



HUNGARIAN
HELSINKI
COMMITTEE

AMNESTY
INTERNATIONAL



EÖTVÖS KÁROLY
INTÉZET

QUESTIONS AND ANSWERS

concerning the reform expected under Component C9.R17 of the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary¹

requiring Hungary to remove obstacles to references for preliminary rulings to the Court of Justice of the European Union

16 May 2023

Component C9.R17 of the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary² [hereinafter referred to as **Super Milestone 215**] is one of the so-called super milestones set by the Council of the European Union, a precondition to access frozen EU funds under Hungary's Recovery and Resilience Fund. In total, the EU has set 27 super milestones that the government must fully implement to receive any payments. Four of these concern the judiciary, out of which one is Super Milestone 215.

Q: What reform is expected under Super Milestone 215?

A: According to Super Milestone 215: *"before the submission of the first payment request under the recovery and resilience plan, legislative amendments shall enter into force and start being applied ensuring that: (i) Sections 666 et seq. of the Criminal Procedure Code are amended in order to remove the possibility for the Kúria to review the legality of the decision of a judge to make a preliminary reference to the Court of Justice of the European Union, and (ii) Section 490 of the Criminal Procedure Code on staying the proceedings is amended in order to remove any obstacle to a court to make a preliminary reference in line with Article 267 TFEU."*

¹ Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary, see: <https://data.consilium.europa.eu/doc/document/ST-15447-2022-ADD-1/en/pdf>

² Section 216 of Table I.2. of the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary, see: <https://data.consilium.europa.eu/doc/document/ST-15447-2022-ADD-1/en/pdf> p. 134.

The wording of Super Milestone 215 offers two different interpretations. On one hand, it can be interpreted formally and in a narrower sense, in which case the reform expected is the amendment of the two specific Sections of Act XC of 2017 on the Criminal Procedure Code (CPC). On the other hand, it can also be interpreted in a wider - and less formal - sense which takes into account the goal of the required amendments. Super Milestone 215 expressly requires that these amendments should be introduced *"in order to remove any obstacle to a court to make a preliminary reference in line with Article 267 TFEU."*

Compliance with Super Milestone 215 should not only be examined formally (namely, whether the Sections referred to were amended) but also from the perspective of the **goal to be achieved by the expected reform**, which is **removing any obstacle to a preliminary reference in line with Article 267 TFEU**. The need for this broader interpretation (focusing on the results expected from the reform rather than the Sections of the law to be amended in the course of the reform) can also be justified by the fact that, parallel to the reform requested under Super Milestone 215, Hungary is obliged to execute Judgment IS of the Court of Justice of the European Union (CJEU) (hereinafter referred to as **Judgment C-564/19**)³ delivered on 23 November 2021.

The fact that Super Milestone 215 requires compliance with Judgment C-564/19 is expressly confirmed by the Annex, according to which *"[t]he objective of the reform is to remove obstacles for courts to independently refer cases for preliminary rulings to the Court of Justice of the European Union (CJEU), thereby ensuring compliance with the CJEU's jurisprudence."*⁴

Q: What were the findings of Judgment C-564/19?

A: Judgment C-564/19 declares that the system of cooperation between national courts and the CJEU precludes a national supreme court from declaring that a request for a preliminary ruling submitted by a lower court is unlawful.

In C-564/19, a Hungarian judge submitted a series of questions to the CJEU regarding not only the criminal case before him but also judicial independence in general. Following the Prosecutor General's (PG) "appeal in the interests of the law" submitted against the request for a preliminary ruling, the apex court of Hungary, the Kúria, ruled that the judge's preliminary reference was unlawful on the ground that the questions referred were not relevant and necessary for the resolution of the dispute before him. Based on the decision of the Kúria, a disciplinary proceeding was also initiated against the Hungarian judge for turning to the CJEU (although it was dropped subsequently).

