

## Romania, Judgment of the Court (First Chamber), C-817/21, R.I. v Inspec?ia Judicial? and N.L., of 11 May 2023, ECLI:EU:C:2023:391

### Member State

 Romania

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### Topic

rule of law, independence of the judiciary

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### Sector

Judicial Interaction Techniques; Disciplinary proceedings; Use of the Preliminary Reference Procedure

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### Deciding Court Original Language

Court of Justice of the European Union, First Chamber

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### Registration N

01/04/2022

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### Date Decision

11/05/2023

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### ECLI (if available)

ECLI:EU:C:2023:391

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### EU legal sources and CJEU jurisprudence

Article 2 and the second subparagraph of Article 19(1) TEU, Commission Decision 2006/928/EC 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 (OJ 2006 L 354, p. 56).

In particular: Judgment of 18 May 2021, Asocia?ia 'Forumul Judec?torilor din Rom?nia' and Others, C?83/19, C?127/19, C?195/19, C?291/19, C?355/19 and C?397/19, EU:C:2021:393; Judgment of 22 February 2022, RS (Effect of the decisions of a constitutional court), C?430/21, EU:C:2022:99; Judgment of 20 April 2021, Repubblika, C?896/19, EU:C:2021:311; Judgment of 21 December 2021, Euro Box Promotion and Others, C?357/19, C?379/19, C?547/19, C?811/19 and C?840/19, EU:C:2021:1034; Judgment of 15 July 2021, Commission v Poland (Disciplinary

regime for judges), C-791/19, EU:C:2021:596; Judgment of 19 November 2019, A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court), C-585/18, C-624/18 and C-625/18, EU:C:2019:982; Judgment of 2 March 2021, A.B. and Others (Appointment of judges to the Supreme Court – Action), C-824/18, EU:C:2021:153.

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### ECtHR Jurisprudence

no explicit reference to ECtHR jurisprudence; implicit reliance on the ‘doctrine of appearances’ (e.g. <https://hudoc.echr.coe.int/fre?i=001-105236>)

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### Subject Matter

Reference for a preliminary ruling – Rule of law – Judicial independence – Independence of the judiciary – Disciplinary proceedings – Judicial Inspectorate – Chief Inspector with powers of regulation, selection, assessment, appointment and disciplinary investigation

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### Legal issue(s)

The Judicial Inspectorate (Inspec<sup>ția</sup> Judiciar<sup>ă</sup>) is a body with legal personality within the Superior Council of Magistracy (SCM), whose accountability and transparency are expressly provided for as a purpose of the first benchmark of the Cooperation and Verification Mechanism developed by the European Commission (Decision 928/2006). It plays a key role in disciplinary proceedings in the judiciary, directly linked to the objective of strengthening the accountability and, therefore, the efficiency of the judiciary, being competent to conduct investigations and bring disciplinary proceedings against judges and prosecutors. The Romanian national legislation at issue in this case confers on the director of the Judicial Inspectorate the power to adopt acts of a normative and individual nature relating, inter alia, to the organisation of that body, the selection of its staff members, their assessment, the conduct of their activities and the appointment of a deputy director. Moreover, those members of staff and the deputy director alone are competent to conduct a disciplinary investigation against that director, while their careers depend, to a large extent, on the decisions of that director and, the term of office of the deputy director will end at the same time as that of the director. Finally, the relevant legislation is not designed in such a way that there can be no reasonable doubt, in the minds of individuals, that the powers and functions of that body will not be used as an instrument to exert pressure on, or political control over, the activity of those judges and prosecutors.

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### Request for expedited/PPU procedures

The referring court requested that the reference for a preliminary ruling be dealt with under an expedited preliminary ruling procedure noting first that R.I., party in several criminal proceedings at the national level, complained about the excessive length of the disciplinary proceedings and second that the question referred concerned an important point of law, in so far as it related to the organisation and operation of a Judicial Inspectorate body. The President of the Court dismissed the request, arguing that, in the absence of exceptional circumstances, the use of an expedited procedure could be justified neither by the need that the case in the main proceedings be resolved swiftly nor by the nature of the dispute in the main proceedings as such

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### Interim Relief

### National Law Sources

Legea nr. 317/2004 privind Consiliul Superior al Magistraturii (Law No 317/2004 on the Supreme Council of the Judiciary) of 1 July 2004 (Monitorul Oficial al României, Part I, No 827 of 13 September 2005), as amended and supplemented ('Law No 317/2004 as amended'): Articles 44(6) , 45(4), 45-1(1), 47(7), 65(2) to (4), 66(3), Article 69(1) and (4) , 71(2)

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### Facts of the case

Seized by an appeal against the decisions of the Judicial Inspectorate to take no further action on a complaint lodged against the Chief Inspector, the Bucharest Court of Appeal raised questions about the soundness of the system of safeguards arising from the Romanian legislation for reviewing the actions of the Chief Inspector

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

The Court of Justice decided that Article 2 TEU and the second subparagraph of Article 19(1) TEU, read in conjunction with Commission Decision 2006/928/EC 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, must be interpreted as precluding national legislation:– which confers on the director of a body competent to conduct investigations and bring disciplinary proceedings against judges and prosecutors the power to adopt acts of a normative and individual nature relating, inter alia, to the organisation of that body, the selection of its staff members, their assessment, the conduct of their activities and the appointment of a deputy director; – where, first of all, those members of staff and the deputy director alone are competent to conduct a disciplinary investigation against that director, next, their careers depend, to a large extent, on the decisions of that director and, finally, the term of office of the deputy director will end at the same time as that of the director.

