

## Court of Justice of the European Union (First Chamber), C-40/21; ECLI:EU:C:2023:367

### Member State

 Romania

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### Topic

Independence, accountability, impartiality

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### Sector

Judicial Interaction Techniques; Use of the Preliminary Reference Procedure

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### Deciding Court Original Language

Curtea de Justi?ie a Uniunii Europene

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### Deciding Court English translation

Court of Justice of the European Union

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### Registration N

C-40/21

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### Date Decision

4 May 2023

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### ECLI (if available)

ECLI:EU:C:2023:367

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### National Follow Up Of (when relevant)

N/A

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### EU legal sources and CJEU jurisprudence

Article 1, 2, and 4 of the 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;  
Article 15(1), Article 47 and Article 49(3) of the Charter of Fundamental Rights of the European Union ('the Charter')

e.g. ECOTEX BULGARIA, C 544/19, EU:C:2021:803, Latvijas Republikas Saeima (Penalty points), C 439/19, EU:C:2021:50; Repsol Butano and DISA Gas, C 473/17 and C 546/17, EU:C:2019:308; Cilevi?s and Others , C 391/20, EU:C:2022:638; elecom Italia, C 34/19, EU:C:2020:148;

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### ECtHR Jurisprudence

Galan v. Italy, CE:ECHR:2021:0518DEC006377216; Galan v. Italy, CE:ECHR:2021:0518DEC006377216; Savisaar v. Estonia, CE:ECHR:2016:1108DEC000836516;

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### Subject Matter

Cooperation and verification mechanism – Elective public office – Conflict of interest; Prohibition to hold any elective public office for a period of time – Judicial reform and the fight against corruption.

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### Legal issue(s)

Powers and duties of national courts when national law provides for disproportionate penalties for infringements of national provisions that implement EU law;  
Interaction between Decision 2006/928, Romanian legislation adopted to implement that decision, and the Charter of Fundamental Rights of the European Union.

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### Request for expedited/PPU procedures

No

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### Interim Relief

N/A

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### National Law Sources

Article 25 of Law No 176/2010 on integrity in the performance of public duties and the holding of public office, amending and supplementing Law No 144/2007 on the establishment, organization and operation of the National Integrity Agency, and amending and supplementing other normative acts) of 1 September 2010 (Official Monitor of Romania, Part I, No 621 of 2 September 2010); Article 66(1) and Article 301 of Law No 286/2009 on the Criminal Code of 17 July 2009 (Official Monitor of Romania, Part I, No 510 of 24 July 2009), in the version in force at the time of the facts in the main proceedings;

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### Facts of the case

T.A.C., the applicant in the main proceedings, was, at the material time, the mayor of a city in Romania. In an assessment report, the National Integrity Agency, the Romanian administrative authority responsible for the assessment of conflicts of interest, found that the applicant had failed to comply with the rules governing conflicts of interest in administrative affairs. The applicant brought an action before Curtea de Apel Timi?oara (The Court of Appeal, Timisoara) seeking the annulment of the assessment report. In support of his application, the applicant argued, inter alia, that EU law precludes national legislation pursuant to which a penalty such as a prohibition to hold any elective public office for a period of three years is imposed automatically on the person found to have acted in a conflict of interest, and cannot be modulated according to the gravity of the

breach committed. That court, harboring doubts as to the correct interpretation of the relevant provisions of EU law, decided to refer to the Court of Justice for a preliminary ruling concerning the interaction between Decision 2006/928, national legislation adopted to implement that decision, and the Charter of Fundamental Rights of the European Union ('the Charter').

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

According to the First Chamber Article 49(3) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that it does not apply to the national legislation which provides, following an administrative procedure, for a measure prohibiting the holding of any elective public office for a predetermined period of three years against a person who has been found to have a conflict of interest in the holding of such an office, in the event that this measure is not criminal in nature.

The principle of proportionality must be interpreted as meaning that it does not preclude national legislation which provides for a measure prohibiting the holding of any elective public office for a predetermined period of three years against a person who has been found to have a conflict of interest in holding of such an office provided that, in the light of all the relevant circumstances, the application of that legislation results in the imposition of a penalty commensurate with the seriousness of the breach which it penalizes, having regard to the objective of ensuring integrity and transparency in the exercise and holding of public functions and offices and preventing institutional corruption. That would not be the case where, exceptionally, the unlawful conduct found to have taken place, having regard to that objective, does not have an element of seriousness, whereas the impact of that measure on the personal, professional and economic situation of that person proves particularly serious.

