Procedure of preliminary decision as a supranational judicial keynote of the European Union member states

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Abstract

The procedure of preliminary decision has been for a long time agreed unanimously both by doctrine and jurisprudence and considered as a keynote in developing notional law systems of the European Communities. In the national frame, it is similarly with submitting unconstitutional exception, regulated in several national jurisdictions of the EU Member States. The current paper aims at providing some argues based on a jurisprudence frame of the procedure of preliminary decision made by the Court of Justice of the European Union, as being directory for the national EU Member States' courts of justice. It also focuses on the judicial issues whose solution is needed in order for the national justice to solve the cases they were invested with.

Keywords: *procedure of preliminary decision; administrative procedure; national justice; supranational judicial system*

JEL Classification: K33, K41

1. Introduction

The procedure of preliminary decision is a comprehensive mechanism, which comprises several elements, such as: the national cases of preliminary question, the EU's judicial authorities and jurisdiction as well as its effects upon the national EU Member States' judiciary. From a secondary overview, this means that a *de jure* relation is developed between the EU judicial authorities and the EU Member States' ones.

The idea of a supranational judicial forum arose in the entire EU Member States, a particular view being on the EU institutions, which have seen a Court of Justice as a key-factor of solving unitary the issues of administrative procedures in all of the 28 Member States. This achievement was also "*an emergency"* case in administrative procedure, due to the fact that solving unitary on the procedure of administrative cases was very much a desideratum as long as different solutions in this area were pronounced in the same judgments.

First of all, I would like to state the Court of Justice of the European Communities has been setting up in order to assure respecting laws and rules of interpretation and application of the EC Treaty during its competence provided. It is well known that, until its creation, the other EU institutions, in particular the European Council, the European Commission and the European Parliament, had

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the main role in the process of legislation both before and after Lisbon. However, the legislative initiative and the degree of participation in the process stated within the European Union, all these issues differed in accordance with the Pillar the decisions were made within. Historically speaking, the 2009 has been a momentum in developing political process after adopting Constitution and Charter of fundamental rights, which ended with Lisbon Treaty, called also the Reform Treaty. Therefore, passing a failure process featured by the project of adopting new Constitution repealed by France and the Netherlands, the political process within the EU has kept on working.[2]

The main feature refers to the adoption of Lisbon Treaty entered into force in the end of the ratification procedure on the 1st of December 2009. Another feature of the 2009, important also, consists in abolishing the Third Pillar of the EU construction, the process even started ten years ago, while the Amsterdam Treaty on visa policy, judicial cooperation between the Member States, immigration policy, asylum policy, cross-border cooperation a.s.o. have been transferred from the Third Pillar of the EU Treaty to the European Community Treaty.[3] This means the area of home affairs became one regulated by the ex-Treaty of the European Community, called "*the Area of Liberty, Security and Justice*". In this way, the entire domain of justice and home affairs is currently stated under the auspicious of the former First Pillar, in which the Court of Justice has the judicial control that was missing till now.[4]

Despite the syntagm "*judicial hierarchy*" or "*the hierarchy of the judiciary*", which literally means the unity of the judicial system of the EU Member States, doctrine has already defined a new concept of the "*judicial architecture*", which is closer to the principles and mechanism the European Union institutions work with.[5] In this context, it is necessary to emphasize that there is no judicial control of the decisions pronounced by the upper courts of justice over the decisions made by the lower courts as national ones. Indeed, this syllogism would not be in accordance with the real relation between the EU Court of Justice and the national EU Member States' courts.

The consequence of the law stated at the European level, particular view upon the area of administrative procedure implemented priority through the procedure of preliminary decision has made intricate the relation between the Court of Justice and the national courts.

From a formal point of view, the stated relation is featured by cooperation instead of hierarchical control, as I pointed out above. From this point of view, the

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[2] Paul Craig, Grainne de Búrca, *EU Law. Text, Cases and Materials*, Oxford University Press, 2008, pp. 136-139.

[3] Delia Magherescu, *Participarea României la procesul de adoptare a acquis-ului în domeniul justiţiei şi afacerilor interne,* in vol. "*10 ani de la aderarea României la Uniunea Europeană. Impactul asupra evoluţiei dreptului românesc*", Universul Juridic Publishing House, Bucharest, 2017, pp. 497-502.

