

THE ROLE OF EUROPEAN AND NATIONAL COURTS FOR UPHOLDING THE RULE OF LAW

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Excellencies,
Ladies and gentlemen,

I am very grateful for the opportunity to participate in this conference and in particular to address you in the present session on “The role of European and national courts for upholding the rule of law”.

As you are all aware, during recent years an increasing number of cases relating directly to the rule of law have arrived in the docket of the Court of Justice of the European Union.

Most of these cases have come to us by way of requests by national courts for a preliminary ruling on the interpretation of EU law.

These cases exemplify the way in which EU law is generally applied in practice, namely, for the most part, by the national courts, which are closest to the facts. Only where there is a doubt as to the meaning or validity of EU law does the Court of Justice come into play. In order to guarantee the uniform interpretation and application of the legal rules and the fundamental values we share, the Member States have vested in one single judicial body, the Court of Justice of the European Union, the task of interpreting EU law and of ruling on its validity.

This mechanism is based not on hierarchy but on mutual assistance: it is a system of dynamic judicial cooperation where different,

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yet complementary tasks are allocated between the Court of Justice and national courts on the basis of mutual respect and mutual trust.

As it happens, the first of the recent rule of law cases was submitted to the Court of Justice by a Portuguese court, namely the *Supremo Tribunal Administrativo*. Members of another Portuguese court, the *Tribunal de contas*, were contesting temporary salary reductions that had been implemented as part of general cuts in public spending. The plaintiffs argued that those salary reductions threatened their judicial independence.

In its landmark judgment *Associação Sindical dos Juízes Portugueses* of 2018,¹ the Court of justice recalled that the European Union is a union based on the rule of law.

It held that every Member State must ensure that any of its courts which may be called upon to apply EU law are independent, in order to be able to provide effective judicial protection in the field of EU law.

The Court of justice explained the concept of independence as follows: it presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously. *Externally*, its members must be protected against interventions or pressure which might influence their decisions. *Internally*, courts are to be impartial, meaning that they must not favour any of the parties before them.

As interpreted by the Court of Justice, the rule of law within the EU does not prescribe a single, particular constitutional model. It allows room for diversity, provided that the basic tenets of any democratic society are respected. That view is shared by the European Court of Human Rights.

That is why, one year after the judgment *Associação Sindical dos Juízes Portugueses* was delivered, in the A.K. judgment² concerning the independence of the Disciplinary Chamber of the Polish Supreme Court, the Court of Justice referred extensively to the case law of the European Court of Human Rights in which that court highlighted that what is at stake with judicial independence is the confidence

¹ Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117.

² Judgment of 19 November 2019, A.K. (Independence of the Disciplinary Chamber of the Supreme Court), Joined Cases C 585/18, C 624/18 and C 625/18, EU:C:2019:982.

which the courts in a democratic society must inspire. That confidence may be undermined not only by constitutional or legislative changes that are at odds with judicial independence but also by the context that led to those changes. That is why both courts favour a contextual approach, according to which judicial independence is protected both *in law* and *in fact*.

In *Repubblika*³, a case concerning judicial independence in Malta, the Court of Justice also followed this contextual approach. It examined whether there are objective circumstances capable of giving rise to legitimate doubts in the minds of the citizens as to the imperviousness of the courts concerned to external factors and their neutrality with respect to the interests before them.

These cases provide classic example of the judicial cooperation between national courts and the Court of Justice that takes place by means of the preliminary ruling mechanism.

It also shows how this mechanism helps to guarantee common minimum standards of judicial protection through independent courts and thus to uphold the rule of law.

For without judicial independence, the rule of law is meaningless in practice.

Judicial independence is also the basis of mutual trust, without which the European Union as a union of law and an area without internal borders could not exist.

Given the importance of the preliminary ruling mechanism in this context, the Court of Justice emphasised, in its *Miasto Łowicz*⁴ judgment of last year, that national judges are free to refer questions to the Court of Justice.

The preliminary ruling mechanism is, of course, not the only procedural route available for guaranteeing respect for EU law and for the rule of law more generally.

The EU Treaties have empowered the Commission, as the Guardian of those treaties, to oversee the proper application of EU law and to bring infringement proceedings before the Court of Justice against a Member State that it considers to be in breach of it.

³ Judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, point 57.

⁴ Judgment of 26 March 2020, *Miasto Łowicz* (Régime disciplinaire concernant les magistrats), C-558/18, EU:C:2020:234.

In addition to the cases I have already mentioned, the Court of Justice has been seized by the Commission in matters concerning respect for the rule of law.

Indeed, infringement proceedings are ultimately the appropriate means for ensuring the correct implementation of judgments delivered by the Court of Justice in preliminary ruling procedures, *where necessary*, as those judgments form part of EU law.

To conclude, I would like to mention once again the European Court of Human Rights which also strongly engages in upholding the rule of law.

Given the threefold protection that exists in the European Union, through national courts, the Court of Justice and the European Court of Human Rights, I am confident that the rule of law will continue to be protected within the European legal space.

I am very much looking forward to our discussion and thank you for your attention.