



Reports of Cases

Case C-107/23 PPU [Lin]ⁱ

**Criminal proceedings
against
C.I. and Others**

(Request for a preliminary ruling from the Curtea de Apel Braşov)

Judgment of the Court (Grand Chamber), 24 July 2023

(Reference for a preliminary ruling – Protection of the financial interests of the European Union – Article 325(1) TFEU – PFI Convention – Article 2(1) – Obligation to counter fraud affecting the financial interests of the European Union by taking effective deterrent measures – Obligation to provide for criminal penalties – Value added tax (VAT) – Directive 2006/112/EC – Serious VAT fraud – Limitation period for criminal liability – Judgment of a constitutional court invalidating a national provision governing the grounds for interrupting that period – Systemic risk of impunity – Protection of fundamental rights – Article 49(1) of the Charter of Fundamental Rights of the European Union – Principle that offences and penalties must be defined by law – Requirements of foreseeability and precision of criminal law – Principle of the retroactive application of the more lenient criminal law (*lex mitior*) – Principle of legal certainty – National standard of protection of fundamental rights – Duty on the courts of a Member State to disapply judgments of the constitutional court and/or the supreme court of that Member State in the event that they are incompatible with EU law – Disciplinary liability of judges in the event of non-compliance with those judgments – Principle of the primacy of EU law)

1. *Questions referred for a preliminary ruling – Urgent preliminary ruling procedure – Conditions – Examination by the Court of its own motion – Person deprived of liberty – Outcome of the dispute liable to have an effect on that deprivation of liberty (Statute of the Court of Justice, Art. 23a; Rules of Procedure of the Court of Justice, Art. 107)*

(see paragraphs 48-56)

2. *Own resources of the European Union – Protection of the European Union’s financial interests – Fight against fraud and other illegal activities – Obligation of the Member States to establish effective and deterrent penalties – Scope – Criminal offences affecting the financial interests of the European Union – Setting limitation periods – Competence of the Member States – Limits (Arts 4(2) and 325 TFEU; Convention on the protection of the European Communities’ financial interests, Art. 2(1))*

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

(see paragraphs 79-86)

3. *Own resources of the European Union – Protection of the European Union’s financial interests – Fight against fraud and other illegal activities – Obligation of the Member States to establish effective and deterrent penalties – Scope – Duty of the national court – Respecting fundamental rights – National standard of protection relating to the principle that offences and penalties must be defined by law – Requirements of foreseeability and precision of criminal law – Judgments of the constitutional court of a Member State invalidating a national provision governing the grounds for interrupting the limitation period in criminal matters – Consequence – Discontinuation of a considerable number of criminal cases, including cases concerning serious fraud offences affecting the financial interests of the European Union – No duty on the courts of a Member State to disapply those judgments (Art. 325(1) TFEU; Charter of Fundamental Rights of the European Union, Art. 51(1); Convention on the protection of the European Communities’ financial interests, Art. 2(1))*

(see paragraphs 91-101, 110-118, 125, operative part 1)

4. *EU law – Principles – Principle that penalties must be defined by law – Scope (Charter of Fundamental Rights of the European Union, Art. 49(1))*

(see paragraphs 104-108)

5. *Own resources of the European Union – Protection of the European Union’s financial interests – Fight against fraud and other illegal activities – Obligation of the Member States to establish effective and deterrent penalties – Scope – Duty of the national court – Respecting fundamental rights – National standard of protection relating to the principle of the retroactive application of more lenient criminal law (lex mitior) – Challenge to the interruption of the limitation period for criminal liability in cases relating to serious fraud offences affecting the financial interests of the European Union – Standard applicable to procedural acts which took place before the finding of invalidity of the national provision governing the grounds for such an interruption – Duty on the national courts to disapply that standard (Art. 325(1) TFEU; Convention on the protection of the European Communities’ financial interests, Art. 2(1))*

(see paragraphs 119-125, operative part 1)

6. *EU law – Primacy – Decisions of the constitutional court and of the supreme court of a Member State which are contrary to provisions of EU law having direct effect – National legislation or practice prohibiting the courts of that Member State, at the risk of incurring the disciplinary liability of the judges concerned, from disapplying those decisions of their own motion – Not permissible (Arts 267 and 325(1) TFEU; Convention on the protection of the European Communities’ financial interests, Art. 2(1))*

(see paragraphs 128-137, operative part 2)

Résumé

In 2010, C.I., C.O., K.A., L.N. and S.P. ('the interested parties') omitted to indicate in their accounting documents the commercial transactions and income relating to the sale, to national recipients, of diesel fuel acquired under the excise duty suspension regime, thereby causing a loss to the State budget, in particular as regards value added tax (VAT) and excise duty on diesel fuel.

