

СУДОУСТРІЙ; ПРОКУРАТУРА ТА АДВОКАТУРА

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APPLICATION OF THE RULE OF LAW IN THE DECISIONS OF THE COURT OF JUSTICE OF THE EU ON JUDICIAL REFORMS: CORRELATION WITH EU LEGAL STANDARDS AND PRACTICAL SIGNIFICANCE FOR LAW ENFORCEMENT

This article examines how the Court of Justice of the EU applies the principle of the rule of law when evaluating national judicial reforms in member states. It explains that the Court's reasoning is grounded in fundamental EU standards, found in EU treaties and the Charter of Fundamental Rights, that protect rights and ensure an independent judiciary. The article analyzes several landmark cases to identify key rule of law elements such as legal certainty, proportionality, and effective judicial protection.

The article highlights that these EU standards directly shape member states' legal reforms. For example, the Court has reviewed anti-corruption laws to ensure they include safeguards for effective judicial review and are proportionate to their aims. It also struck down reforms (such as forced retirements) that would have undermined judicial independence. The Court maintains that while the organization of the judiciary is primarily a national prerogative, all reforms must uphold uniform European values and procedural guarantees. As a result, the article concludes that national lawmakers and courts should align their reforms with EU rule of law criteria. In particular, these findings are crucial for countries like Ukraine seeking EU membership: aligning with the Court's standards on independence, legal certainty, proportionality and effective protection is essential to meet EU requirements. Such alignment not only satisfies accession criteria but also helps build trust in the judiciary. Overall, the article shows that CJEU case law concretizes the rule of law in practice and offers guidance for shaping judicial policy consistent with fundamental EU values.

These holdings thus set precise benchmarks: domestic reform efforts may seek to improve efficiency or accountability, but they must not undermine the fundamental guarantees of judicial autonomy and fairness. CJEU jurisprudence has effectively turned the right to judicial protection into an "objective obligation" on states to preserve independent courts. These standards will continue to shape European legal policy and enlargement. Candidate countries (notably, Ukraine) must align their judicial reforms with this *acquis* of EU jurisprudence. Indeed, EU accession criteria make democracy, human rights and the rule of law (including an independent judiciary) prerequisites for membership.

Key words: Rule of law; Court of Justice of the EU; judicial reforms; EU Charter; independence of the judiciary.

Сінгаєвська О. І. ЗАСТОСУВАННЯ ВЕРХОВЕНСТВА ПРАВА В РІШЕННЯХ СУДУ ЄС ЩОДО СУДОВОЇ РЕФОРМИ: СПІВВІДНОШЕННЯ З ПРАВОВИМИ СТАНДАРТАМИ ЄС ТА ПРАКТИЧНЕ ЗНАЧЕННЯ ДЛЯ ПРАВОЗАСТОСУВАННЯ

У цій статті розглядається, як Суд ЄС застосовує принцип верховенства права при оцінці національних судових реформ у державах-членах. Пояснюється, що аргументація Суду ґрунтується на фундаментальних стандартах ЄС, викладених у договорах ЄС та Хартії основних прав, які захищають права та забезпечують незалежність судової влади. У статті аналізується кілька знакових справ з метою визначення ключових елементів верховенства права, таких як правова визначеність, пропорційність та ефективний судовий захист.

У статті підкреслюється, що ці стандарти ЄС безпосередньо впливають на правові реформи держав-членів. Наприклад, Суд переглянув антикорупційні закони, щоб переконатися, що вони містять гарантії ефективного судового контролю та є пропорційними до своїх цілей. Він також скасував реформи (такі як примусове звільнення на пенсію), які могли б підірвати незалежність судової влади. Суд стверджує, що хоча організація судової влади є переважно національною прерогативою, всі реформи повинні відповідати єдиним європейським цінностям та процесуальним гарантіям. У результаті в статті робиться висновок, що національні законодавці та суди повинні узгодити свої реформи з критеріями верховенства права ЄС. Зокрема, ці висновки мають вирішальне значення для таких країн, як Україна, які прагнуть членства в ЄС: узгодження зі стандартами Суду щодо незалежності, правової визначеності, пропорційності та ефективного захисту є необхідною умовою для виконання вимог ЄС. Таке узгодження не тільки задовольняє критерії вступу, але й сприяє зміцненню довіри до судової влади. Загалом, стаття показує, що судова практика ЄСПЛ конкретизує верховенство права на практиці та пропонує рекомендації щодо формування судової політики, що відповідає фундаментальним цінностям ЄС.

Таким чином, ці рішення встановлюють чіткі орієнтири: внутрішні реформи можуть бути спрямовані на підвищення ефективності або підзвітності, але вони не повинні підривати фундаментальні гарантії судової незалежності та справедливості. Судова практика Суду ЄС фактично перетворила право на судовий захист на «об'єктивне зобов'язання» держав зберігати незалежність судів.

Ці стандарти й надалі визначатимуть європейську правову політику та розширення ЄС. Країни-кандидати (зокрема, Україна) повинні привести свої судові реформи у відповідність до цього доробку судової практики ЄС. Дійсно, критерії вступу до ЄС ставлять демократію, права людини та верховенство права (включно з незалежною судовою владою) як обов'язкові умови членства.

Ключові слова: Верховенство права; Суд ЄС; судові реформи; Хартія ЄС; незалежність судової влади.

Introduction. The issue of strengthening and upholding the rule of law in the EU Member States occupies one of the leading places in the legal order of the European Union. Against the background of active reform of judicial systems in a number of European countries, decisions of the Court of Justice of the EU play an important role, which, on the one hand, confirm that the organization of the judiciary is the competence of the Member States, and, on the other hand, set clear requirements regarding the need to ensure its independence, proportionality of legislative restrictions and strict respect for human rights. This approach is based on Article 2 of the EU Treaty, which defines the rule of law as a fundamental value of the Union, and on Article 19(1) of the EU Treaty, which obliges Member States to ensure effective judicial protection in the areas of application of EU law.

The article focuses on a comprehensive analysis of three cases in which the Court of Justice of the EU issued principled legal positions on judicial reforms in the member states.

