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## RULE OF LAW, TRUST, AND COMPETITION: WILL SPED-PRO BECOME A GAME-CHANGER FOR THE PROTECTION OF EU FUNDAMENTAL VALUES?

***Abstract:** The CJEU's jurisprudence based on the LM case has been criticized on the grounds that it is very difficult, if not impossible, to prove threats to due process in an individual case. The central question posed is the permissibility of limiting the principle of mutual trust between Member States because of a potential breach of fundamental rights in one of them. In the recent Sped-Pro case, the General Court decided to apply the above question to a new field of EU Law – competition law – without changing much of the essence of the question. In trying to protect mutual trust between Member States, the General Court has not created effective tools to protect the rule of law in the Member States. This also puts the principle of mutual trust at risk.*

**Key words:** rule of law, competition law, Court of Justice of the European Union, European Union, mutual trust.

### 1. INTRODUCTION

The discussion on the rule of law in the EU Member States takes place in various forms at the EU level but is also carried out by national institutions, domestic courts in particular. According to the case law of the Court of Justice of the European Union (CJEU) domestic courts, when dealing with requests for the surrender of a person under a Euro-

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pean Arrest Warrant (EAW) regime, are obliged to examine allegations based on possible threats to a fair trial arising from the rule of law backsliding. However, the jurisprudence based on the (in)famous *LM* ruling<sup>1</sup> has been criticized that it is almost impossible to prove (on the basis of the criteria set out by the CJEU) threats to a fair trial in an individual case.<sup>2</sup> In its ruling of 9 February 2022 in *Sped-Pro*,<sup>3</sup> the General Court extended the application of the case law based on the *LM* case to issues relating to antitrust proceedings. The purpose of this analysis is to assess whether the application of the *LM* test in the new context is capable to counteract the erosion of the rule of law in EU Member States, in Poland in particular.

## 2. *SPED-PRO* – WHEN THE RULE OF LAW MEETS THE COMPETITION LAW

The *Sped-Pro* case concerned a complaint to the European Commission against PKP Cargo's<sup>4</sup> decision to refuse to conclude a long-term cooperation agreement with Sped-Pro – a company providing transport services. The complaint alleged that PKP Cargo had abused its dominant position. The Commission rejected the complaint, indicating that the President of the Office of Competition and Consumer Protection (*Urząd Ochrony Konkurencji i Konsumentów*, UOKiK) had jurisdiction to hear and decide it. Already at this stage, the Commission attempted to carry out the *LM* test on the independence of the President of UOKiK by checking “whether systemic or general deficiencies in respect for the rule of law in Poland precluded rejection of the complaint on the grounds that the Polish competition authority was competent to deal with it”.<sup>5</sup> Following the Commission's rejection of the complaint, Sped-Pro filed a complaint

1 CJEU, Case C-216/18 PPU, *LM*, judgment of 25 July 2018 [GC].

2 Bárd, P., Ballegooij, W. van, 2018, Judicial Independence as a Precondition for Mutual Trust? The CJEU in *Minister for Justice and Equality v. LM*, *New Journal of European Criminal Law*, Vol. 9, pp. 353–365; Frąckowiak-Adamska, A., 2021, Drawing Red Lines with No (Significant) Bites: Why an Individual Test Is Not Appropriate in the *LM* Case, in: Bogdandy, A. von *et al.*, (eds.), *Defending Checks and Balances in EU Member States*, Springer, pp. 443–454. For positive assessments of the *LM*, cf. *inter alia*: Konstadinides, T., 2019, Judicial Independence and the Rule of Law in the Context of Non-Execution of a European Arrest Warrant: *LM* Case C-216/18 PPU, *Minister for Justice and Equality v. LM*, EU:C:2018:586, *Common Market Law Review*, 56, pp. 743–770.

3 CJEU, Case T-791/19, *Sped-Pro S. A. v European Commission*, judgment of 9 February 2022 [General Court].

4 It is a logistics operator and the largest railway carrier in Poland. The company's biggest shareholder is state-owned PKP S.A.

