

Italy, Justice of the Peace for Lanciano, no. 803/2019, pending case.

Member State

 Italy

Topic

Independence (Interference of the executive)

Rule of law (Fair Trial/Access to Justice)

Deciding Court Original Language

Giudice di Pace di Lanciano

CJEU Case C-220/20

Deciding Court English translation

Justice of the Peace for Lanciano

Registration N

Ruolo Gen. 803/2019

Date Decision

Pending

National Follow Up Of (when relevant)

Direct follow up of the CJEU judgment C-220/20

EU legal sources and CJEU jurisprudence

- Article 2 TEU
- Article 4(3) TEU
- Article 6(1) TEU
- Article 9 TEU
- Article 67 TFEU

- Article 81 TFEU
- Article 82 TFEU
- Article 47 of the Charter

CJEU judgments:

- LM, C-216/18
 - Commission v. Poland, C-619/18 R, Order of the Vice-President of the Court
 - M.A.S. and M.B. C-42/17, Order of the President of the Court
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Subject Matter

Preliminary request to the Court of Justice concerning the compatibility of the measures adopted by Italy to face the Covid-19 pandemic, in particular the declaration of a state of national health emergency and its extension, and the situation of paralysis of the civil and criminal justice with EU law, in particular Articles 2, 4(3), 6(1) and 9 TEU, Articles 67(1) and (4), 81 and 82 TFEU, in conjunction with Articles 1, 6, 20, 21, 31, 34, 45 and 47 of the Charter, in so far as they undermine the independence of the referring court and infringe the principle of fair trial and the connected rights. The court rejected the preliminary request as inadmissible.

Legal issue(s)

Independence of the Italian Giudice di pace and right to a fair trial

The Giudice di Pace of Luciano doubted the compatibility with EU law of the measures adopted by the Italian government to face the first phase of the Covid-19 pandemic, which, according to him, resulted in the total paralysis of the Italian justice system and the breach of the right to a fair trial. Moreover, in combination with the job insecurity of the Italian honorary judges, who do not enjoy working conditions equivalent to those of professional judges, even though they perform the same judicial functions, they resulted in the violation of their independence.

Request for expedited/PPU procedures

The Giudice di Pace requested the case to be decided under the expedited procedure, in accordance with Article 105 of the Court's Rules of Procedure. He stressed that a violation of the right to an independent judge under Article 47 of the Charter could give rise to a "serious and irreparable harm".

National Law Sources

Selection of the most relevant sources quoted:

- Articles 7(1)(c) and 24(1) of the Legislative Decree no. 1/2018
- Resolution of the Council of Ministers 31 January 2020 declaring the state of emergency as a result of the health risk associated with the onset of pathologies deriving from transmissible viral agents.
- Legislative decrees (d.l.) on the suspension or reorganisation of the judicial activity in the

period 9 March - 11 May 2020: Article 10 of d.l. 2 March 2020, n.9; Articles 1-4 of d.l. of 8 March 2020, n. 11; Article 83 of d.l. 17 March 2020, n. 18; Article 36 of d.l. 8 April 2020, n.23; Article 3 of d.l. 30 April 2020, no. 28, Article 16 of d.l. 19 May 2020, n. 34 (Decreto Rilancio).

- Decrees of the President of the Council of Ministers (DPCM) adopted to face the pandemic and affecting fundamental rights of 4 March 2020, 8 March 2020, 9 March 2020, 11 March 2020, 22 March 2020, 1 April 2020 and 10 April 2020, 26 April 2020

Facts of the case

The plaintiff challenged the National Autonomous Roads Corporation (ANAS) before the Justice of the Peace of Lanciano to pay compensation for damages allegedly suffered as a result of a road accident occurred on October 31, 2018 and caused by a hole in the road. According to Anas, the claimant's claim was unfounded and the responsibility for the cause of the road accident was attributable to the Province of Chieti. The latter contested this fact and asked for the rejection of the questions in full because inadmissible and unfounded in fact and in law.

