

TABLE WITH REFERENCES FOR A PRELIMINARY RULING SUBMITTED BY THE ROMANIAN COURTS TO COURT OF JUSTICE OF THE EUROPEAN UNION REGARDING RULE OF LAW

Nr. crt.	Referring Court	Case number and name of the party	The question referred for a preliminary ruling
1.	<p style="text-align: center;">Olt County Court - Second Section of Civil, administrative and fiscal cases</p> <p style="text-align: center;">Casew file no. 2122/104/2018</p> <p style="text-align: center;">Decision from 29 of January 2019</p> <p style="text-align: center;">(Meanwhile, the case was moved to Mehedinți County Court at the request of the Judicial</p>	<p style="text-align: center;">Case C-83/19</p> <p style="text-align: center;"><i>Romanian Judges' Forum Association</i></p> <p style="text-align: center;">Cases C-83/19, C-127/19 and C-195/19 were joined (<i>Romanian Judges' Forum Association and others</i>)</p> <p style="text-align: center;">Urgent procedure ordered by the President of CJEU</p>	<p>1. Mechanism of Cooperation and Verification (MCV), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, must be considered an act of an institution of the European Union under Article 267 TFEU, which may be subject to interpretation by the Court of Justice of the European Union?</p> <p>2. The content, nature and extent in time of the Mechanism of Cooperation and Verification (MCV), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, are circumscribed to the Treaty of Accession of Bulgaria and Romania to the European Union signed by Romania in Luxembourg on April 25, 2005? Are the requirements set out in the reports under this mechanism binding for Romanian State?</p> <p>3. Article 19 (1), second subparagraph of the Treaty on European Union must be interpreted as creating the obligation for Member States to establish the necessary measures for effective legal protection in the fields covered by Union law, namely guarantees for independent disciplinary proceedings for Romanian judges, removing any risk relating to political influence on the conduct of disciplinary proceedings, such as direct appointment by the government of the Judicial Inspection Chief, even provisionally?</p>

	Inspection, by the Craiova Court of Appeal)		4. Article 2 of the Treaty on European Union must be interpreted as creating an obligation for Member States to meet the criteria of the rule of law, requested even in reports from the Mechanism for Cooperation and Verification (MCV), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, in case of direct appointment by the Government of Judicial Inspection Chief, even provisionally?
2.	<p>Pitești Court of Appeal, Second Section of Civil, administrative and fiscal cases</p> <p>Case file no. 1156/46/2018</p> <p>Decision from 7 february 2019</p> <p>On June 19, 2019, High Court of Cassation and Justice will rule on displacement of the case made by the Superior</p>	<p>Case C-127/19</p> <p><i>Romanian Judges' Forum Association and the Movement for the Defense of the Statute of Prosecutors Association</i></p> <p>Cases C-83/19, C-127/19 and C-195/19 were joined (<i>Romanian Judges' Forum Association and others</i>)</p> <p>Urgent procedure ordered by the President of CJEU</p>	<p>1. Mechanism of Cooperation and Verification (MCV), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, must be considered an act of an institution of the European Union under Article 267 TFEU, which may be subject to interpretation by the Court of Justice of the European Union?</p> <p>2. The content, nature and extent in time of the Mechanism of Cooperation and Verification (MCV), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, are circumscribed to the Treaty of Accession of Bulgaria and Romania to the European Union signed by Romania in Luxembourg on April 25, 2005? Are the requirements set out in the reports under this mechanism binding for Romanian State?</p> <p>3. Article 2 correlated with art. 4 par. 3 of the Treaty on European Union must be interpreted as meaning that the Member State's obligation to respect the rule of law includes the need for Romania to meet the requirements imposed by the reports in the Mechanism for Cooperation and Verification (MCV), set up under Decision nr.2006/928/EC of the European Commission on December 13, 2006?</p> <p>4. Article 2 of the Treaty on European Union, in particular the need to comply with the rule of law, preclude legislation that establishes and organizes the Section for Investigating the Crimes committed by Magistrates, created in the Prosecutor's Office attached to High Court of</p>