5 *Sped-Pro*, para. 74. English translation of *Sped-Pro* provided by the author.

to the General Court, indicating, *inter alia*, that the Commission had violated its right to effective judicial protection. It argued that it was the Commission that had jurisdiction to deal with the complaint because of systemic and general deficiencies in respect of the rule of law in Poland and, in particular, the lack of independence of the Polish competition authority and the independence of the national courts with jurisdiction in this area.<sup>6</sup>

In considering the *Sped-Pro* case, the General Court identified a number of factors that justify the application of the *LM* test to a competition authority. The importance of mutual trust between Member States (and between EU authorities and the Member States) and the importance of competition law in the EU legal order were the main grounds for broadening the scope of application of the *LM* test.<sup>7</sup> The Court emphasized the converging nature of the two regulatory regimes (the area of freedom, security and justice and EU competition law), which were described as a system of close cooperation between the competent authorities based on the principles of mutual recognition, mutual trust, and loyal cooperation.<sup>8</sup> The Court explicitly linked it to the right to a fair trial as being of particular relevance for the correct application of Articles 101 and 102 TFEU, which additionally can be directly applicable.<sup>9</sup>

The Court found that the Commission did not examine “specifically and precisely” the evidence presented by *Sped-Pro*. Whereas the Commission should have assessed, specifically and precisely, in the light of the specific concerns expressed by the applicant whether there were substantial grounds for believing that the applicant ran a real risk of its rights being infringed, if its case were to be examined by the national authorities.<sup>10</sup> As a result the General Court annulled the Commission’s decision.

### 3. MUTUAL TRUST IN THE EU – FROM *ARANYOSI* TO *SPED-PRO*

The central question posed in both *LM* and *Sped-Pro* is the permissibility of limiting mutual trust between Member States because of a possible breach of fundamental rights and values in one of them. In the context of judicial cooperation, the exception was introduced in the *Aran-*

6 *Sped-Pro*, para. 71.

7 *Sped-Pro*, paras. 83–85.

8 *Sped-Pro*, para. 85.

9 *Sped-Pro*, para. 91.

10 *Sped-Pro*, para. 104.

*yosi* case<sup>11</sup> in which the Court formulated a two-prong test that allows to verify whether prisoners' rights will be guaranteed in a State that issued EAW.<sup>12</sup> *LM* dealt with possible limitations caused by doubts regarding diminishing guarantees of judicial independence, which can directly affect the right to a fair trial. In light of the *LM*, the first stage involves an assessment of whether there is a real risk of a breach of the fundamental right to a fair trial due to systemic or general deficiencies affecting the independence of the judiciary. The second involves verifying concretely and precisely "whether, in the light of the personal situation, as well as the nature of the offense [...] and the factual context that form the basis of the European arrest warrant, and in the light of the information provided by the issuing Member State [...], there are substantial grounds for believing that that person will run such a risk if he surrendered to the latter State."<sup>13</sup>

While in the *Aranyosi* case introduction of the exception to the mutual trust principle was welcomed as a step in the right direction,<sup>14</sup> which gave fundamental rights real meaning under EU law, the application of the same method in the *LM* case raised serious doubts. The CJEU refused the possibility of suspension of the mechanism without a decision taken under Article 7 TEU. In subsequent judgments, the CJEU confirmed its position expressed in the *LM* case and rejected the possibility that a breach of the rule of law could reach such a level as to derail the due process of law, and thus that it would not be necessary to demonstrate an individualized risk in a particular case. The requirement to prove an individualized risk to a fair trial is probably the greatest practical difficulty in applying the *LM* test.

11 CJEU, Joined Cases C-404/15 and C-659/15 PPU, *Pál Aranyosi and Robert Căldăraru v. Generalstaatsanwaltschaft Bremen*, judgment of 5 April 2016 [GC].

12 In *Aranyosi* case, the German court executing the EAW pointed to the systemic deficiencies in the Hungarian prison system confirmed, *inter alia*, in the case law of the European Court of Human Rights. The case was referred to the Court of Justice, which allowed for the possibility of waiving the execution of an EAW if both systemic deficiencies that may result in a violation of the prohibition of inhuman treatment and a demonstration of individualized probability in the case of a specific person are shown.

13 *LM*, para. 79.

