“NICOLAE TITULESCU” UNIVERSITY OF BUCHAREST

LAW FACULTY

DOCTORAL SCHOOL

DOCTORAL THESIS

„*The Court of Justice of the European Union’s Jurisdiction to give preliminary rulings*”

– SUMMARY –

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CONTENT OF THE SUMMARY OF THE DOCTORAL THESIS

Note: In elaborating the doctoral thesis we took into consideration: the European Union's legislation; internal legislation; treaties, conventions and international agreements of relevance; Romanian and foreign legal doctrine; the case-law of the Court of Justice of the European Union, of the European Court of Human Rights and of national courts, prior to August 1st, 2021.

ABBREVIATIONS AND ACRONYMS

art. – article

CJEC – Court of Justice of the European Communities

CJEU – Court of Justice of the European Union

CST – Civil Service Tribunal

EAEC/Euratom – European Atomic Energy Community

ECB – European Central Bank

ECSC – European Coal and Steel Community

EEC – European Economic Community

EU – European Union

HCCJ – High Court of Cassation and Justice

let. – letter

no. – number

OJ – Official Journal of the European Union

par. – paragraph

PhD – Philosophy Doctor

pt. – point

Romania's Off. M. – Romania's Official Monitor

TEAEC – Treaty establishing the European Atomic Energy Community

TEC – Treaty establishing the European Community

TECSC – Treaty establishing the European Coal and Steel Community

TEU – Treaty on European Union

TFEU – Treaty on the Functioning of the European Union

vol. – volume

I. PLAN OF THE DOCTORAL THESIS

The doctoral thesis is structured into 8 chapters, preceeded by "METHODOLOGICAL ASPECTS". Each chapter is divided into sections, points and subpoints, as follows:

CHAPTER I. *PROLEGOMENE*

Section I. The institutional system of the European Union – general presentation

Section II. The Court of Justice of the European Union

1. Evolution

2. The hierarchy reflected by the appeals

Section III. Conclusions

CHAPTER II. THE JURISDICTION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Section I. Jurisdiction *ratione personae* and *ratione loci*

Section II. Jurisdiction *ratione materiae*

Section III. Jurisdiction *ratione temporis.* Brexit

Section IV. Comparison with the jurisdiction of the European Court of Human Rights and of the International Court of Justice

1. The European Court of Human Rights

2. The International Court of Justice

Section V. Conclusions and *de lege ferenda* proposals

CHAPTER III. PRELIMINARY RULING PROCEDURE – CONCEPT AND REGULATION

Section I. The definition and the functions of the preliminary ruling procedure

1. Conceptual delimitations

2. The functions of the preliminary ruling procedure

Section II. Regulation

1. Evolution of the legislation

2. Current *sedes materiae*

A. European Union Law

II. CONTEXT AND RELEVANCE OF THE SCIENTIFIC RESEARCH OF THE DOCTORAL THESIS' SUBJECT

The European Union is a supranational legal entity, unlike other in Europe's history: an international integration organization, with federal elements in its structuring and its functioning.[1] It has over 69 years of dynamic existence since the first European Community was established. During this period, the number of Member States has risen from 6 to 28 and then it decreased to 27 in 2021, once the United Kingdom of Great Britain and Northern Ireland withdrew from the EU.

In order to promote the values they share and to reach their common objectives (amongst which there are peace and economic prosperity), the Member States of the European Union have created a new legal order. The treaties establishing the European Communities and their modifying treaties are the main source of this new autonomous legal order. For this reason, the legal doctrine considers the treaties to have a real constitutional value for European Union law. We share this opinion, supported, amongst others, by the complex structure and by the hierarchy of the sources of European Union law, which have been developed through the normative activity of the European Union's institutions, with the contribution of the Court of Justice of the European Union.

The legal order of the European Union belongs to international law, but it is also one with accentuated elements of specificity, distinct from the national legal order of the Member States and integrated into their legal systems, as a result of the direct and immediate applicability of European Union law and of the priority of European Union law in relationship with the internal law of the Member States.

Once Romania acceded to the European Union on January 1st, 2007, European Union law was integrated in positive Romanian law. From this moment on, a thorough knowledge of the sources of European Union law, of the relationship between European Union law and internal law and of the effects of the Court of Justice of the European Union's rulings became an imperative for every law professional.

For a correct and uniform application of European Union law by all of the Member States, at the request of a national court of a Member State, the Court of Justice of the European Union has jurisdiction to give preliminary rulings on the interpretation of EU law or on the

[1] Amongst the elements of federal law, there are: the two chambers of the legislative, the European Union's own budget, the mandatory jurisdiction of the Court of Justice of the European Union, the European citizenship, the priority of EU law over national law, the integration, the democracy.

validity of legislative acts adopted by the European Union's institutions.[2] Establishing the limits of the Court of Justice of the European Union's jurisdiction to give preliminary rulings is the *sine qua non* premise for the effective use of this legal instrument (in the sense of a legal means designed to reach a certain goal) that is the preliminary ruling procedure. Thus, choosing the theme of the doctoral thesis was based on the practical implications of the researched subject, as well as on considerations regarding the actuality and the importance of the preliminary ruling procedure.

The jurisdiction of the Court of Justice of the European Union to give preliminary rulings, answering the questions asked by the national courts, is enshrined in the founding treaties and has been maintained by the modifying treaties concluded until the present day by the Member States of the European Union.

The number of cases registered by the Court of Justice of the European Union, consisting of references for a preliminary ruling, has increased constantly throughout the years. The need to give the rulings in a reasonable time limit has determined a series of adaptations of the procedure and of the way the Court is organized.

Also, through the rich case-law resulted from this intense activity, the Court of Justice of the European Union has contributed to the development of European Union law, establishing the priority of European Union law in its relationship to the internal law of the Member States, the direct effect of European Union law provisions in internal law, the principle of national procedural autonomy, in corelation with the principle of equivalence and the principle of effectivity, different autonomous notions in EU law and so on. Likewise, the judgements given have led to the unification or to the change of the national courts' case-law and have offered national courts the elements they needed to decide on the compatibility of some provisions in national law with the provisions of European Union law.

As a result, the dialogue between the national courts and the supranational court on the correct interpretation of European Union law and on the validity of legislative acts adopted by the European Union's institutions remains a dynamic and a current subject.

The legal doctrine in the Member States of the European Union has shown a constant preoccupation with the preliminary ruling procedure and was enriched, gradually, following the

[2] The Court of Justice of the European Union includes, at present, the Court of Justice and the General Court. Only the **Court of Justice** has jurisdiction to give preliminary rulings. Nevertheless, since the European Union's treaties in force mention the jurisdiction of the Court of Justice of the European Union and, also, the jurisdiction of the General Court to answer preliminary references, taking into account the evolution of the legislation and the expressions validated by the legal doctrine, we have used, in the title of the doctoral thesis, the indication to the Court of Justice of the European Union. The evolution of the legislation and the reasons for which the General Court does not give preliminary rulings are rendered in Chapter I, Section II, pt. 1 of the doctoral thesis.

enlargement of the European Union. The approach to this subject matter is diverse, as it is stimulated by the social, economic and political changes the European Union and the Member States are going through, as well as by the evolution of European Union law and of the case-law of the Court of Justice of the European Union. The withdrawal of the United Kingdom of Great Britain and Northern Ireland, a process commonly known as „Brexit"[3], and the Covid-19 virus pandemic are the most recent of the challenges the European Union has had to manage, which influence the jurisdiction and the activity of the Court.

