

Romania – Court of Justice of the European Union (First Chamber) Case C-53/23 of 8 May 2024, ECLI:EU:C:2024:388 (request for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Pitești (Court of Appeal Pitești, Romania), made by decision of 31 January 2023, in the proceedings Asociația ‘Forumul Judecătorilor din România’, Asociația ‘Mișcarea pentru Apărarea Statutului Procurorilor’ v Parchetul de pe lângă Înalta Curte de Casație și Justiție – Procurorul General al României

Member State

 Romania

Topic

Rule of law, independence of the judiciary, Cooperation and Verification Mechanism, Benchmarks subscribed to by Romania, Fight against corruption, Investigations of offences committed within the judicial system, Action challenging the nomination of prosecutors with competence to conduct those investigations, Standing of professional associations of judges to bring proceedings

Sector

Disciplinary proceedings; Judicial Ethics

Deciding Court Original Language

Court of Justice of the European Union

Deciding Court English translation

Court of Justice of the European Union

Registration N

C-53/23

Date Decision

08.05.2024

ECLI (if available)

ECLI:EU:C:2024:388

National Follow Up Of (when relevant)

The national case is not the direct follow -up of a CJEU or ECtHR decision.

EU legal sources and CJEU jurisprudence

Article 2, Article 4(3) and Article 19(1) TEU, of Articles 12 and 47, and 51 of the Charter of Fundamental Rights of the European Union ('the Charter'), Annex IX to the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded (OJ 2005 L 157, p. 203), which entered into force on 1 January 2007, and 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).

Judgment of 10 March 2022, Commissioners for Her Majesty's Revenue and Customs (Comprehensive sickness insurance cover), C-247/20, EU:C:2022:177,

Judgment of 22 February 2022, RS (Effect of the decisions of a constitutional court), C-430/21, EU:C:2022:99,

Judgment of 9 November 2023, Odbor azylové a migrační politiky MV (Scope of the Return Directive), C-257/22, EU:C:2023:852

Judgment of 13 July 2023, Azienda Ospedale-Università di Padova, C-765/21, EU:C:2023:566,

Judgment of 15 April 2021, État belge (Circumstances subsequent to a transfer decision), C-194/19, EU:C:2021:270,

Judgments of 18 May 2021, Asociația 'Forumul Judecătorilor din România' 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, paragraph 188, and of 22 February 2022, RS (Effect of the decisions of a constitutional court), C-430/21, EU:C:2022:99,

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,

judgments of 13 March 2007, Unibet, C-432/05, EU:C:2007:163, paragraph 43 and the case-law cited, and of 24 October 2018, XC and Others, C-234/17, EU:C:2018:853,

Judgments of 20 December 2017, Protect Natur-, Arten- und Landschaftsschutz

Umweltorganisation, C-664/15, EU:C:2017:987, paragraph 58, and of 23 April 2020, Associazione Avvocatura per i diritti LGBTI, C-507/18, EU:C:2020:289,

Judgments of 10 July 2008, Feryn, C-54/07, EU:C:2008:397, paragraph 27; of 23 April 2020, Associazione Avvocatura per i diritti LGBTI, C-507/18, EU:C:2020:289, paragraphs 62 to 64; and of 8 November 2022, Deutsche Umwelthilfe (Approval of motor vehicles), C-873/19, EU:C:2022:857,

Judgments of 18 May 2021, Asociația 'Forumul Judecătorilor din România' 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 6 October 2021, W.?. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment), C-487/19, EU:C:2021:798

Judgment of 5 June 2023, Commission v Poland (Independence and private life of judges), C-204/21, EU:C:2023:442,

Judgment of 2 March 2021, A.B. and Others (Appointment of judges to the Supreme Court – Actions), C-824/18, EU:C:2021:153,

Judgment of 20 April 2021, Repubblika, C-896/19, EU:C:2021:311

ECtHR Jurisprudence

The ECHR jurisprudence was not referred to in this case.

Subject Matter

rule of law – independence of the judiciary – standing of professional associations of judges to

bring proceedings – investigations of offences committed within the judicial system

Legal issue(s)

The CJEU judgement refers to the compatibility of a national framework prohibiting a professional association of judges to challenge an administrative act related to the promotion of prosecutors, if the national framework states that such an application cannot be filed in lack of a private interest to act, associated to the subsidiary public interest to act of the professional association.

Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

Article 8(11) of the Legea contenciosului administrativ nr. 554/2004 (Law on Administrative Proceedings No 554/2004) (Monitorul Oficial al României, Part I, No 1154 of 7 December 2004)

Facts of the case

A Romanian professional association of judges and another Romanian professional association of prosecutors (Asociația 'Forumul Judecătorilor din România', Asociația 'Mișcarea pentru Apărarea Statutului Procurorilor') challenge the appointment of certain prosecutors responsible for conducting investigations concerning cases of corruption in Romania. They consider that the national legislation on which those appointments are based is incompatible with EU law and should not be applied.