Article 15(1) of the Charter of Fundamental Rights must be interpreted as meaning that the right to exercise an electoral mandate obtained following a democratic electoral process, such as a mayor, is not covered by that provision.

Article 47 of the Charter of Fundamental Rights must be interpreted as meaning that it does not preclude national legislation which provides for a measure prohibiting the holding of any elective public office for a predetermined period of three years against a person who has been found to have a conflict of interest in the holding of such an office, provided that the person concerned has had an effective opportunity to challenge the legality of the report that made that finding and the penalty imposed on the basis of it, including its proportionality.

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### Relation of the case to the EU Charter

The EU Charter was used both as a legally binding parameter and to support the Court reasoning. The CJEU pointed out that:

- the prohibition on the holding of elective public office laid down by the national legislation at issue in the main proceedings does not appear to be criminal in nature is a matter for the referring court to verify. To the extent that it is not criminal in nature, that measure cannot be assessed in the light of Article 49(3) of the Charter.

-the right to hold elective public office, in particular that of mayor, does not fall within the scope of Article 15(1) of the Charter, with the result that, in the case at hand, the applicant in the main

proceedings cannot usefully rely on that provision. Based on the Article 53 of the Charter, such an interpretation is nevertheless without prejudice to the possibility for the Member States to apply a more favorable standard of protection of the right to work and the freedom to pursue an occupation recognized by their national constitution, provided that the application does not compromise the level of protection provided for by the Charter, as interpreted by the Court.

-there is nothing in the file before the Court such as to cast doubt on the effectiveness of the remedies provided for in Romanian law or on the compatibility of the national legislation at issue in the main proceedings with Article 47 of the Charter.

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### Relation between the EU Charter and ECHR

The Article 6 of the ECHR was relied on by the referring court regarding the interpretation of the principle of the proportionality of penalties, enshrined in Article 49 of the Charter. The reasons behind citing the ECHR are ornamental. The CJEU only refers to the case-law of the European Court of Human Rights to support the interpretation of the EU Charter.

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### Use of Judicial Interaction technique(s)

Use of the preliminary reference mechanism by the national ordinary courts; consistent interpretation, disapplication of national legislation providing for excessive penalties in favour of EU law; Direct effect of the principle of proportionality; preserving the efficiency of the judicial cooperation mechanism through art. 267 TFEU.

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

The national court cited case-law of the Romanian Constitutional Court, referring to the nature and classification of the offence under national law. In this respect, the national referring court pointed out that in accordance with the case-law of the Constitutional Court, Romania, the additional prohibition on holding elective public office concerns all of the elective public offices referred to in Article 1 of the Law No 176/2010 and under Romanian law, neither the automatic termination of the term of office in the event of a finding of a conflict of interest nor the prohibition on the holding of any elective public office, in addition to that termination, is regarded as a criminal penalty.

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

N/A

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

The referring court used the preliminary ruling mechanism in order to clarify the interaction between Decision 2006/928, national legislation adopted to implement that decision, and the Charter.

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### Impact on Legislation / Policy

N/A

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

The outcome achieved by the referring court is consistent with the CJEU case law regarding the scope of application of the Article 15(1), Article 47 and Article 49(3) of the Charter and regarding the powers and duties of national courts when national law provides for disproportionate penalties for infringements of national provisions that implement EU law. The referring court uses the First Chamber Judgement as full support in ruling the case.

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### 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 referring court did not quote other judgements of the CJEU than those mentioned at point 4.3 that were also referred to in the CJEU Judgement in the C 58/22 case.

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

The standards and recommendations of GRECO and the Venice Commission are not mentioned by the ordinary referring Court in its judgement following the First Chamber Judgement in the C 58/22 case.

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

The national case law on fundamental rights was not considered an important element in this case.

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### 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

Pursuant to the national procedural law, the judgment of the national court subsequent to the First Chamber Judgment is not final. The appeal declared against the national judgement is pending before the High Court of Cassation and Justice.

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### 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?

The C 40/21 Judgment is for the moment too recent for an accurate evaluation of its impact within the national courts practice. In the national judgments taken so far, in the similar matters, there has been a consensus among the national courts on how to implement the CJEU preliminary ruling.

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

N/A

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### Connected national caselaw / templates

N/A

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### (Link to) full text

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=273281&pageIndex=0&doclang=en&mo>

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