The first case (C-40/21, *Agenția Națională de Integritate*) concerns Romanian legislation on the fight against corruption and conflict of interest and demonstrates how the CJEU applies the criteria of legal certainty, proportionality and effective judicial review to sanctioning mechanisms.

The second case (C-192/18, *Commission v. Poland*) illustrates how the Court of Justice of the EU responds to the risks of a retreat from judicial independence by forcibly lowering the retirement age of judges, establishing discretion for the executive branch in extending their powers, etc.

The third case (C-896/19, *Repubblica v. Il-Prim Ministru*) examines the procedure for appointing judges itself (using the example of Malta) and examines its compatibility with the requirements of the rule of law and the principle of non-recourse.

Overall, the experience of the Court of Justice in these cases shows that, despite the national specificities of judicial reforms, Member States are obliged to adhere to uniform European legal standards – from guarantees of legal certainty and proportionality of restrictions to the requirement of proper procedures for the appointment

and dismissal of judges. This has a direct impact on the activities of national authorities, in particular constitutional courts, which may refer to the judgments of the Court of Justice when reviewing legislative initiatives or administrative practice.

Problem setting. In its reasoning, the Court of Justice is guided by the following components of the rule of law such as legal certainty, proportionality and judicial review, as well as by the standards of EU law (in particular, those provided for in the EU Charter of Fundamental Rights).

This article will describe in detail how these components influenced the decisions of the Court of Justice of the EU and how the EU rules on fundamental rights shaped the approach of the Court of Justice of the EU in the context of applying the rule of law as the ultimate measure of the fairness of the application of a particular regulatory act in specific situations, even despite the sign of supranationality of EU law.

Accordingly, it is necessary to clarify how the principle of the rule of law has influenced the decision-making process in cases. The Court of Justice of the EU regarding the governmental and legislative reforms and the legislation identical to them, in which the principle of the rule of law with its components played a key role; and it is also necessary to clarify how these legal positions can be used in practice by both judges and legislators.

Results of the study. The first examined case is Case C-40/21 – *Agenția Națională de Integritate*. This case concerns Romania's compliance with EU law on judicial reform, the prevention of corruption and the fundamental rights of persons subject to integrity assessments. The Court of Justice of the EU examined whether Romanian legislation, which automatically bars persons with a conflict of interest from holding elected public office for three years, complies with the principles of proportionality, effective judicial protection and fundamental rights guaranteed by the EU Charter. The rule of law ensures that such measures respect fundamental rights, allow for judicial review and are proportionate to the gravity of the offence.

In this case, the Court of Justice of the EU examined a Romanian law that automatically terminated the powers of a mayor and prohibited

him from holding any public office for three years due to the discovery of a conflict of interest.

Romania's National Integrity Agency has accused a local mayor of violating conflict of interest rules. Specifically, during his term, he allowed an association (of which his wife was deputy chair) to use municipal property for free – behavior considered a conflict of interest.

According to Law No. 176/2010 (enacted as part of Romania's EU accession commitments to fight corruption), a final ANI report that reveals a conflict leads to automatic sanctions: the official's term of office is terminated and he is prohibited from holding any elected public office for three years.

These penalties are applied *ipso jure* (by force of law) once the ANI conclusion becomes final, without adjustment based on the gravity of the offense, and, in accordance with Romanian case law, the ban applies to all elected positions (and not just to the same position).

The applicant challenged the ANI report, arguing that such an automatic, non-modulatory ban was incompatible with EU law, in particular with EU requirements on the rule of law and the Charter of Fundamental Rights.

The Romanian Court of Appeal (Curtea de Apel Timișoara), doubting the compatibility of a fixed three-year disqualification with EU law, referred a question to the Court of Justice of the EU. The previous reference asked whether EU law (including Commission Decision 2006/928 establishing a cooperation and verification mechanism, as well as Articles 15(1), 47 and 49(3) of the EU Charter) prohibited such national legislation.

Thus, it is vital for the study to examine how the rule of law is applied in decision C-40/21 *National Integrity Agency*.

The case of Case C-40/21 *Agenția Națională de Integritate* highlights how the Court of Justice of the EU's commitment to the rule of law influences judicial decision-making in the context of national anti-corruption measures. In its judgment, the Court of Justice of the EU assessed Romania's integrity measures in relation to key sub-principles of the rule of law, in particular – legal certainty, proportionality and judicial review (effective judicial protection), ensuring that Romania's fight against corruption was conducted within the framework of the law and fundamental rights.

Legal certainty and predictability. Laws must be clear, predictable and applied consistently, this is particularly important when laws restrict rights or impose penalties. The Romanian legislation in question provided for pre-defined sanctions (loss of office and three-year disqualification from any elected office) for any person in an elected office who has a conflict of interest.

However, there was a textual ambiguity in the law: it stated a ban on holding “the same position” for three years, but Romanian courts (including the Constitutional Court) interpreted this to mean all elected positions.

This interpretation ensured a broad and uniform application of the rule to any public mandate, removing any doubt as to its scope. The CJEU implicitly adopted this established interpretation, treating the sanction as a general disqualification for elected office. With this interpretation, the meaning of the law was sufficiently clear to satisfy legal certainty. The fixed duration (three years) further contributes to certainty – it is a “sufficiently long predetermined period” aimed at deterrence.

Proportionality of the sanction. The principle of proportionality is a fundamental principle of EU law that governed the review by the Court of Justice of the three-year ban on holding office. Proportionality (also enshrined as a general principle in the Charter) requires that measures must be proportionate to the legitimate aim pursued and not go beyond what is necessary to achieve it. The question thus arises: is an automatic three-year disqualification appropriate and necessary to maintain integrity in public office, or does it go too far?

Legitimate purpose. The Court did not doubt the legitimacy of the aim. It recognised that Romanian Law 176/2010 aimed to “ensure integrity and transparency in the exercise of public functions and prevent institutional corruption”, aims which “constitute a legitimate aim recognised by the European Union”.