[4] Beatrice Andresan-Grigoriu, *Procedura Hotărârilor Preliminare,* Hamangiu Publishing House, Bucharest, 2010, pp. 14-15.

[5] *Ibid*

only one interaction between the Court of Justice and the national courts is made by the procedure of preliminary decision. In other words, the Court of Justice ensures in the case of a fair manner of applying European rules.

A fair application and interpretation of the European Union law could arise in the cases submitted to the national courts. However, they are not obliged to ask the Court of Justice on the issue involved and can adopt the appropriate solution of applying EU law invoked in the case.

The current paper is structured in four main chapters followed by concluding remarks and Bibliographic references.

The research topic has been conducted using some particular research methods as tools used to gather data combined with methodological approach delimitated between qualitative and quantitative. Actually, in researching current paper, the qualitative method has been used, instead of the quantitative one. In this respect, the research methodology has been viewed as a philosophy or general principle according to the topic based on the issue of the procedure of preliminary decision, which guides the research working in close collaboration with doctrine in Europe, whose specialists know the situation in a particular setting.

Taking into consideration the research methods, during the research paper I would like to find out exclusively the appropriate results, as pointed out in the beginning of the introductive chapter. In spite of the method chosen by myself, I am confident a nexus between the judicial field research stated in the paper and the methodology detailed within the fourth chapter is obviously.

2. Framework principles of solving preliminary questions

Until emphasizing the issue of the framework principles of solving preliminary questions within the procedure of preliminary decision, it is necessary to deepen the concept of "*constitutionalization*", which was related by doctrine with the "*process through the setting up Communities Treaties were achieved the legislative independence from the Member States, which created them, and developed in a Fundamental Charter of a supranational system of government"*.[6]

Taking into account this definition and its features, the national laws of the Member States and the community one cannot be viewed as divided legal orders. They are still considered as being levels of the same legal orders working within the same system of principles and values.[7]

Doctrinaire speaking, the principle of supremacy of the community law is also connected to the issue of *direct effect*. The theory of direct effect is devoted to the study of how the community rules, adopted in the area of first Pillar, in particular the directives, can be invoked directly within the national Court of law as well as within the administrative bodies, as the Court of Justice stated on the "direct effect" of directives.[8]

[6] *Ibid, p. 35.*
[7] *Ibid*
[8] Paul Craig, Grainne de Búrca, *op. cit.*, pp. 257-366.

The main advantage of the "*direct effect*" principle, as a general rule of interpretation, is that of its respecting by the national courts and also recognised by all national systems of law.

The premise of principle is linked to that of awarding rights during the administrative procedure, in which the public authorities can make an administrative decision directly, based on the directives provisions.

Basically, a directive is transposed into the national legislations of the EU Member States, but usually there is a long time till its transposition, longer than it is provided expressly inside. For this reason, the petitioners do not have a national legal basis of drawing up their complaints. The only one way of solving problems is resulted from the directive provisions. This means that the administrative or judicial bodies are called to apply a national law of transposing directives.

From a point of view, it was stated the administrative procedure strengthened at the European level is a mean of achievement of administrative prerogatives by the national appropriate bodies in accordance with the European standards submitted by the European Court of Justice. The conception was argued by the degree of administrative procedure alienation, generally speaking, as well as of the entire rules of procedure.

In order to reach this conclusion, the theory of crossing judicial and political reasons has been launched. It is obviously that most of practitioners have recognised the political preponderance over the judicial one.[9] This is because the public administrative procedure has been considered even since the very beginning as being the legal way of determining adequate relation between the governments and the public policy by public liberties, citizens' rights as well as their influence upon the public procedures during proceedings.

From another point of view, it was appreciated that the administrative rules mean the whole institutions, methods and means of achieving administrative procedure. Thus, it is a comprehensive determination than the relation between the administrative law and the administrative procedure and refers not only to the substantive issue and its forms, but it is also a "*synthetic indicator*" of the procedure.

3. A model of administrative Code: the Romanian approach

Romania has passed a difficult period both from political and governmental points of view, since 1989 till nowadays, during which the public authorities has been permanently confronted with several drawbacks having serious repercussions in the administrative matter as well. After the failure of the penal Code and penal procedure Code that were several times amended by the Romanian Constitutional Court[10] specialists opined the Codes exist in order for lawyers not to

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[9] Pierre Sandevoir, *Les Jurisdictions Administratives*, Droit public, Paris, 1991, pp. 386-511.