The Giudice di pace had fixed the hearing for 1 May 2020. However, before that could take place, the tragedy of the Covid-19 epidemic occurred and the Italian the Government adopted a series of measures that the referring judge suspected to be constitutionally illegitimate, because they paralyzed the civil and criminal justice, also affecting the ordinary development of the case at issue. Thus, by two decrees of April 14, the referring judge ordered the postponement of both civil and criminal proceedings assigned to him to May 11, thus deferring the hearing of the dispute at issue from May 4, 2020 to 1 June 2020, outside the period of suspension of judicial activity. Later on, he was forced to further postpone the hearing to a date after the 31 August 2020.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

According to Law Decrees 18/2020 and 28/2020, during the first phase of the Covid-19 pandemic, the heads of the judicial offices had to adopt the organizational measures in order to avoid gatherings within the judicial office and close contacts between people. Since the 1 May 2020, it was up to the court Presidents to decide whether perform trials in both in civil and criminal proceedings via remote modalities. As regards proceeding, they could decide either to celebrate civil and criminal proceedings behind closed doors, or to conduct of civil hearings that do not require the presence of other subjects than the defenders and the parts through remote connections or the exchange and the deposit of written notes. In the alternative, they had to postpone hearings to a date after 31 July 2020. However, in most cases including the one of the referring courts, due to the specificities of the Italian judicial administration and lack of any form of trial digitalisation, Presidents of the Courts were precluded from applying any of the above modalities but the postponement of hearings. Indeed, even in cases such as the present one, where the Presidents of the Court identified the remote trial as the method of conducting civil and criminal cases pending in the period from May 12 to July 31, this organizational mode entailed the nullity of the trial for violation of the provisions of the codes of procedure on the drafting of minutes of the hearing. As regards holding trial behind closed door, this possibility was precluded by the lack of authorisation of regional health services and the absence of sufficient health protection devices. Finally, the legislative provisions pushing for the use of smart working in the public administration resulted in a paralysis of the judicial activity, as the justice system was obliged to

renounce to the physical presence of most of its personnel. Such a working mode was prolonged with the extension of the state of emergency to 31 January 2020.

In light of the above, the referring judge on 11 May 2020 postponed all hearings to a date after the 31 August 2020, including the one of the present cases.

According to the referring court, the above situation highlighted the intention of the Italian government to impede the celebration of judicial proceedings, except the urgent ones, until the end of the emergency period. The result of the above situation of paralysis of the justice system was also the impossibility for the citizens to access the justice and enjoy their right to a fair trial. In particular, the condition of the honorary judiciary was very problematic, with the impossibility to hold any hearing. The referring court claimed that the Italian Government took advantage of the precarious working conditions of the justices of peace to suspend their working activities and envisage as a compensation only an economic contribution in the amount of 600 euros per month. This situation is worsened by the economic situation of honorary judges, whose compensation scheme is different from the one for ordinary judges as it is contingent on their actually working. Since no justice of peace had received, at the date of the order for reference, any compensation as an honorary magistrate, thanks to the paralyse of the honorary justice system the Italian State saved an amount of money equal to 74.800.000 euros.

According to the referring court, the measures adopted by the Italian government are “outrageous” to the dignity of judges and detrimental not only to their independence but also to the rights of the plaintiffs to a fair trial. Such a situation is deemed incompatible with Articles 2, 4(3), 6(1) and 9 TEU, Articles 67, 81 and 82 TFEU and Article 47 of the Charter. In particular, Article 83 of Legislative Decree 18/2020 breaches the requirement of independence of the Giudice di Pace.

The referring judge shared the opinion that the Government has entered into an institutional and constitutional short-circuit in the management of the Covid-19, generating a special right for the state of emergency in violation of the national Constitution and EU law. This fact was also proved by the Government’s concealment of the declaration of the state of national emergency in the first emergency decrees of the President of the Council of Ministers (DPCM). In particular it deemed problematic and incompatible with EU law the measures included in Articles 42, 83 and 87 of Decree Law No 18 of 17 March 2020, the decision of the Council of Ministers of 31 January 2020 declaring a state of national health emergency for six months until 31 July 2020 and Articles 14 and 263 of Decree Law No 34 of 19 May 2020 (Decreto Rilancio). It considered that the independence of the referring judge and the right to a fair trial were breached by:

- the declaration of the state of emergency and the consequent power shift in favour of the government;
- the suspension of the judicial activities, with the exception of urgent cases, in the period 9 March – 11 May 2020;
- the lack of action on the side of the Government as regards the disinfection of judicial rooms and the digitalisation of the judicial sector;
- the working modalities for the justice system, which are considered by the referring judge as “seriously detrimental to right to defence and of trial of the parties”;
- lack of personnel physically present in the judicial offices, which made impossible the holding

- of hearings behind closed doors;
- the forced choice for the referring judge to postpone all hearings to a date after the 31 August 2020;
- the fact that the referring judge received no contribution from the Italian State for the whole period of the state of emergency;
- the fact that the state of emergency and the paralysis of the justice system were prolonged to the 31 January 2021 while all economic activities were reopened from 18 March.

