

The Influence of the Jurisprudence of the Court of Justice of the European Union on Romanian Administrative Litigation

Lecturer **Mihai ȘTEFĂNOAIA**¹

Abstract

The influence of the jurisprudence of the Court of Justice of the European Union (CJEU) on Romanian administrative litigation has intensified following Romania's integration into the European Union and the assumption of the obligation to apply European law directly and with priority. National courts, including those specialized in administrative litigation, are now required to ensure that administrative acts comply with the rules and principles of EU law, including the interpretations provided by the CJEU. This phenomenon has led to a paradigm shift, in the sense that the legality of an administrative act is no longer assessed solely in relation to national legislation, but also through the lens of European regulations and case law. Landmark decisions of the CJEU — such as those concerning the principle of effective protection of rights conferred by EU law, the proportionality of administrative sanctions, or the guarantee of the right to an effective remedy — have been invoked and applied by Romanian courts. Additionally, the preliminary ruling mechanism has become an essential tool for clarifying the application of European norms in administrative litigation cases. In conclusion, the jurisprudence of the CJEU actively contributes to the harmonization of standards of legality and judicial protection in the relationship between citizens and public administration, strengthening the role of national courts as guardians of European law.

Keywords: fundamental rights protection, paradigm shift in administrative law, rule of law, legal certainty, national law.

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1. Introduction

Romania's accession to the European Union on January 1, 2007, represented not only a geopolitical milestone but also a constitutional transformation

¹ Mihai Ștefănoaia - Faculty of Law and Administrative Sciences, „Ștefan cel Mare” University Suceava, Romania, <https://orcid.org/0000-0002-7163-4436>, stefanoaiamihai@yahoo.com.

of the national legal order. This integration process entailed the assumption of direct obligations stemming from the *acquis communautaire*, including the binding force of primary and secondary EU law, as well as the jurisprudence of the Court of Justice of the European Union (CJEU)². Among the most deeply impacted sectors of Romanian law was the domain of administrative litigation, which underwent a reconfiguration in both its procedural and substantive dimensions to accommodate the principles, norms, and interpretative approaches developed at the European level.

In accordance with the principles of *direct effect* and *primacy of EU law*, national courts have acquired the duty to apply European legal provisions in a manner that supersedes conflicting domestic norms³. This duty extends particularly to the interpretation and application of administrative legal frameworks, where courts must now assess the legality of acts issued by public authorities not solely in reference to Romanian legislation, but also through the lens of EU law and the interpretative authority of the CJEU.

The influence of the CJEU has been especially visible in cases concerning fundamental rights, public procurement, environmental governance, data protection, and the enforcement of competition rules—areas in which Romanian administrative courts increasingly rely on European jurisprudence to resolve legal uncertainty and uphold individuals' rights under EU law. Moreover, the use of the preliminary reference mechanism under Article 267 of the Treaty on the Functioning of the European Union (TFEU) has become a key procedural avenue through which Romanian courts seek clarification on the scope, validity, and interpretation of EU norms.

This paper explores the multifaceted impact of the CJEU's jurisprudence on Romanian administrative litigation. It focuses on several interrelated dimensions: the doctrinal and procedural adaptation of national courts to the principles of EU law⁴; the growing role of preliminary rulings in shaping domestic administrative adjudication; and the progressive internalization of European legal standards such as proportionality, effective judicial protection, and legal certainty. By doing so, the study aims to illuminate the evolving nature of judicial dialogue between national courts and the CJEU, and to assess the extent to which Romanian administrative litigation is being transformed into a vehicle for European

² Douglas-Scott, S. (2006). „A tale of two courts: Luxembourg, Strasbourg and the growing European human rights acquis”. *Common Market Law Review*, 43(3), 629–665.

³ Paul Craig, Gráinne de Búrca (2020). *EU law: Text, cases, and materials* (7th ed.). Oxford University Press, p. 43; Sanja Bogojević (2013). „EU Climate Change Litigation, the Role of the European Courts, and the Importance of Legal Culture”, *Law and Policy*, Volume 35, Issue 3, pp. 184–207, <https://doi.org/10.1111/lapo.12005>.

⁴ Jose A. Gutiérrez-Fons, Koen Lenaerts (2010). „The constitutional allocation of powers and general principles of EU law”. *Common Market Law Review*, 47(6), 1629–1669, DOI: 10.54648/COLA2010069; Takis Tridimas (2006). *The general principles of EU law* (2nd ed.). Oxford University Press, p. 231.

legal integration⁵.