Indeed, this law was part of the implementation of the benchmarks in the EU Cooperation and Verification Mechanism (Decision 2006/928), binding on Romania, which requires effective anti-corruption measures. The fight against corruption and conflict of interest in public administration is fully in line with the values and commitments of the EU.

Relevance to the purpose. The court found the sanction to be appropriate or appropriate to achieve the objective. It was noted that the automatic termination of the conflicting official's powers and the prohibition of him from holding office for a certain period of time “provides an opportunity to definitively put an end” to the unlawful situation, while preserving the functioning of public institutions, and is likely to deter other officials from violating the conflict of interest rules.

By establishing real consequences (loss of office and temporary disqualification), the law sends a clear message of support for the rule of law: no one is above the law, and integrity rules

will be enforced. The court concluded that a three-year ban “seems appropriate to achieve the legitimate aim” of integrity in public office.

Necessity and scope of application. The judgment expressly states that “the scale of the conflict of interest and the level of corruption” in the national public sector must be taken into account when assessing whether the law goes beyond what is necessary. This reflects a realistic proportionality analysis taking into account the context: in an environment with a high level of corruption, more severe standardised penalties may be justified in order to achieve deterrence. The Court also noted that the Romanian legislators had set the three-year period “in view of the intrinsic seriousness” that the conflict of interest represents for the government and society.

The existence of a parallel criminal offence underlined that the conflict of interest was considered a serious matter. Thus, the three-year administrative ban under Law 176/2010 fits into the gradation of responses – it is a pre-established penalty for administrative offences, as opposed to the variable (and potentially more severe) sanctions for criminal offences.

Taking these factors into account, the Court found that the Romanian legislation “does not go beyond what is necessary” to achieve its anti-corruption objective, “taking into account the context” in which it operates. In principle, even relatively minor conflicts of interest can lead to a three-year disqualification in a country where the fight against corruption is a “genuine demand of society” and a priority for the legislature.

Judicial review and effective judicial protection. The cornerstone of the rule of law is the availability of judicial review – an independent court must be able to oversee administrative decisions and ensure legality and respect for rights. The Court of Justice therefore examined whether the Romanian system offered an effective judicial protection for the individual, as required by Article 47 of the Charter (right to an effective remedy and to a fair trial). Article 47 guarantees that everyone whose rights or freedoms guaranteed by EU law are violated has access to a fair and impartial trial.

Since the ANI sanctions were imposed in the context of the implementation of the EU’s anti-corruption obligations, Article 47 was applicable. The Court emphasised that effective judicial protection includes, inter alia, the right of access to a court and the power of the court to examine all relevant facts and points of law.

In this case, although the three-year ban was automatic, the official could have gone to court to challenge the ANI assessment report, and there-

fore the basis for the sanction. The requesting court had full jurisdiction to review the legality of the ANI report, including a factual assessment of whether a conflict of interest existed, and to quash that report if it was unfounded.

Thus, the Romanian court must verify not only the existence of a conflict of interest, but also whether a three-year ban corresponds to the seriousness of this specific offense.

Ultimately, the CJEU found no violation of Article 47, given that Romanian law provided for a remedy before a court and that nothing in the case file indicated that this remedy was ineffective. However, the condition is that the person had an effective opportunity to challenge the lawfulness of the decision and “the penalty imposed on the basis thereof, including its proportionality”.

In its final judgment, the Court stated that Article 47 does not preclude Romanian legislation as long as such judicial possibilities exist. This links the principle of the rule of law of judicial review directly to the result: a measure of integrity is acceptable under EU law only if there is reliable judicial review. The role of the judiciary here is to ensure compliance with EU law – both with anti-corruption objectives (CVM benchmarks) and with fundamental rights/proportionality guarantees. The message of the Court of Justice is that judicial review is an integral part of the review of executive or administrative actions in the fight against corruption, the prevention of abuse and the respect for individual rights as part of the rule of law.

After the examination of application of the rule of law, we shall examine the impact of EU legal standards (EU Charter and values) on the Court’s reasoning in decision C-40/21 *Agencia Națională de Integritate*.

From the very beginning, this case was considered within the framework of EU law, in particular because Romania’s integrity legislation was adopted in line with the EU accession criteria. The Cooperation and Verification Mechanism Decision 2006/928 set out specific benchmarks for judicial reform and the fight against corruption in Romania. Law 176/2010, which created the ANI and its sanctions, implements one of those benchmarks set by the EU.

Three provisions of the Charter were examined: Article 49(3) (proportionality of penalties), Article 47 (effective remedy and fair trial) and Article 15(1) (freedom to choose an occupation/employment).

The Court’s approach to each of these shows how EU standards shaped the reasoning:

Proportionality of punishments: “The severity of punishments should not be disproportionate to the criminal offense”.

The key issue was whether a three-year ban on holding office (imposed administratively) fell within the scope of Article 49(3). The Court ultimately held that Article 49(3) did not apply directly because the measure was “not criminal in nature”. Although the sanction was punitive in nature, it was classified as an administrative consequence of an administrative offence (as opposed to a criminal conviction and more limited in severity than a criminal penalty).

In reaching this conclusion, the Court of Justice of the European Union implicitly applied criteria from European case law (e.g. the Engel criteria under the ECtHR) to determine that the ban did not constitute a “criminal charge” for the purposes of the Charter. This meant that the Charter’s provision on the proportionality of fines was not a criterion. However, this did not leave the sanction without proportionality review: the Court referred to proportionality as a general principle of EU law applicable to all measures implementing EU law.

In practice, the general principle analysis led to the same consideration of suitability, necessity and proportionality that were discussed earlier. Thus, EU law still requires a proportionality test; it simply follows from the broader principle (and Article 5 TEU, etc.) rather than directly from Article 49(3) of the Charter.

This nuanced approach shows that the Court carefully frames the issue within the proper EU legal standard: the prohibition of integrity has been reviewed for proportionality, as all national measures within the framework of EU law must comply with it, even if the Charter’s provisions on criminal penalties do not formally classify the measure as a “criminal” penalty.

Freedom of choice of profession/job: “Everyone has the right to engage in work and to pursue a profession which he freely chooses or accepts”.