The CJEU found that EU law precludes (i) the Kúria from declaring that a request for a preliminary ruling submitted by a Hungarian lower court judge is unlawful on the ground that the questions referred are not relevant or necessary for the resolution of the dispute in the main proceeding; and (ii) disciplinary proceedings from being brought against a national judge on the ground that he or she

³ Judgment of the Court (Grand Chamber) in Case C-564/19, 23 November 2021, ECLI:EU:C:2021:949 <https://curia.europa.eu/juris/document/document.jsf?jsessionid=642B74353C3D61EF94193B74317206F4?text=&docid=249861&pageIndex=0&doclang=hu&mode=req&dir=&occ=first&part=1&cid=602>

⁴ See: <https://data.consilium.europa.eu/doc/document/ST-15447-2022-ADD-1/en/pdf> p. 95.

has made a reference for a preliminary ruling to the CJEU. In the view of the CJEU the mere prospect of being the subject of such proceedings can undermine the mechanism of preliminary references and judicial independence.

In the words of Judgment C-564/19: "1. Article 267 TFEU must be interpreted as precluding the supreme court of a Member State from declaring, following an appeal in the interests of the law, that a request for a preliminary ruling which has been submitted to the Court under Article 267 TFEU by a lower court is unlawful on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings, without, however, altering the legal effects of the decision containing that request. The principle of the primacy of EU law requires that lower court to disregard such a decision of the national supreme court. 2. Article 267 TFEU must be interpreted as precluding disciplinary proceedings from being brought against a national judge on the ground that he or she has made a reference for a preliminary ruling to the Court of Justice under that provision."

Q: Is it necessary to amend the Sections of the CPC marked in Super Milestone 215 in order to execute Judgment C-564/19?

A: Yes.

The CPC should expressly declare amongst the exceptions that the PG is prevented from submitting an appeal in the interests of the law against a court order suspending a procedure to request a preliminary ruling. The fact that, under the current CPC, the PG is entitled to submit an appeal in the interests of the law in such cases may have the effect of deterring a Hungarian court hearing a case governed by EU law from exercising the discretion conferred on it by Article 267 TFEU. Therefore the CPC should be modified accordingly.

Q: Is it enough to amend the Sections [Sections 666 et seq. and 490] of the CPC marked in Super Milestone 215 in order to execute Judgment C-564/19?

A: No.

A legal provision expressly declaring that the PG may not submit an "appeal in the interests of the law" against an order requesting a preliminary ruling from the CJEU is necessary but not sufficient for the execution of Judgment C-564/19. The two Sections of the CPC in question are both of procedural nature, and their scope is limited to criminal procedures; therefore, their modification would only constitute a limited execution of Judgment C-564/19 and thus limited compliance with Super Milestone 215.

The requested modification of the CPC will only put an end to the possibility of opening new proceedings against lower courts but will not revoke the substance of the Kúria judgment examined by the CJEU. While it is necessary to close the procedural path currently open for the PG to challenge the orders of lower courts, blocking this possibility would not eliminate the material obstacle to references for preliminary rulings to the CJEU.

Currently, the real (material) threat faced by a judge who turns to the CJEU does not primarily lie in the possibility of facing a procedure initiated by the PG (based on an “appeal in the interests of the law”) but rather in decision Bt.III.838/2019/11 of the Kúria (hereinafter referred to as **Precedential Decision**).⁵ The Precedential Decision was delivered in the main proceeding underlying Judgment C-564/19 and was found contrary to EU law by the CJEU. However, since 1 April 2020, it has gained precedential force, and its application has become obligatory for lower-tier courts when formulating a preliminary request.

In order to properly execute Judgment C-564/19, the binding legal effect of the Precedential Decision should be eliminated.

Q: Is the Precedential Decision obligatory for lower-tier courts?

A: Yes, for two reasons.

First, because it was delivered as a consequence of an “appeal in the interests of the law”; second, because it has gained precedential force.

(1) The fact that the Precedential Decision was delivered as a consequence of an “appeal in the interests of the law” means that it affects all branches of adjudication (including the civil, criminal, and administrative branches). The interpretation of the law provided in it serves as a guideline for lower-tier courts and aims to guarantee the uniform application of the law by judges.