[10] Decision no. 166 of 17 March 2015 of the Romanian Constitutional Court on the unconstitutionality exception of the provisions of Art. 54, Art. 344 (3) and (4), Art. 346 (3) and (7), Art. 347 and Art. 549[1] of the penal procedure Code, published into the Romanian Official

say they do not exist at all. The missing concordances between the penal procedure Code and Constitution makes part of the specialists in administrative area being sceptically on the process of codification in administrative matter and reflect upon the real circumstances it has to develop for the future. This is because of many reasons, among other, being diversification of administrative legislation, which influences in a few particular cases the idea of a unity in the matter[11].

Doctrine has already stated the *europeanisation of administrative* law must be taken into account by the national legislator[12], while the home authorities decide to adopt the new rules of administrative law within the process of codification.

It is true that some of the European Union Member States have experienced the influence of the EU legislation and its principles in the national legal order[13]. From this point of view, prof. Dragos and prof. Neamtu pointed out that "*the national administrative law is becoming Europeanised"*[14]. At the same time, a significant role is permanently occurred by the jurisprudence issued from the European Court of Justice, whose decisions are compulsory for the Member States' authorities. They are always corroborated with the principles derogated from the EU treaties.

Speaking about this kind of principles, we have to take into consideration two theses. Thus, doctrine has been divided into two parts, one of these supported *the constitutional thesis* and another one is focused on *the unconstitutional thesis.*[15]

The constitutional thesis provides the European legal order has been developed from the formal legal order based on both public and private relations to the integrated legal order "*whose main feature results in giving a set of rights and obligations for the natural bodies' advantages, with the consequence of exciting control over the implementation of public power following the model of the organized states".*[16]

As a consequence, the future of constitutionalism must be taken into account in opposition with another concept of *international provisions*. Moreover, the EU treaties and the principles therein have a double function, of fundamental

Journal no. 264 of 21 April 2015; Decision no. 552/2015 on the unconstitutionality exception of the Art. 3 (3) thesis II of the penal procedure Code, published into the Romanian Official Journal no. 707 of 21 September 2015.

[11] Regarding the difficulties of codifying administrative law, see Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p. 58.

[12] See Cătălin-Silviu Săraru, *Consideraţii cu privire la principiile spaţiului administrativ european şi la necesitatea includerii lor în proiectul Codului administrativ român*, „Caietul Ştiinţific ISAR" no. 7/2005, Section for Legal and Administrative Sciences, Sibiu, pp. 12-41.

[13] Dacian Dragoș and Bogdana Neamțu, *Europeanisation of Administrative Law in Romania: Current Developments in Jurisprudence and Legislation*, "Review of European Administrative Law", vol. 2, no. I, Europa Law Publishing, 2009, p. 88.

[14] *Ibid*

[15] Raluca Bercea, *Drept Comunitar. Principii,* C. H. Beck Publishing House, Bucharest, 2007, pp. 102-103.

[16] *Ibid*

feature as well as of international one. The last one means a delimitation of the elements themselves.

Basically, the Member States are guardians for respecting EU treaties due to the *ab initio* assumption of the EU "constitutional" organization.

The second thesis promoted does not recognise the constitutionalism of the EU treaties and, for this reason its actors ignore the activity of the European Court of Justice. In this regard, the status of the Court "*is not sui generis incompatible with the public international law, as a consequence it might be recognised by another international jurisdiction better integrated to the classical model"*.[17]

The process of reform in administrative matter in Romania is still passed from the period of transition to democracy and the rule of law. In a fair understanding administrative area in Romania, a particular feature is also related to the governments succeeded since 1990 till the present, in order to become more confident with the issue of *good governance*, which must be taken into consideration under the system of balance, whose theories and practices are part of.

In my opinion, these reasons are the preliminary rules in adopting administrative Code, whose provisions will strengthen and "build" the entire society in the context of contemporary Romania. The government has also the important aim of imposing and building itself as a constituent element of its system in making society accountable.[18]

From this point of view, the government is expected to provide guaranties as a source of stability and legitimacy in order to finalize the process of reform in administrative matter. It also has to prove a degree of resistance against arbitrary governance due to the fact that this process must be seen as a priority for the next period of time. Moreover, the government must work in close cooperation with the civil society in purpose to achieve a real recognition and implement legal framework or even assure the outright public support.

