

**Romania, Pitesti Court of Appeal, Criminal Ruling No. 3/F-CC-DL,
Case no. 722/46/2021, 07 June 2021, ECLI:
ECLI:RO:CAPIT:2021:011.000003**

Member State

 Romania

Topic

rule of law, independence of the judiciary

Sector

disciplinary proceedings; use of the preliminary reference procedure

Deciding Court Original Language

Curtea de Apel Pitesti, Sec?ia Penal? ?i pentru Cauze cu Minori ?i de Familie

Deciding Court English translation

Pitesti Court of Appeal, Criminal Section and Section for Minors and Family Cases

Registration N

-

Date Decision

07/06/2021

ECLI (if available)

ECLI: ECLI:RO:CAPIT:2021:011.000003

National Follow Up Of (when relevant)

EU legal sources and CJEU jurisprudence

- art. 2 and art. 19 para. (1) second paragraph TEU,

- Commission Decision 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 (notified under document number C(2006) 6569) (2006/928/EC)
- Charter of Fundamental Rights of the European Union - Articles 47 and 48

Judgment of the Court (Grand Chamber) 18 May 2021; Case 26/62 Van Gend en Loos; Case 6/64, Flaminio Costa v ENEL (1964); Case 283/81 Srl CILFI and Lanificio di Gavardo SpA v Ministry of Health; Case 66/80 SpA International Chemical Corporation v Amministrazione delle finanze dello Stato (1981) ECR -01191; Case C-11/70 Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel; Case 106/77, Amministrazione delle Finanze v Simmenthal SpA (1978); R (Factortame Ltd) v Secretary of State for Transport 19.06.1990 Case C-118/00 Lasy [2001]

ECtHR Jurisprudence

- Ninn-Hansen v. Denmark (dec.) - 28972/95
 - Findlay v. The United Kingdom, 110/1995/616/706, 25.02.1997
 - Parlov-Tkalčič v. Croatia - 24810/06. Judgment 22.12.2009;
 - Case No. 42095/98, Daktaras v Lithuania, 10 October 2000;
 - Moiseyev v. Russia - 62936/00. Judgment 9.10.2008 [Section I]
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Subject Matter

rule of law, independence of the judiciary

Legal issue(s)

incidence of the Judgement of the Court (Grand Chamber) 18 May 2021

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

Romanian Constitution - art. 124 para. 3, art. 148 para. 2 and 4; Code of criminal law procedure: art. 4886, art. 275 para. 3; Law no. 304/2004

Facts of the case

The case concerns the appeal regarding the duration of the criminal proceedings brought by a national association, requesting the setting of a time-limit within which the prosecutor within the Public Prosecutor's Office of the High Court of Cassation and Justice - Section for the Investigation of Offences in the Judiciary (SIOJ) must solve a criminal prosecution file relating to the offence of abuse of office provided for in Article 297(2) para. 1 of the Criminal Code. Thus, the competent judge within the Pitești Court of Appeal found that the criminal investigation has not been carried out within a reasonable time, as more than a year had passed from the time of the complaint until the ordering of the first measure in the case. In view of the above, the court also questioned the jurisdiction of the SIOJ prosecutor, by reference to the CJEU judgment of 18.05.2021, arguing that, according to a constant CJEU case-law, national courts have the obligation to implement European Union law in cases within their competence.

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

The national judge of rights and freedoms finds that from the perspective of European Union law, the decision of 18.05.2021 is binding for all national courts, the Court interpreting Article 2 and Article 19 paragraph (1) second paragraph of the TEU, as well as Decision 2006/928. Therefore, whenever they solve cases where criminal proceedings were carried out by the prosecutors of the SIIJ, the national courts are obliged to analyze whether the cumulative conditions mentioned by the Court in point 5 of the binding part of its judgement are met. Second, the national judge of rights and freedoms finds that the provisions of art. 148 para. 2 and 4 of the Romanian Constitution itself expressly provide for the competence of the national courts to apply Community law with priority over the contrary provisions of national law, no exception being possible. This point is confirmed by the Romanian Constitutional Court landmark caselaw (e.g. Decision no. 148/2003).

Relation of the case to the EU Charter

The national judge of rights and freedom notes that no constitutional provision or internal law gives Romanian judges the power, in the event of the establishment within the Public Ministry of a specialized section that has the exclusive competence to investigate crimes committed by judges and prosecutors, to analyze whether the establishment of the specialized section is justified by objective and verifiable imperatives related to the good administration of justice and if it is accompanied by specific guarantees that allow, on the one hand, to remove any risk that this section is used as an instrument of political control of the activity of the respective judges and prosecutors likely to affect their independence and, on the other hand, to ensure that the respective jurisdiction can be exercised over the latter in full compliance with the requirements arising from Articles 47 and 48 of the Charter of Fundamental Rights of the European Union.

Relation between the EU Charter and ECHR

The reference to the standards enshrined by Articles 47 and 48 of the Charter of Fundamental Rights of the European Union is reinforced by the reference to Article 6 para 1 of the European Convention on Human Rights and to the relevant caselaw of the European Court of Human Rights

in respect with the European autonomous concept of "independence".

Use of Judicial Interaction technique(s)

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

N/A

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

Consistent interpretation with the EU law (here, also the Judgment of the Court (Grand Chamber) 18 May 2021) of the national constitutional provisions offered by the national court (national judge of rights and freedoms); disapplication of national law in favour of EU law; the national judge finds out that the standard of independence of judges established by European law, as interpreted by the Decision of 18.05.2021 of the CJEU, is superior to the standard of independence of judges provided by the Romanian Constitution by art. 124 para. 3, so that pursuant to Art. 20 of the Romanian Constitution the Romanian courts have the obligation to apply the higher standard.

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

N/A

Impact on Legislation / Policy

N/A

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

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

The national court based its considerations on the case law of the CJEU (as indicated at 4.3). References to the ECtHR judgements and decisions have also been made with less significance for the solution of the case (as indicated at 4.4).

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

- European Commission for Democracy Through Law (Venice Commission) - Opinion No. 924 / 2018 on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy, adopted by the Venice Commission at its 116th Plenary Session (Venice, 19-20 October 2018),
- European Commission for Democracy Through Law (Venice Commission) - Opinion no. No. 950 / 2019 on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice, adopted by the Venice Commission at its 119th Plenary Session (Venice, 21-22 June 2019)
- GRECO Ad hoc Report on Romania 23.03.2018 and
- GRECO Follow-up Report to the Ad hoc Report on Romania 21.06.2019.
- GRECO Second Interim Compliance Report Including Follow-up to the Ad Hoc (Rule 34) Report on Romania 25.03.2021

Did the national court take into account national case law on fundamental rights?

N/A

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

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

The criteria provided by the Judgment of the Court (Grand Chamber) 18 May 2021 were in general not verified by the national ordinary courts in the relevant cases pending before them. The national judge of right and freedoms who pronounced this judgement, Andrei Costin Stancu, was later on accused of having breached the rules on the magistrates' status and disciplinary sanctioned by the Judicial Inspection. However, the Superior Council of the Magistracy rejected the disciplinary action of the Judicial Inspection and would not apply the provisions of Art.99 lit.t) of the Law no.303/2004 on the statute of judges and prosecutors.

Connected national caselaw / templates

N/A

(Link to) full text

N/A

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