2. The Legal Framework: Direct Effect and Supremacy of EU Law

At the core of the European Union legal order lie the principles of direct effect and supremacy, both established through foundational CJEU case law. In *Van Gend en Loos* (Case 26/62), the Court established that certain provisions of EU law generate direct rights for individuals which national courts are obliged to protect. The *Costa v ENEL* judgment (Case 6/64) reaffirmed that EU law cannot be overridden by domestic legal provisions without undermining the Union's foundational legal framework. These principles have since become indispensable for ensuring the uniform and effective application of EU law across all Member States⁶.

In the Romanian context, the application of these principles necessitated a recalibration of judicial practice, particularly in administrative litigation. Courts now face the imperative to interpret and apply domestic laws, including provisions of administrative procedure, in a manner consistent with the objectives and spirit of EU law. When a conflict arises between a provision of Romanian law and a norm of EU law with direct effect, the national court must set aside the national provision, even in the absence of a constitutional challenge or legislative amendment.

Moreover, the supremacy of EU law operates not merely in abstract but has practical implications in domains such as state aid, public procurement, environmental law, and fiscal regulation, where administrative authorities often act based on national frameworks that may contradict or insufficiently implement EU obligations. Romanian judges have progressively embraced their role as decentralized EU judges, tasked with ensuring that domestic administrative acts conform with binding Union law. This transformation has elevated the function of administrative litigation to a Europeanized judicial oversight mechanism capable of addressing inconsistencies between domestic administration and supranational legal mandates.

Nevertheless, challenges persist in ensuring the uniform application of these principles across all levels of jurisdiction. Differences in judicial training, experience with EU law, and access to jurisprudential resources may lead to dis-

⁵ Monica Claes (2006). *The national courts' mandate in the European constitution*. Hart Publishing, p. 67.

⁶ Marcus Klamert (2014). *The principle of loyalty in EU law*. Oxford University Press, p. 80; Madalina Moraru, Galina Cornelisse, and Philippe De Bruycker (Eds.). (2020). *Law and judicial dialogue on the return of irregular migrants from the European Union*. Hart Publishing, p. 47; Watler van Gerven, (2005). „Of rights, remedies and procedures”. *Common Market Law Review*, 41(3), 501–536.

parities in how courts interpret and enforce the doctrines of direct effect and supremacy. Addressing these inconsistencies remains an essential step toward consolidating the rule of law within a multilevel constitutional framework that includes both national and European legal orders.

3. The Legal Framework: Direct Effect and Supremacy of EU Law

One of the key instruments fostering the uniform application and interpretation of European Union law across Member States is the preliminary ruling procedure provided under Article 267 TFEU. This mechanism enables national courts to refer questions concerning the interpretation or validity of EU law to the CJEU, thereby promoting legal coherence and fostering judicial dialogue within the Union. In the Romanian context, the preliminary reference has become an increasingly utilized tool in administrative litigation, especially in cases involving complex interactions between national administrative measures and EU norms.

Since Romania's accession, administrative courts — particularly Courts of Appeal and the High Court of Cassation and Justice — have submitted numerous references to the CJEU, seeking clarification in areas such as public procurement (Case C-408/18, *Petrotel-Lukoil*), fiscal obligations (Case C-249/13, *Buda*), and social rights (Case C-258/14, *Florescu*). These references underscore the growing reliance on the CJEU to interpret EU law in ways that shape domestic administrative jurisprudence.

The increased use of Article 267 TFEU reflects not only a maturing legal culture of integration but also the challenges national courts face in aligning administrative norms and practices with evolving European standards. The preliminary ruling in *Florescu*, for instance, was pivotal in reaffirming the obligation of national authorities to respect the principles of proportionality and legal certainty when applying austerity measures that affected pension rights—demonstrating how CJEU guidance can directly influence the review of national administrative acts.

Moreover, preliminary references have helped to clarify the limits of national discretion in implementing EU law, particularly where administrative bodies possess broad regulatory powers. The case *C-81/16, VTB Bank*, originating from Romania, highlighted how administrative sanctions imposed by national financial authorities must comply with the EU principle of proportionality and be subject to effective judicial oversight.