Given the complex structure of European Union law, originated in both international law and internal law, the preliminary ruling procedure is applicable in an interdisciplinary context and the rulings of the Court of Justice refer to legal norms from a variety of fields of law.

In conclusion, the subject of the research is inexhaustible and it can be updated, it can be given new nuances and it can be seen from new perspectives.

III. MAIN OBJECTIVES OF THE DOCTORAL THESIS

The main objective in elaborating the doctoral thesis is to contribute to scientific research in the field European Union law, through a detailed analysis of the main and of the adjacent problems concerning the jurisdiction of the Court of Justice of the European Union to give preliminary rulings, at the request of national courts of the Member States.

The doctoral thesis is meant to facilitate the understanding of the role held by the Court of Justice of the European Union within the institutional system of the European Union and to lay out the main competences the Member States have attributed to this Court, in order to differentiate the CJEU from other courts, such as the European Court of Human Rights and the International Court of Justice.

Other goals are to clarify and to set out the concepts and notions used, to display the evolution of the legislation that is the *sedes materiae* of the preliminary ruling procedure and to study its impact on Romanian law.

In order to determine which are the limits of the Court of Justice of the European Union's jurisdiction to give preliminary rulings, we have identified which of the sources of European Union law may be the object of a preliminary reference, we have determined the sphere of national courts that can refer to the Court of Justice and we have shown their margin of discretion in deciding to initiate the preliminary ruling procedure.

[3] From joining together the words „British" and „exit".

Given the procedural dimension of the Court's jurisdiction, we have also researched the European Union's procedural law provisions applicable to this subject matter and we have emphasized the practical relevant aspects which lead the real dialogue between the Court of the European Union and the national courts towards the desired result, that is obtaining a preliminary ruling, which may take the form of a preliminary judgment or of a reasoned order.

After going through these stages, we have established the preliminary ruling procedure's role in the process of applying European Union law. This role is highlighted by the effects the preliminary rulings produce for the European Union, for the Member States and on an international level.

The scientific approach seeks to bring together theoretical relevance and practical utility. It is meant to unravel the varied and complex issues that are posed by the application of European Union law and to offer solutions, in an a reasoned manner, including de *de lege ferenda* proposals for European Union law and for Romanian law.

IV. METHODOLOGICAL SUPPORT OF THE SCIENTIFIC RESEARCH

The scientific research consisted, mainly, of: going through the legislation of the European Union, Romanian legislation and the legislation of other Member States, referring to the theme of the doctoral thesis; the elaborate study of Romanian and foreign doctrinal works, which contain information that is relevant for the subject matter, that is: courses, treaties, monographs, articles form legal magazines and so on; the comparative analysis of the diverse opinions and points of view on the different law issues raised by the preliminary ruling procedure; selecting the relevant case-law, analysing and summarizing the rulings of the Court of Justice of the European Union and of national courts; highlighting the elements of comparative law; attending seminars, international conferences and scientific debates; elaborating articles and publishing them in legal magazine, including as a member of the Romanian Society of European Law, part of the International Federation of European Law; giving lectures to law students.

The resources used for the documentation endeavour were purchased or consulted at the library of the "Nicolae Titulescu" University of Bucharest, at the library of the Bucharest Tribunal and at the library of the Court of Justice of the European Union, but also by accessing online databases, sub as www.europa.eu, www.curia.eu, www.ssrn.com and the legislation programme Lege 5.

The information acquired was harnessed in order to offer arguments for our opinions and conclusions. For this purpose, we have resorted to the scientific research methods in the legal field, which we have correlated, in the effort to render the theoretical and practical implications of the research subject and to convey a unitary perspective.

We used *the logical method* to research the meaning of legal provisions, by the means of logical categories and reason. Since law is a predominantly deductive science, we took into account logical syllogism to frame the facts into the provisions of law and to construct the arguments that fundament our conclusions.

The historical method was at the basis of our study of the regulations that govern the subject matter of the Court of Justice of the European Union's jurisdiction to give preliminary rulings, in relation to the stages the European Union has gone through in its existence.

The historical perspective was supplemented by *the sociological method*, used to discern the context in which the preliminary ruling procedure was established, the reasons for which the founding states of the European Union have instituted it and the motives for which it had to be adapted in accordance to the changes in the social, economic and political reality of the Member States of the European Union.

To covey the similarities and the differences between the jurisdiction of the court of Justice of the European Union and the jurisdiction attributed to the European Court of Human Rights and to the International Court of Justice, we have employed *the comparative method*.

On the same method we based our research of the *ratione temporis* jurisdiction of the Court of Justice of the European Union, in the analysis of the relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland prior to, respectively, after this state's withdrawal from the Union.

Likewise, the comparative method facilitated highlighting the comparative law elements that can be found in the doctoral thesis.

We resorted to *the quantitative method* in order to systematize the legislation applicable to the subject matter, to select the case-law that was relevant to the theme of the doctoral thesis and to identify the examples in the court's case-law which reflect, in the clearest manner, the rules of law and the exceptions therein.

The statistical method helped us extract from the statistical data that can be found in the Court of Justice of the European Union's annual reports, the information which constitutes an addition to the research process and supports the logical reasoning, enriching the sociological approach.

Alongside the methods of scientific research that we used, we took into consideration the types of text interpretation specific to the legal field. *The grammatical interpretation* consisted of the syntactic and morphological analysis of the text of the legal norm and it was

needed in order to determine the exact meaning of the words in the text and in studying the different language versions of the Court of Justice of the European Union's rulings, which do not have an official translation in Romanian.

The layered character of the system of sources of European Union Law and the legal systems that intertwine with European Union law (that is the international legal system and the national legal systems of the Member States) have generated the need for a *systematic interpretation* of the provisions of law applicable to the presented facts.

The historical interpretation proved useful in explaining the meaning of the rules of law in relation to the social, economic and political reality from the moment when they were instituted and *the logical interpretation* represented the bond between all the types of interpretation, allowing the construction of the reasoning and ensuring its persuasive character. For example, we used the *per a contrario* argument, based on the logical principle of the excluded third[4], the *a fortiori* argument, according to which the reasons for applying a certain rule are even stronger in another hypothesis than that indicated expressly in the legal provision and the argument *a majori ad minus*, which states that if more is allowed, implicitly, less is allowed as well.

We consider that the personal print in conducting the scientific research consisted in dosing the methods we mentioned, in combining and structuring them in the doctoral thesis in order to display a unitary vision.

V. EXPECTED RESULTS AND UTILITY OF THE SCIENTIFIC ENDEAVOUR

The jurisdiction of the Court of Justice of the European Union to give preliminary rulings at the request of national courts of the Member States is a subject of great importance for national judges form the Member States of the European Union and, also, for other professionals of law.

To come to their support and to contribute to the doctrinal debates, the doctoral thesis is meant to represent a useful tool for practitioners, in which they ca easily find: the main legal provisions applicable and the legal issues they entail; the opinions on these legal issues expressed in established legal literature, as well as our reasoned opinions, convergent or divergent; the relevant case-law, summarized and commented; the good practices for initiating

[4] A logical axiom that a claim is either true or false, with no third option.

and traversing the preliminary ruling procedure by the national courts; the legal effects of the Court of Justice of the European Union's rulings.