	<p><u>Council of Magistrates, which requested cancellation of the request for a preliminary ruling.</u></p>		<p>Cassation and Justice, through the possibility of exercising, indirectly, a pressure on the judiciary?</p> <p>5. The principle of judicial independence enshrined in Article 19 (1), second paragraph TEU and in article 47 of the Charter of Fundamental Rights of the European Union, as interpreted by the Court of Justice of the European Union (Grand Chamber, judgment of February 27, 2018, <i>Associação Sindical dos Juizes Portugueses</i>, C-64/16, ECLI:EU:C:2018:117) precludes the establishment of the Section for Investigating the Crimes committed by Magistrates, created in the Prosecutor's Office attached to High Court of Cassation and Justice, in the light of the method on appointment / dismissal of prosecutors who are part of this section, of the activity deployed by it and of competence in relation to the small number of offices in that Section?</p>
<p>3.</p>	<p>Bucharest Court of Appeal, First Criminal Section</p> <p>Case file no.36/2/2019</p> <p>Decision from 15 February 2019</p>	<p>Case C-195/19</p> <p>PJ</p> <p>Cases C-83/19, C-127/19 and C-195/19 were joined (<i>Romanian Judges' Forum Association and others</i>)</p> <p>Urgent procedure ordered by the President of CJEU</p>	<p>1. Cooperation and Verification Mechanism (CVM) set up under Decision 2006/928/EC of the European Commission on December 13, 2006 and the requirements set out in the CVM reports are binding for the Romanian state?</p> <p>2. Art. 67 par. 1 TFEU, art. 2 first sentence TEU and art. 9 first sentence TEU preclude national legislation instituting a prosecution department that have an exclusive competence to investigate any crime committed by judges or prosecutors?</p> <p>3. Principle of EU law supremacy, as it is enshrined in Case <i>Costa vs. ENEL</i> from July 15, 1964 and in subsequent case law of the CJEU, precludes legislation which allow a political and judicial institution such as the Constitutional Court of Romania to infringe the aforesaid principle by decisions that are not subject to any appeal?</p>

<p>4.</p>	<p>Braşov Court of Appeal, Criminal Section</p> <p>Case file no. 8676/2/2017</p> <p>Decision from 5 March 2019</p>	<p>Case C-291/19</p> <p>SO</p>	<p>1. Mechanism of Cooperation and Verification (MCV), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, must be considered an act adopted by an institution of the European Union under Article 267 TFEU, which may be subject to interpretation by the Court of Justice of the European Union?</p> <p>2. Requirements set out in the reports under this mechanism are binding for Romanian state, especially (but not only) with respect to the need for legislative changes regarding the organization and functioning of the judiciary to be made in agreement with the recommendations of MCV's, of the Venice Commission and the Group of states against corruption of the Council of Europe?</p> <p>3. Article 2 correlated with art. 4 par. 3 of the Treaty on European Union must be interpreted as meaning that the Member State's obligation to respect the rule of law includes the need for Romania to meet the requirements imposed by the reports in the Mechanism for Cooperation and Verification (MCV), set up under Decision nr.2006/928/EC of the European Commission on December 13, 2006?</p> <p>4. The principle of judicial independence enshrined in Article 19 (1), second paragraph TEU and in article 47 of the Charter of Fundamental Rights of the European Union, as interpreted by the Court of Justice of the European Union (Grand Chamber, judgment of February 27, 2018, <i>Associação Sindical dos Juízes Portugueses</i>, C-64/16, ECLI:EU:C:2018:117) precludes the establishment of the Section for Investigating the Crimes committed by Magistrates, created in the Prosecutor's Office attached to High Court of Cassation and Justice, in the light of the method on appointment / dismissal of prosecutors who are part of this section, of the activity deployed by it and of competence in relation to the small number of offices in that Section?</p> <p>5. Art. 47 par. 2 of the Charter of Fundamental Rights of the European Union regarding the right to a fair trial in a reasonable time preclude the</p>
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			establishment of the Section for Investigating the Crimes committed by Magistrates, created in the Prosecutor's Office attached to High Court of Cassation and Justice, in the light of the activity deployed by it and of competence in relation to the small number of offices in that Section?
5.	<p>Pitești Court of Appeal, Second Section of Civil, administrative and fiscal cases</p> <p>Case file no. 45/46/2019</p> <p>Decision from 29 March 2019</p>	<p>Case C-355/19</p> <p><i>Romanian Judges' Forum Association and the Movement for the Defense of the Statute of Prosecutors Association</i></p>	<p>1. Mechanism of Cooperation and Verification (MCV), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, must be considered an act adopted by an institution of the European Union under Article 267 TFEU, which may be subject to interpretation by the Court of Justice of the European Union?</p> <p>2. The content, nature and extent in time of the Mechanism of Cooperation and Verification (MCV), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, are circumscribed to the Treaty of Accession of Bulgaria and Romania to the European Union signed by Romania in Luxembourg on April 25, 2005? Are the requirements set out in the reports under this mechanism binding for Romanian State?</p> <p>3. Article 2 of the Treaty on European Union must be interpreted as imposing an obligation for Member States to respect the rule of law, set out also in reports issued under the Cooperation and Verification Mechanism (CVM), established under Decision 2006/928/EC of the European Commission on December 13, 2006, in the case of emergent establishing of the Section for Investigating the Crimes committed by Magistrates, which creates a particular concern in the fight against corruption and can be used as an additional tool for intimidating judges and for exercising pressure on them?</p> <p>4. Article 19 par. (1), second subparagraph of the Treaty on European Union must be interpreted as imposing the obligation for Member States to establish appropriate measures for effective legal protection in the fields covered by Union law, especially by removing any risk of political influence</p>

