

Case C-817/21

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

21 December 2021

Referring court:

Curtea de Apel Bucureşti (Romania)

Date of the decision to refer:

10 December 2021

Appellant:

R. I.

Respondents:

Inspekția Judiciară

N. L.

Subject matter of the main proceedings

Appeal in an administrative dispute seeking, inter alia, annulment of the decisions of certain judicial inspectors adopted following a complaint relating to the commission of disciplinary offences by the chief inspector of the Inspekția Judiciară (Judicial Inspectorate: the ‘IJ’). In essence, the matter concerns whether the guarantees of independence and impartiality must also apply to the disciplinary investigation activity carried out by the judicial inspectors in relation to the chief inspector

Subject matter and legal basis of the request

An interpretation of Article 2 and the second subparagraph of Article 19(1) TEU, and of Commission Decision 2006/928, is sought pursuant to Article 267 TFEU.

Question referred for a preliminary ruling

Must Article 2 and the second subparagraph of Article 19(1) of the Treaty on European Union, Decision 2006/928 (establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption), and the guarantees of independence and impartiality imposed under EU law, be interpreted as precluding national legislation which allows the chief inspector of the Judicial Inspectorate to issue administrative acts of a normative nature (subordinate to the law) and/or an individual nature by which he or she decides autonomously on the organisation of the institutional framework of the Judicial Inspectorate for the selection of judicial inspectors and the assessment of their activity, the conduct of the inspection activities, and the appointment of the deputy chief inspector, where, under organic law, those persons alone may carry out, approve or reject acts of disciplinary investigation in respect of the chief inspector?

Provisions of EU law and case-law relied on

Treaty on European Union, Article 2 and the second subparagraph of Article 19(1);

Charter of Fundamental Rights of the European Union, Article 47;

Commission Decision 2006/928 of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption; recitals 1 to 3, Article 1, and point 1 of the annex;

Judgment of 6 October 2021, *W.Ž. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798;

Judgment of 18 May 2021, *Asociația ‘Forumul Judecătorilor din România’ and Others*, Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393; ‘judgment in *Asociația “Forumul Judecătorilor din România”*’.

Provisions of national law and case-law relied on

Legea nr. 317/2004 privind Consiliul Superior al Magistraturii (Law No 317/2004 on the Supreme Council of the Judiciary), republished, with subsequent amendments and additions. That organic law contains the general regulatory framework for the organisation and functioning of the Judicial Inspectorate. Under that law, in order to bring disciplinary proceedings against a judge a disciplinary investigation must be conducted by the IJ. Cases are to be assigned to the judicial inspectors on a random basis. The decision of the judicial inspector investigating a complaint filed against a judge is to be subject to

confirmation by the chief inspector, who may overturn it only once. The person who filed the complaint may lodge a complaint against the decision to terminate proceedings with the chief inspector. Disciplinary proceedings may be brought within two years of the date on which the offence was committed. The IJ is to be headed by a judge chief inspector appointed through a competition organised by the Consiliul Superior al Magistraturii (Supreme Council of the Judiciary; the 'CSM'), assisted by a public prosecutor deputy chief inspector, appointed by the chief inspector, whose term of office is to end at the same time as that of the chief inspector. The rules on the conduct of inspection activities, and the organisation and functioning of the IJ, the organisational structure thereof, and the functions of its departments, are to be laid down in regulations approved by order of the chief inspector. The judicial inspectors are to be appointed by the chief inspector, following a competition organised by IJ pursuant to regulations approved by order of the chief inspector. The assessment of the professional activity of the judicial inspectors is to be carried out annually by a board made up of the chief inspector and another two members elected by the general assembly of judicial inspectors.

Ordinul nr. 131/2018 al inspectorului-șef al Inspecției Judiciare privind aprobarea Regulamentului de organizare și desfășurare a concursului pentru numirea în funcție a inspectorilor judiciari (Order No 131/2018 of the chief inspector of the Judicial Inspectorate approving the regulations on organising and conducting the competition for the appointment of judicial inspectors). Under those regulations, the inspectors of the IJ are to be appointed by the chief inspector, following a competition consisting of an interview and a written test. The interview board is to be made up of the chief inspector, the directors of the inspection directorates, and a psychologist having an advisory function, appointed by order of the chief inspector. The board's activity is to be coordinated by the chief inspector.