The information comprised by the doctoral thesis, updated until August 1st, 2021, was systematized and presented in such a manner as to lead to a better understanding of the limits of the Court of Justice of the European Union's jurisdiction throughout the different stages of the preliminary ruling procedure and to allow the national judge to evaluate if it is necessary to engage in dialogue with the supranational court, but also to act accordingly, in order to avoid having the request rejected as inadmissible or as manifestly out of the Court's jurisdiction. Assessing the opportunity to refer to the Court of Justice of the European Union is a necessary step, meant to relieve the work load of the Court with requests that are outside its sphere of jurisdiction and to steer clear of an inefficient process, which would prolong the duration of the main national proceedings.

The subject of the doctoral thesis was thoroughly analysed, in a comprehensive manner, reaching all the relevant legal issues of the researched subject matter. The aim was to offer a useful tool for law professionals and to allow the extraction of other subjects, for further development, by way of new scientific research. Also, it was our desire that the doctoral thesis would be accessible to those persons not instructed in the legal field, who wish to supplement their knowledge in domains adjacent to their profession.

We appreciate that the original elements in the doctoral thesis can be found in the way we approached the subject matter of the study, in the corelations and comparisons we made, in the arguments, opinions and conclusions presented, in the aspects of novelty we approached and, also, in the *de lege ferenda* propositions we formulated.

The dissemination of the information we acquired throughout the process of scientific research was done by publishing several articles in legal magazines, by participating in legal debates, conferences, seminars, both on an internal and on an international level, and at the meetings dedicated to the continuous professional training of judges. Of course, the final aim is to publish the doctoral thesis.

VI. CONCEPTUAL DELIMITATIONS

The preliminary ruling procedure is noncontentious, since it is a means for the national court from a Member State to obtain a ruling of the Court of Justice on the interpretation or on the validity of a provision of EU law, when such a ruling is necessary in order to give its own judgment in the pending national case before it. The phrase "national court" is autonomous in

EU law and it includes bodies with jurisdictional powers from the Member States of the EU, which meet certain criteria, not just national courts *stricto sensu*.

The noncontentious character of the preliminary ruling procedure is due to the way this procedural means is constructed in EU law. The national court alone has the right to refer to the EU court and, in doing so, it does not request for a right to be established in an adversary procedure, but to obtain the information it needs to pronounce a decision in the main pending proceedings. For the national court, the reference for a preliminary ruling has the nature of a procedural incident, because the judgment of the case is suspended and the national litigation is solved only after the Court of Justice gives its decision.

The parties to the main proceedings may ask the national court to refer to the Court of Justice. They are directly interested in the correct and uniform application of EU law, especially in those cases with cross border elements. Although aces to the CJEU for nationals[5] of the Member States is limited, even for the purpose of assessing the validity of EU law, the preliminary ruling procedure can prove an indirect means to call upon the supranational court. As the case-law of national courts has often shown, they have initiated the preliminary ruling procedure following strong reasons provided by the parties, arguing that it is necessary to refer to the Court of Justice a certain question or certain questions on the interpretation and/or validity of provisions of EU law.

It must be emphasized that the parties to the main proceedings are not the beneficiaries of a direct right to aces the Court of Justice and, even if they may ask the national court to draft and send a preliminary reference, the national court is free to decide if it is necessary to act in this respect and, in the affirmative case, it has complete freedom to determine which questions shall be addressed to the Court. At the same time, the ruling of the court in Luxemburg does not establish the facts in the national case and does not offer a direct solution, that would decide on the rights and interests of the parties who have followed the judicial path to realize them.

On a terminological level, the Romanian versions of the provisions of EU law that constitute the *sedes materiae* utilize phrases such as: "The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings"[6], "questions referred for a preliminary ruling"[7], "references for a preliminary ruling", "preliminary ruling procedure", "interpretation

[5] Physical or legal persons residing in Member States of the European Union.

[6] Art. 267 par. 1 TFEU.

[7] Art. 256 TFEU and art. 23a form the Protocol (no 3) on the Statute of the Court of Justice of the European Union, amended by the Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 17 April 2019, published in the OJ L 111, 25.4.2019.

of preliminary rulings", "request for a preliminary ruling", "expedited preliminary ruling procedure", "urgent preliminary ruling procedure", "revision of a decision"[8].

Also, in Law no. 134/2010 regarding the Code of civil procedure (hereinafter referred to as "the Code of civil procedure"), we find the phrase: "a request for a preliminary ruling referred to the Court of Justice of the European Union"[9].

We notice the preference for using the word "request" to designate the act that is sent to the court of the EU, in agreement with the view in Romanian procedural law, according to which, usually, the act registered with the court is named a request, irrespective of its contentious or noncontentious character.[10] It is true that the procedural act elaborated by the Romanian Courts is a judgment, but it includes the request referred to the Court of Justice to answer one or several questions regarding the interpretation and/or validity of EU law. These are the reasons for which we have used in the doctoral thesis, with preponderance, the notion of "request" to designate the act that is sent to the Court of Justice, in the detriment of the phrases "preliminary reference" and "preliminary question/questions".

The procedure carried out in order to obtain a preliminary ruling, from the moment the request is registered with the Court of Justice and up to the point a decision is pronounced, is referred to as the "preliminary ruling procedure". We used this phrase, as well as "preliminary reference" and "preliminary decision procedure", depending on the context, because the preliminary ruling procedure has to follow certain steps and is possible to be stopped on its way. Although the national court that sends the request wishes to obtain a judgment form the Court of Justice, it is possible that the procedure would not reach this point. For example, the request may be withdrawn, as a result of the plaintiff renouncing the claim or giving up his right or as a consequence of a solution of the Court of Justice in a similar case, which raised the same issues of interpretation and/or validity of the same EU law provisions. Furthermore, the final act of the Court of Justice is a "decision" and it may take the form a judgment, as well as the form of a reasoned order.

The noncontentious character of the preliminary ruling procedure sets it apart from the direct actions in the jurisdiction the Court of Justice of the European Union. The Rules of Procedure of the Court of Justice use the word "action" in connection to direct actions and they do not use this word in relation to the preliminary ruling procedure. Also, the national court is

[8] Title III of the Rules of Procedure of the Court of Justice of 25 September 2012 (OJ L 265, 29.9.2012), as amended on 18 June 2013 (OJ L 173, 26.6.2013), on 19 July 2016 (OJ L 217, 12.8.2016), on 9 April 2019 (OJ L 111, 25.4.2019) and on 26 November 2019 (OJ L 316, 6.12.2019).

[9] Art. 412 par. (1) pt. 7 of Law no. 134/2010 regarding the Code of civil procedure, republished in Romania's Off. Monitor, First Part, no. 247 of 10 April 2015, with the subsequent amendments.

[10] For example: art. 30, art. 62, art. 68, art. 73, art. 141, art. 192, art. 209, art. 527 of the Code of civil procedure.

does not have the right to bring an action before the Court of Justice. *A fortiori*, the parties in the main proceedings, who may not address the supranational court directly, cannot be considered to have a right to bring an action before it.

Nevertheless, the phrase "preliminary action" can be found in some official translations, as well as in some of the legal literature in Romanian, since in Romanian civil procedural law the notions "action" and "the right to bring an action before a court" are different. The definition of the action is comprised in the part dedicated to the general provisions of the Code of civil procedure[11] and it corresponds both to the specific of the contentious procedure and of the noncontentious one.