In the words of the Precedential Decision: *“The appeal in the interests of the law is not a legal instrument available to the parties of the procedure, but only to the Prosecutor General, and its primary aim is not to obtain a decision (ruling) that is binding on the parties, but to declare that the contested decision is - as a whole or in part - unlawful. **The declaration of the unlawfulness does not affect the past, but shall serve as basis for future application of the law** [emphasis added].”⁶ “The law does not intend to apply the appeal in the interests of the law to remedy the unlawfulness of final decisions, but **to guarantee the uniform application of the law** [emphasis added] in the adjudication by allowing the possibility of challenging unlawful decisions without remedying them.”⁷ “**The Kúria points out that its examination is not only specific to criminal procedural law but is also carried out with respect to all other branches of law, including civil law, in their respective fields, and as a result, as explained below, the Kúria takes a unified position based on the union law** [emphasis added].”⁸ “The Prosecutor General of Hungary was exercising his statutory right enshrined in the Criminal Procedure Code when he requested the Kúria to declare the violation of the law. His motion was well-founded and could not be legally rejected by the Kúria. The decision has no consequences beyond the declaration of the breach of the law.”⁹ “The judgment of the Kúria does not impose a specific obligation on anyone, but it shall be deemed as a **guideline for lower courts** in terms*

⁵ The Precedential Decision was originally published as a decision in principle of court under no. EBH2019.B.22. Later, as a consequence of the introduction of the semi-precedential system in 2020, it gained precedential force. See: https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf

⁶ See https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf para [19].

⁷ See https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf para [20].

⁸ See https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf para [46].

⁹ See https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf para [80].

*of how an order to suspend proceedings under Section 490 of the Criminal Procedure Code should be applied in accordance with the law [emphasis added]. Both the examination of the extraordinary legal remedy submitted by the Prosecutor General and **the interpretation of the law provided by the Kúria serve the uniform application of the law by ordinary courts.** Ensuring the uniform application of the law is a basic obligation of the Kúria under the Fundamental Law.”¹⁰*

(2) After it was delivered by the Kúria in September 2019, the decision gained precedential force by Act CXXVII of 2019, which introduced a semi-precedential system in ordinary courts beginning on 1 April 2020. From that date, lower-tier courts are required by law to follow the published decisions of the Kúria. Thus, any deviation from the interpretation given by the Precedential Decision must be reasoned and may be subject to an extraordinary legal review before the Kúria (see, e.g., Sections 561(3)(g), 648(d), 649(6), 652(1) of the CPC). Due to the fact that the Precedential Decision establishes general guidelines with respect to preliminary references, its material scope not only covers criminal proceedings but also all types of legal disputes (e.g., civil and administrative court proceedings).

Q: Does the Precedential Decision create a material obstacle to references for preliminary rulings to the CJEU?

A: Yes.

The Precedential Decision was delivered by the Kúria during the dispute in the main proceeding underlying case C-564/19 in September 2019. The CJEU examined the Precedential Decision in its judgment and claimed that it “is likely to prompt the Hungarian courts to refrain from referring questions for a preliminary ruling to the Court, in order to preclude their requests for a preliminary ruling from being challenged by one of the parties on the basis of the Kúria decision or from being the subject of an appeal in the interests of the law.” (para 75 of Judgment C-564/19). The proper execution of Judgment C-564/19, therefore, requires the negation of the direct effect of the Precedential Decision, which was found contrary to EU law. This goal can be achieved by the modification of all procedural codes (not only the CPC) and expressly declaring that a request for a preliminary ruling submitted by a lower court cannot be deemed unlawful under any circumstances.

If this does not happen, the Precedential Decision will continue to have a binding effect on the jurisprudence irrespective of the fact that the PG may not in the future bring similar appeals in the interests of the law before the Kúria if the CPC is amended to prevent the PG from doing so.

Q: Which part of the Precedential Decision shall be deemed obligatory for lower tier court?

A: The reasoning of the Precedential Decision contains several declarations that can prompt judges to refrain from requesting a preliminary ruling.

¹⁰ See https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf para [81].