By a judgment published on 25 June 2018, the Curtea Constituțională (Constitutional Court, Romania) declared a national provision governing the interruption of the limitation period for criminal liability unconstitutional on the ground that it infringed the principle that offences and penalties must be defined by law.¹ That court subsequently clarified, in a judgment published on 9 June 2022, that, having regard to the lack of action by the Romanian legislature immediately after its 2018 judgment, Romanian positive law did not provide for any ground for interrupting that limitation period between the date of publication of the latter judgment and the date of entry into force, on 30 May 2022, of the provision replacing the invalidated provision.²

By judgment delivered on 30 June 2020, the Curtea de Apel Braşov (Court of Appeal, Braşov, Romania), the referring court, convicted or upheld the convictions of the interested parties and sentenced them to terms of imprisonment for tax evasion and establishment of an organised criminal group. The interested parties brought extraordinary appeals against that judgment, on the ground that they had been convicted even though the limitation period for their criminal liability had expired. More specifically, they claim that the fact that, during the abovementioned period, positive law did not provide for any possibility of interrupting the prescription periods constituted, in itself, a more favourable criminal law, which should be applied to them in accordance with the principle of the retroactive application of the more lenient criminal law (*lex mitior*). They invoke in that context a judgment of 25 October 2022 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), by which that court held that a final conviction may, in principle, be the subject of an extraordinary appeal based on the effects of judgments of the Constitutional Court as a more favourable criminal law (*lex mitior*).³

The referring court finds that, if that interpretation were accepted, the limitation period in the present case would have expired before the decision convicting the interested parties became final, which would entail the discontinuation of the criminal proceedings and would render impossible their conviction.

The referring court questions the compatibility of that interpretation with EU law, since it would have the effect of exempting the interested parties from their criminal liability for serious fraud offences liable to affect the European Union's financial interests. Moreover, it emphasises that it might be required – if it transpires that an interpretation consistent with EU law is not possible –

¹ That provision, namely Article 155(1) of the Romanian Criminal Code, provided that the limitation period for criminal liability was to be interrupted by the performance of 'any procedural act'. According to the Constitutional Court, that provision lacked foreseeability and infringed the principle that offences and penalties must be defined by law, given that the expression 'any procedural act' also covered acts which were not notified to the suspect or accused person, thus preventing him or her from becoming aware of the fact that a new limitation period for his or her criminal liability had begun to run.

² Article 155(1) of the Criminal Code was amended so that the limitation period for criminal liability is interrupted by any procedural act which must be notified to the suspect or accused person.

³ In that judgment of 25 October 2022, the High Court of Cassation and Justice specified that, in Romanian law, the rules relating to the interruption of the limitation period for criminal liability fall within the scope of substantive criminal law and that, consequently, they are subject to the principle of non-retroactivity of criminal law, without prejudice to the principle of the retroactive application of the more lenient criminal law (*lex mitior*).

to disapply the judgments of the Constitutional Court and/or the High Court of Cassation and Justice. The new disciplinary regime allows for the imposition of penalties on judges who, knowingly or through gross negligence, disregard the judgments of those courts.

In the context of the urgent preliminary ruling procedure, initiated by the Court of Justice, sitting as a Grand Chamber, of its own motion, the Court specifies the Member States' obligations resulting from (i) the obligation to counter fraud affecting the financial interests of the European Union and (ii) the need to respect fundamental rights, as protected by EU law and national law.

Findings of the Court

The Court holds that neither Article 325(1) TFEU nor Article 2(1) of the PFI Convention⁴ require the courts of a Member State to disapply the judgments of the Constitutional Court invalidating the national legislative provision governing the grounds for interrupting the limitation period in criminal matters, even if, as a consequence of those judgments, a considerable number of criminal cases, including cases relating to offences of serious fraud affecting the financial interests of the European Union, will be discontinued because of the expiry of the limitation period for criminal liability.

In that regard, the Court clarifies first of all that, although the adoption of rules governing the limitation periods for criminal offences affecting the financial interests of the European Union fell, at the time of the facts in the main proceedings, within the competence of the Member States, those Member States are required, when exercising that competence, to comply with their obligations deriving from EU law. Accordingly, they must counter fraud and any other illegal activities affecting the financial interests of the European Union through effective deterrent measures and take the necessary measures to ensure that conduct constituting fraud affecting those interests, including VAT fraud, is punishable by effective, proportionate and dissuasive criminal penalties. Accordingly, the Member States must ensure that the limitation rules laid down by national law allow effective punishment of infringements linked to such fraud.

The application of judgments of the Constitutional Court invalidating the national legislative provision governing the grounds for interruption of the limitation period for criminal liability would entail the discontinuation of the criminal proceedings and would render impossible the conviction of the interested parties. That application could, moreover, lead to the removal of criminal liability in a substantial number of other cases, and thus entail a systemic risk of serious fraud offences affecting the financial interests of the European Union going unpunished. The existence of such a systemic risk is incompatible with the requirements of Article 325(1) TFEU and Article 2(1) of the PFI Convention.