The Court of Justice in its decision dismissed the preliminary request by order. The Court found no connection between the provisions of EU law whose interpretation was sought and the national dispute pending before the Giudice di pace. That request did not concern an interpretation of EU law that was objectively necessary for the resolution of that dispute but was of a general nature. Moreover, the order for reference did not contain any explanation as to the choice of the provisions of EU law or as to the doubts raised by the referring court in that regard. Since the referring court merely set out general considerations, the Court held the reference for a preliminary ruling manifestly inadmissible.

Relation of the case to the EU Charter

The Giudice di pace invoked Article 47 of the Charter as legally binding parameters to challenge the measures adopted by the Italian government during the first phase of the Covid-19 pandemic. He also referred to Articles 1, 6, 20, 21, 31, 34, 45 of the Charter in the order for reference as rights connected to the violation of the fair trial but without explaining their concrete relevance to the case.

The Court of Justice in its order found that the lack of information on the applicability of EU law to the national proceeding also prevented the Court from ruling on the applicability of the Charter. Thus, the reference was inadmissible in so far as it relates to the provisions of the Charter referred by the national judge.

Use of Judicial Interaction technique(s)

Preliminary reference; direct reference to the case law of CJEU:

- the Giudice di pace refers a question for a preliminary ruling to the CJEU
 - the Giudice di pace directly referred to the case law of CJEU: LM, *Commission v Poland*, M.A.S)
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Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The referring court cites on few occasions the case-law of the Court of Justice to support its reasoning. In particular, it refers to the role of the guarantees of independence in light of the fundamental right to a fair trial and Article 2 TEU and quoted in his support the judgment in LM (C-216/18, para 48). Moreover, in supporting his claim for the expedited procedure, he referred to the order of the vice-president of the Court in *Commission v. Poland* (C-619/18, para 21) - to stress the fact that a violation of Article 47 of the Charter is capable as such to give rise to a serious and

irreparable harm - and to the order of the President of the Court in M.A.S. (C-42/17).

Strategic use of judicial interaction technique (purpose aimed by the national court)

The use of judicial interaction techniques is presumably strategical in the sense that the Giudice di pace referred the question to the CJEU in order for hear its pronouncement over the situation of honorary judges in Italy. Such a case must be read in light of other orders of reference sent by members of the honorary Italian judiciary to the CJEU and dealing with their special status under Italian law (see the CJEU judgment in case C-658/18 and the pending cases C-834/19 and C-236/20). The aim pursued was a direct finding of breach by Italy of the independence of the referring judge in order to push the Italian legislator to change the national legislation on the status of honorary judges. In this respect, the order of the Court of Justice declaring the preliminary request as inadmissible it not unexpected.

Notes on the national implementation of the preliminary ruling by the referring court

Not yet applicable since both the decision of the national judge is still pending.

Connected national caselaw / templates

Templates:

- Justice of the Peace for Bologna (Italy), no. 2508/2020, 30/09/2020 (connected with the CJEU judgment in Case UX, C-658/18)
 - Tribunale Amministrativo Regionale per la Emilia Romagna (Italy) n. 644 of 20 October 2020, pending case (connected to the pending request for a preliminary ruling from lodged by the same court on 4 June 2020, Case C-236/20, PG)
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(Link to) full text

Request for a preliminary ruling: <http://www.unionegiudicipace.it/wordpress/wp-content/uploads/2020/05/Pregiudiziale-Gdp-Lanciano.pdf>

Order of the CJEU:

<http://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-220/20&jur=C>

History of the case: (please note the chronological order of the summarised/referred national judgments.)

Application to the Giudice di pace di Lanciano: 25 September 2019

2. Order for reference: 18 May 2020

3. Decision of the Court of Justice declaring the case inadmissible: 10 December 2020

4. Judgment of the Giudice di pace di Lanciano: pending