However, the practical use of the preliminary ruling mechanism remains uneven. Some lower-level administrative courts exhibit reluctance to refer questions to the CJEU, either due to uncertainty regarding the admissibility criteria or

due to a lack of familiarity with EU procedural instruments⁷. Judicial training and increased institutional cooperation between Romanian courts and the European judiciary remain essential in enhancing the consistency and efficacy of the preliminary reference practice.

In conclusion, the preliminary ruling mechanism plays a vital role in Romanian administrative litigation, not only as a technical legal instrument but as a cornerstone of European legal integration. It fosters a dynamic and dialogical relationship between national and supranational judicial authorities, reinforcing the authority of EU law in domestic legal systems and enhancing the legitimacy of administrative decision-making.

4. The Principle of Proportionality in the Judicial Review of Administrative Acts

The principle of proportionality is a general principle of EU law that has become a crucial benchmark in reviewing the legality of administrative acts, both at the European and national levels. Originating in the jurisprudence of the CJEU, it requires that any measure adopted by a public authority must be suitable to achieve a legitimate objective, necessary in the sense that no less restrictive alternative exists, and proportionate *stricto sensu*, meaning that the disadvantages caused must not outweigh the benefits pursued (*Case C-331/88, R. v Minister of Agriculture, ex parte Fedesa*).

In the Romanian context, administrative courts have gradually integrated the proportionality test into their adjudication of cases involving public sanctions, restrictions of rights, or discretionary decisions by authorities. This shift represents a move away from a traditionally deferential stance toward administrative discretion, in favor of a more active, substantive control of legality inspired by European standards.

A landmark illustration of this influence can be found in decisions addressing the proportionality of fiscal and disciplinary sanctions. Following the guidance of the CJEU in *Case C-210/10, Urbán*, Romanian courts have begun to assess whether the severity of sanctions imposed by tax authorities or regulatory bodies corresponds to the gravity of the infringement and whether mitigating circumstances were considered. In public procurement cases, the Romanian courts have cited *Case C-568/08, Combinatie Spijker* to examine whether exclusions or penalties imposed on tenderers were excessive in relation to the objectives of fair competition and transparency⁸.

⁷ Damian Chalmers, Gareth Davies, Giorgio Monti (2019). *European Union law: Text and materials* (4th ed.). Cambridge University Press, p. 60.

⁸ Sacha Prechal, Madeleine de Leeuw (2007), „Dimensions of Transparency: The Building Blocks for a New Legal Principle?” *Review of European and Administrative Law*, Vol. 0, No. 1, pp. 51-61, 2007, Available at SSRN: <https://ssrn.com/abstract=1555469>.

Moreover, proportionality has emerged as a key criterion in judicial review concerning limitations on fundamental rights, such as the right to property, access to public services, and data protection. For instance, administrative measures involving eviction or revocation of permits must now pass the proportionality threshold as elaborated by the CJEU in *C-524/06, Huber*, which balances data collection with privacy rights under Article 8 of the Charter.

This transformation has also encouraged a shift in Romanian judicial reasoning, from purely formal legality checks to substantive analyses of the effects and justification of administrative acts. Courts are increasingly expected to provide detailed assessments of whether the public interest invoked by the administration truly outweighs the burden imposed on individuals or companies. This doctrinal development aligns Romanian administrative litigation with the broader European model of "intensive legality control"⁹.

Nevertheless, challenges persist in ensuring a uniform application of proportionality standards across all jurisdictions. Lower-level courts sometimes apply the principle inconsistently, and a lack of comprehensive training in EU general principles contributes to divergent practices. Despite these obstacles, the incorporation of the proportionality principle into Romanian administrative jurisprudence is a major step toward consolidating the rule of law and reinforcing the accountability of public power.

5. Challenges and Opportunities in the Europeanization of Romanian Administrative Litigation

The gradual incorporation of the jurisprudence of the Court of Justice of the European Union into Romanian administrative litigation has brought both significant progress and structural challenges. While Romanian courts have increasingly engaged with EU law — particularly through the application of general principles, the use of preliminary references, and the review of administrative acts in light of proportionality and fundamental rights — this process of "Europeanization" remains uneven and incomplete.

One of the primary challenges is the heterogeneous level of EU law competence among judges, particularly at lower courts. Although EU law is formally part of the judicial training curriculum, its practical application still relies heavily on individual initiative and the interpretative openness of particular judges. Empirical studies and case law analysis have shown that some judges are reluctant to invoke CJEU jurisprudence unless explicitly required by the parties, thereby limiting the proactive role expected under the doctrine of *ex officio* application of EU law¹⁰.