It is considered the process of administrative codification is still in the beginning phase because of many reasons, featured from the historical point of view, the nature of legal provisions as well as the context of the European framework. According with the European laws and the home provisions in the matter, the process of administrative codification must act first of all in conformity with the Constitution and the other laws related with.[19]

Despite this goal, the criticism will probably be addressed to the implementation of legal solutions into practice and how the administrative

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[17] *Ibid*

[18] Wolfgang Benedek (Ed.), *Civil Society and Good Governance in Societies in Transition*, N.W.V. Vienna, 2006, pp. 24-26.

[19] On 23 March 2016, the Romanian Government approved the preliminary theses of the Administrative Code, which is expected to be adopted during this year. They contain issues that will be provided by the Code, regarding the dispositions already incomplete or even contradictory regulated currently in about 18 laws on both central and local public administration. It is also expected by the legislator to unify the current legislation on the public administration through both using a unitary terminology for the same legal facts as well as regulating completion and correlation legal provisions each other.

authorities both at the national and local level will response and respect them. This is because the existing legal framework in administrative matter is related to the equality of legal solutions as well as to the equality of their application in practice. And, not in the last time, it comprises both political and social aspects and the role of governance is described as "*the manner in which authority is exercised in the management of the country's economic and social resources for development*".[20]

Finally, the directives has to be taken into account at the time of adopting administrative Code and, in this respect, the national authorities have to decide not to extend the home legal framework outside the directives as they proceeded in other matters.[21]

4. Rethinking national rules

In applying substantive laws of the European Union's institutions, the Member States apply their own provisions of procedural law. Despite this rule, there are some relevant exceptions, which are usually connecting with the European documents of harmonizing procedural law, such as: the judicial cooperation both in civil and criminal matters.[22] In accordance with the Article 4 (3) of the European Union Treaty, the national judicial bodies are the only one authority responsible for respecting citizen's rights stated on behalf of the community law.

Doctrine has been permanently involved in finding solutions on how these administrative judicial bodies have to follow the national rules of procedure or the European ones, while they are invested with a case based on the EU law.[23] Due to the fact that, there is no European regulation to state on this matter, as a consequence the European Court of Justice decided to delegate the competence upon the cases, which deal with the EU law, to the national law systems. The principle is recognised as being the "*national autonomy*" or the national primary procedural responsibility.[24]

The procedural and jurisdictional autonomy of the Member States supposes the recognition of assessing limit on their behalf, but *"the conditions stated by the national legislations … cannot be less favorable than the internal ones (the principle of equivalence) and cannot be conceived in such a manner to make, in practice, impossible or excessively difficult the obtaining compensation (the principle of effectiveness)*".[25] On this topic, the Belgian Supreme Court

[20] Wolfgang Benedek (Ed.), *op. cit,* p. 56.
[21] Dacian Dragoș, Bogdana Neamțu, Raluca Veliscu, *Remedies Available for Recurement Outside the Directives – a Comparative Assessment* in Roberto Caranta, Dacian Dragos (Eds.), *Outside the EU Procurement Directives – Inside the Treaty?,* European Procurement Law Series, vol. 4, DJØF Publishing, Copenhagen, 2012, pp. 397-408.
[22] Beatrice Andresan-Grigoriu, *op. cit.*, pp. 44-45.
[23] *Ibid*
[24] *Ibid*
[25] Mihaela Mazilu Babel, *Intrebare Preliminara cu privire la Conflictul dintre Normele de Procedura Nationale si Principiul Efectivitatii Dreptului Uniunii,* online available at:

submitted a preliminary question on the conflict between the national procedural provisions and the effectiveness principle of the European Union with reference to the Article 267 of the EU Treaty and the Article 4 (3) therein.[26]

Actually, the national procedure of administrative jurisdiction in appeal followed against the administrative authorities' decisions are not reopened if a decision of the European Court of Justice states, under the Article 267 of the EU Treaty, a national provision is contrary to the community law. On the other hand, any interested person can use the way of unconstitutional exception and therefore submit an action to the national Constitutional Court in order to state upon the nullity of a national provision.[27] In this case, if the Constitutional Court pronounces a decision of unconstitutionality of a national provision, it produces the legal effect of reopening administrative and jurisdictional way of appeal.

