



PRESS RELEASE No 76/23

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Judgment of the Court in Case C-817/21 | Inspectia Judiciala

Rule of law: the body in charge of disciplinary proceedings against judges must be independent and impartial

The rules governing the review of the actions of its director must be designed in such a way as to dispel any reasonable doubt in that respect

In Romania, a party in several criminal proceedings filed a number of disciplinary complaints with the competent Judicial Inspectorate against certain judges and prosecutors involved. Since all of those complaints were the subject of decisions to take no further action, that party lodged a complaint against the Chief Inspector, in respect of which it was also decided to take no further action. She then turned to the Court of Appeal, Bucharest, Romania, to challenge those decisions to take no further action, claiming, inter alia, that it is impossible to bring disciplinary proceedings on account of the concentration of powers in the hands of the Chief Inspector. Such a concentration of powers is, in her opinion, contrary to EU law.

The Court of Appeal, Bucharest, referred a question to the Court of Justice in that regard.

By its judgment delivered today, the Court of Justice confirmed its case-law ¹ according to which, while the organisation of justice is a matter for the Member States, the exercise of that power must comply with EU law. As such, **the disciplinary regime applicable to the judges** who may be called upon to apply EU law **must provide the necessary guarantees in order to prevent any risk of its being used as an instrument of political control over their activities.**

The rules governing the organisation and operation of a body competent to conduct disciplinary investigations and to bring disciplinary proceedings against judges and prosecutors must, consequently, comply with the requirements arising from EU law and, in particular, that of the **rule of law.**

In order to verify that this is indeed the case, the Court specifies that it is for the referring court to assess the Romanian legislation as such and in its national legal and factual context.

As to the relevant factors for the purposes of carrying out that assessment, the Court notes that, under Romanian law, disciplinary action intended to punish abuses committed by the Chief Inspector can be initiated only by a member of staff whose career depends, to a large extent, on the decisions of the Chief Inspector. In addition, the decisions relating to the Chief Inspector can be reviewed by the Deputy Chief Inspector, who has been appointed by the Chief Inspector and whose term of office will end at the same time as that of the latter. **Such a disciplinary regime appears, subject to verification to be carried out by the Court of Appeal, Bucharest, capable of preventing, in practice, disciplinary proceedings from being brought effectively against the Chief Inspector,** even if the

¹ Judgement 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](#) (see, also, Press Release [No 82/21](#)),

latter were to be the subject of properly substantiated complaints.

The decision to take no further action with regard to a complaint against the Chief Inspector may be subject to review which could lead, where appropriate, to the annulment of the decision to take no further action. It is, however, for the Court of Appeal, Bucharest, to assess the extent to which the powers available to the Romanian courts in that regard are capable of allowing disciplinary proceedings to be brought effectively against the Chief Inspector and complaints directed against the latter to be handled efficiently and impartially.

The Court notes, in that respect, that if that court were to conclude that the Chief Inspector's actions cannot, in the context of the legislation at issue in the main proceedings, be the subject of genuine and effective control, the view would have to be taken that that 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 the Judicial Inspectorate will not be used as an instrument to exert pressure on, or political control over, judicial activity.

As to the national legal and factual context, **it appears that the powers of the Chief Inspector have been strengthened in the wider context of the reforms concerning the organisation of the Romanian judiciary the purpose or effect of which is to reduce the guarantees of independence and impartiality of Romanian judges.** Moreover, **it appears that the Chief inspector is closely linked to the executive or the legislature.** Last, account must also be taken of the Chief Inspector's **actual practice** in the exercise of his or her powers that can be used for the purpose of political control over judicial activity.

Subject to verification to be carried out by the Court of Appeal, Bucharest, it therefore appears that the elements of the legal and factual context brought to the attention of the Court tend to corroborate, rather than invalidate, a possible finding that **the legislation at issue 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 the Judicial Inspectorate will not be used as an instrument to exert pressure on, or political control over, judicial activity.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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