The Court and the parties raised the question of whether a ban on someone holding an elected public office infringes the freedom to work or choose an occupation. In response, the Court of Justice drew a line between economic/occupational freedoms and political rights. It recognised that Article 15(1) was broadly worded (“everyone” – “work” – “occupation”) and had received a wide range of case law.

However, the Court concluded that Article 15(1) “does not include the right to exercise, for a fixed period, an electoral mandate obtained after democratic elections.” Holding an elected office, such as that of mayor, was characterised as a political function deriving from a popular vote, rather than a typical “occupation” entitled to a free market.

The Court confirmed this reasoning by referring to the structure of the Charter: the rights

to political participation (the right to vote and to stand for election) are dealt with in Articles 39–40 of the Charter (Chapter V – Citizens’ Rights), separately from the general freedom to choose an occupation in Article 15 (Chapter II – Freedoms). This has also been reiterated by the European Court of Human Rights, which considers the right to hold elected office to be a matter of political rights and not part of the right to work. Thus, the removal of someone from the office of mayor concerns his right to hold public office (a civil right governed by national electoral law and EU law) and not his fundamental right to earn a living through a profession.

Having clarified this, the Court found no violation of Article 15(1), this provision of the Charter was simply not the applicable standard for the file on disqualification from elections. The Court observed that Member States remained free to grant greater protection in accordance with their national constitutions to the right to work, as long as this did not undermine the level of protection of the Charter. In essence, the impact of the Charter here was to define the appropriate category of rights at stake: the Romanian ban affected political rights that the Charter does not codify broadly, with the exception of voting rights at EU level, and not the general right to work. The legitimacy of the ban would therefore depend on the principles of proportionality and democracy, not on freedom of occupation.

An effective remedy and a fair trial: the Court was satisfied that the requirements of Article 47 regarding an effective remedy and a fair trial had been met. The Court insisted on the availability of a review of the ANI report and the legality and proportionality of the sanctions. Article 47 of the Charter framed the decision by providing a benchmark for judicial protection: the Romanian system had to be assessed against the standard of whether TAC had effective means to protect his rights.

The result was a condition that the person concerned had to have a real day in court to challenge both the conclusion and the penalty. This is a direct imposition of the EU fundamental rights standard on the national procedure. The Court was satisfied that, interpreted in accordance with its guidance, Romanian law could be applied in a manner that complied with Article 47 (since the court could annul the report and even adjust the sanction if proportionality required). By integrating Article 47, the decision ensured that the rule of law was equivalent to the rule of law in this context: anti-corruption measures must also respect the individual’s right to a fair trial.

The Court of Justice of the EU upheld Romania’s strict anti-corruption sanctions

(fulfilling the EU guideline that sanctions should be “dissuasive”), while also implementing the requirements of fairness and proportionality (respect for fundamental EU values and rights). In line with Article 2 TEU (which lists the rule of law as a value of the Union) and Article 19 TEU (which entrusts national courts with the task of ensuring effective legal protection in areas of EU law), the judgment can be seen as part of the broader framework of the EU rule of law: it ensures that Romania’s compliance with EU anti-corruption standards does not come at the expense of judicial guarantees. In fact, compliance with one (the anti-corruption guideline) was achieved in harmony with the other (fundamental rights and judicial review).

Thus, the EU Court of Justice was satisfied that the method of preserving integrity in public office in Romania, an automatic sanction in connection with a conflict of interest, met the basic standards of the rule of law: legal certainty (the law was clear and consistently applied), proportionality (the sanction was generally proportionate to its anti-corruption objectives, with the possibility of avoiding excesses in extreme cases) and judicial review (the sanctioned official has access to independent courts to challenge the decision and penalty).

Ultimately, the Court’s decision reconciles Romania’s obligation to fight corruption with its obligation to uphold EU values and rights. It demonstrates that upholding the rule of law is not an obstacle to the fight against corruption, but rather an essential component of it – ensuring accountability and justice.

The decision set a precedent that integrity measures, such as a ban on holding office, are acceptable under EU law if they operate within a framework that respects fundamental rights and allows for fine-tuning by the courts.

This decision is thus a compelling example of the rule of law in action: the intervention of the Court of Justice of the EU led to a decision that strengthens both the fight against corruption in Romania and the protection of fundamental legal principles, demonstrating that in the legal order of the European Union, the ends (clean governance) do not justify any means, only those that are compatible with the rule of law.

The second examined case is *Case C-192/18 – Commission v. Poland*. This was a landmark decision on judicial reforms in Poland in light of the fundamental principles of the EU rule of law. In this infringement case, the European Commission challenged a 2017 Polish law that (1) lowered the retirement age for judges (with different ages for men and women) and (2) granted the Minister of Justice discretion to

continue judges in active service beyond this new retirement age. The case directly raised the issue of the independence of the judiciary, the irremovability of judges and the right to effective judicial protection, all essential components of the rule of law.

The CJEU had to decide whether these reforms violated EU law, in particular Article 2 TEU (which enshrines the value of the rule of law), Article 19(1) TEU (the obligation of Member States to ensure effective judicial protection) and Article 47 of the EU Charter of Fundamental Rights (the right to an effective remedy before an independent tribunal).

Thus, it is vital for the study to examine how the rule of law is applied in *Case C-192/18 Commission v. Poland*.

Legal certainty. In *Commission v. Poland*, the Court of Justice found that the Polish reform lacked important clarity and safeguards, undermining legal certainty. The contested law allowed the Minister of Justice to decide whether a judge could continue in office after reaching the new retirement age, but it did not set out clear, binding criteria or procedures for such a decision. The legislative criteria governing the Minister’s decision were “too vague and unverifiable”, and the Minister was not even required to explain the reasons for granting or refusing an extension. Furthermore, the decision was not subject to judicial review, eliminating any oversight or accountability for the Minister’s use of that power.

The law also did not specify a timeframe for the minister’s decision. Judges were required to submit a request 6-12 months before retirement, but there was no deadline for the minister to respond, meaning the judge could remain in limbo for an indefinite period while awaiting a decision.