Thus, the principle of effectiveness rises a particular issue on the national procedural provision and how it makes impossible or very difficult exercising rights by the petitioners within the European legal order, taking into account the place it occurs within the whole procedure, how it is proceeded as well as its features before different national courts. From this point of view, the general principles of the national judicial system will be taken into account as well.[28]

On the other hand, respecting principle of equivalence supposes the national provision is applied both in cases based on the infringement of the European law and in cases based on the infringement of the national law, which have similar cause and object.[29]

Basically, the national judicial systems are sovereign to decide on the appropriate rules, which have to be applied: the national procedural rules or the European ones. The only one condition stated in this matter refers to the legal framework which has not to be more restricted for petitioners' rights during proceedings. Infringing petitioners' rights is really a serious violation of human rights, sanctioned by the EU institutions. These rules are also linked to the European Convention of Human Rights, provisions which regulate common standards on human rights protection for the entire members. From this point of view, there are two sides of controlling human rights provisions and how they are respected at the European level. One of these is revised by the European Court of Justice over the solutions adopted by the 28 Member States and another one involves the solutions pronounced by the 47 states signatory to the European Convention of Human Rights.

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http://www.juridice.ro/389715/intrebare-preliminara-cu-privire-la-conflictul-dintre-normele-de-procedura-nationale-si-principiul-efectivitatii-dreptului-uniunii.html, accessed April, 30th, 2016.; Decision no. 07A3954 of 27 November, 2007, p. 24

[26] The Case C-250/15 *Rechtbank van eerste aanleg te Antwerpen* (Belgium) of 29 May 2015 - Vivium SA/Belgische Staat.

[27] Dacian Dragoș, Bogdana Neamțu, Roger Hamlin (Eds.), *Law in Action: Case Studies in Good Governance*, (nstitute for Public Policy and Social Research, Michigan, 2011, pp. 287-289.

[28] Decision "Peterbroeck", C-312/93, EU:C:1995:437, point 14, and Decision "Fallimento Olimpiclub", EU:C:2009:506, point 27.

[29] Decision "Littlewoods Retail et. all", EU:C:2012:478, point 31.

As a specific element for the European Court of Justice, the preliminary questions became a source of respecting human rights within the European Union. In this way, the European Union institutions adopted a joint declaration in the matter of the Court's jurisprudence, in accordance with the Article 6 of the European Union Treaty before Lisbon.[30]

Doctrine has for a long time interested in finding appropriate legal feature for the procedure of preliminary decisions. As much time as it is under the judiciary of the Member States, they are freely to appreciate upon the solutions pertinence and utility the European Court of Justice would decide on. From this point of view, it could be considered as a procedural incident, due to the fact that it can intervene only if the national court of justice is invested with a case. Therefore, the parties involved in a case are not able to send the preliminary questions to the European Court of Justice. They can only require the national courts of justice to use the procedure and send a question in order to solve the case. This is also the reason of considering procedure as a preliminary one.

The preliminary procedure is, at the same time, similarly with the national procedure of constitutionality law, which the courts of justice in Romania, for example, are required in cases in which parties consider one or many articles therein are unconstitutional. In these cases, the Constitutional Court is invested with an unconstitutional exception. Thus, the parties involved in case do not have the right to notice the Constitutional Court with the preliminary action.

Table 1. Characteristics of the Romanian courts of justice's preliminary questions submitted

	2012	2013	2014
HCJ	6	6	7
AC	21	31	45
Ts	19	26	39
Total	46	63	91

Source: curia.europa.eu

As shown in Table 1, the cases in which the courts of justice in Romania submitted preliminary questions to the European Court of Justice increased at the Courts of Appeal and Tribunals with more than 10 items, but the same number of preliminary questions were submitted by the High Court of Justice during 2012 and 2013 and only one questions was added in 2014. This means the national courts of justice in Romania are still reserved in applying the community procedure tool in

[30] Preliminary question submitted by *Fővárosi Közigazgatási és Munkaügyi Bíróság* (Hungary) on 8 September 2014: WebMindLicenses Kft. /*Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám Főigazgatóság* (Case C-419/14) online at: http://curia.europa.eu/juris/document/document.jsf?text=contencios%2Badministrativ&docid=159904&pageIndex=0&doclang=RO&mode=req&dir=&occ=first&part=1&cid=585390#ctx1, accessed April, 25th, 2016.

the matter in comparison with the other Member States' courts of justice, as provided below.