In the official versions of EU law and in the doctrine the phrases "preliminary appeal in cassation" or "prejudicial appeal in cassation" were used, as a result of the literal translation in Romanian of texts written in French. These phrases were used especially in the period immediately following Romania's accession to the European Union.[12] In Romanian, the phrase "appeal in cassation" designates, traditionally, a judicial remedy against a judgment, which may induce the erroneous idea of a system of hierarchical control in which the supranational court has the power to change the judgments of the national court, an idea that does not express the real nature of the preliminary ruling procedure. The confusion might be amplified, since the European Union's procedural law also has an appeals on points of law. For these reasons, we did not use the phrases we mentioned in the doctoral thesis.

VII. GENERAL PRESENTATION OF THE DOCTORAL THESIS

Chapter I has an introductory character, being meant to reveal, starting from a general presentation of the institutional system of the European Union, which is the role that the Member States of the EU have attributed to the Court of Justice of the European Union.

The reason and the fundament of the preliminary jurisdiction of the CJEU cannot be completely understood unless we relate to the qualitative and quantitative evolution of the European Union, through the course of its existence and of its institutional system, a system that was enriched, gradually, and that comprises, at present, seven institutions, namely: the

[11] Art. 29 of the Code of civil procedure: "The civil action is an ensemble of procedural means provided by law for the protection of a subjective right claimed by one of the parties or of another juridical situation, as well as for ensuring the defence of the parties to the proceedings." (our translation)

[12] Romania became a Member State of the Economic Community and of the European Atomic Energy Community since January 1st, 2007. At present, Romania is a Member State of the European Union, because, according to art. 1 par. 3 the final thesis TEU: "The Union shall replace and succeed the European Community."

European Parliament; the European Council; the Council; the European Commission; the Court of Justice of the European Union; the European Central Bank and the Court of Auditors. In addition, there are the European Investment Bank and a series of bodies, offices and agencies. The European Parliament holds the function of political control and, together with the Council, exercises the legislative and budgetary functions. The European Council defines he general political directions and priorities thereof and the European Commission has the executive function, with prerogatives that entail, mainly, ensuring that EU law is observed and applied. The European Central Bank implements the monetary policy of the EU, supported by the national central banks of the Member States that have adopted Euro, and contributes to maintaining price stability, alongside all national central banks. The Court of Auditors examines the accounts of all revenue and expenditure of the EU and ensures good financial management.

Within the institutional system that we mentioned, the jurisdictional function is held by the Court of Justice of the European Union. In order to fulfil this function, the CJEU has a variety of attributions, that have multiplied and diversified, in correlation with the gradual increase in the number of Member States and with the social and economic realities in the Member States of the EU.

From an evolutionary perspective, the Single European Act and the Treaty of Nice mark two of the most important moments in the reformation of the Court, because they were the basis for the creation of the Court of First Instance and, respectively, of the Civil Service Tribunal. The most recent measures adopted in order to manage the increasing case-load and to improve the swiftness of case solving have consisted in: doubling, in three successive stages, the number of judges of the General Court, as the Treaty of Lisbon renamed the Court of First Instance; the disband of the CST, starting from September 1st, 2016, and the transfer of its jurisdiction to rule at first instance on disputes between the EU and its staff to the General Court. As a consequence, at present, the CJEU includes the Court of Justice and the General Court. Out of the two, the Court of Justice is at the top of the hierarchy of the jurisdictional system instituted by the treaties of the EU, with power of review over the decisions of the General Court.

Chapter II is dedicate to the analysis of the competences of the Court of Justice of the European Union[13]. We highlighted the main aspects regarding the legal standing to participate in procedures before the Court of the EU and the main actions and requests that can be lodged with the Court, distinguishing between the jurisdiction of the General Court and of the Court of

[13] Depending on the context, we have used the notion of "jurisdiction" to refer to the jurisdiction of a court, to the total of its attributions or to a specific attribution and we used the notion of "competences" to designate the different attributions of a court, with the scope to delimit and classify them.

Justice and we have researched the space and time span of the jurisdiction of the CJEU. Also, we identified the main similarities and differences between the jurisdiction of the CJEU and the jurisdiction of other international courts, namely the European Court of Human Rights and the International Court of Justice.

Art. 19 par. (1) TEU attributes to the CJEU the task to ensure that the law is observed in the interpretation and application of the EU treaties. In order to complete this task, the Court has a wide competence *ratione personae*, given the fact that the following have access to the Court: the Member States; the national courts of the Member States; the institutions, bodies, offices and agencies of the EU; the staff of the EU; physical and legal persons; the central banks of the Member States; third states or international organisations that accept the jurisdiction of the Court pursuant to an arbitration clause contained in a contract governed by public or private law, concluded by or on behalf of the EU.

The *ratione materiae* competence of the CJEU comprises the request for a preliminary ruling and direct actions, which are, mainly: the action for establishing an infringement by a Member State of an obligation under the EU treaties; the action to annul EU acts; the action for failure to act; the action for damages under the contractual liability of the EU and the actions of the staff of the EU. In addition, there are: actions under the non-contractual liability of the EU and of the ECB for damages incurred by their agents; disputes between Member States which relate to the subject matter of the EU treaties; other special forms of the annulment action and of the action of infringement. Also, the Court can issue opinions as to whether an international agreement that is to be concluded with third states or with international organizations is compatible with the EU treaties.

The CJEU does not have jurisdiction in the field of the common foreign and security policy, with some exceptions, but it does have jurisdiction in the area of freedom, security and justice, with some exceptions.

The *ratione materiae* competence of the Court of Justice is delimitated by that of the General Court through art. 256TFEU and art. 51 of the Statute of the CJEU. In essence, the rule instituted by these articles is that all requests and actions which are not attributed, expressly, to the jurisdiction of the General Court, remain in the jurisdiction of the Court. It must be emphasized that the provisions which give the General Court the competence to hear and determine, on first instance, questions referred for a preliminary ruling, in specific areas laid down by the Statute of the CJEU, are not applicable, because the Statute has not been amended in this respect.

The *ratione loci* jurisdiction of the CJEU stretches across the entire territory of the Member States of the EU, as defined in their internal law, and the *ratione temporis* jurisdiction,

delimited by the timeframe in which a state has membership status, has known new valences, once the United Kingdom of Great Britain and Northern Ireland has withdrawn from the EU.

In the Agreement on the withdrawal of the United Kingdom form the EU the parties have determined, among others, the effects of the transition period, situated between February 1st, 2020, and December 31st, 2020, and the effects subsequent to the withdrawal, starting on January 1st, 2021, on the jurisdiction of the CJEU. The EU, the Member States and the United Kingdom have convened that the CJEU shall retain complete jurisdiction over the United Kingdom during the transition period. After the end of the transition, the CJEU has a residual competence to decide on requests and actions registered before withdrawal, up to the point until the last decision becomes final. Also, the CJEU is given new competences, namely: it can rule on actions brought before it by the Commission or by a Member State, during a period of 4 years after the withdrawal, with the objective to establish if there is an infringement by the United Kingdom of an obligation it had under EU law prior to the end of the transition period, and on references for a preliminary ruling in the field of citizens' rights, provided in the Agreement on the withdrawal, sent to the Court of Justice by courts of the United Kingdom within a period of 8 years since the end of the transition period, as well as on references for a preliminary ruling on the interpretation of the Agreement on the withdrawal. In relation to these provisions, we consider that the United Kingdom has accepted CJEU's jurisdiction, post Brexit, for an undetermined period of time. Only the beginning of some of the proceedings must be within a specific time limit, but the ones initiated in that timeframe can go on until the last decision becomes final.