The court noted that this indefinite waiting period, during which a judge remains in office pending the Minister’s decision, prolongs the “period of uncertainty” for the judge and leaves the time entirely at the Minister’s discretion.

Such uncertainty in the application of the law undermines legal certainty, as judges could not foresee how and when decisions on extensions would be taken and had no legal remedy if the decision was taken late or arbitrarily. This lack of clear rules and remedies in the Polish scheme was incompatible with the rule of law requirement for a stable, transparent legal framework. The CJEU considered these shortcomings as directly concerning the independence of the judiciary, as vague rules and unchecked discretion opened the door to arbitrary influence on judges.

Judicial independence. The preservation of the independence of the judiciary was at the heart of

this case. Article 19(1) TEU (second paragraph) obliges Member States to ensure the independence of courts entrusted with the application of EU law. The Court reiterated that independence is “essential” to the judicial function and constitutes an essential part of the essence of the right to a fair trial.

He identified two dimensions of judicial independence: the external dimension (the court must be free from external pressure or interference) and the internal dimension (impartiality, i.e. the absence of an interest in the outcome other than the application of the law). Externally, judges must perform their functions autonomously, “not subject to any hierarchical constraint or to any other authority or to any order or instruction from any source”, and be protected from external interference or pressure that might influence their decisions.

Internally, judges must remain neutral and base decisions solely on the law, maintaining an “equal distance” from all parties and interests, keeping an impartiality that ensures they have no vested interest in the outcome of a case, other than the strict application of the rule of law.

The CJEU agreed that the contested mechanism could undermine the autonomy of judges and ruled that the Minister’s unlimited power was “such as to raise reasonable doubts” in the minds of observers as to the independence and neutrality of the judges. In other words, since the Minister can arbitrarily decide who remains on the bench, an objective citizen may question whether the judges remain impervious to external factors or are instead subject to the influence of the executive.

In addition, the Court found that the Polish law violates the principle of irremovability of judges, which is a cornerstone of the independence of the judiciary.

Irremovability means that judges should not be arbitrarily dismissed or forcibly dismissed, so they serve until the mandatory retirement age or the end of their term, and early dismissal is only permitted for legitimate, serious reasons (e.g. misconduct or incapacity) in accordance with strict procedures.

By effectively forcing judges to retire at a younger age unless the minister agrees otherwise, the Polish law undermines the stability of tenure. The EU Court of Justice noted that the minister’s extension of his term was inconsistent with irremovability, which is “an integral part of judicial independence.”

The Court’s analysis thus shows that the independence of the judiciary, inter alia freedom from external influence and guaranteed tenure, is a non-negotiable element of the rule of law, and the Polish provisions do not meet this standard.

Effective legal protection. The principle of effective judicial protection links the above concepts, ensuring that individuals have the opportunity to assert their rights under EU law before independent courts. Under EU law, this principle is both a fundamental right (Article 47 of the Charter) and a fundamental requirement for the legal systems of the Member States (Article 19(1) TEU). The Court of Justice of the EU has confirmed that effective judicial protection of EU rights is a general principle of EU law, which stems from the common constitutional traditions and Articles 6 and 13 of the ECHR and is now enshrined in Article 47 of the Charter.

The mandate of Article 19(1) TEU for Member States to provide “remedies sufficient to ensure effective legal protection in the fields covered by Union law” embodies this principle. Importantly, the Court has emphasised that for judicial protection to be “effective”, the courts must be independent.

He pointed to Article 47(2) of the Charter, which expressly refers to an “independent and impartial tribunal” as part of the right to a fair trial, stressing that the independence of the tribunal is a necessary condition for any effective remedy.

Without an independent judiciary, the rights granted by EU law would lack a reliable enforcement mechanism, which would undermine the rule of law.

The Commission argued and the Court agreed that the requirement of an “effective remedy” in Article 19(1) must be interpreted with reference to the content of Article 47, i.e. the guarantees of a fair and impartial hearing by an independent tribunal apply.

By undermining the independence of the judiciary through the retirement and extension scheme, Poland has failed to guarantee an effective remedy for individuals before these courts. For example, if a party’s EU rights (say, under EU anti-discrimination law or any other area) were at stake in a Polish court, that party could question the court’s ability to deliver an impartial judgment if the judge’s career depended on the government’s approval. This directly affects the individual’s right to an effective, impartial judicial decision on their claim under EU law.

Ultimately, the Court ruled that Poland’s measure violated Article 19(1) TEU because it failed to preserve the independent judicial decision necessary for effective judicial protection.

In summary, the Court was guided by the rule of law principle of effective judicial protection: it insisted that national judicial reforms should not deprive individuals of the real guarantee of an

independent tribunal to ensure respect for their rights.

After the examination of application of the rule of law, we shall examine the impact of EU legal standards (EU Charter and values) on the Court's reasoning in decision *C-192/18 Commission v. Poland*.

While the Polish government argued that the organisation of the judicial system was a national prerogative, the Court stressed that member states must nevertheless respect the EU's obligations and values.

Article 2 TEU states that the EU is founded on values, including democracy, the rule of law and human rights. Although Article 2 is a high-level principle (not normally an operational legal basis for specific sanctions outside the mechanism of Article 7 TEU), it sets an important context. The CJEU has clearly linked its analysis to the values of Article 2 TEU: it has stated that protecting the independence of the judiciary in the Member States is essential for protecting "the values common to the Member States as set out in Article 2 TEU, in particular the value of the rule of law".

By referring to Article 2, the Court placed the case in the broader context of the EU's fundamental obligations: in essence, stating that the independence of the Polish judiciary was not only a Polish problem but a European problem, given the fundamental status of the rule of law. This value-based perspective reinforced the seriousness of the violation; the Court noted that the undermining of judicial independence struck at one of the constitutional foundations of the Union.

Thus, Article 2 TEU has formed the argument, emphasizing that respect for the rule of law (as independent courts) is a condition of EU membership and subject to EU supervision. The decision can be seen as operationalizing the abstract value of the rule of law through the specific obligations of Article 19(1) TEU.