Table 2. Statistics of the EU Member States' cases of preliminary questions submitted

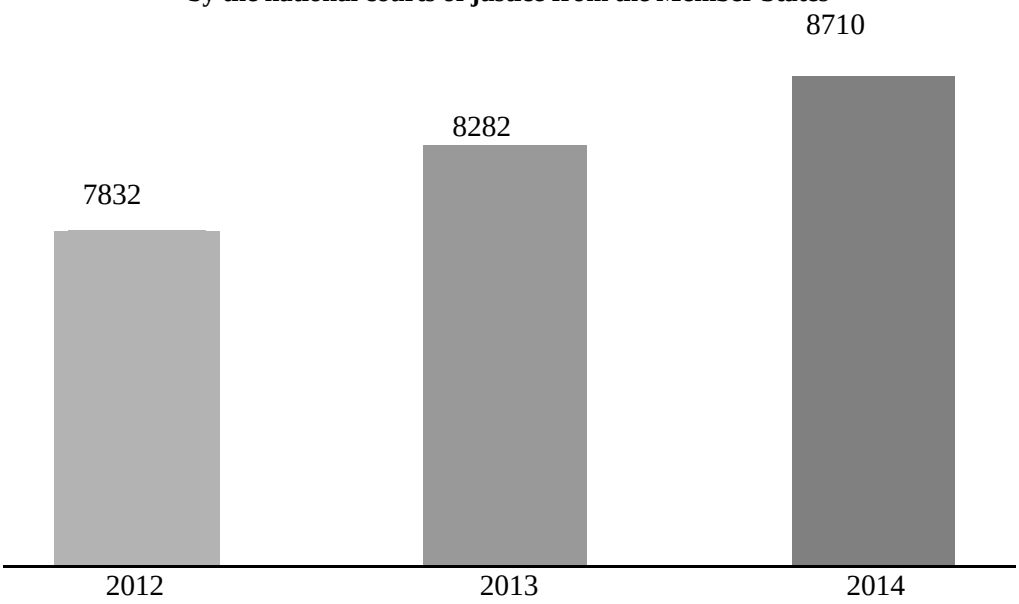
	Austria	United Kingdom	Belgium	Netherlands
2012	410	547	713	833
2013	429	561	739	879
2014	447	573	762	909

Source: curia.europa.eu

In other Member States, the number of preliminary questions submitted to the European Court of Justice is higher. The Netherlands is one of the most active Member State, which uses the European procedure of preliminary questions more frequently than Romania, for example, or even Czech Republic, Latvia or Poland, while Sweden, Portugal and Hungary occurs the middle position.

On the whole, taking into account all Member States, the rate of preliminary questions submitted is also increasingly. In this respect, the Figure 1 states the total number of preliminary questions submitted during a period of three years, from 2012 to 2014.

Figure 1. The number of preliminary questions submitted by the national courts of justice from the Member States



Source: curia.europa.eu

In the matter of fact, a particular interest occurs to the legal consequences the procedure of preliminary decisions has in the Member States' judicial cases. As a general rule, the European Court of Justice states a set of provisions on this topic. Basically, the European Court is not kept of the previous decisions adopted in cases it was invested with. In spite of this rule, in practice it has been viewed the Court changed rarely its own solutions pronounced before.

Another rule concerns the preliminary decisions are compulsory for all the national Member States' courts of justice, but not only for the sending court.

Finally, another rule states the preliminary decisions produce legal consequences retroactively, since the legal provision's entrance into force. From this rule, there are exceptions stated for particular serious situations.[31]

Using procedure of preliminary questions, the European Court of Justice states the community legal provision signification in order to interpret unitary its rules by all actors of the European Union, being known the competence of their concrete application devolves exclusively to the national courts. The question formulated by the national courts refers only to the issue of interpretation, validity as well as application of the community law, but not to the national law provisions or elements of a particular case. In this respect, the European Court of Justice has considered the national court's request, which does not provide the community law to be interpreted, but *de facto* it aims at solving definitely a case, is not admissible because of the fact that it exceeds its competence.[32]

Table 3. Statistics of the preliminary questions submitted by the Member States' courts of justice to the European Court of Justice

year	preliminary questions
1997	239
1998	264
1999	255
2000	224
2001	237
2002	216
2003	210
2004	249
2005	221
2006	251
2007	265
2008	288
2009	302