14 Gáspár-Szilágyi, S., 2016, Joined Cases *Aranyosi and Căldăraru*: Converging Human Rights Standards, Mutual Trust and a New Ground for Postponing a European Arrest Warrant, *European Journal of Crime, Criminal Law and Criminal Justice*, 24, pp. 197–219; Anagnostaras, G., 2016, Mutual Confidence Is Not Blind Trust! Fundamental rights protection and the execution of the European arrest warrant: *Aranyosi and Căldăraru* Joined Cases C-404 & 609/15 PPU, *Pál Aranyosi and Robert Căldăraru v. Generalstaatsanwaltschaft Bremen*, judgment of the Court of Justice (Grand Chamber) of 5 April 2016, EU:C:2016:198, *Common Market Law Review* 53, pp. 1675–1704; Łazowski, A., 2018, The Sky Is not the Limit: Mutual Trust and Mutual Recognition Après *Aranyosi and Căldăraru*, *Croatian Yearbook of European Law and Policy*, 14, pp. 1–30.

Introduction of exception to mutual trust in the *LM* case resulted from the interpretation of the consequences of the European Commission's decision to initiate of the Article 7 TEU procedure against Poland. The Court pointed out that "information in a reasoned proposal recently addressed by the Commission to the Council on the basis of Article 7(1) TEU is particularly relevant in the context of assessing the existence of a real risk of a breach of the fundamental right to a fair trial, linked to the lack of independence of the judiciary of that Member State, due to systemic or general deficiencies in that State".<sup>15</sup> The very fact of introducing such an exception to the principle of mutual trust (and consequently the recognition of decisions of judicial authorities of other EU Member States) was probably inevitable. 'Blind' trust in a situation of deepening violations of national and international law constituting an erosion of the rule of law would take place to the detriment of the entire legal order of the Union. *Aranyosi's* two-pronged test<sup>16</sup> is designed to address issues that can be measured and then translated into the likelihood of a specific future threat regarding conditions in prisons. The future independence of the courts cannot be measured in relation to a specific case if the legal system in which the courts operate has significant structural defects, such as undermined guarantees of judicial independence. The phenomenon of the erosion of the rule of law, which we have been witnessing for several years, has an impact on the entire legal system in Poland, in particular on the institutional arrangements. It would be risky to say that the judicial system has protected itself from this phenomenon. Changes to the courts, mainly in terms of personnel and organization, have been and continue to be at the heart of changes to the law, which have on several occasions been found to be contrary to European Union law,<sup>17</sup> as well as the European Convention on Human Rights.<sup>18</sup>

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15 *LM*, para. 61.

16 "[W]here there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalized, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State" (*Aranyosi*, para. 104).

17 CJEU, Case C-619/18, *Commission v. Poland*, Judgment of 24 June 2019; CJEU, Case C-791/19, *Commission v. Poland*, Judgment of 15 July 2021 [GC].

18 *Inter alia*, ECtHR, *Xero Flor v. Poland*, no. 4907/18, Judgment of 7 May 2021; ECtHR, *Broda and Bojara v. Poland*, nos. 26691/18 and 27367/18, Judgment of 29 June 2021;

In the *Sped-Pro* case, the subject of the test is the independence of the Polish competition authority and (presumably) the competition court. *LM* case dealt with a horizontal arrangement, where a national court assessed the national court of another country. In the *Sped-Pro* case, therefore, we are dealing with a kind of vertical arrangement, where the European Commission assesses the status of a national competition authority. Thus, the central element of the analysis in *Sped-Pro* is not the fairness of the judicial proceedings in the criminal case, but the administrative proceedings before the competition authority and the possible judicial proceedings before the competition court.

In the *Sped-Pro* case, the Court has hardly changed the construction of the *LM* test. First, “the person concerned must provide circumstantial evidence of the existence of serious and verifiable grounds for believing that he would be exposed to a real risk of violation of his rights if his case were to be examined by the national authorities”. Subsequently, “in the light of the particular concerns expressed by the complainant and any information provided by the complainant, the Commission should assess concretely and accurately whether such grounds exist in the circumstances of the case, having regard to the personal situation of that party, the nature of the alleged infringement and the factual context of the case”.<sup>19</sup>

#### 4. UNDERMINED TRUST AND UNSHAKEABLE PRESUMPTION

*Sped-Pro* is the first judgment of the EU General Court to recognize and analyze the problem of systemic deficiencies with the rule of law in the context of competition law.<sup>20</sup> It shows that the independence standards (which are a condition for effective legal protection) examined in *LM* seem to apply also to competition authorities.<sup>21</sup> This supports the thesis that potentially abstract values can have a real and practical impact on the functioning of the EU legal system and that this impact will be seen in further areas of law. However, it is probably difficult to expect that the Commission, after re-examining the complaint of *Sped-Pro*, will come

ECtHR, *Advance Pharma v. Poland*, no. 1469/20, Judgment of 3 February 2022; *Grzęda v. Poland*, no. 43572/18, Judgment of 15 March 2022 [GC].