Hearing that case, the Court of Appeal of Pitești (Romania) asks the Court of Justice whether the Romanian procedural rules, which, in essence, prevent associations of judges from bringing an action against the appointment of those prosecutors, since those rules make the admissibility of such an action subject to the existence of a legitimate private interest, comply with EU law. The Romanian court also refers a question regarding the compatibility of that legislation with undertakings given by Romania to combat corruption and with EU law, which is not solved by the CJEU since the initial question, regarding the professional association's interest to prevent any further analysis.

The Court of Appeal Pitești questioned the Court of Justice as to the compatibility of national laws stating that professional associations of judges have to provide both a primary private interest to act, and a subsidiary public interest to act with EU laws, by asking the following questions:

1. Do Article 2 and the second subparagraph of Article 19(1) TEU, read in conjunction with Articles 12 and 47 [of the] Charter of Fundamental Rights of the European Union, preclude the placing of limits on the bringing of certain legal proceedings by the professional associations of judges – aiming to promote and to protect the independence of the judiciary and the rule of law, and to safeguard the status of the profession – by introducing the condition that there must be a legitimate private interest which has been excessively restricted, on the basis of a binding decision of the High Court of Cassation and Justice, followed by a national practice in cases such as that in which the present question has been raised, which requires a direct link between the administrative act subject to judicial review by the courts and the direct purpose and objectives of the professional associations of judges, laid down in their articles of association, in cases where such associations seek to obtain effective judicial protection in matters governed by EU law, in

accordance with the general purpose and objectives of the articles of association?

2. In the light of the answer to the first question, do Article 2, Article 4(3) and the second subparagraph of Article 19(1) TEU, Annex IX to the Act concerning the conditions of accession of Romania and Decision 2006/928 1 preclude national legislation which limits the competence of the National Anti-Corruption Directorate by conferring exclusive competence to investigate corruption offences (in a broad sense) committed by judges and prosecutors upon certain prosecutors appointed for that purpose (by the Prosecutor General of Romania, acting on a proposal of the plenary assembly of the Supreme Council of Judiciary) in the public prosecutor's office attached to the High Court of Cassation and Justice and, respectively, in the public prosecutor's offices attached to the Courts of Appeal, the latter also being competent for the other categories of offences committed by judges and prosecutors?

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

The Court provided a response only to the first question, regarding the legal dispositions referring to a professional association of judges' interest to act before a national court.

In its reasoning, the Court held that EU law does not preclude a national law which excludes, in practice, professional associations of judges from challenging the appointment of prosecutors competent to conduct criminal prosecutions against judges, by requiring the existence of a legitimate private interest to be established in order for such an action to be admissible. In principle, the Court deemed that it is for the Member States to decide who may bring actions before the courts, without however undermining the right to effective judicial protection. It is true that, in certain cases, EU law requires the Member States to allow representative associations to bring legal proceedings in order to protect the environment or combat discrimination, but such permission should not be deemed as an obligation of the Member State to amend its legal framework so that the association may act in any case, only based on a public interest.

As such, the Court mentioned there is no provision of EU law that requires the Member States to guarantee, generally, to professional associations of judges the right to contest any incompatibility with EU law of a national measure relating to the status of judges.

In addition, the sole fact that national legislation does not permit those associations to bring such actions is insufficient to create, in the minds of individuals, legitimate doubts as to the independence of Romanian judges.

In its judgement, the Court made reference to several CJEU case law judgements, and analysed the concept of proper access to justice, principles of equivalence and effectivity, liberty of association as regulated by art. 12 of the Charter, as well as impartiality and independence guarantees. The Court's analysis of these broad concepts lead to the conclusion that even though professional associations are granted and recognized the right of free association, the national Member State is not obliged to guarantee their possibility to act before the national court for challenging the process related to the appointment of judges. Also, the Court noted that such lack of interest to act before the national court would not determine a legitimate doubt of the regular citizen in respect to the independence of judges selected through a process which could not be challenged by said professional association.

Relation of the case to the EU Charter

The EU Charter was invoked as part of preliminary question no. 1 (1. Do Article 2 and the second subparagraph of Article 19(1) TEU, read in conjunction with Articles 12 and 47 [of the] Charter of Fundamental Rights of the European Union, preclude the placing of limits on the bringing of certain legal proceedings by the professional associations of judges – aiming to promote and to protect the independence of the judiciary and the rule of law, and to safeguard the status of the

profession – by introducing the condition that there must be a legitimate private interest which has been excessively restricted, on the basis of a binding decision of the High Court of Cassation and Justice, followed by a national practice in cases such as that in which the present question has been raised, which requires a direct link between the administrative act subject to judicial review by the courts and the direct purpose and objectives of the professional associations of judges, laid down in their articles of association, in cases where such associations seek to obtain effective judicial protection in matters governed by EU law, in accordance with the general purpose and objectives of the articles of association?). Also, art. 51 of the Charter was invoked when the Court analysed the recognition of the right to an effective remedy, in a given case, which in its optics, presupposes that the person invoking that right is relying on rights or freedoms guaranteed by EU law or that that person is the subject of proceedings constituting an implementation of EU law, within the meaning of Article 51(1) of the Charter.