The Charter of Fundamental Rights, in particular Article 47 (Right to an effective remedy and to a fair trial), has also significantly informed the Court's approach. Although the Charter applies to Member States "only when they are implementing Union law", the Court has avoided a formal obstacle by relying on Article 19(1) TEU. The second subparagraph of Article 19(1) TEU is not limited to the condition of the scope of the Charter; it requires effective judicial protection "in the fields covered by Union law" in general, regardless of whether the act of a Member State implements a particular EU law. However, the content of the obligation under Article 19(1) has been defined in the light of the guarantees of a fair trial under Article 47. The Court has considered the Char-

ter as a guide for interpreting what constitutes effective judicial protection. He cited Article 47's requirement for an "independent and impartial tribunal" as confirmation that independence is a fundamental component of the EU right to a remedy.

The Charter thus helped to define the standards that Poland had to meet. In essence, judges in Warsaw had to be as independent and impartial as the Charter required if it were to be directly applicable. This interpretative synergy ensured coherence between the Treaties and the Charter: individuals in any Member State have the right to an independent tribunal when asserting their EU rights, regardless of whether this guarantee is provided by the Charter or by Article 19 TEU. The CJEU also referred to the wider European human rights context, noting that effective judicial protection is a general principle also reflected in Articles 6 and 13 of the European Convention on Human Rights.

In summary, EU legal standards shaped the Court's reasoning, providing both a legal basis for action (Article 19(1) TEU as a concrete complement to the values of Article 2 TEU) and an essential criterion (the criteria of independence and impartiality of Article 47 of the Charter) against which the Polish legislation was assessed. The result was a decision that is firmly anchored in EU fundamental law: the Polish regime for the retirement of judges was found to be incompatible with the standards of the rule of law and the Union's fundamental rights obligations.

Thus, the judgment of the Court of Justice of the EU in Case C-192/18 set a significant precedent, reinforcing the independence of the judiciary and the separation of powers as binding rules of EU law. It was one of the first final judgments to find a Member State in breach of Article 19(1) TEU through judicial reforms. By upholding the Commission's appeal, the Court clearly established that EU law can control national measures that threaten the independence of the judiciary.

The judgment confirmed that the preservation of an independent judiciary is not only a national constitutional issue, but also an obligation under EU law, where those courts can rule in accordance with EU law. Any action by a Member State which systematically undermines the independence of the judiciary can be considered a breach of EU treaty obligations. This was a notable evolution in EU case-law, effectively constitutionally enshrining the separation of powers at EU level through Article 19(1) TEU.

Although the judgment does not use the phrase "separation of powers" directly, this principle is reflected in all considerations of independence. The Court's insistence that judges should be free

from “orders or instructions from any source” and not subject to other authorities is a direct confirmation of the separation of powers. By removing the Minister of Justice’s control over the powers of judges, the ruling rebalanced the powers in favor of the independence of the judiciary from the executive.

This set a precedent that neither the executive nor the legislature can retain discretionary influence over the careers of judges without violating EU law. In essence, the decision draws a clear line: political influence on the composition or functioning of the judiciary is incompatible with the EU value of the rule of law. This serves as a strong deterrent against future attempts to weaken the independence of the judiciary in any Member State.

The case established Article 19(1) TEU (and the related principles of the Charter of Fundamental Rights) as a judicial instrument for the protection of the rule of law. The case of *Commission v. Poland* (together with the related case before the Supreme Court) demonstrated that the Court will pay attention to Article 19(1), reading it in the light of fundamental rights. This precedent means that future judicial reforms – for example, concerning systems of disciplinary liability of judges, the composition of courts or retirement conditions, they will be assessed against the standards set here.

In conclusion, the judgment in *Commission v. Poland* had a significant impact on the case-law on the rule of law in the EU. It translated abstract principles such as legal certainty, judicial independence, effective judicial protection into concrete legal requirements that Member States must comply with.

The case highlighted the role of judicial oversight, both at the national level (which was found to be lacking in the Polish system) and at the EU level, where the Court intervened to uphold compliance with EU law.

As a precedent, this provision states that an independent judiciary is a cornerstone of the EU legal order, directly linked to the rule of law and the separation of powers. Any national reform that jeopardises this independence will be subject to close scrutiny and possible condemnation under EU law.

The Court’s firm position in case C-192/18 thus reinforces the role of the judiciary as guardian of individual rights and EU values, sending a clear message that the rule of law is not just a principle in theory, but a binding obligation in practice.

And finally, the third examined case is *Case C-896/19 – Republic v Prime Minister*.

In this case, the Court of Justice of the EU examined whether the Maltese system for the

appointment of judges complies with EU rule of law standards. An NGO (Repubblika) challenged by *actio popularis* Malta’s constitutional provisions on the appointment of judges, claiming that they breached EU obligations on the independence of the judiciary under Article 19(1) TEU and Article 47 of the EU Charter. The Maltese court questioned whether these EU provisions applied to the national system for the appointment of judges and whether the influential role of the Prime Minister in the appointment was compatible with EU law.

This case raised key principles of the rule of law – judicial independence, separation of powers and legal certainty, and tested how EU legal standards (the values of Article 2 TEU, the Charter, etc.) shape national judicial reforms.

Thus, it is vital for the study to examine how the rule of law is applied in Case C-896/19 *Repubblika v. Il-Prim Ministru*.

Judicial independence and separation of powers. The rule of law in the case law of the Court of Justice of the EU requires that the judiciary be free from undue influence from other branches of government. The Court has stressed that the independence of the judiciary is essential “in accordance with the principle of the separation of powers which characterises the operation of the rule of law”, requiring that judges be independent, in particular in relation to the legislative and executive branches.

In other words, the cornerstone of the rule of law is that courts must remain impartial and free from external pressure from political authorities. The judgment reiterated that judges must be protected from any external interference, direct or indirect, that might compromise their impartiality.

Legal certainty. The Maltese court that made the request noted that if the appointment system were to be declared illegal, it could call into question the validity of previous decisions made by these judges, undermining the stability of the legal system.

Ultimately, by upholding the Maltese system as compatible with EU law, the Court avoided disrupting settled cases, thus preserving legal certainty. If the system were found to be incompatible, the question arose whether the decision would only affect future appointments or also past ones, demonstrating the Court’s awareness that abrupt changes could undermine public confidence in the stability of the justice system.