Since those provisions have direct effect, under the principle of primacy of EU law, it is, in principle, for the national courts to give full effect to the obligations under those provisions and to disapply national provisions which, in connection with proceedings concerning serious fraud affecting the financial interests of the European Union, prevent the application of effective and deterrent penalties in order to counter such offences. It thus appears that, in principle, those courts are required to disapply those judgments.

⁴ The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 and annexed to the Council Act of 26 July 1995 (OJ 1995 C 316, p. 49; 'the PFI Convention').

That being said, given that the criminal proceedings instigated for VAT offences amount to an implementation of EU law, within the meaning of Article 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), it remains necessary to ascertain whether the obligation to disapply such judgments conflicts with the protection of fundamental rights and, in the present case, of those enshrined, in the EU legal order, in Article 49(1) of the Charter.⁵ Since the rules governing limitation periods in criminal matters do not fall within the scope of that provision, the obligation to disapply those judgments is not such as to undermine the fundamental rights as guaranteed in that provision.

However, where a court of a Member State is called upon to review whether fundamental rights are complied with by a national provision or measure which, in a situation where the action of the Member States is not entirely determined by EU law, implements the latter for the purposes of Article 51(1) of the Charter, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, and the primacy, unity and effectiveness of EU law are not thereby compromised. In so far as, in Romanian law, the rules concerning the interruption of the limitation period for criminal liability fall within the scope of substantive criminal law and, consequently, are subject to the principle that offences and penalties must be defined by law and to the principle of the retroactive application of the more lenient criminal law (*lex mitior*), those principles must therefore be regarded as national standards of protection of fundamental rights.

In this respect, the Court notes, in the first place, the importance given, both in the EU legal order and in national legal systems, to the principle that offences and penalties must be defined by law, as to its requirements concerning the foreseeability, precision and non-retroactivity of criminal law. Those requirements constitute a specific expression of the principle of legal certainty, which is an essential element of the rule of law, which is identified in Article 2 TEU both as a founding value of the European Union and as a value common to the Member States.

In the present case, the Constitutional Court applied a national standard of protection of the principle that offences and penalties must be defined by law, as to its requirements concerning the foreseeability and precision of criminal law, which supplements the protection against arbitrariness in criminal matters offered by EU law, under the principle of legal certainty. Having regard to the importance of that protection against arbitrariness, such a standard may preclude the obligation which the national courts are under, pursuant to Article 325(1) and (2) TFEU, to disapply national provisions governing limitation periods in criminal matters.

In the second place, the Court holds that, under Article 325(1) TFEU and Article 2(1) of the PFI Convention, the courts of a Member State are, however, required to disapply a national standard of protection relating to the principle of the retroactive application of the more lenient criminal law (*lex mitior*) which makes it possible, including in the context of appeals brought against final judgments, to call into question the interruption of the limitation period for criminal liability in cases relating to serious fraud offences affecting the financial interests of the European Union by procedural acts which took place before the finding of invalidity of a national legislative provision governing the grounds for interrupting the limitation period in criminal matters.

⁵ That provision, which enshrines in EU law the principle that offences and penalties must be defined by law and the principle of the retroactive application of the more lenient criminal law (*lex mitior*), is worded as follows: 'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.'

Contrary to the national standard of protection relating to the principle that offences and penalties must be defined by law, as to its requirements relating to the foreseeability and precision of criminal law, which is limited to neutralising the interrupting effect of procedural acts which occurred during the period from 25 June 2018, the date of the publication of the judgment finding the national legislative provision in question invalid, to 30 May 2022, the date on which the provision replacing that provision entered into force, the national standard of protection relating to the principle of the retroactive application of the more lenient criminal law (*lex mitior*) permits the neutralisation of the interrupting effect of procedural acts which took place even before 25 June 2018. The application of such a national standard of protection is liable to exacerbate the systemic risk that serious fraud affecting the financial interests of the European Union will go unpunished, in breach of Article 325 TFEU and Article 2(1) of the PFI Convention.

In such circumstances, in view of the need to weigh the latter national standard of protection against the provisions of Article 325 TFEU and Article 2(1) of the PFI Convention, the application of that standard by a national court is liable to compromise the primacy, unity and effectiveness of EU law.

In the last place, the Court finds that the principle of primacy precludes national legislation or a national practice under which the ordinary national courts of a Member State are bound by the decisions of the constitutional court and by those of the supreme court of that Member State and cannot, for that reason and at the risk of incurring the disciplinary liability of the judges concerned, disapply of their own motion the case-law resulting from those decisions, even if they consider, in the light of a judgment of the Court, that that case-law is contrary to provisions of EU law having direct effect. The fact that a national court performs the tasks entrusted to it by the Treaties and fulfils its obligations under the Treaties, by giving effect – in accordance with the principle of the primacy of EU law – to a provision of EU law such as Article 325(1) TFEU or Article 2(1) of the PFI Convention and to the interpretation given to it by the Court, cannot, by definition, be regarded as a disciplinary offence on the part of judges sitting in that court without that provision and that principle being infringed *ipso facto*.