The EU Charter was referred to considering the relevance of its text to the matters being decided. The EU Charter was used as a legally binding parameter.

Relation between the EU Charter and ECHR

The ECHR was mentioned in this case, insofar as articles 3 and 13 of the ECHR Convention are concerned. To this end, CJEU retained the applicability of the principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, as a general principle of EU law stemming from the constitutional traditions common to the Member States, 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 to which Article 47 of the Charter corresponds (see, to that effect, 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, paragraph 219 and the case-law cited).

Use of Judicial Interaction technique(s) preliminary reference

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

The Court invoked the principle of the effective judicial protection of individuals' rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, as being a general principle of EU law stemming from the constitutional traditions common to the Member States, and the fact that national legislation establishing and governing the organisation of a section of the Romanian Public Prosecutor's Office for the investigation of offences committed within the judicial system, and which is competent to conduct criminal prosecutions against judges, falls within the scope of Decision 2006/928 and that it must, consequently, comply with the requirements arising from EU law and, in particular, from Article 2 and Article 19(1) TEU (see, to that effect, judgment of 22 February 2022, RS (Effect of the decisions of a constitutional court), C-430/21, EU:C:2022:99, paragraph 57 and the case-law cited).

Apart from these appreciations, stemming from the interpretation of the CJEU case law related also to constitutional courts' decision, the CJEU did not make any constitutionality review and did not engage with an assessment of other national judgements, since the matter of the case did not impose such an analysis.

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

Considering the specifics of this case, in which the analysis was to be performed firstly in respect to the compatibility with EU laws of national legislation regarding the interest to act of professional associations, the national court made an assessment of other national courts insofar as interest was concerned. On the merits of the claim, references were made to the settled CJEU case law, which were afterwards considered by the CJEU in its judgement.

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

The referring court used the preliminary ruling mechanism as a strategic litigation tool, in order to create the possibility for professional associations of judges to act before a national court, in spite of not proving a private interest to act, as the national legal framework stipulated. The scope pursued by the national court when using judicial interaction techniques was, most likely, to allow a professional association of judges to act, and on the merits of the case, to protect the independence of the judiciary.

The national court's intention was in line with the claimant's arguments and interpretation that with the dissolution of the Section for the Investigation of Judicial Offences (SIJ), the competence to investigate corruption offenses committed by judges and prosecutors does not return to the specialized prosecutor's office - the National Anticorruption Directorate - but is assigned to specifically designated prosecutors (by the Prosecutor General of Romania, at the proposal of the Plenary of the Superior Council of Magistracy) within the Prosecutor's Office attached to the High Court of Cassation and Justice, as well as within the prosecutor's offices attached to the courts of appeal. These prosecutors also have the competence to handle other categories of offenses committed by judges and prosecutors.

The national court wanted a confirmation that this national regulation contradicts Romania's commitments and EU law, especially Article 2, Article 4 paragraph (3) of the Treaty on European Union (TEU), and Article 19 paragraph (1) second subparagraph of the TEU, Annex IX of Romania's Act of Accession to the European Union, and Decision 928.

Impact on Legislation / Policy

The national legislative framework has not been changed pursuant to the CJEU judgement, since the judgement referred only to aspects related to interest to act of professional associations of judges, so its impact is not as significant as other judgements. Consequently, there is no known debate on how to interpret the CJEU preliminary ruling, also considering its recent issuance (08 May 2024) and the lack of court practice thereof.

The national referring court, Curtea de Apel Pitesti, maintained the suspension of the trial having as object the application of Asociația "Forumul Judecătorilor din România" and of Asociația 'Mișcarea pentru Apărarea Statutului Procurorilor' in file no. 588/46/2022, until present, so no decision has been yet issued in national proceedings with regard to this file. Considering that the national trial is still pending before the referring court, its solution or motivation are not available, so no assessment can be made on the national court's arguments.

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?

N/A

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

N/A

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

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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

The CJEU preliminary ruling did not represent a change of approach with respect to previous case law prompted by the decision of the CJEU. Moreover, the CJEU actually explained why its judgment does not contradict previous decisions generated by the rule of law referrals triggered in Romania by the Asociația 'Forumul Judecătorilor din România', considering that the right of

association does not necessarily imply the obligation of a Member State to grant such professional association powers to act before the court, in lack of a private interest.

Connected national caselaw / templates

N/A

Other

N/A

(Link to) full text

<https://curia.europa.eu/juris/document/document.jsftext=&docid=285824&pageIndex=0&doclang=EN&mo>

Author

Roxana Catea, National Association of the Romanian Bars (UNBR)

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

N/A
