

**Question for written answer E-002127/2023  
to the Commission**  
Rule 138  
**Loránt Vincze (EPP)**

Subject: Enforcing entitlements arising from EU law

Based on CJEU practice<sup>1</sup>, in the case of *res judicata* decisions, the Köbler formula is available to legal entities.

Legal entities consider that the sentences to an effective loss of freedom handed down by Romanian courts are in breach of EU directives<sup>2</sup>. As a consequence of the penalty of loss of freedom, they requested that the Member State be held liable for its judicial decisions.

The legal entities have, in the light of the uncertainties linked to the expiry of the limitation period for commencing legal actions, invoked CJEU practice<sup>3</sup> regarding exceptions to the principle of legal certainty.

The court of first instance rejected the claims without addressing the arguments based on EU law, and the court of second instance responded to the arguments based on EU law by stating merely that it is not able to request a preliminary ruling<sup>4</sup>.

Based on the CILFIT formula<sup>5</sup>, the main rule is that the Member State's court adjudicating at last instance must make a reference to the CJEU.

In so far as the aforementioned court's decision does not fit with the CILFIT formula, what can the legal entity do: that is, could it, by virtue of its nature and on the basis of the professional criteria of a similar case, belong to the narrow range of exceptions when the Commission launches an infringement procedure?

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<sup>1</sup> Court of Justice of the European Union, C-224/01.

<sup>2</sup> Directive 2016/343/EU and Directive 2012/13/EU.

<sup>3</sup> Each of the legal entities supported the use, in the present case, of the decisions of the Court of Justice of the European Union in Joined Cases C-773/18 to C-775/18 *TK, UL and VM*, Case C-246/09 *Bulicke* and Case C-676/17 *Călin*.

<sup>4</sup> In our view, Decision 986/17.11.2022 of Covasna (Kovászna) County Court of First Instance and Decision 609/04.04.2023 of Brasov (Brassó) Court of Appeal do not meet the requirements arising from EU law. There is nothing to prevent the competent national court from turning to the CJEU in a preliminary ruling procedure. C-210/06.

<sup>5</sup> Court of Justice of the European Union, Case 283/81.