Oversight and reviews of the judicial appointment system in Malta. The main theme of the judgment was the role of oversight and checks (both judicial and institutional) in ensuring that the appointment process does not undermine

independence. The very fact that national constitutional provisions were reviewed by the Maltese courts and the CJEU demonstrates a multi-layered judicial oversight: national judges, supported by the preliminary ruling process, act as guardians of the values of EU law in the Member State. This oversight was intended to ensure that the Maltese executive did not have unlimited powers to appoint judges to the detriment of compliance with EU law..

In Malta's own system, the Court has identified several safeguards that support the separation of powers by limiting the executive's power in the selection of judges. In 2016, Malta established the Judicial Appointments Committee (JAC), an independent body that assesses judicial candidates. The Court of Justice has stressed that the involvement of such an independent committee can make the appointment process more objective by "limiting the discretion" of the Prime Minister in the selection of judges.

The court was satisfied that Malta's JAC met this standard: noting, for example, that politicians are prohibited from joining the committee, members must act on their own discretion without any instructions, and the committee uses transparent, merit-based criteria for evaluation.

Because the referring court did not express any doubts about the independence or effectiveness of the JAC, the Court concluded that the 2016 reform "strengthens" the independence of the judiciary by introducing this buffer between the government and judicial nominees.

In addition, the role of the Prime Minister is limited by law in important respects, providing additional oversight. The Court pointed to two key limitations on the Prime Minister's appointment powers: objective qualification criteria and transparency requirements. First, candidates for judicial office must meet constitutional requirements regarding professional experience and knowledge.

This means that the Prime Minister cannot appoint unqualified or purely partisan individuals; the selection is limited to those who meet the established standards, which is a legal check that promotes competence and impartiality. Second, if the Prime Minister does decide to recommend a candidate who was not among those preferred by the JAC, he or she must give clear reasons and inform the legislature of this decision.

Maltese law requires the Prime Minister to submit a justification to the House of Representatives (and publish it in the Official Gazette) whenever he bypasses the JAC-recommended candidates.

This ensures transparency and accountability of the process: the executive must publicly defend any departure from the opinion of the indepen-

dent committee. Such a redefinition must also be exceptional. The Court of Justice of the EU stressed that as long as the Prime Minister exercises this power "only in exceptional circumstances" and with "strict and effective" compliance with the obligation to explain the reasons, this is unlikely to raise legitimate doubts about the independence of the judges.

In other words, because this extraordinary power is rarely used and cannot be exercised arbitrarily or secretly, it does not fatally undermine the appearance or reality of judges' impartiality.

Together, these checks and an independent review panel, legal eligibility criteria and the necessary transparency in appointments, which constitute a system of supervision and guarantee compliance with EU law. They ensure that the selection of judges is not a purely political prerogative but is subject to impartial review and justification. The Court found that, thanks to these safeguards, the appointment process in Malta did not breach the standard of Article 19(1) TEU. The national provisions did not "give rise to legitimate doubts in the minds of individuals" as to whether judges were free from external (in particular political) influence.

As a result, the rule of law, in the sense of an independent judiciary capable of protecting EU rights, is preserved in the Maltese system. Notably, the Court's reply to the Maltese court confirmed that Article 19(1) TEU "does not preclude" a system in which the Prime Minister has the final say in appointments, provided that an independent body is involved in the process of assessing candidates and delivers an opinion.

Judicial independence can be ensured through such a pluralistic model of shared authority, as long as there are effective oversight mechanisms to prevent abuse.

After the examination of application of the rule of law, we shall examine the impact of EU legal standards (EU Charter and values) on the Court's reasoning in decision C-896/19 *Repubblika v. Il-Prim Ministru*.

The Court of Justice's reasoning was clearly informed by the values of the EU, in particular the need for an independent judiciary as a manifestation of the rule of law. The Court recalled that the EU is composed of States committed to the common values set out in Article 2 and that respect for those values (such as the rule of law) is a condition for the enjoyment of all rights under the Treaties.

Most importantly, it emphasises the principle of "non-regression": no Member State may amend its laws in such a way as to reduce the protection of the value of the rule of law. According to the Court, a Member State "may not have the effect

of reducing the protection of the value of the rule of law, a value which is specifically expressed, in particular, in Article 19 TEU". Member States must prevent any setback to the independence of the judiciary by refraining from any reforms which undermine the autonomy of the judiciary.

This context was evident in *Repubblika*: while Malta's 2016 constitutional reform increased the independence of the judiciary by creating new checks, it clearly did not constitute a departure from the status quo at the time of accession to the EU. The Court noted that the establishment of the Judicial Appointments Committee in 2016 "serves to strengthen the guarantee of the independence of the judiciary in Malta compared to the situation ... when Malta joined the EU".

That is, EU values required that Malta's system at least match the level of independence existing at the time of accession and preferably improve upon it, as it did.

Article 19(1) TEU obliges Member States to "provide remedies sufficient to ensure effective judicial protection" in the areas covered by EU law. The Court has interpreted Article 19 as imposing an obligation to maintain an independent judiciary as part of effective judicial protection. In particular, the CJEU has confirmed that Article 19(1) applies to national rules on the organisation of the judiciary even if the Member State does not implement EU law in the strict sense. It is sufficient that national courts "may be called upon to give judgments on questions of EU law", which is true for virtually all courts of the Member States.

This allowed the Court to assess the process of appointing judges in Malta in line with EU law, even though the appointment of judges is normally a national competence. The Court of Justice thus confirmed its jurisdiction to protect EU requirements on the rule of law: domestic arrangements concerning courts cannot escape review if they potentially affect the independence of the courts, which ultimately uphold EU law.

Article 47 of the EU Charter of Fundamental Rights (right to an effective remedy and to an independent tribunal) was also taken into account in the analysis. The Charter was not directly applicable to the case, as the NGO's claim did not concern the enforcement of a specific individual right under EU law (the claim was an abstract review of constitutional provisions, not the implementation of EU law). However, the Court noted that Article 47 "reaffirms" the principle of effective judicial protection and reflects the essential elements of judicial independence.