			on criminal investigation of judges in the case of emergent establishing of the Section for Investigating the Crimes committed by Magistrates, which creates a particular concern upon the fight against corruption and can be used as an additional tool for intimidating judges and for exercising pressure on them?
6.	<p>Cluj Court of Appeal, Second Civil Section</p> <p>Case file no. 6449/328/2015</p> <p>Decision from 3 April 2019</p>	<p>Case C-269/19</p> <p><i>Bank B</i></p>	In the context of the primacy of EU law, principles of legal certainty and effectiveness must be interpreted as precluding, in a case of protection of consumer rights, the changing of procedural rules after referring the case to the court by the consumer, through a decision of the Romanian Constitutional Court, with binding effect, implemented by the legislator in a law amending the Code of civil procedure, which introduced a new remedy that can be used by professionals, with the consequence of prolonging the litigation and increasing the costs for finalizing the case ?
7.	<p>High Court of Cassation and Justice, Five judges Panel</p> <p>Case file no. 3089/1/2018</p> <p>Decision from 22 April 2019</p>	<p>Case C-357/19</p> <p><i>Euro Box Promotion</i></p>	<p>1. Art. 19 par. (1) of the Treaty on European Union, art. 325 par. (1) of the Treaty on the Functioning of the European Union, art. 1 par. (1) letter a) and b) and art. 2 par. (1) of the Convention adopted pursuant to Article K.3 of the Treaty on European Union, on the protection of the financial interests of the European Community and the principle of legal certainty, must be interpreted as precluding a decision adopted by an authority outside the judiciary, namely the Romanian Constitutional Court, that assess on the legality of a panel of judges, creating thus the conditions required for the admissibility of extraordinary appeals against final judgments rendered in a certain period of time?</p> <p>2. Article 47 par. 2 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding a decision adopted by a body outside the judiciary, with binding effect, that establishes the lack of independence and impartiality of a judges' panel which includes a judge with a management position that was not assigned randomly but on the</p>

			<p>basis of a transparent rule, known and not disputed by the parties, rule that is applicable in all cases decided by the panel?</p> <p>3. Article 47 par. 2 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding a finding by a body outside the judiciary character lack of independence and impartiality of a panel which includes a judge having management function that was not assigned randomly but on the basis of transparent rules, known and not disputed by the parties, the panel rule applicable in all cases that the decisions taken are binding under domestic law?</p>
8	<p>Bihor County Court, Criminal Section</p> <p>Case file no. 3507/111/2016</p> <p>Decision from 7 May 2019</p>	<p>Case C-379/19</p> <p><i>National Anticorruption Directorate Prosecutor – Oradea Department</i></p>	<p>1. Cooperation and Verification Mechanism (CVM) set up under Decision 2006/928 / EC of the European Commission on December 13, 2006 and the requirements set out in the CVM reports are binding for the Romanian state?</p> <p>2. Article 2 correlated with art. 4 par. 3 of the Treaty on European Union must be interpreted as meaning that the Member State's obligation to respect the rule of law includes the need for Romania to meet the requirements imposed by the reports of the Mechanism for Cooperation and Verification (CVM), set up under Decision no. 2006/928/EC of the European Commission on December 13, 2006, including the abstaining of a Constitutional Court, a politico-judicial institution, from interpreting the law and determining its effective and mandatory application by the courts, competence exclusively assigned to the judiciary, and from establishing new legal rules, competence exclusively assigned to the legislator?</p> <p>European Union law requires removing the effects of such a decision adopted by the Constitutional Court? European Union law precludes the existence of internal rules governing disciplinary responsibility of a magistrate who removes from application the Constitutional Court decision, in the context of the above question?</p>