It declares that: *"It is unlawful to suspend the criminal proceeding to submit a preliminary reference if the preliminary reference does not concern the interpretation or validity of the acts of bodies, institutions or agencies of the European Union, but questions which are not related to the outcome or the subject matter of the case pending before the court."*¹¹ *"The Kúria points out that according to the TEU and the TFEU, the purpose of the preliminary ruling is to ensure the uniform application and interpretation of the union law and not to evaluate the constitutional organisation and legal system of a member state. [...] The performance of procedural acts, the exercise of procedural rights, and the use of the institutions of the Criminal Procedure Code may not serve to remedy real or perceived individual grievances or to enforce organisational interests."*¹² *"Suspension of proceedings at all times (and in all legal cases) delays the decision on the merits of the case and should therefore only be ordered if a decision on the merits of the case cannot be taken without answering the preliminary request."*¹³ *"It is not possible to raise extra-legal issues in an ongoing criminal proceeding applying procedural acts for this purpose."*¹⁴

In August 2022, the Hungarian Helsinki Committee submitted a freedom of information request to the Kúria to clarify which part of the Precedential Decision shall be deemed as obligatory for lower-tier courts. The Kúria declined the request,¹⁵ despite the fact that according to Section 163(1b) of Act CLXI of 2011 on the Organisation and Administration of Courts (OAC), *"The decision published by the Kúria must be accompanied by the substance of the decision, failing that, a brief summary of the content, and the legislation applied."* The fact that the Kúria has failed to point out which part of the Precedential Decision shall be deemed obligatory in practice amplifies the negative effect of the judgment. While the *ratio decidendi* of the Precedential Decision remains uncertain, Hungarian courts are more likely to refrain from referring questions for a preliminary ruling to the CJEU.

Q: Is it necessary to exclude the applicability of the Precedential Decision?

A: Yes.

As a consequence of its precedential force and the fact that it was delivered based on an "appeal in the interest of the law," the Precedential Decision is applicable to and obligatory for all Hungarian judges. It declares with a general scope, overarching all branches of adjudication (criminal, civil, and administrative) that referring a question to the CJEU is unlawful if the question referred is not relevant to and necessary for the resolution of the dispute concerned. As long as the Precedential Decision remains in force, there is no need for the PG to initiate new appeals in order to declare that a reference for a preliminary ruling is unlawful. It is enough to establish - for example in the framework of a suitability proceeding or a disciplinary proceeding initiated against the judge - that a preliminary reference contains questions not relevant to the dispute concerned, and the unlawfulness of the preliminary reference will necessarily be established by the force of the Precedential Decision. The mere prospect of being the subject of such proceedings can undermine the mechanism of references to the CJEU and judicial independence.

¹¹ See https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf para [34].

¹² See https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf para [75].

¹³ See https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf para [82].

¹⁴ See https://helsinki.hu/wp-content/uploads/2022/11/Bt.838_2019_11.pdf para [84].

¹⁵ <https://helsinki.hu/wp-content/uploads/2022/11/Kuria-valasz-a-kozerdeku-adatigenylesre-20220830.pdf>

Q: How is the reform proposed to be implemented by Hungary?

A: The Hungarian government intends to implement Super Milestone 215 exclusively by modifying the procedural rules of the CPC. According to the explanatory memorandum¹⁶ attached to Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan¹⁷ (hereinafter referred to as the **Reform**), *"by the new provisions, the Proposal clarifies that the right of Hungarian judges to refer a request for a preliminary ruling to the Court of Justice of the European Union, which derives from the EU Treaties, is not limited by internal legal instruments."*¹⁸

Besides modifying the sections governing legal remedies against references to the CJEU,¹⁹ the Reform also modifies Section 490 (1) of the CPC. According to the wording of the proposed provision, *"The court may on its own motion or based on a request, refer a request for a preliminary ruling to the Court of Justice of the European Union, in accordance with the rules of the founding EU Treaties, where it finds that it is necessary with respect to any legal act or legislation of the European Union applicable in the criminal proceeding."*

Q: Does the Reform reassuringly exclude the applicability of the Precedential Decision?