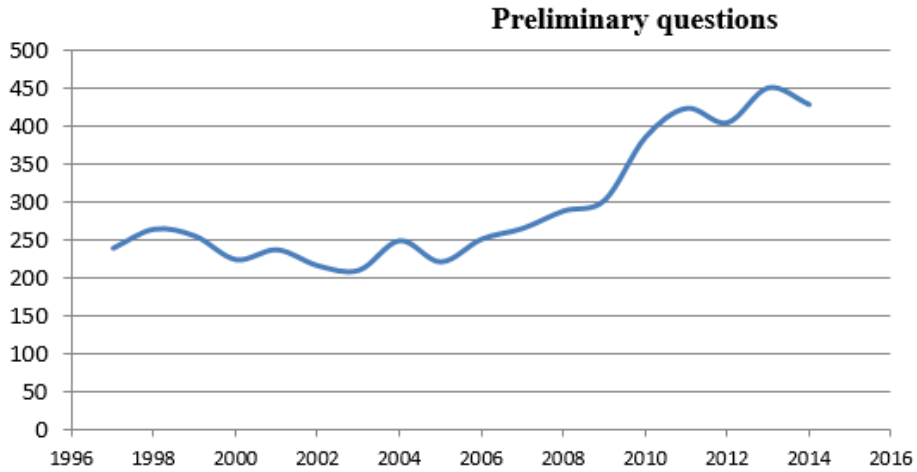
[31] Cristina Diana Radu Presura, Roxana Mariana Popescu, *Legal Regime of the CJEC Preliminary Rulings and Their Impact upon the National Legal System* IER, Bucharest, 2009, available at: http://www.ier.ro/sites/default/files/pdf/Studiul_3_-_Jurisprudenta_RO.pdf., accessed April, 30th, 2016.

[32] Decision no. 277 of 20 January 2012 of the High Court of Cassation and Justice of Romania, Civil Section, available online at: http://www.legal-land.ro/sesizarea-cjue-cu-o-intrebare-preliminara-privind-aspecte-legate-de-dreptul-national-sau-elemente-particulare-ale-unei-spete-deduse-judecatii/, accessed April, 30th, 2016.

year	preliminary questions
2010	285
2011	423
2012	404
2013	450
2014	428

Source: curia.europa.eu

Figure 2. References of preliminary questions and its evolution



Source: own work

As provided above, the number of cases in which the national courts of justice submitted preliminary questions was gradually increased from the only one case of preliminary questions submitted by a national court to the European Court of Justice during 1961 and the same number in 1966, till 428 references submitted in 2014.

5. Conclusion

Following procedure of preliminary decision, the national sending court requests essentially to the European Court of Justice to state if the community law has to be interpreted in such a manner in order to pronounce a sentence in a particular case. Moreover, sending court requests also to establish if other technical, legal or even organizing issues have to be taken into account when decides upon the case, on the one hand. Moreover, the European Court of Justice pronounces a preliminary decision and offers explanations in purpose to direct the national court to the interpretation it has to do in the case, on the other hand.

It is known the national court has the duty of analyzing whole circumstances of the main case. It pronounces decision based on the corroboration

of evidence as well as on respecting principles stated in the national legislation in the matter.

Until adopting common principles and provisions of procedural law within the preliminary decisions to be applied in the whole Member States, the situation could be analysed as a drawback, which has to be taken into consideration by the European authorities in their effort to improve the European regulations. It is obviously, at the moment it is impossible to adopt a general Code, which would be applied by the whole Member States, but there is still time for a better understanding as well as rethinking procedure in preliminary decisions.

An enthusiastic action at the European level has been conducted in the end of 2000's while a group of researchers in law from the University of Utrecht met in Florence, Italy, advanced a set of rules as *guiding principles*, both traditional and "*new*" ones, to be comprised in a European Code. I consider their effort has remained on the proposing level due to many reasons, such as differences between the law systems of the Member States. I also consider that even if it had adopted at the European level, it would not have implemented into the Member States' home judicial systems. In spite of this inconvenience, several European judicial principles of both substantive and procedural law were submitted to be adopted by the Member States, which produce consequences at the national level as well.

Although the European legislation does not contain provisions on codification in administrative matter, Romania adopted recently the preliminary theses of the new Administrative Code, which is expected to be adopted in the current year. It is viewed as an efficient legal tool of simplifying legislation in administrative matter, which is reiterated within the National Strategy of Strengthening Public Administration for the period 2014-2020 adopted by Governmental Decision no. 909/2014.

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