Also, the united Kingdom has agreed to respect the binding force and the executional character of the decisions of the CJEU and to take the necessary measures to comply with the judgments, irrespective of the fact that they are given prior or subsequent to the end of the transition period.

Consequently, the novelty element presented by the Agreement on the withdrawal of the United Kingdom form the EU, in the preliminary ruling matter, is the extension of the *ratione temporis* jurisdiction of the CJEU beyond the period in which this state has had membership status.

In our opinion, the EU, the Member States and the United Kingdom may extend further the jurisdiction of the CJEU, by concluding new agreements, in which to confer the CJEU the competence to rule on requests and actions mentioned in the EU treaties or new competences, of an innovative nature. The United Kingdom may also become a party to exiting treaties, such as the Agreement on the European Economic Area, which authorizes the courts of the Member States of the European Free Trade Association to request the CJEU preliminary rulings on the interpretation of the Agreement.

De lege ferenda, we proposed, concretely, the inclusion in the Agreement on the withdrawal of provisions that would enlarge the jurisdiction of the CJEU in comparison with the current clauses and we suggested a text of these provisions, in a formula considered purposeful.

The CJEU has issued two opinions on the accession of the EU to the European Convention for the Protection of Human Rights and Fundamental Freedoms. In Opinion 2/94, the Court held, in essence, that there is no legal basis in EU law for the accession. After the reform brought about by the Treaty of Lisbon, art. 6 part. (2) TEU states that the EU shall accede to the Convention. The agreement drafted for this purpose was the object of Opinion 2/13, in which the Court answered in the negative to the accession issue. One of the reasons for which the Court considered that the draft agreement is not compatible with EU law was the lack of provisions to corelate the mechanism based in the Protocol no. 16 to the Convention with the preliminary ruling procedure in art. 267 TFEU. Thus, EU's accession to the Convention remains a subject open to debate. For unravelling the difficulties entailed by the process of accession, including its possible consequences on the CJEU's jurisdiction to give preliminary rulings, we have analysed, from a comparative perspective, the jurisdiction of the CJEU and the one of the European Court of Human Rights.

We have distinguished CJEU's jurisdiction form that of the International Court of Justice, as well, synthesizing the essential elements of the comparison, which reflect the relationship between the two courts.

In **Chapter III** we discerned the defining elements of the preliminary ruling procedure and its main functions, analysed the evolution of the legislation and highlighted the present *sedes materiae* in EU law and in Romanian civil procedural law.

On the EU level, the preliminary ruling procedure ensures the necessary frame for the dialogue between the national court and the specialized one, in order to facilitate the uniform interpretation and application of EU law in all of the Member States and to maintain its unity and coherence. The legal framework of the preliminary ruling procedure has evolved from the texts in the treaties establishing ECSC, EEC and EAEC/Euratom, which have each given the court in Luxemburg the jurisdiction to rule on preliminary references, to the wholesome vision introduced by the Treaty of Lisbon, which included a single legal basis for this, that is art. 267 TFEU. Accordingly, the right of national courts to request a preliminary ruling is instated by EU law and cannot be limited or supressed by internal law. The Member States can, however, by virtue of the principle of procedural autonomy, adopt the internal law necessary for exerting this right.

The Romanian legislator has introduced in civil procedural law, at art. 412 par. (1) pt. 7 of the Code of civil procedure, the obligation of the national court to suspend proceedings in the main case when it requests a preliminary ruling and a supplementary revision motive, in the matter of administrative disputes, at art. 21 par. (2) of the Law on administrative disputes no. 554/2004.

The possibility to revise final decisions of administrative courts, which breach the principle of priority of EU law, has been included in the law in 2007. The initial text was declared contrary to the Constitution, in 2010, since the Romania's Constitutional Court held that it was imperfect and susceptible to generate confusion and uncertainty, but also to constitute a real obstacle in exerting the effective right to free access to justice. The text was repelled by a law adopted in 2011. In 2012, the Constitutional Court decided that this law was contrary to the Constitution, in its entirety, and that art. 21 par. (2) of the Law no. 554/2004, in its previous form, was contrary to the Constitution if it was interpreted in the way that only the judgments on merits can be revised.

In the absence of prompt intervention of the legislator, this revision motive of final decisions was analysed and clarified by the CJEU and by the HCCJ. The CJEU held that the Romanian legislator does not have an obligation to introduce this motive for revision in civil cases, but underlined that the persons who have suffered damages as a result of the breach of the principle of the priority of EU law still have the right to engage the state's responsibility.

The HCCJ stated that revision is admissible irrespective of the fact that the moment when the CJEU has given its decision, from which the breach of the principle of the priority of EU law can be deduced, is prior or subsequent to the moment when the judgment to be revised was pronounced. Also, the HCCJ mentioned that the admissibility of the revision is not dependant on the fact that the claimant invoked the EU law that was not given priority in relationship to the internal law applicable in the case.

Art. 21 of Law no. 554/2004 was modified in 2018. It was expressly stated that final judgments that are not on the substance of the case may still be revised. The amendment din not include, however, all the relevant elements indicated by the HCCJ.

De lege ferenda, we considered opportune that art. 21 of Law no. 554/2004 is repelled and that the provisions of the civil procedural law are amended with the texts we presented in the doctoral thesis. The form of the texts we proposed extends the legal protection of the justice seekers to other matters than administrative disputes, supporting them in their wish to obtain the observance of the principle of priority of EU law, facilitating their access to justice and ensuring the full effect of the decisions of the Constitutional Court. Also, it transposes, on the legislative level, the pertinent observations of the CJEU and of the HCCJ relating to the correct interpretation of the faulty text of art. 21 par. (2) of Law no. 554/2004.

The preliminary ruling procedure is similar to the procedure to request the High Court of Cassation and Justice a preliminary ruling on points of law. Both procedures are initiated in a pending case, by a court, that suspends the main proceedings until a ruling is given. The ruling is necessary for pronouncing a solution in the case and has binding force on the referring court.

Chapter IV is consecrated to the sources of EU law that can be the object of a preliminary reference – as an expression of the limits of the Court of Justice of the European Union's jurisdiction to give preliminary rulings.

Discerning which treaties art. 267 par. (1) let. a) TFEU refers to, in a generical manner, required a historical-teleological interpretation, having regard of the evolution of this provision and of the purposes for its amendment by the Member States of the EU. All of the three treaties that established the European Communities, that is TECSC, TEEC and TEAEC, had texts that allowed the Court to interpret them. The modifying treaties have maintained the Court's jurisdiction to give preliminary rulings on the interpretation of all of the provisions in the EU treaties. Hence, at present, the Court can answer preliminary references regarding the interpretation of TEU, TFEU, TEAEC and of all the other treaties that are the primary sources of EU law like the modifying treaties and the accession treaties, but also regarding the protocols and annexes to the treaties, if they have the same binding force as the treaties.