A: No. The modification of the legal provision interpreted by a precedential decision may only terminate the precedential effect of the decision if it is capable of giving rise to a different interpretation of the law. A merely formal modification (e.g., changing the order of the words), or a modification that expressly confirms the interpretation provided by the precedential decision in question, cannot in any way affect the legal force of the precedent.

With respect to Section 490 (1) of the CPC, this means that its modification could only neutralise the compulsory interpretation provided by the Precedential Decision if it would allow a new interpretation of the law. However, it does not. The adopted modification of Section 490 (1) of the CPC is not capable of neutralizing the compulsory requirements set out in the Precedential Decision, for two reasons:

- (i) First, the new wording of Section 490 (1) of the CPC does not allow for a new interpretation of the law. Essentially, it contains a formal change in the order of words. The only element that can be considered "new" in the text of the law is a supplement, according to which the court should turn to the CJEU with a preliminary ruling *"where it finds that it is necessary with respect to any legal act or legislation of the European Union applicable in the criminal proceeding."* This newly added element does not run counter to the Precedential Decision. It rather strengthens the restrictive interpretation formulated by the Precedential Decision, according to which any reference to the CJEU containing questions not relevant to the dispute concerned can be unlawful. The condition added that requires the applicability in the criminal proceeding does not anyhow neutralize the interpretation that requires relevance in the legal dispute concerned, and according to which all other preliminary references - as declared by the Precedential Decision - shall be deemed as

¹⁶ See: <https://magyarkozlony.hu/dokumentumok/019c4e9f4bad28ec3d54ba7e26e7750e1513f61/megtekintes>

¹⁷ See: <https://magyarkozlony.hu/dokumentumok/a87dd6ba5bb31d10d132a3461d87b33650b38323/megtekintes>

¹⁸ See the notes attached to Articles 63 and 64 of the Reform.

¹⁹ According to the modifications adopted, (i) a new paragraph (4) is added to Section 490 of the CPC to eliminate the possibility of the PG to initiate an appeal in the interests of the law against court orders requesting a preliminary ruling or turning down a motion for a request for a preliminary ruling; and (ii) a new paragraph (2a) is added to Section 667 of the CPC that excludes any type of legal remedies against orders delivered under Section 490.

unlawful. In order to lift and countervail the legal effect of the Precedential Decision, the CPC should expressly declare that a request for a preliminary ruling submitted by the court can under no circumstances be deemed unlawful.

- (ii) Second, the amendments adopted by the Reform do not cover the other two branches of adjudication (civil and administrative proceedings) on which the Precedential Decision is also binding. This means that the precedential force of the decision and the interpretation provided in it with the aim to guarantee the uniform application of the law remains in force until all other procedural codes exclude the possibility of parties to challenge a judicial order requesting a preliminary ruling of the CJEU (on the basis of the Kúria decision or on any other basis) and expressly declare that a request for a preliminary ruling submitted by the court can under no circumstances be deemed unlawful.

While the explanatory memorandum claims that by the adopted modification, no internal legal instruments will create an obstacle to preliminary references, the Precedential Decision remains in force, and Hungarian judges remain bound by it.

Q: Was it publicly confirmed that Hungarian judges are bound by the Precedential Decision?

A: Yes.

The barrier that the Precedential Decision creates was emphasized on several occasions by representatives of the justice system of Hungary, first and foremost by the Kúria President and by the PG.

(1) Relevant press releases of the Kúria and public statements of the Kúria President

On 16 April 2021, as a response to the Opinion of the Advocate General in case C-564/19, the Kúria issued a press release²⁰ on its website stressing that the Precedential Decision must be considered obligatory for lower-tier courts.

On 23 November 2021, the same day when the CJEU released Judgment C-564/19, the Kúria published a press release²¹ on its official website claiming that: *"As long as the Kúria does not decide otherwise by applying the provisions of the law, by interpreting the second sentence of Article 25 (1) of the Fundamental Law, Article R), Article 28, and Article E) of the Fundamental Law together as necessary, the order of the Kúria Bt.III.838/2019/11 is final, its interpretation is binding, and therefore the Kúria maintains the position expressed in its previous communications* [emphasis added]."

