

CCR rules special Section for Judicial Crimes is constitutional, offers interpretation of CJEU relevant decision

The Constitutional Court of Romania (CCR) rejected today several constitutional challenges to Law No. 304/2004 on judicial organization and also unanimously quashed challenges to several articles in OUG No. 90/2018 on specific measures for rendering operational the Section for the Investigation of Judicial Crimes (SIJ).

In its statement, the Constitutional Court expresses its views on the ruling of the Court of Justice of the European Union (CJEU) on the Special Section.

"From the perspective of constitutional review, the CJEU ruling brings no novelty with regard to either the legal effects of Decision No. 2006/928 and the CVM reports drawn up by the Commission on the basis thereof - establishing, as Romania's Constitutional Court had already done, the binding nature of Decision No. 2006/928 and the recommendatory nature of the CVM reports - or the content of Decision No. 2006/928, determining that Romania is required to cooperate in good faith with the European Commission in order 'to overcome (...) the difficulties encountered in achieving the aforementioned benchmarks.' Therefore, the Court maintained its previous jurisprudence and found that the only act which, by virtue of its binding nature, could have constituted a norm interposed to the constitutionality control performed in reference to Art.148 of the Constitution - Decision 2006/928 -, by the provisions and objectives it imposes, has no constitutional relevance, as it does not fill a gap of the Fundamental Law nor does it set a higher standard of protection than the constitutional regulations in force," CCR argues.

The Constitutional Court recalls that the CJEU has established that the regulations on the establishment of the SIJ must comply with the following:

- * be justified by objective and verifiable requirements relating to the sound administration of justice;
- * be accompanied by specific safeguards to remove any risk that would harm the independence of judges and prosecutors;
- * during the investigation procedure, judges and prosecutors should have the right to an effective remedy and to a fair trial, the presumption of innocence and the right to defense.

"In view of the three aspects on which the CJEU delivered a ruling, and which arise from Union law and in particular from the value of the rule of law provided for in Article 2 TEU, the Constitutional Court has examined to what extent the principle of the rule of law, which is expressly enshrined in national law, in Art.1 paragraph (3) of the Constitution of Romania, is affected by the regulations governing the establishment of the Section for the Investigation of Judicial Crimes and found that they represent an option of the national legislator and meet the guarantees stipulated in the CJEU ruling, in agreement with the constitutional provisions contained in Article 1 paragraph (3) and in Article 21 paragraphs (1) and (3) regarding the free access to justice, the right to a fair trial and the settlement of cases within a reasonable time, and implicitly, in agreement with the provisions of Art.2 and Art.19 paragraph (1) TEU," CCR explains.

Regarding the court's jurisdiction in interpreting and enforcing the European law, CCR argues that, in the first place, a court is competent to analyze the conformity of a provision of "domestic law" with European law provisions in the light of Art.148 of the Constitution and, should it find non-compliance, it has the power to enforce with priority the provisions of European Union law in disputes that touch on the subjective rights of

citizens.

"In all cases, by the notion of 'domestic laws', the Constitution envisages exclusively the infra-constitutional legislation. The Fundamental Law preserves its hierarchically superior position by virtue of Art.11 paragraph (3) of the Constitution, and Art.148 does not give Union law priority of application over the Romanian Constitution, so that a court does not have the power to analyze the conformity of a 'domestic law' provision that was found to be constitutional by the Constitutional Court with the provisions of European law in the light of Art.148 of the Constitution," the CCR goes on to say.

By declaring the binding nature of Decision No. 2006/928, the CJEU limited its effects from a dual perspective: on the one hand, it established that the obligations arising from the decision fall on the Romanian authorities competent to cooperate institutionally with the European Commission (para. 177 of the Decision), so this is the task of the political institutions, the Parliament and the Government of Romania, and, on the other hand, that the obligations are exercised based on the principle of loyal collaboration, provided for by Art.4 TEU.

"From both perspectives, the obligations cannot be incumbent on the courts, the state bodies that are not empowered to cooperate with a political institution of the European Union," the CCR concludes.

"In the third place, the Court found that the operative part of the CJEU ruling, according to which a court 'is authorized to leave unenforced of its own motion a national provision falling within the scope of Decision 2006/928 and which - in the light of a Court judgment - it considers to be contrary to this decision or the second subparagraph of Article 19 (1) TEU 'has no basis in the Romanian Constitution, as Article 148 of the Constitution enshrines the priority of applying Union law over contrary domestic law provisions. The CVM reports drawn up on the basis of Decision 2006/928, by their content and effects, as established by the CJEU ruling of May 18, 2021, do not constitute rules of European law which the court should apply as a matter of priority. Thus, the national judge cannot be put in a position to decide the priority enforcement of certain recommendations to the detriment of the national legislation, declared to be in accordance with the national Constitution by the Constitutional Court, since the CVM reports do not regulate, therefore they are not likely to enter into a conflict with the domestic legislation," the CCR adds.

In conclusion, the Constitutional Court considers that the CJEU ruling of May 18, 2021 cannot be considered an element that can determine a jurisprudential reversal in terms of the incidence of Decision 2006/928/EC in the constitutionality review and, implicitly, in the potential violation of Art. 148 of the Constitution.

On 18 May, the Court of Justice of the European Union ruled that it is for national courts to determine whether the establishment of the Special Section for the Investigation of Judicial Crimes, which had the exclusive power to investigate judges and prosecutors, complies with the requirements of the EU's Charter on Fundamental rights.