Ordinul nr. 134/2018 al inspectorului-șef al Inspecției Judiciare privind aprobarea Regulamentului de organizare și funcționare a Inspecției Judiciare (Order No 134/2018 of the chief inspector of the Judicial Inspectorate approving the regulations on the organisation and functioning of the Judicial Inspectorate). Under those regulations, it is the chief inspector who is to appoint, from among the judicial inspectors, the management team, made up of the deputy chief inspector and the directors of the inspection directorates, and to assess the staff. The appointment of the deputy chief inspector and the abovementioned directors is to be carried out through a selection procedure in which the candidates are interviewed by the chief inspector on the basis of a management project. The staff assessment is to be carried out by a board made up of the chief inspector and two judicial inspectors elected by the general assembly of the judicial inspectors. The assessment criteria are to include conduct and communication with the chief inspector.

Ordinul nr. 136/2018 al inspectorului-șef al Inspecției Judiciare de aprobare a Regulamentului privind normele de efectuare a lucrărilor de inspecție (Order

No 136/2018 of the chief inspector of the Judicial Inspectorate approving the regulations laying down rules for the conduct of inspection activities)

Decisions Nos 474/2016, 588/2017, 121/2020 and 454/2020 of the Constitutional Court, by which it ruled, in essence, that the essential aspects concerning the status of judges must be governed by organic law, and not by an act of lesser force than the law.

Succinct presentation of the facts and procedure in the main proceedings

- 1 The respondent IJ is a structure with legal personality within the CSM, with powers relating to judicial investigations of judges. It is headed by a chief inspector, the respondent N.L., who is assisted by a deputy chief inspector, appointed by the chief inspector, that is to say the public prosecutor P.M. The lawfulness of N.L.'s appointment to the post of chief inspector for the period from 1 September 2018 to 14 May 2019 was contested in one of the cases on which the judgment in *Asociația 'Forumul Judecătorilor din România'* was given.
- 2 The appellant is a party in several criminal proceedings at the investigation or decision stage. In this context, she made several disciplinary complaints against judges and public prosecutors, taking the view that she had been adversely affected by their judicial activity. Certain decisions of the judicial inspectors were adopted in relation to those complaints and some of those decisions have been approved or confirmed by the respondent.
- 3 The appellant lodged an appeal in an administrative dispute against one of those decisions issued by P.M on 2 July 2018 and approved by the respondent. By judgment of 27 September 2019 of the Curtea de Apel București (Court of Appeal, Bucharest), which has become final, that appeal was allowed and the IJ was ordered to carry out checks. In the grounds for that judgment, it was stated, in essence, that the IJ had not examined effectively the aspects on which the appellant relied. Having completed the checks, the IJ issued, on 11 March 2021, a new decision, confirmed by the chief inspector by the rejection of the complaint brought by the appellant. Those decisions are being contested in court in another case pending before the Curtea de Apel București.
- 4 By a memorandum addressed to the Ministry of Justice on 29 November 2019, the appellant complained that the IJ, and in particular the respondent, had infringed her constitutional and procedural rights. Taking the view that that complaint fell within the competence of the IJ, the Ministry of Justice referred it to the IJ, with which it was registered on 29 January 2020.
- 5 By a complaint registered on 16 February 2021 with the IJ – Direcția de inspecție pentru judecători (Inspection Directorate for Judges), the appellant lodged a complaint against the respondent N.L., alleging that he had committed several disciplinary offences in bad faith. In support of that complaint, the appellant claims that, in the context of the complaints which she made from 2018 until the

time of the abovementioned complaint: (1) no real investigation had been carried out in relation to the judges and public prosecutors whom she had reported; (2) the files which existed at the IJ had not been made available to her for consultation; (3) she had not been provided with the original of the decision in a case in which certain judges had been reported; (4) the decision had been delayed in relation to her complaint to the Ministry of Justice on 29 November 2019 and forwarded to the IJ for a decision; (5) enforcement of the judgment of 27 September 2019 of the Curtea de Apel București had been refused; (6) the obligation to refrain from taking decisions on complaints addressed to the Ministry of Justice, in which one of the persons complained of was the chief Inspector himself, was not fulfilled; and (7) it had been stated, contrary to the facts, in a letter of 25 January 2021 that a copy of a decision and copies of certain documents had been sent to her, but in fact the envelope contained only a blank sheet of paper.