On 27 November 2021, the Kúria President claimed with regard to Judgment C-564/19, that *"the CJEU is not a forum for appeal for Hungarian courts, while the Kúria and the Hungarian Constitutional Court*

²⁰ <https://www.kuria-birosag.hu/hu/sajto/kuria-kozlemenye-az-europai-unio-birosaga-c-56419-szamu-ugyeben-kifejtett-fotanacsnok>

²¹ See: <https://www.kuria-birosag.hu/hu/sajto/kuria-kozlemenye-az-europai-unio-birosaga-c-56419-szamu-ugyeben-hozott-itelete-vonatkozasaban>

are.” By this statement, the Kúria President suggested that Hungarian judges should obey the judgments of the Kúria, instead of obeying the judgments of the CJEU.

On 20 July 2022, after the release of the 2022 Rule of Law Report of the European Commission, the Kúria President gave an interview²² also discussing Judgment C-546/19 of the CJEU.

*“The other question is how and when Hungarian judges can address the CJEU. Last year there was an event, which was obviously unpleasant and which, taken out of context, now really gives the impression that there is a problem. In fact, there is no problem with that either. [...] Concerns can only be raised if the judge refers a question with respect to a law that is not applicable in the case. Now this is not acceptable according to European rules, and the Kúria had a decision which also said that this is not acceptable. [Here the President of the Kúria gave equal weight to the ability of the CJEU to declare a preliminary reference inadmissible and the ability of the Kúria to declare a preliminary reference unlawful]. There is a debate around whether the Kúria could have said that. You see, the CJEU claims that although it is true that judges can't ask any kind of questions, only the CJEU can decide whether the question could be posed. So the preliminary question should be posed, and if the question is not right, the CJEU can declare it inadmissible. This is true, but unfortunately there is a consequence: if a judge turns to the CJEU, he or she has to suspend the domestic proceeding pending before him or her, and that's no longer a game, because then the other European court, the European Court of Human Rights, comes and says that a compensation should be paid to the party of the proceeding, whose rights were infringed due to the excessive length of the proceeding, so the fact that the underlying proceeding must be suspended has a very serious consequence. And the Kúria said that suspending the proceeding was unjustified under Hungarian law, but it did not say a word about stopping or blocking the CJEU's decision. **It is beyond dispute that the CJEU said that this will scare, or curb, or freeze the Hungarian judges' willingness for submitting a preliminary reference. I can't say any more on this, because at the moment this case is not open before the Kúria, and as for how the Kúria will translate this European judgment for itself, we need a case in which this has to be dealt with, so in abstracto I can't say any more** [emphasis added].”*

Most recently, at a working breakfast held on 2 March 2023 at the Kúria, the President of the Kúria in his speech,²³ pointed out that the semi-precedential system serves to counterbalance “external judicial influences”, i.e., the judgments of the Court of Justice of the European Union.

*“The Kúria as the supreme court, has the exclusive mediating role between the other three superior courts (the Constitutional Court, the Court of Justice of the European Union, and the European Court of Human Rights) and the courts of general jurisdiction. In this role, it must **balance external judicial influences while at the same time serving as an internal benchmark for the other courts**. The limited precedent effect of the judgments of the Kúria, which is a quite new element in our jurisdiction, and the introduction of the uniformity complaint procedure as a guarantee are the means of achieving this.*

²² The radio interview is available in Hungarian here: <https://infostart.hu/arena/2022/07/20/varga-zs-andras-a-kuria-elnok>

²³ See: https://kuria-birosag.hu/sites/default/files/sajto/dr._varga_zs._andras_elnok_eloadasa.pdf

(2) The press release of the Prosecutor General

On 24 November 2021, the day after Judgment C-564/19 was released, the Prosecutor General issued a press release²⁴ which announced: *"The judgment of the CJEU - in concordance with the Hungarian Prosecutor General's appeal, and in the light of the above-mentioned decisions - considered inadmissible the questions of judicial independence and remuneration among the three grounds raised in the suspension injunction [i.e., the request for a preliminary ruling]. The Central District Court of Pest should have continued the proceedings also with regard to the third issue, related to the interpretation, as all the information available at the time did not cast doubt on the quality of the interpretation and the fact that the accused was informed in a language he understood. [...] The Prosecutor General's appeal was in compliance with the effective Hungarian laws in all respects."*

Q: How should Super Milestone 215 be implemented?