Even if Article 47 was inapplicable "as such", it had to be "due regard" when interpreting the requirements of Article 19. In practice, this

meant that the Charter standard of "an independent and impartial tribunal" helped to shape the guidelines under Article 19. The Court clearly linked the guarantee of a fair trial in Article 47 to the "essence" of the rule of law, noting that the independence of the judiciary was part of the "essence of the fundamental right to an effective judicial remedy and to a fair trial" in Article 47.

The EU legal standards such as the values of Article 2 TEU, the binding obligations under Article 19 TEU and the guidance on the interpretation of Article 47 of the Charter together guided the Court's reasoning. They led the Court to carefully assess whether Malta's appointment system contained sufficient guarantees of independence to satisfy the EU rule of law.

Thus, the judgment in this case is of great importance in that it strengthens the EU guidelines on the independence of the judiciary and outlines the acceptable limits of national reform. First, it establishes the principle that even basic constitutional mechanisms (such as the way judges are appointed) must comply with EU law standards if they affect the role of the judiciary in the application of EU law. A Member State cannot insulate its judicial structure from review by calling it a 'constitutional' or 'internal' competence, so the Court will supervise when fundamental EU values are at stake.

Importantly, a clear precedent is set on the principle of non-recourse: it is now made clear that Member States are prohibited from derogating from the guarantees of judicial independence. The Court's reference to Article 49 TEU (accession to the EU) and Article 2 TEU makes it clear that when a country joins the EU, it undertakes to uphold and promote the values of the Union, and it cannot subsequently adopt legislation that undermines them.

The *Repubblika v. Il-Prim Ministru* ruling thus strengthens the EU's legal arsenal in countering the erosion of the rule of law. It is consistent with the wider EU trend of scrutinising measures that threaten judicial impartiality, and gives reforming governments a clear baseline – any changes must respect the "essence" of judicial independence, otherwise they risk breaching EU law.

At the same time, the judgment recognises that there is no universal model for the appointment of judges, provided that the basic principles are respected. The Court did not require Malta to introduce a purely self-appointment system for judges or to eliminate all political influence; rather, it confirmed a hybrid system involving the executive, tempered by independent scrutiny. This points to a precedent of flexibility: Member States may have different appointment procedures (some involving presidents, governments, councils

for the judiciary, parliaments or a combination of these) and it is important that these procedures include safeguards to prevent undue influence. The existence of checks such as the Maltese JAC and reasoned decision-making by the executive can satisfy EU requirements.

So, the decision in *Repubblika v. Il-Prim Ministru* not only resolved the Maltese problem, but also sent a message to all EU countries: the rule of law is a guiding principle that actively influences judicial decision-making, and any national measures concerning the courts will be assessed against this criterion. Future developments in judicial systems in the EU will likely be assessed through the lens of this decision, which combines national constitutional autonomy with the supra-national imperative of the rule of law.

Conclusions. An analysis of the case law of the EU Court of Justice shows that the rule of law is consistently implemented in decisions on national judicial reforms. In particular, the key components of this principle are legal certainty and effective judicial protection (through independent and impartial courts), as well as proportionality. In Cases C-40/21, C-192/18, C-896/19, these elements were the criteria for assessing the compliance of national changes with EU standards: from the requirement to ensure stability and predictability of legal consequences to the proper balance between the purpose of the reform and the measures taken. Thus, the CJEU actually concretises the rule of law principle enshrined in Article 2 of the TEU through the obligations of Member States under Article 19(1) of the TEU to ensure the independence of the courts and effective remedies. This, in turn, has a direct impact on Member States' justice and anti-corruption policies, encouraging them to bring their judicial reforms in line with these requirements.

For Ukraine, which is currently in the active process of European integration, these conclusions are of particular practical importance. Compliance with the European standards of the rule of law is a prerequisite for successful integration, and therefore the Ukrainian legal system should adopt and implement the relevant principles and approaches into national legislation. In particular, the reforms of the judiciary in Ukraine should be carried out with due regard to the EU Court of Justice's developments on the independence of courts, legal certainty of decisions and proportionality of legal restrictions – this will ensure that the reforms are consistent with the EU membership criteria and strengthen trust in justice.

The approach to analysing EU case law outlined in this article is extremely relevant for Ukrainian lawmakers. When preparing legal acts, especially in the area of judicial reform,

Ukrainian legislators should focus not only on formal borrowing of EU law provisions, but also on a deep understanding of how these provisions are implemented in practice through the judgments of the EU Court of Justice. A detailed study of precedents (such as the above-mentioned cases) will allow to anticipate possible comments on the compliance of Ukrainian reforms with the rule of law and to take into account European legal standards in the development of laws in a timely manner.

This analytical approach is also useful for the Constitutional Court of Ukraine. If it intends to use the case law of the EU Court of Justice in its judgments, the CCU should not only rely on general references to fundamental principles, but also conduct a detailed and consistent analysis of the relevant judgments of the European Court. This means that the reasoning of the Constitutional Court's decisions should reflect the specific legal positions of the EU Court of Justice in similar cases, which will contribute to greater conviction and legitimacy of national decisions. The application of the EU Court of Justice precedents based on a thorough study of their reasoning will help the CCU to integrate European standards into Ukraine's constitutional jurisdiction more effectively.

Finally, when interpreting and applying national legislation within the framework of the judicial reform, the interaction between the rule of law and the values and fundamental principles of the EU should be taken into account. The European experience shows that the rule of law is closely linked to other fundamental principles of the Union – democracy, protection of human rights, separation of powers, and is implemented through specific legal obligations established in EU law (such as the requirements of Article 19(1) of the TEU and the Charter of Fundamental Rights). Therefore, Ukrainian authorities and courts, when implementing reforms, should ensure that new norms and practices are consistent not only with the letter but also with the spirit of EU law. This approach will guarantee the consistency of Ukrainian reforms with European standards, strengthen the rule of law in Ukraine and contribute to the successful progress of our country on the path to EU membership.

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