- 6 A judicial inspector ruled on the abovementioned complaint and issued a decision to terminate proceedings on 17 March 2021. The complaint lodged against that decision was dismissed by decision of 11 May 2021, issued by the deputy chief inspector, and more precisely the public prosecutor P.M. The appellant lodged with the referring court an appeal in an administrative dispute by which she is seeking annulment of those decisions.

The essential arguments of the parties in the main proceedings

- 7 In the statement of grounds for her appeal, the appellant submits that the situations of the chief inspector and the deputy chief inspector were incompatible when deciding on the complaint in question, that the acts of appointment of the latter are unlawful, and that there are irregularities connected with the organisation and functioning of the IJ.
- 8 As regards the incompatibility of the situations of the chief inspector and the deputy chief inspector, the appellant claims that the decision issued on 2 July 2018 by the deputy chief inspector, the public prosecutor P.M., approved by the chief inspector, was annulled by the judgment of 27 September 2019 of the Curtea de Apel București. The deputy chief inspector found himself in an incompatible situation when issuing the decision of 11 May 2021 in that the relevant complaint concerned the exercise of certain functions by the chief inspector in a case which had been settled precisely by the deputy chief inspector by the decision which had been definitively annulled by the judgment of the Curtea de Apel București of 27 September 2019. The present appeal also concerns the delay in adopting an actual decision on the complaint in question which, moreover, was intended to allow the legal time limits within which disciplinary proceedings may be brought to expire, namely two years from the commission of the offence. In addition, the respondent N.L., who was the subject of the complaint lodged through the Ministry of Justice, continued systematically to confirm the decisions to terminate proceedings in relation to the complaints concerning the actions of certain judges lodged by the appellant, and those judges continued to infringe her rights as they

deemed themselves to be protected by the passivity of the IJ, as represented by the chief inspector.

- 9 As regards the unlawfulness of the acts of appointment, the appellant relies on the judgment in *Asociația 'Forumul Judecătorilor din România'*, which was interpreted as meaning that the administrative acts issued by the chief inspector in relation to the appellant's complaints in the period from 1 September 2018 to 14 May 2019 are unlawful in that they were adopted by a person who did not have the status required by law since the respondent N.L. had been appointed to that position in breach of the mandatory provisions of the law on the organisation of the courts.
- 10 With regard to the irregularities connected with the organisation and functioning of the IJ, the appellant considers that the following aspects infringe the guarantees of independence and impartiality: 1. the involvement of the chief inspector in the selection of the judicial inspectors; 2. the appointment of the deputy chief inspector by the chief inspector by means of an individual administrative act without applying objective selection criteria; 3. the possibility for the chief inspector to issue administrative acts of a normative nature by which he or she determines the manner in which the functions of the IJ's structure are established; 4. the effect of the way in which the IJ is organised and functions on the way in which the activities of judicial inspectors are carried out; 5. the failure to have the status of judges and public prosecutors governed exclusively by organic law; and 6. the absence of guarantees against a lack of impartiality and arbitrariness.
- 11 The respondent IJ contends that the judicial inspectors enjoy independence in the context of the checks which they carry out and act with impartiality and that the analysis of the presence of signs that a disciplinary offence has been committed is an exclusive task of the judicial inspector, on the basis of the outcome of the preliminary checks carried out in relation to the aspects which are the subject of the complaint. The decisions contested in the present case contain arguments of fact and law underlying the decision to terminate proceedings adopted by the judicial inspector and were ordered in compliance with the special legal conditions in that regard.
- 12 As regards the plea based on the judgment in *Asociația 'Forumul Judecătorilor din România'*, the respondent claimed that that judgment did not rule on the unlawfulness of the administrative acts issued by the chief inspector in the period from 1 September 2018 to 14 May 2019, but, on the contrary, the Court of Justice merely set out the principles which the national courts must apply in each case.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 13 First, the referring court points out that the analysis of the present appeal is limited to assessing whether there are signs that a disciplinary offence has been committed, which entails a summary examination, apparently on the basis of a minimum set of evidence. It states that the appellant relies on the effects of the