Given that fact that all of EU's institutions, including the CJEU, have been created and function on the basis of the treaties, as manifestations of the common will of the Member States, art. 267 TFEU does not provide the possibility to subject the treaties to a validity check from the Court.

By answering preliminary references, the Court of Justice has established the general principles of EU law and their legal content, in order to ensure coherence and uniformity in interpreting and applying EU law and to fill in the voids or ambiguities in EU law. The Court held, among others, that there is an autonomous standard in EU law in the area of human rights and fundamental freedoms. It consecrated the principle or reciprocity, inspired from international law, the principle of legal certainty and the principle of good-faith, taken form the internal law of the Member States of the EU.

Most often, the preliminary references are about the interpretation of international agreements concluded by the European Communities or by European Union, as the case may be, with third states or international organizations, and the secondary sources of EU law.

The EU concludes international agreements through its institutions and, once concluded, the agreements become a part of the EU legal order. Thus, CJEU's jurisdiction to interpret them is based on the necessity to ensure the uniform interpretation and application of EU law by all Member States. Likewise, the Court has jurisdiction to interpret the unilateral acts adopted by

bodies that have been established in the international agreements concluded by the European Communities/European Union and even to interpret certain agreements the EU is not a party to, but which have binding force for all Member States and have been concluded on the basis of EU law or to attain the goals set forth in agreements concluded by the European Communities/European Union.

In the category of secondary sources of EU law we can find, mainly, the legislative acts enumerated in art. 288 TFEU, namely: the regulation; the directive; the decision; the recommendation and the opinion. The regulation is directly applicable in all Member States and is binding in all its elements, without having to be transposed in the internal law of the Member States. The directive is binding only on the designated Member States and only as to the result to be achieved, leaving the form and the adequate methods for achieving that result at the choice of the national authorities. For this reason, since the directive is not directly applicable, the Member States are under the obligation to implement the directive by transposing it into their internal law. The decision is binding in all its elements and is directly applicable, but it is mandatory only for the Member States of for the national it addresses.

The regulation, the directive and the decision are adopted in the ordinary legislative procedure or in a special legislative procedure and they constitute legislative acts. On their basis, delegated (non-legislative) acts can be adopted, in order to supplement or amend certain non-essential elements of the legislative act, as well as implementing acts of the legally binding EU acts. The last ones can be adopted by the Member States or by the Commission and have the word "implemented" inserted in their title.

Recommendations and opinions have the legal nature of *soft law*, because art. 288 par. 5 TFEU stipulates thar they have no binding force.

Unlike the primary sources of EU law, the secondary legislation of the EU and the international agreements concluded by the European Communities/European Union by virtue of their/its exclusive competence, are immediately applicable in the internal law of the Member States and do not need to be ratified.

Immediate applicability is not to be mistaken for direct applicability, understood as the characteristic of EU law to produce legal effect in the internal law of the Member States of the EU without them having to adopt legislative measures of transposition or administrative measures of transfer into national law. Likewise, direct applicability is not the same as the direct effect that certain provisions of EU law can produce, under the conditions explained by the CJEU in its case-law. The direct effect is the ability of a provision of EU law to generate rights and obligations in the patrimony of nationals of the Member States, which they can rely upon in court.

All of the legal acts that constitute the secondary source of EU law can be the object of a preliminary reference, even if they do not apply, as such, in the main proceedings that are pending before the referring court, but that are relevant for giving a solution in that case or are implemented by the internal law applicable in the dispute.

The CJEU retains its competence to answer preliminary references regarding the legal acts specific to the former pillar dedicated to police and judicial cooperation in criminal matters, adopter prior to the dismantle of the pillar system by the Treaty of Lisbon and that continue to be in force, namely: decisions, framework decisions and conventions concluded in this area.

Since the CJEU gives it ruling on the interpretation of EU law only at the request of national courts of the Member States, we consider that only those acts susceptible to produce legal effects in the main proceedings or relevant for the solution of the case may be the object of interpretation. For example, interinstitutional agreements, intended to produce legal effects only for the institutions that concluded them, do not fall within the premiss we mentioned.

CJEU's decisions are acts of an institution of the EU, in the scope of art. 167 par. 1 let. b) TFEU and the Court has stated it has jurisdiction to interpret them. Nevertheless, the Court excluded the possibility to answer questions on the validity of its rulings. The Court also recognized the right of national courts to formulate and send new preliminary questions if they have difficulties in understanding the preliminary ruling they received in the pending case or if they can reveal new motives, which might justify a different answer from the Court.

Only the CJEU has jurisdiction to rule on the validity of acts adopted by the institutions, bodies, offices and agencies of the EU. National courts may assess that the reasons set forth by the parties to the main proceedings about the invalidity of a certain legislative act of the EU are unfounded. If the national courts have reasonable doubts as to the validity of the act of the EU, they are under the obligation to refer to the CJEU. Thus, the preliminary references on validity are a means for the CJEU to exert control over the legality of legislative acts of the EU. In spite of this, the request shall be deemed inadmissible if the party to the national dispute, who asked the national court to refer the preliminary question, could have filed a direct annulment action.

The Court of Justice is the only one entitled to decide on its jurisdiction and the provisions of art. 267 par. 1 TFEU give it a margin of discretion in determining the actual sphere of the sources of EU law it can interpret or analyse for validity. The study of CJEU's case-law reveals a variety of situations in which the position of the Court became more nuanced with every request it answered in the form of a judgment or of a reasoned order.

De lege ferenda, we considered that art. 267 par. 1 TFEU should be rephrased and we suggested a text meant to ensure coherence in relation to art. 263 par. 1 TFEU, concerning the annulment action.

Chapter V continues the analysis of the limits of the CJEU's jurisdiction to give preliminary rulings, illustrated also by the legal standing of the referring courts.

The Court decided that the notion of "national court" in art. 267 TFEU is autonomous and it is not limited to national courts, *stricto sensu*, but also includes other bodies entitled to give decisions of a judicial nature, established by law, with permanent and mandatory jurisdiction, which follow an adversarial procedure (*inter partes*), apply rules of law and are independent. The criteria we mentioned are cumulative. Thus, failing to meet one of them will lead the Court to the conclusion that the request for a preliminary ruling falls outside its jurisdiction.

Out of the criteria we enumerated, the national court's independence has proven to be the decisive one in a significant proportion of the cases that were rejected by the Court, referring to bodies at the border of the legal and the administrative domains. In the context of an increased concern from the EU's institutions regarding a backslide of the rule of law in some of the Member States, including in what guaranteeing the independence of the judiciary is concerned, the analysis of this criterion has been given new valences in the case of national courts, *stricto sensu*. The recent case-law of the Court, commented in the doctoral thesis, has revealed that the measures adopted by some of the Member States of the EU, which infringe the independence of the judiciary, in corelation with the steps taken by the EU's institutions to trigger the legal remedies set forth by art. 7 TEU in order to counteract the risk of systemic or generalized deficiencies in the rule of law in these states, can have consequences on the right of the national courts in the Member States in question to refer to the Court of Justice for a preliminary ruling.