19 *Sped-Pro*, para. 97.

20 Cseres, K., Borgers, M., 2022, Mutual (Dis)trust: EU Competition Law Enforcement in the Shadow of the Rule of Law Crisis, *VerfBlog*, 16 February 2022, (<https://verfassungsblog.de/mutual-distrust/>).

21 Bernatt, M., 2022, The Double Helix of Rule of Law and EU Competition Law: An Appraisal, *European Law Journal*, 27, p. 151.

to a diametrically different conclusion compared with the first proceedings.<sup>22</sup> The construction of the test is based on the presumption that the independence criteria are met by the courts or the competition authorities. However, the presumption that certain standards of independence are met and that EU values are respected by Member States is not enough to protect mutual trust in a situation of blatant and obvious violations of national and EU law by some Member States.

The Court, in the *LM* and in subsequent judgments, rejected the possibility to suspend cooperation (e.g. by refusing to execute an EAW) on the basis of general deficiencies affecting the right to a fair trial arising from the rule of law backsliding. In *Sped-Pro* case, the applicant argued in the proceedings that the Commission had applied the *LM* test incorrectly, limiting itself only to the analysis of the second stage of the test and omitting to assess whether the conditions for the first stage of the test were satisfied.<sup>23</sup> According to the Court, since the two stages of the analysis are cumulative, the Commission cannot be accused of limiting itself to examining the second stage for the sake of the economy of the procedure.<sup>24</sup> The Court, therefore, held that “the arguments raised by the applicant seeking to demonstrate, in a general manner, the existence of systemic or general irregularities in Poland capable of jeopardizing the independence of the Polish competition authority and the independence of the national courts with jurisdiction in the field are ineffective”.<sup>25</sup> It, therefore, appears that, based on the Court’s previous case law, the Court does not envisage a situation in which general deficiencies in the rule of law would be so serious as to abolish the second part of the test.

In *Sped Pro*, the application of the *LM* test was broadened to include the public administration body, but not much was changed in the test itself. The Court, therefore, focuses on examining whether *Sped-Pro*’s rights have been infringed. The *LM* test, as applied in *Sped-Pro*, does not examine whether another public good would have been compromised if a systemic irregularity had been shown to exist.<sup>26</sup> The court has therefore copied the *LM* test for the purposes of the competition authority without adapting it to the nature of competition law.

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22 Rompuy, B. Van, 2022, Independence as a Prerequisite for Mutual Trust between EU Competition Enforcers: Case T-791/19, *Sped-Pro v. Commission*, *Journal of European Competition Law & Practice*, Vol. 13, Issue 6, pp. 413–415.

23 *Sped-Pro*, para. 93.

24 *Sped-Pro*, para. 94.

25 *Sped-Pro*, para. 95.

26 Such a ‘harm’ to a society and fundamental values (democracy), can be done, *inter alia* e.g. when media market is being controlled by the government, since such a system might be prone to politically motivated abuses.



## 5. LACK OF EFFECTIVE REMEDIES TO PROTECT RIGHTS, VALUES, AND MUTUAL TRUST

In *LM*, the Court emphasized that the decision on whether or not to suspend cooperation under the EAW regime rests with the European Council on the basis of Article 7 TEU.<sup>27</sup> In the light of above, granting at least partial legal protection – by refusing automatic judicial cooperation with a ‘rogue’ Member State where EU values are openly and consistently violated – should be subject to a decision of EU political body. Such a conclusion was based on the interpretation of the recitals to the EAW Framework Decision.<sup>28</sup> By avoiding the criticism of over-centralization,<sup>29</sup> the Court does not create an effective *remedy*. By giving priority to the competence of the European Council, the Court ignores its own obligations under, *inter alia*, Article 19 TEU.<sup>30</sup> It protects neither fundamental rights nor mutual trust. The problem with trust is that you need substantial facts in order to strengthen and support it. *LM* test does not require presenting facts that the trust exists. Mutual trust is formally upheld under *LM* unless no counter-evidence is presented. There is no need to present proof of how systemic deficiencies caused by the rule of law backsliding will be overcome in judicial proceedings before the domestic courts.