judgment in *Asociația 'Forumul Judecătorilor din România'* on the appointment of the chief inspector of the IJ and on the acts carried out during the period from 1 September 2018 to 14 May 2019, which entails an analysis of the existence of signs that a disciplinary offence had been committed in the light of certain elements of substantive law.

- 14 That court goes on to observe that the appellant also challenges the lawfulness of the procedure in which the contested decisions were issued and calls into question the very organisation and functioning of the IJ, on the ground that the judicial inspectors who may carry out, approve or reject acts of disciplinary investigation in relation to the chief inspector are selected and assessed by him or her and carry out their inspection activities on the basis of an institutional framework in which the chief inspector is empowered to issue administrative acts of a normative and individual nature. Therefore, if the chief inspector is the subject of a complaint, the complaint against the decision of the judicial inspector analysing the case is dealt with by the deputy chief inspector, who is also appointed by the chief inspector, by a unilateral and individual act, following a selection procedure consisting solely in the presentation of a management project in an interview with the chief inspector.
- 15 That possibility of issuing an individual administrative act appointing the judicial inspectors holding hierarchically lower management posts within the IJ (including the deputy chief inspector) is provided for in Law No 317/2004, which also provides that the term of office of the latter is to terminate at the same time as that of the chief inspector. This, therefore, raises the question at issue, which would fall within the jurisdiction of the Court of Justice, as to whether the continued employment of the latter in managerial roles depends on the continued employment of the chief inspector and, if so, how that aspect affects the independence and impartiality with which a decision on a disciplinary complaint against the chief inspector must be taken.
- 16 It follows that, in the analysis of the question before the referring court, priority must be given to issues relating to the procedural rules under which the contested decisions were issued, that is to say those relating to the existence of a legislative framework at the level of the organic law which provides objective guarantees as to the independence and impartiality of the judicial inspectors in relation to the chief inspector, where the latter is the subject of the disciplinary complaint.
- 17 The referring court considers that the judgment in *Asociația 'Forumul Judecătorilor din România'*, on which the appellant relies, concerns a specific case, that is to say that of the appointment of the chief inspector of the IJ, and the guarantees were analysed from the point of view of the objective risk to the status of any judge in that the prospect of a disciplinary investigation being initiated is per se likely to put pressure on judges. In the present case, however, the appellant refers to a different case, that is to say one where, because of the way in which the rules governing disciplinary liability are laid down, the impossibility of bringing disciplinary proceedings (on account the expiry of the statutory time limits and

alleged passivity on the part of the chief inspector) depends, essentially, on the way in which the IJ is organised and functions.

