

# CJEU Rules on Compatibility of Romanian Constitutional Court Decisions with Effective Prosecution PIF Crimes

Thomas Wahl

On 21 December 2021, the CJEU (Grand Chamber) delivered [its judgment on several issues of the Romanian justice reform](#) in the area of corruption. The referring Romanian courts mainly questioned whether several decisions of the Romanian Constitutional Court are compatible with Union law. For the cases ([Joined Cases C-357/19 and 547/19 \(Euro Box Promotion and Others\)](#)) and the [Joined Cases C-811/19 and 840/19 \(FQ and Others\)](#), the questions referred and the Advocate General's Opinion → [eucrim 1/2021, 20](#).

The first set of questions dealt with obligations for national legislation and national practice to ensure the effective protection of the EU's financial interests in line with [Art. 325 TFEU](#). In this context, the CJEU reiterated its case law on the effectiveness of the protection of the EU's financial interests required by Art. 325(1) TFEU as well as [Decision 2006/928](#) that set specific benchmarks for Romania in the areas of judicial reform and the fight against corruption. Accordingly, the Member State must not only ensure that criminal offences to the detriment of the EU's financial interests are effectively detected, investigated and prosecuted, but also imposed penalties effectively enforced. The national legislator is obliged to ensure that there is no systemic risk of impunity, while national courts must disapply national rules that prevent the imposition of dissuasive and effective sanctions.

In the case at issue, the Romanian Constitutional Court annulled some criminal law decisions due to unlawful composition of the trial or appeal panels. According to the CJEU, this Constitutional Court case law results in the relevant fraud and corruption cases having to be re-examined, possibly several times. Given their complexity and duration, such a re-examination inevitably has the effect of prolonging the duration of the relevant criminal proceedings, which is contrary to the obligations incumbent on Romania under Decision 2006/928. Moreover, given the national statute of limitations, re-examining the cases in question could lead to the statute of limitations for the offences and prevent effective and dissuasive sanctioning of persons holding the highest offices of the Romanian state who have been convicted of committing serious fraud and/or corruption offences in the exercise of their office. This would make the risk of impunity systemic for this group of persons and would jeopardise the objective of fighting corruption at the highest level.

Regarding the consequences for defence rights, the judges in Luxembourg stated that the obligation to ensure that such offences are subject to effective and dissuasive penalties does not exempt the referring court from examining the need to respect the fundamental rights guaranteed by Art. 47 CFR. However, that court is not allowed to apply a national standard of protection of fundamental rights which would entail a systemic risk of impunity. The requirements resulting from this premise do not prevent any possible non-

## AUTHOR

Thomas Wahl

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

ISSN: 1862-6947

<https://eucrim.eu>



application of the Constitutional Court's case law on the specialisation and composition of the judicial panels in corruption cases.

A second set of referred questions concerned the consequences for national judges if they disapply the practice of the Constitutional Court. The CJEU clarified that any disciplinary liability of national judges which would be triggered for failure to comply with such judgments is contrary to judicial independence and the primacy of Union law.

---

## About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and "criministrative" law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to [eucrim-subscribe@csl.mpg.de](mailto:eucrim-subscribe@csl.mpg.de) to receive alerts for new releases of issues.

The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



**Co-funded by  
the European Union**