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### Relation of the case to the EU Charter

Meaningful reference made to Article 47 of the Charter, as bodies that may be called upon to rule on questions concerning the application or interpretation of EU law must be able to ensure an effective judicial protection, their independence being essential, while the concentration of extended powers in the hands of the Chief Inspector could give rise to reasonable doubt, in the minds of individuals, as to the use of the powers and functions of that body as an instrument to exert pressure on, or political control over, judicial activity.

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### Relation between the EU Charter and ECHR

The Court notes that principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and is now reaffirmed in Article 47 of the Charter of Fundamental Rights of the European Union.

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### Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with

#### Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

Within a genuine vertical interaction mutually relevant, the Court of Justice grants a large margin of appreciation to the referring court whom it explicitly advises to assess the national legislation at issue in the main proceedings as such and in its national legal and factual context. The assessment of the safeguards that the legislation provides in order to prevent the misuse of his powers by the Chief Inspector is equally contextual, as the referring court should, in particular, have to take account of the dependence on the Chief Inspector, who will again be seised of the case following the annulment of a decision to take no further action, and of the risk that limitation periods may expire, precluding disciplinary proceedings from being brought. For the analysis of the national legal and factual context, the Court suggests a 'cumulative effects' approach, pursuant to which the national court should take into account three elements: (1) the increase of the Chief Inspector's powers through reforms aiming to reduce the guarantees of independence and impartiality of Romanian judges; (2) the relevance of the appointment rules, if they indicate that the Chief Inspector is closely linked to the executive or the legislature; (3) the Chief Inspector's actual practice to use his powers for the purpose of political control over judicial activity.

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

First, the referring court seeks the assistance of the Court of Justice in order to preserve the independence of the judiciary at the national level; second, it contributes to the development of the CJEU caselaw on that matter. The first purpose appears justified as the Judicial Inspectorate started in 2021 the disciplinary investigation of the first judge who implemented the CJEU preliminary ruling in the *Asociația 'Forumul Judecătorilor din România' and Others (AFJR)* case (Commission Staff Working Document, 2021 Rule of Law Report Country Chapter on the rule of law situation in Romania). The judge was accused of having acted in serious negligence for, de facto, giving effect to the CJEU judgment in the AFJR case over a Romanian Constitutional Court decision expressing defiance towards EU law (Decision no. 390/2021). From the second point of view, the initiative of the referring court in this case is connected to, yet different from the one that the Court of Justice responded to in the AFJR case. On the one hand, the AFJR judgement concerned the irregular appointment of the Chief Inspector, a politically convenient solution for the ruling party at that time, as targeted disciplinary investigations started against the judges who had been critical of the justice reform, in a context where the Romanian Constitutional Court expressed its defiance towards EU law (by its Decision no. 390/2021). At that time, the novelty in the AFJR case was that 'not only the disciplinary body that ultimately decides on the disciplinary offence, but also the body that initiates disciplinary proceedings matters'. On the other hand, in *Inspecția Judicială*, the issue at stake was the impossibility to bring efficient disciplinary proceedings given the manner in which the Judicial Inspectorate is organised and operates. The subquestion was whether a body, such as the Judicial Inspectorate, called upon not to settle disputes as judges, but to conduct investigations and initiate disciplinary proceedings, must offer the same guarantees of independence and impartiality as are required of courts under EU law and the response to this issue is relevant for the general EU constitutional law.

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### Impact on Legislation / Policy

No legislative reform has been adopted since May 2023 to this date, the time span being too short for the legislative procedure to unfold. In a press release of June 2023, Asociația 'Forumul Judecătorilor din România' publicly required it:

<http://www.forumuljudecatorilor.ro/index.php/archives/6700>

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

The case that has generated the referral is still pending before the Bucharest Court of Appeal.

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### Impact on national case law from the same Member State or other Member States

The Judgment is too recent for its genuine impact at the national level to be assessed. For the impact of the national court referral on the developing caselaw of the CJEU, see 6.4.

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### Connected national caselaw / templates

Judgment of the Court (Grand Chamber) in Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, Asociația Forumul Judecătorilor din România (AFJR) of 18 May 2021, ECLI:EU:C:2021:393; Judgment of the Court (Grand Chamber), C-430/21 RS, ECLI:EU:C:2022:99; Judgment of the Court (Grand Chamber), in Case C-107/23, PPU [Lin] of 24 July 2023, ECLI:EU:C:2023:606.

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### (Link to) full text

<https://curia.europa.eu/juris/document/document.jsf?docid=273603&mode=req&pageIndex=1&dir=&occ=first>

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