- 18 In addition, the appellant claimed that there had been delays and deficiencies in communicating the inspection measures, taking the view that her interest in availing herself of legal remedies provided for by law had been adversely affected, and considered that EU law precluded such a legal framework which concentrated in the hands of a single person the power to regulate and determine to a significant degree the career of the judicial inspectors. On the other hand, she states that the disciplinary proceedings against the judges responsible for ruling on the criminal cases to which she is party or against the chief inspector constitute a remedy to ensure compliance with her procedural rights in those cases, separate from the exercise of the remedies provided for in criminal law.
- 19 The referring court emphasises that it does not have to rule on those aspects at this stage of the proceedings and merely points to the causal link between the interpretation of EU law and the present case as regards the appellant's means of defence.
- 20 Referring to paragraph 109 the judgment in *Asociația 'Forumul Judecătorilor din România'*, the referring court states that the matter raised in the present case is whether the guarantees of independence and impartiality also apply in the case of judicial inspectors and those managing the IJ and whether, in a situation such as that in the present case, EU law precludes national legislation which allows the chief inspector of the Judicial Inspectorate to issue administrative acts of a normative nature and/or individual nature by which he or she decides autonomously on the organisation of the institutional framework of the IJ, where he himself or she herself may be the person subject to disciplinary proceedings.
- 21 The referring court recalls that the provisions contested by the appellant form part of a process of reforming the disciplinary system initiated in 2012 and one of the measures adopted is precisely that of strengthening the IJ as an institution by increasing its autonomy in relation to the CSM, both from the point of view of the way in which it performs functions and from the point of view of operational independence. The explanatory memorandum to the law thus adopted refers to the reports from the Commission on progress in Romania under the Cooperation and Verification Mechanism and observes inter alia that 'it is recommended that measures be taken to strengthen the capacity and organisation of the judicial inspections in order to ensure sufficient focus on disciplinary investigation, that an annual evaluation of the Judicial Inspectorate's performance be introduced, and that the process of reforming the Judicial Inspectorate be continued'.
- 22 The measure increasing the autonomy of the IJ in relation to the CSM was considered to be intended to ensure compliance with Decision 2006/928 and the issue of the interpretation of EU law consists in determining what objective guarantees must accompany such institutional autonomy and whether they preclude national legislation by which the autonomous nature of the institution

coincides with the power conferred on a single person, the person managing that institution, to issue administrative acts of a normative nature, by way of derogation from the standard of organic law imposed by the Curtea Constituțională a României (Romanian Constitutional Court) on the status of judges.

- 23 In the present case, the regulations adopted by orders of the chief inspector of the IJ Nos 131/2014, 134/2014 and 136/2014 contain provisions of domestic law relating to all the aspects challenged by the appellant – that is to say the structures of the institution, the roles of the staff, the registration and distribution of applications, the time limits for taking a decision on them, the appointment of the judicial inspectors, the conduct of the investigation activities, the appointment by the chief inspector of the persons with executive roles, and the monitoring and assessment of their activities – the adoption, amendment and supplementation of which the legislature leaves to the exclusive competence of the chief inspector of the IJ.
- 24 Relying on the judgment in *Asociația 'Forumul Judecătorilor din România'*, the referring court states that the way in which the organisation and functioning of a judicial body are regulated is considered by the Court of Justice to be linked to the length of the proceedings conducted before the relevant body. The matter in the present case is different in that the object of the activities of the institutions concerned is different since the circumstances relied on by the appellant are connected, inter alia, to the discretion of chief inspector of the IJ in issuing normative acts by which he regulates the organisation and functioning of the IJ.
- 25 Consequently, the question arises as to the solidity of a system of guarantees based largely on administrative acts of a normative nature issued, unilaterally, by a person performing the role of chief inspector, even though precisely that person may be the subject of a disciplinary complaint.
- 26 In that regard, the referring court recalls the standards laid down by the Consultative Council of European Judges (CCJE) from which it is apparent that although different forms of organisation of the disciplinary system exist in the Member States, the same, or even stricter, standard of guarantees must apply to judicial inspectors and judicial inspection activities as those applicable to the body of judges to which they belong, having regard to the fact that it is the judicial inspectors who may bring disciplinary proceedings against any judge, including the person in charge of the judicial inspection activity.

Justification for determining the case pursuant to an expedited procedure

- 27 The referring court asks that the present case be determined pursuant to an expedited procedure on the ground that the appellant has already complained about the length of the disciplinary proceedings in relation to the complaints which she has lodged, claiming that they had been ineffective. It is therefore necessary that the time taken to complete the preliminary ruling procedure should

not be regarded by the parties as a cause of uncertainty as to the efficiency or effectiveness of the judicial remedy which they are seeking. In addition, the matter raised is an important one since the questions raised concern issues relating to the organisation and functioning of a judicial inspection body, an aspect which is relevant to all Member States.

WORKING DOCUMENT