The *LM* analyses some aspects related to the rule of law in Poland, but *LM* test is not a tool that could, even partially, solve them. Passing the *LM* test, *i.e.* recognizing that there are systemic deficiencies in the rule of law in a Member State that has an impact on the standard of fairness of judicial proceedings, but lacking evidence that there would be a violation in

27 *LM*, paras. 70–72.

28 “The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Art. 6(1) of the Treaty on European Union, determined by the Council pursuant to Art. 7(1) of the said Treaty with the consequences set out in Art. 7(2) thereof. [after Lisbon Treaty – Art. 7(3) TEU]”, Recital 10 of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States – Statements made by certain Member States on the adoption of the Framework Decision, *OJ L* 190, 18. 7. 2002, pp. 1–20.

29 *Cf.* Konstadinides, T., 2019, Judicial Independence and the Rule of Law in the Context of Non-Execution of a European Arrest Warrant: *LM* Case C-216/18 PPU, Minister for Justice and Equality v. *LM*, EU:C:2018:586, *Common Market Law Review*, 56, pp. 743–770.

30 Krajewski, M., 2018, Who Is Afraid of the European Council? The Court of Justice’s Cautious Approach to the Independence of Domestic Judges ECJ 25 July 2018, Case C-216/18 PPU, The Minister for Justice and Equality v. *LM*, *European Constitutional Law Review*, Vol. 14, Issue 4, p. 810.



a specific case of a defendant before a given court, in practice means that there is no reaction from the system of judicial cooperation within the EU. In addition, such decisions further legitimize changes introduced in countries such as Poland or Hungary, *inter alia* in judiciary or civil service.

Mutual trust between Member States enhances the effectiveness of cooperation implemented in different areas of EU law, *e.g.* criminal matters. Restrictions on this cooperation or problems occurring in its full implementation create a kind of tension arising, for example, from the fear of impunity that could result from the suspension of the EAW against one Member State. This is an important factor to take into account when dealing with issues that may undermine confidence in Member States. Such tensions can be used to put pressure on Member State governments to stop violating the EU values precisely because of the threatened negative consequences (*e.g.* possible impunity for suspected criminals). However, the Court in *LM* chose to neutralize the tension instead of exploiting it and turning it into an effective measure to protect the trust and fundamental values of the EU. Even the most serious breach of the rule of law by one Member State will not be able to trigger a direct response from a national court in another Member State. Under the *LM*, mutual trust is protected more than the rule of law or fundamental rights.<sup>31</sup> The Court's imposition of trust in factual and legal conditions that realistically undermine that trust will have devastating consequences, both for the rule of law and mutual trust. If there is no chance that undermining trust will have real consequences, then such trust will have no real value, but will only be a theoretical legal construct. The *LM* test flattens the issue of mutual trust by reducing it to a presumption of its existence, which cannot be overcome in practice in case of violation of the right to a fair trial.<sup>32</sup>

## 6. COURT'S WALKOVER

In *LM*, the Court of Justice left room for the European Council to decide whether to suspend cooperation with Poland in the execution of the EAW.<sup>33</sup> In *L and P*,<sup>34</sup> the Court held that the increasing scale of violations of the rule of law was irrelevant under *LM* test.<sup>35</sup> By limiting the

31 Popelier, P., Gentile, G., Zimmeren, E. van, 2022, Bridging the Gap between the Facts and Norms: Mutual Trust, the European Arrest Warrant and the Rule of Law in an Interdisciplinary Context, *European Law Journal*, p. 6.

32 Popelier, P. *et al.*, pp. 17–18.

33 *LM*, paras. 70–72.

34 CJEU, Case C-354/20 PPU, *L and P*, Judgment of 17 December 2020 [GC].

35 Frackowiak-Adamska, A., 2022, Trust until It Is too Late!: Mutual Recognition of Judgments and Limitations of Judicial Independence in a Member State: L and P:

possibility of suspending judicial cooperation with a Member State based on a decision of the national courts of other Member States, the Court seeks to protect the presumption of mutual trust between States. However, the inability to effectively implement the *LM* test in practice results in systemic rule of law problems not being addressed adequately. This in turn causes them to persist, and by that undermining mutual trust. The *LM*, combined with the lack of a decision on the part of the European Council under Article 7 TEU, only intensifies the erosion of this trust. Without decision under Article 7 the CJEU “is forced into performing the job political institutions should take accountability for” despite the fact that Luxembourg is “unwilling to take over the role of other EU institutions”.<sup>36</sup>

