

CJEU again Finds Romanian Judicial System Flawed



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Thomas Wahl

News

In the dispute between the Court of Justice of the EU and national constitutional courts over the distribution of competences, the CJEU, sitting in for the Grand Chamber, blamed the Romanian justice system. In its [judgment of 22 February 2022](#) (Case C-430/21), the CJEU clarified its line of argumentation regarding judicial independence (enshrined in the second subparagraph of Art. 19(1) TEU) read together with the primacy of EU law. Accordingly, EU law precludes a national rule under which national courts have no jurisdiction to examine the conformity with EU law of national legislation which has been held to be constitutional by a judgment of the constitutional court of the Member State.

Background of the case

In the case at issue, a Romanian court considered it necessary to examine, in the context of an appeal procedure, whether the national legislation establishing a specialised section within the public prosecutor's office for the investigation of criminal offences committed within the judiciary was compatible with Union law. The CJEU already ruled in 2021 ([Cases C-83/19, C-127/19 et. al.](#)) that the establishment of the specialised section was contrary to EU law if its establishment is not justified by objective and verifiable requirements relating to the sound administration of justice and is not accompanied by specific guarantees. Following this judgment, the Romanian Constitutional Court confirmed, however, its previous findings that provisions on the aforesaid creation of the specialised section were constitutional. It argued that, whilst Art. 148(2) of the Romanian Constitution provides for the primacy of EU law over contrary provisions of national law, that principle cannot remove or negate national constitutional identity. Furthermore, the Romanian Constitutional Court stated that an ordinary court was not competent to examine the conformity with Union law of a national regulation that had been declared compatible with the constitutional provision requiring respect for the principle of the primacy of Union law.

In those circumstances, the Romanian appeal court was in a conflict and therefore referred the matter to the CJEU asking whether it must comply with the case law of the Constitutional Court or has jurisdiction to examine the conformity with EU law of the legislation establishing the specialised section within the prosecution office. In addition, the referring court pointed out that, according to the current rules, national judges are put at risk of exposure to disciplinary proceedings and penalties, if they examine the conformity with EU law of a provision of national law that the Romanian constitutional court has found to be constitutional.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

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Ruling of the CJEU

The judges in Luxembourg found such national rules and practices incompatible with EU law and emphasised *inter alia*:

- The necessity for national courts to fully apply any provision of EU law having direct effect ensures equality of Member States and expresses the principle of sincere cooperation (Art. 4(3) TEU). This allows national courts to disapply contrary national provisions of their own motion;
- Preventing national courts from assessing the compatibility of national provisions with EU law and the requirement to comply with judgments of the constitutional court would preclude the full effectiveness of the rules of EU law;
- Such national rules or practice would undermine the system of cooperation between the CJEU and national courts since ordinary courts would be deterred from ruling on the dispute by submitting preliminary ruling requests.

In addition, the judges in Luxembourg argued that only the CJEU itself, as the highest EU court, is competent to interpret common Union law in a binding manner. A national constitutional court cannot itself decide that the CJEU had exceeded its jurisdiction with a judgement and therefore reject to give effect to a preliminary ruling judgement. A national constitutional court may not disapply an EU provision even if it considers the national identity of the Member State threatened. It would then be up to the CJEU to decide.

Ultimately, EU law (Art. 2 and 19(1) TEU) preclude that national judges may incur disciplinary sanctions if they ignore a decision of the constitutional court and appeal to the CJEU.

Put in focus

The CJEU's Grand Chamber already took a similar decision in December 2021 (→ [eucrim 4/2021, 214](#)). In the context of the effective protection of the EU's financial interests, the judges in Luxembourg clarified that EU law takes precedence over the national constitution. At that time, the CJEU ruled that Romanian courts can disapply decisions of the Constitutional Court in certain cases.

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