			<p>3. The principle of judicial Independence enshrined in article 19 (1), second paragraph TEU and article 47 of the Charter of Fundamental Rights of the European Union, as interpreted by the Court of Justice of the European Union (Grand Chamber, judgment of February 27, 2018, <i>Associação Sindical dos Portugueses Juizes</i> C-64/16, ECLI:EU:C:2018:117), precludes substituting judicial powers by the Constitutional Court decisions (decisions no.51 from 16 February 2016, Decision no. 302 from 4 May 2017 and Decision no. 26 from 16 January 2019), with the consequence of unpredictability of the criminal proceedings (retroactivity) and the impossibility of interpreting and applying the law in the pending case? European Union law precludes the existence of internal rules governing disciplinary responsibility of a magistrate who removes from application the Constitutional Court decision, in the context of the above question?</p>
9.	<p>Bucharest County Court, Third Civil Section</p> <p>Case file no.30/3/2019</p> <p>Decision from 8 May 2019</p>	<p>Case C-397/19</p> <p><i>Romanian State – Minister of Public Finance</i></p>	<p>1. Mechanism of Cooperation and Verification (MCV), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, must be considered an act adopted by an institution of the European Union under Article 267 TFEU, which may be subject to interpretation by the Court of Justice of the European Union?</p> <p>2. Mechanism of Cooperation and Verification (CVM), set up under Decision 2006/928/EC of the European Commission on December 13, 2006, is an integral part, is interpreted and applied according to the provisions of the Treaty of Accession for Bulgaria and Romania to the European Union signed by Romania in Luxembourg on April 25, 2005? The requirements set out in the CVM reports are binding for Romanian State and if the answer is positive to this question, the national court responsible with applying the provisions of European Union law, within its jurisdiction, is obliged to enforce these rules, if necessary refusing ex officio to apply the provisions of national law contrary to the requirements formulated in reports drawn up under this mechanism?</p> <p>3. Article 2 correlated with art. 4 par. 3 of the Treaty on European Union</p>

			<p>must be interpreted as meaning that the Member State's obligation to respect the rule of law includes the need for Romania to meet the requirements imposed by the reports in the Mechanism for Cooperation and Verification (MCV), set up under Decision nr.2006/928/EC of the European Commission on December 13, 2006?</p> <p>4. Article 2 in connection with Art. 4 par. 3 of the Treaty on European Union, in particular the need to compliance with the rule of law, preclude national legislation such as article 96, paragraph 3 letter a) of Law 303/2004 on the statute of judges and prosecutors, which defines in a concise and abstract manner the judicial error as performing procedural acts in violation of legal provisions of substantive law and procedural law, without clarifying the nature of infringed laws, the application <i>rationae materiae</i> and <i>ratione temporis</i> of those provisions in the case, the manner, terms and procedure for determining the breach of legal norms, the competent body to determine the violation of these laws, creating the possibility of exercising, indirectly, a pressure on the judiciary?</p> <p>5. Article 2 in connection with art. 4 par. 3 of the Treaty on European Union, in particular the need to comply with the rule of law, preclude national legislation, such as article 96, paragraph 3, letter b) of Law 303/2004 on the statute of judges and prosecutors, which defines the judicial error as the delivery of a final judgment which is clearly against the law or the facts resulting from the evidence provided in the case without establishing the procedure for determine this unlawfulness, without defining <i>in concreto</i> the meaning of this contradiction of the judgment with legal provisions applicable to the facts, creating the possibility of blocking the work of interpretation of the law and rules of evidence by the magistrate (judges and prosecutors)?</p> <p>6. Article 2 in connection with art. 4 par. 3 of the Treaty on European Union, in particular the need to comply with the rule of law, preclude national</p>
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			<p>legislation, such as article 96 paragraph 3 of Law 303/2004 on the statute of judges and prosecutors, according to which the civil liability of a magistrate (judge or prosecutor) is held by state, based on the state's own assessment and, eventually, on the advisory report of the Judicial Inspection regarding the intent or gross negligence of the magistrate in committing the material error, this magistrate not being able to fully exercise the right of defense, creating thus the possibility of setting off and finalizing, in a arbitrary manner, the material liability of a magistrate by the state?</p> <p>7. Article 2 of the Treaty on European Union, in particular the need to comply with the rule of law, preclude national legislation such as the provisions of art. 539 paragraph 2, last sentence in conjunction with art.541 paragraph 2 and paragraph 3 of the Code of Criminal Procedure, which opens sine die and implicitly for the defendant an extraordinary appeal, sui generis, against a final judgment on the legality of detention pending trial, after the defendant is acquitted, while extraordinary appeal is under trial only in civil court and the illegal character of the arrest was not found in the judgment given by the criminal court in violation with the principle of predictability and accessibility of the legal norm, with the specialization of judges and with the principle of legal certainty?</p>
10.	<p>High Court of Cassation and Justice, Five judges Panel</p> <p>Case file no. 927/1/2018</p>		<p>Article 2 of the Treaty on European Union, article 19 par. 1 of the Treaty and article 47 of the Charter on Fundamental Rights of the European Union must be interpreted as precluding the intervention of the Constitutional Court (organ that is not, under domestic law, a trial court) on how the supreme court has interpreted and applied the infraconstitutional law in its activity of constituting the panels of judges?</p>

	Decision from 13 May 2019		
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