⁹ Sacha Prechal (2005). *Directives in EC law* (2nd ed.). Oxford University Press, p. 80.

¹⁰ Damian Chalmers, Gareth Davies, Giorgio Monti, *op. cit.* (2019), p. 60.

Another persistent issue is the inconsistent use of the preliminary reference procedure. While Romanian courts have submitted a growing number of questions to the CJEU since 2007, the distribution of these references remains concentrated in a few appellate courts and specialized administrative sections. Some courts avoid making referrals due to perceived procedural delays or uncertainty regarding admissibility criteria. Moreover, when preliminary rulings are issued, their impact is not always effectively disseminated across the judiciary, leading to divergent interpretations and fragmentation of legal reasoning.

Additionally, institutional factors such as high caseloads, understaffing, and limited access to EU legal databases impede the full engagement of courts with European jurisprudence. Administrative judges often lack the resources or time necessary to conduct in-depth analyses of CJEU case law, which diminishes the transformative potential of EU legal integration.

Despite these challenges, important opportunities for systemic improvement exist. Judicial cooperation platforms, such as the European Judicial Training Network (EJTN) and the EU-funded TRIAL or RE-Jus projects, provide valuable avenues for professional development and transnational dialogue. Romania has also benefited from structural reforms in the judiciary supported by EU funding, enabling digitalization, increased transparency, and better access to comparative jurisprudence.

Furthermore, the increasing involvement of civil society organizations and specialized legal practitioners in administrative litigation has expanded the normative pressure on courts to align their decisions with EU standards. The rise of strategic litigation in fields like environmental protection, anti-corruption, and anti-discrimination has brought EU principles and CJEU case law to the forefront of administrative adjudication.

In sum, while the Europeanization of Romanian administrative litigation is an ongoing and complex process, it holds substantial potential for enhancing legal certainty, judicial independence, and the effective protection of rights. The convergence with EU jurisprudence not only strengthens the legitimacy of national administrative courts but also reinforces their role as active guardians of the Union's legal order.

6. Conclusions and Discussion

The analysis of the influence of the jurisprudence of the Court of Justice of the European Union on Romanian administrative litigation reveals a gradual but substantial transformation in both the interpretative practices and institutional dynamics of national courts. Since Romania's accession to the EU, administrative litigation has undergone a notable shift from a predominantly national legal framework to a hybrid model increasingly shaped by supranational legal principles, interpretative doctrines, and procedural mechanisms established by the

CJEU.

This transformation is evident in several critical areas: the adoption of the principles of direct effect and primacy of EU law; the growing reliance on the preliminary reference procedure as a mechanism of judicial dialogue; the incorporation of general principles such as proportionality, legal certainty, and effective judicial protection; and the progressive reinterpretation of national procedural norms in light of European standards.

The findings suggest that Romanian administrative courts are no longer passive recipients of EU law but are gradually becoming active participants in its application and development. By invoking CJEU jurisprudence, they contribute to a broader process of legal convergence and integration, reinforcing the rule of law and the uniform protection of rights within the EU legal order. This shift enhances the legitimacy of administrative adjudication and redefines the role of the judiciary in the constitutional architecture of both the Member State and the Union.

Nevertheless, the discussion must also address the limitations of this integration process. The uneven application of EU principles across courts, the underuse of preliminary references in lower jurisdictions, and the limited dissemination of CJEU decisions remain significant obstacles. Moreover, structural issues such as judicial overload, insufficient specialization in EU law, and fragmented access to relevant legal resources continue to hinder the full operationalization of European standards in administrative litigation.

From a broader perspective, the Romanian experience illustrates both the potential and fragility of judicial Europeanization. It confirms that supranational legal integration is not solely a matter of institutional transposition but involves the continuous adaptation of judicial reasoning, interpretative culture, and procedural strategies. In this regard, the role of training, inter-court cooperation, and academic engagement becomes essential.

Looking forward, strengthening the capacity of national administrative courts to internalize and apply CJEU jurisprudence consistently is not only a matter of legal refinement but also a political and civic imperative. Enhancing the European dimension of administrative justice can contribute to consolidating trust in public institutions, safeguarding individual rights, and fostering a more coherent and resilient European legal space.

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