Regarding the meaning of the phrase "of a Member State", in art. 267 TFEU, the novelty element is provided by the withdrawal of the United Kingdom and Northern Ireland from the EU. The Agreement on the withdrawal maintains the United Kingdom under the preliminary jurisdiction of the CJEU after the date of January 1st, 2021, from which the EU treaties no longer apply to this state. Thus, unlike the consecrated meaning of "court of a Member State" in art. 267 TFEU, on the basis of the Agreement on the withdrawal, the jurisdiction of the CJEU to give preliminary rulings is extended beyond the territory of the EU and can cover facts that happen after the loss of membership status by the United Kingdom.

The national court of a Member State has the right to refer to the Court of Justice, during a pending case before it, irrespective of the nature or the object of that case, if an answer from the Court is necessary in order to enable the national court to give its judgment in the main proceedings. Consequently, the national court is free to decide if the EU law issue is pertinent and necessary in order to give a solution to the pending dispute. Implicitly, it is within the margin of discretion of the national court to determine whether it refers to the Court of Justice *ex offcio* or at the reasoned request of the parties and what should be the number and the content

of the preliminary questions. The reference can be made all along the main proceedings, including during the appeals, under the condition that the case is pending.

The CJEU presumes the pertinence of the preliminary references formulated by the national courts, since it does not have the jurisdiction to establish the facts in the main proceedings or to criticize the reasons for which the request for a preliminary ruling has been sent. The pertinence presumption may be waived if it results, form the file of the case, that the question is purely hypothetical or that EU law is not applicable in that case. Also, preliminary references can be rejected, as inadmissible, if the national courts do not state the reasons for their reasonable doubts on the interpretation or on the validity of EU law or if they do not present the facts of the case in a comprehensive manner, as to understand the circumstances the preliminary questions are based upon.

National courts are under an obligation to send the Court of Justice a preliminary reference if against their decisions there is no judicial remedy under national law. However, there courts do have the same discretion to assess the pertinence of the question or questions put forth by the parties, as well as to a determine if an answer from the CJEU is necessary to solve the dispute. Also, it shall not be necessary to refer to the Court if: the correct interpretation of EU law is obvious and leaves no room for reasonable doubt; the reasons the parties present to argue the lack of validity of the EU act are unfounded; the Court has already decided on the interpretation or on the validity of the same text; the question was raised during interlocutory proceedings for an interim order, provided that each of the parties is entitled to institute proceedings on the substance of the case. Breaching the obligation to refer for a preliminary ruling by the national courts may result in the responsibility of the Member State towards the persons who have suffered damages.

The examples of preliminary references sent by the Romanian courts, analysed in the doctoral thesis, have revealed a special interest of national courts to address the CJEU, in the most diverse fields of law like consumer protection, taxation, freedom of movement, public procurement or the environment. The Court has encouraged this dialogue by rephrasing, when it was possible, imperfectly formulated questions, in order to offer a useful answer to the referring court.

From the recent case-law of the Court, judgment of May 18th, 2021, *Asociația „Forumul Judecătorilor din România" and others*[14], held our attention. In this judgment, the Court was addressed a series of questions about the judicial reforms in Romania concerning the organization of the judicial system, the disciplinary system for judges and prosecutors and the

[14] Judgment of 18 May 2021, *Asociația „Forumul Judecătorilor din România" and others*, joined cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, par. 146-252.

liability of judges in the event of judicial error. Some of the CJEU's findings in this case have been analysed by the Romanian Constitutional Court, which was asked to establish the compatibility with the Constitution of internal law that instituted a special section within the Public Prosecutor's Office for the investigation of offences committed within the judicial system by judges and prosecutors.[15] The judgment of the Court of Justice and the decision of the Constitutional Court illustrate the differences of opinion between the two courts on the priority of EU law in relation to internal law. The practical consequence of these two approaches is putting the referring national court in difficulty, because the Court of Justice interpreted EU law in the sense that it authorizes the national court to disapply, out of its own motion, national provisions which it considers to be contrary to EU law. The Constitutional Court, however, held that art. 148 of Romania's Constitution cannot represent the legal basis that would allow the national court to proceed in the manner indicated by the supranational court, because the same provisions of internal law have been the object of constitutional control, including in relation to the conditions the referring court must verify.

If the national court decides to send to the CJEU a request for a preliminary ruling, EU law provides the mandatory suspension of the main proceedings until the national court receives the answer of the court in Luxemburg.

De lege ferenda, we have made a series of reasoned proposals to amend the provisions of the Code of civil procedure on the suspension of the procedure and on the revision of final judgments.

Chapter VI is dedicated to the preliminary ruling procedure before the Court of Justice, the materialization of the Court of Justice of the European Union's jurisdiction to give preliminary rulings.

The procedure before the Court of Justice has a written part and an oral part. The written part debuts with the registration of the request and it ensures the parties and interested persons indicated in art. 23 of the Statute of the CJEU, the possibility to submit statements of the case or written observations, to which they can annex documents that support their point of view. The oral part is meant to contribute to a better understanding of the EU law issues referred to the Court, by presenting the report of the Judge-Rapporteur, hearing the arguments of the participants, the conclusions of the Advocate General, the answers to the question that the participants were asked by the judges or by the Advocate General, as well as hearing the witnesses or the experts, as the case may be.

[15] Decision of the Romanian Constitutional Court nr. 390 of 8 June 2021, published in Romania's Off. Monitor, First Part, no. 612 of 22 June 2021, par. 36-39, 45-86.

The statements of case or the written observations must be submitted within a time limit of two months from service of the request for a preliminary ruling, time limit which can be extended, on account of distance, by a single period of 10 days. *De lege ferenda*, we proposed an amendment to art. 52 of the Rules of Procedure of the Court of Justice regarding the possibility to extend time limits.

The Court may decide to rule on the preliminary reference without the conclusions of the Advocate General, if the EU law issues is not new. Likewise, the Court may establish it is not necessary to go through the oral part of the procedure or, on the contrary, it may decide to reopen it, if: it considers it lacks sufficient information; it should decide on the basis of an argument which has not been debated; a new fact has been brought to the attention of the Court's which is of such a nature as to be a decisive factor for the decision.

Expedited preliminary ruling procedure and urgent preliminary ruling procedure are special, since they are a derogation from the common procedural provisions, with the scope of swift solutions in urgent cases. The application of the urgent preliminary ruling procedure is limited to the area of freedom, security and justice. Even though the accelerated procedure has a wider filed of application than the urgent procedure, its derogations from the common procedural provisions are few and low in impact, resulting in a minimal shortening of the time that is necessary for the Court to rule.

The analysis of some of the cases in which the Court decided to apply the accelerated preliminary ruling procedure or the urgent preliminary ruling procedure reveals that the Court considers urgency to be justified in three situations, namely: the delay in the procedure could affect the family life of the parties to the main proceedings, including minors; the answer to the questions influence the solution in a criminal case in which a person is being detained or imprisoned and, respectively, the delay would impact, in a negative way, the course of the procedure before the national court or it would make the answer of the Court irrelevant, with irreversible consequences.

These criteria can guide the national court when it decides whether to ask the Court to apply one or another of the two special procedures provided by art. 23a of the Statute of the CJEU, in order to avoid having their request rejected and keeping the dialogue an efficient one.

In the context of the sanitary crisis triggered in 2020 in the EU by the Covid-19 virus pandemic, which led the Members States to adopt measures that limited personal freedom and the free movement of persons across the borders of the EU, the CJEU acted in a way as to adapt its procedural provisions in order to allow it to continue its activity and to protect, at the same time, the health of the persons. For example: the parties and the other participants to the procedure were encouraged to use the e-Curia application for lodging and notifying procedural documents, at the expense of the means of communication by post, fax or delivery; the hearings

have been delayed of annulled; the oral part was dismissed in some of the cases and the deliberations were adapted as to allow some of the members of the Court to participate via videoconference or audioconference.

