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Judgment of the Court in Case C-216/21 | Asociația 'Forumul Judecătorilor din România'

Rule of law in Romania: the promotion of judges to a higher court, based on an assessment, by members of that court, of their work and conduct, is compatible with EU law

The relevant substantive conditions and procedural rules must, however, be such as to dispel any reasonable doubt as to the independence and the impartiality of the judges concerned, once they have been promoted

In 2019, the Superior Council of Magistracy (SCM) of Romania approved a reform of the procedure for the promotion of judges to higher courts. The 'Forum of Judges of Romania' Association and a private individual are contesting that reform before the Court of Appeal, Ploiești (Romania).

The applicants in the main proceedings submit that replacing the old written exams with an assessment, by (i) the president and (ii) members of the higher court concerned, of candidates' work and conduct makes the promotion scheme subjective and discretionary.

The Court of Appeal, Ploiești, is questioning the Court of Justice as to the compatibility of such a reform with the principle of the independence of judges.

In its judgment, delivered today, the Court rules that **a piece of national legislation relating to the scheme for the promotion of judges is required to ensure compliance with the principle of the independence of judges.**

In that context, the Court also rules that **EU law does not preclude, in principle, the promotion of judges to a higher court being based on an assessment, by a board composed of (i) the president and (ii) members of that higher court, of their work and conduct.** However, the substantive conditions and procedural rules governing the adoption of decisions relating to promotion must be such that they cannot give rise to reasonable doubts, in the minds of individuals, as to the independence and the impartiality of the judges concerned, once they have been promoted.

The Court observes that the procedure for the promotion of judges serving in the lower courts in Romania consists of two stages. The first stage, which enables a judge to be promoted 'on the spot' without a change of post, is based on a written competitive procedure designed to assess both the theoretical knowledge and the practical skills of candidates. The second stage, known as 'effective promotion', enables candidates who have already been promoted 'on the spot' to be effectively assigned to a higher court.

It is only in the context of that second stage that the assessment is to be carried out by a board composed, at the level of each court of appeal, of (i) the president of that court and (ii) four of its members, who are to be appointed by the Section for Judges of the SCM.

Even if the reform of the second stage is, according to the Court of Appeal, Ploiești, likely to lead to power being concentrated in the hands of certain members of the assessment board and, in particular, its president, it nevertheless cannot be regarded as being, as such, incompatible with EU law.

It is for the Court of Appeal, Ploiești, to ascertain whether that concentration of power, taken in isolation or combined with other factors, is liable to offer, in practice, the persons on whom it is conferred the ability to

influence the decisions of the judges concerned, and thus create a lack of independence or an appearance of partiality on their part likely to prejudice the trust which justice in a democratic society governed by the rule of law must inspire in individuals. According to the Court, the case file does not contain any material capable of establishing that that potential concentration of power could, in itself, confer, in practice, such an ability to influence; nor does it point to any other factor which could, combined with that concentration of power, produce effects which would be such as to give rise to doubts, in the minds of individuals, as to the independence of the judges who have been promoted.

Regarding the substantive conditions governing the adoption of decisions relating to effective promotion and, in particular, the assessment of candidates' work and conduct, that assessment is to be based on criteria which appear to be relevant for the purpose of assessing the professional merits of those candidates. Those criteria seem to be the subject of objective assessments based on verifiable information.

As for the procedural rules governing the adoption of those decisions, they also do not appear to be such as to jeopardise the independence of the judges who have been promoted. Indeed, the assessment board must provide reasons for its findings and the candidate concerned may contest those findings before the Section for Judges of the SCM.

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 and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from '[Europe by Satellite](#)' ☎(+32) 2 2964106.

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