A: The implementation of Super Milestone 215 and the proper execution of Judgment C-564/19 requires the amendment of the Hungarian legislation in two respects, covering both the procedural and the substantial aspects of Hungary's existing breach of Article 267 TFEU. With respect to the procedural aspect, the modification of the CPC is not enough, as the Precedential Decision continues to bind all branches of adjudication (criminal, civil, and administrative). Additionally, it is necessary to prevent the direct effect of the Precedential Decision of the Kúria, which was found contrary to EU law.

Therefore in order to implement Super Milestone 215 properly and to execute Judgment C-564/19 fully,

- (i) not only should the CPC be modified to exclude the possibility of the Prosecutor General challenging a judicial order requesting a preliminary ruling of the CJEU via "an appeal in the interests of the law"; but
- (ii) all relevant procedural codes should be modified to prohibit litigants from challenging a judicial order requesting a preliminary ruling of the CJEU (on the basis of the Kúria decision or on any other basis); and
- (iii) all relevant procedural codes should expressly declare that a request for a preliminary ruling submitted by a court can under no circumstances be deemed unlawful.

²⁴ See: <http://ugyesszeg.hu/az-europai-unio-birosaganak-c-564-19-szamu-ugyeben-a-legfobb-ugyesz-nem-sertett-unios-jogot-mivel-a-jogorvoslati-kezdemenyezese-nem-az-elozetes-donteshozatali-eljaras-hanem-a-magyar-buntetoeljaras/>

Q: Which EU decisions require the proper execution of the expected reform?

A: The proper execution of the required reform is expected under several decisions:

- (i) the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary;²⁵
- (ii) ten different Commission Implementing Decisions approving Hungary's operative programmes from union funds.²⁶ Concerning these operative programmes, the proper execution of the expected reform is an enabling condition;
- (iii) judgment C-564/19 of the Court of Justice of the European Union.

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²⁵ Section 216 of the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary, see: <https://data.consilium.europa.eu/doc/document/ST-15447-2022-ADD-1/en/pdf> p. 134.

²⁶ See:

1. Commission Implementing Decision C(2022)10004 on the Environmental and Energy Efficiency Operational Programme Plus [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10004&lang=hu](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10004&lang=hu) ;
2. Commission Implementing Decision C(2022)10007 on the Digital Renewal Operational Programme Plus [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10007&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10007&lang=en) ;
3. Commission Implementing Decision C(2022)10008 on the Territorial and Settlement Development Operational Programme Plus [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10008&lang=hu](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10008&lang=hu) ;
4. Commission Implementing Decision C(2022)10009 on the Economic Development and Innovation Operational Programme Plus [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10009&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10009&lang=en) ;
5. Commission Implementing Decision C(2022)10010 on the Human Resources Development Operational Programme Plus [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10010&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10010&lang=en) ;
6. Commission Implementing Decision C(2022)10011 on the Integrated Transport Development Operational Programme Plus [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10011&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10011&lang=en) ;
7. Commission Implementing Decision C(2022)10018 on the Hungarian Fisheries Programme Plus (HFP Plus) [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10018&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10018&lang=en) ;
8. Commission Implementing Decision C(2022)10019 on the Internal Security Fund [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10019&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10019&lang=en) ;
9. Commission Implementing Decision C(2022)10020 on the Instrument for Financial support for Border Management and Visa Policy [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10019&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10019&lang=en) ;
10. Commission Implementing Decision C(2022)10022 on the Asylum, Migration and Integration Fund [Article 3 (2) d)]
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10022&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en) ;