It seems that the Member States’ governments that violate common EU values are less ‘concerned’ about potential limitations of mutual trust than the national courts of other Member States that have to recognize and enforce the judicial decisions of such States. Moreover, neither *LM* nor *Sped-Pro* creates pressure on the part of the other Member States to address systemic breaches of the rule of law in the form of a European Council decision based on Article 7 TEU. It happens despite the fact that the Court’s decision to give priority to the Council in deciding whether to suspend the EAW system against a Member State should create the need for such a decision to be taken by the body empowered to do so (meaning the Council).<sup>37</sup>

The Court fears also (probably more than the Member State concerned violating EU values) the consequences that could result from the suspension of cooperation with such a rogue State. In the *X and Y* judgment of February 2022, the Court cited, *inter alia*, the need to ensure the protection of the rights of crime victims who are also parties to criminal proceedings in which an EAW has been issued.<sup>38</sup> That would suggest that protection of crime victims implies a duty to cooperate even at the expense of the procedural guarantees, such as judicial independence. Furthermore, in the Court’s view, a one-step *LM* test (*i.e.* limited to the section on the existence of systemic threats to the independence of the judiciary in the Member State issuing the EAW) would result in a “high risk of impunity for persons who attempt to flee from justice after having been convicted

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joined cases C-354/20 PPU and C-412/20 PPU, *Openbaar Ministerie v. L and P* (Indépendance de l’autorité judiciaire d’émission), *Common Market Law Review*, p. 125.

36 Bárd, P., 2021, *Canaries in a Coal Mine: Rule of Law Deficiencies and Mutual Trust*, *Pravni zapisi*, 2, p. 386.

37 *Inter alia*, Meijers Committee, *Surrender to Poland suspended. Call for political intervention to protect the rule of law in EU Member States*, CM2007.

38 *X and Y*, paras. 60–61.

of, or after they have been suspected of committing, an offense, even if there is no evidence to suggest a real risk, if they were surrendered, of breach of their fundamental right to a fair trial”<sup>39</sup>

## 7. CONCLUSION

The *Sped-Pro* case is a manifestation of the extension of the application of the *LM* test, *i.e.* the recognition by the judiciary of the EU courts of existing problems with the rule of law in certain Member States. Thus, *Sped-Pro* opened another chapter in the CJEU’s jurisprudence on the consequences of the rule of law backsliding. However, the application of the *LM* test to competition cases shows that the rule of law problems have not yet been even partially resolved with the *LM* test. The *LM* test does not examine to what extent trust has already been breached by systemic deficiencies resulting from the erosion of rule of law principles affecting, *e.g.* right to fair trial. Therefore, it does not offer an adequate measure to repair or rebuild this trust. By leaving considerable discretion to the European Council to decide whether or not to suspend cooperation with a Member State (under the EAW system or possibly under antitrust), the CJEU seems not to see in the *LM* or *Sped-Pro* cases a potential to develop an effective tool to protect fundamental values such as the rule of law.

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39 *X and Y*, para. 62.

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## VLADAVINA PRAVA, POVERENJE I KONKURENCIJA: HOĆE LI SPED-PRO PROMENITI ZAŠTITU OSNOVNIH VREDNOSTI EU?

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### APSTRAKT

Praksa Suda pravde Evropske unije, zasnovana na predmetu *LM*, pretrpela je dosta kritika u kojima se navodi da je veoma teško, ako ne i nemoguće, dokazati pretnje zakonitom postupku u pojedinačnom slučaju. Centralno pitanje koje se postavlja jeste dozvoljenost ograničavanja međusobnog poverenja između država članica zbog potencijalnog kršenja osnovnih prava u jednoj od njih. U nedavnom predmetu *Sped-Pro*, Opšti sud je odlučio da primeni navedeno pitanje na novu oblast prava Evropske unije – pravo konkurencije – ne menjajući mnogo suštinu pitanja. Pokušavajući da zaštiti međusobno poverenje između država članica, Sud nije stvorio delotvorna sredstva za zaštitu vladavine prava u državama članicama. To takođe dovodi u opasnost načelo uzajamnog poverenja.

**Ključne reči:** vladavina prava, pravo konkurencije, Sud pravde EU, Evropska unija, uzajamno poverenje.

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