After deliberation, the Court gives a reasoned order, when the request is manifestly inadmissible or outside the Court's jurisdiction or a judgement, when it answers on the substance of the case. The decision of the Court is by reasoned order, also, in the following situations: a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled; the reply to the question may be clearly deduced from existing case-law; the answer to the question admits no reasonable doubt.

Clerical mistakes, errors in calculation and obvious inaccuracies affecting the decisions may be rectified by the Court, of its own motion or at the request of an interested person, but the decisions cannot be interpreted and if the referring court has not obtained sufficient information, it may refer again for another preliminary ruling.

The decision of the Court of Justice is binding from the moment it is pronounced and is notified to the referring national court, which will take into account the operative part and, especially, the substance of the court's ruling in order to give the decision in the main proceedings.

Chapter VII focuses on the effects of preliminary rulings, that illustrate the purpose of the Court of Justice of the European Union's jurisdiction to give preliminary rulings.

The decision of the Court of Justice is the final act of the preliminary ruling procedure and, even if it is a judgment or a reasoned order, it is binding. The binding effect start from the date the judgment is delivered and the reasoned order is serviced. The distinction is justified by the specifical traits of the reasoned orders, which are delivered, usually, when the Court rejects the request for a preliminary ruling.

The preliminary ruling is an intermediate phase for the national court in delivering its own decision and it is meant to aide in the correct interpretation and application of EU law in the main proceedings, ensuring, at the same time, the uniform interpretation and application of EU law provisions by all of the Member States. Consequently, the national court is under an obligation to observe the preliminary ruling of the court in Luxemburg, when it decides the national dispute. In principle, the decision of the Court has *inter partes litigantes* effects, meaning that the referring court is obliged to take into consideration what the Court held in the operative part, as well as on the substance of the case, regarding the interpretation of EU law or the validity of an act adopted by the institutions, bodies, offices or agencies of the EU.

If the national court is of the opinion that the main proceedings give rise to new preliminary questions or is in doubt as to the correct meaning of a preliminary ruling given

before, it can refer, again, to the Court of Justice. The preliminary ruling procedure cannot be used, however, to contest the validity of a previous preliminary decision.

The binding effect of the decisions of the Court of Justice is maintained during the appeals and the other judicial remedies under national law, since what the court in Luxemburg has established cannot be ignored in the subsequent stages of the pending main proceedings. The courts are free to address new questions, if necessary, and, if the ruling of the Court leads to the conclusion that a superior court has applied EU law erroneously, the referring courts are not bound by the findings of the superior court, but must apply EU law correctly, in accordance with the ruling of the Court.

If the preliminary ruling is not observed, this must be taken into account by the superior courts during the appeals. If the solution is final and cannot be changed or annulled, the persons that incurred damages can entail the responsibility of the Member State for breaching EU law.

For the other courts of the Member States of the EU, different from those involved in solving the dispute in the main proceedings, the preliminary judgments that interpret EU law and those that establish a certain act of an institution, body, office or agency of the EU in not valid, have *erga omnes* effects. The preliminary rulings are, in principle, declaratory and do not constitute a legal precedent. Nevertheless, national courts cannot ignore the Court's case-law. The interpretation of a provision of EU law becomes a part of that provision and the judgment has authority of interpretation. Similarly, if a judgment of the Court declares an act to be null and void, this is sufficient reason for any other national court to disapply that particular act.

Even if the binding effects are *ex tunc*, it must be underlined that they are binding on other courts in pending cases. The definitive judgments at the date when the Court of Justice delivers its decision have *res judicata* authority, by virtue of the principle of legal certainty, even if the national court's interpretation is invalidated by the subsequent ruling of the Court and even if it was based on an act that is declared null and void. In this situation, the persons that suffer damages have the right to lodge a complaint in order to entail the responsibility of the Member State, in the conditions stipulated by the internal law.

The preliminary rulings bind Member States and the institutions, bodies, offices and agencies of the EU to take all necessary measures for their implementation. This is the reason why the Member States and the institutions, bodies, offices and agencies of the EU are included by art. 23 of the Statute of the CJEU amongst the persons interested in submitting statements of the case or written observations, in the course of the preliminary ruling procedure before the Court of Justice.

The Court does not consider it is bound by its own judgments and can change its case-law on a specific EU law issue if there are sound reasons to do so. This does not mean that the court in Luxemburg does not try to ensure the uniform application of EU law. On the contrary,

the Court seeks to maintain the coherence and stability of its case-law, adjusting its position, in time, in accordance to the evolution of the European Union and of the standards in adopting and applying EU law and with the concrete needs of the Member States of the EU and those of their nationals.

Chapter VIII contains the general conclusions and our *de lege ferenda* proposals.

The analysis of the jurisdiction of the Court of Justice of the European Union to give preliminary rulings at the request of national courts of the Member States on the interpretation of EU law or on the validity of acts adopted by institutions, bodies, offices or agencies of the EU has revealed the complexity of the researched subject and the varied character of the problems that the application of EU law can generate, in an evolving social and economic context.

The scientific research has shown the newest elements that impact the CJEU's jurisdiction to deliver preliminary rulings, that is: the consequences of the withdrawal of the United Kingdom from the EU and those of the rule of law backsliding in some of the Member States, especially with respect to the independence of the judiciary. Also, we took into consideration the impact of the sanitary crisis determined by the Covid-19 virus on the procedure before the CJEU.

We have reached all the main and the adjacent aspects of the jurisdiction of the CJEU to give preliminary rulings, highlighting the issues of interest for the theme of the doctoral thesis and identifying possible solutions, including in the form of *de lege ferenda* proposals, detailed in the doctoral thesis.

Given the fact that EU law is in continuous development, interdependent with the evolution of the EU, the subject of the doctoral thesis is susceptible of new research directions like the future accession of the EU to the Convention for the Protection of Human Rights and Fundamental Freedoms, the relationship EU is trying to define with the United Kingdom after its withdrawal and the application of art. 7 TEU in relation to some of the Member States of the EU.

In synthesis, we consider that the subject of the doctoral thesis is important, complex, current and of real perspective.

SELECTIVE BIBLIOGRAPHY

The bibliographical resources taken into consideration in elaborating the doctoral thesis, which can be found in the content of the thesis or in the footnotes, consist of:

- courses, treaties, monographs, case-law books, dictionaries of legal expressions (in Romanian);
- courses, treaties, comments, monographs, case-law books (in other languages than Romanian);
- articles from legal magazines;
- legislation of the European Union;
- internal legislation;
- international conventions and agreements;
- legislation books;
- online resources;
- selected case-law of the CJEC/CJEU (over 200 judgments and orders);
- case-law of the European Court of Human Rights;
- case-law of the Romanian Constitutional Court;
- case-law of the High Court of Cassation and Justice – The formation for deciding on points of law.

For example, this is the list of titles from the legal literature that we have referred to in the doctoral thesis, the other bibliographic material being indicated in the final pages of the thesis:

1. Courses, treaties, monographs, case-law books, dictionaries of legal expressions (in Romanian):

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