PROCEDURAL ASPECTS REGARDING REFERENCES FOR PRELIMINARY RULINGS

Oana-Măriuca Petrescu*

Abstract. *The purpose of preliminary rulings, or the preliminary reference as it is known, can be traced directly to the need to secure uniformity in the Community legal order throughout the Member States. The procedure of preliminary rulings was mentioned for the first time by the Advocate General Joseph-Louis Lagrange 40 years ago in this Opinion in Bosch v de Geus case. Much of the responsibility for applying the rules laid down in the European Community Treaty (EC Treaty) and in Community acts belongs to the national courts of the Member States. To help safeguard the uniform application of Community law, article 234 (former art.177) of EC Treaty, therefore lays down a procedure which enables national courts to refer to the European Court of Justice questions of Community law that they have to decide before giving a judgment*.

Keywords: *Governance, justice, legal order, Court of Justice*

INTRODUCTION

The matter of taking actions for the purpose of obtaining preliminary rulings[1], is not a new one, as it was first regulated by the constitutive Treaties[2], providing "*the possibility for the Court to perform a preliminary interpretation action, upon incidental title, outside actual litigation, directly deduced before the community court, by means of recourse in interpretation, which is regulated differently by the Treaties of Rome compared to the Treaty of Paris*"[3].

Subsequently, by the Treaty establishing the European Community there was established under art. 234 par. (1)[4] that the Court of Luxemburg "*shall have jurisdiction to give preliminary rulings concerning:*

a. the interpretation of this Treaty;

b. the validity and interpretation of acts of the institutions of the Community and of the ECB;

c. the interpretation of the statues of bodies established by an act of the Council, where those statues so provide".

It was the first time that in the content of a treaty regarding this set of actions a clear delimitation was made between the **possibility** (provided by paragraph 2) and the **obligation** (provided by paragraph 3) of bringing the matter before the European Court of Justice[5] (ECJ) upon a preliminary action for the purpose of obtaining a preliminary ruling,

* **Oana-Măriuca Petrescu** is a PhD Candidate at Nicolae Titulescu University and European Affairs Counsellor at the Ministry of Justice, e-mail: mariucaoana@yahoo.com

[1] Ovidiu Tinca, *Drept comunitar general,* ediția a III-a, Publishing House Lumina Lex, Bucureşti, 2005, p.381-400; Fabian Gyula *Curtea de Justiție Europeană, instanța de judecată supranațională*, Publishing House Rosetti, Bucureşti, 2002, p.124; Fabian Gyula *Drept instituțional comunitar*, ediția a II-a, Publishing House Sfera Juridică, Cluj-Napoca, 2006, p.321; website: http://curia.europa.eu/ro/instit/presentationfr/index_cje.htm.

[2] Art.41 of the CECA Treaty; Art.177 of the EEC Treaty; art.150 of the Euratom.

[3] Ovidiu Tinca, quoted paper, p.381; Case C33/76 Rewe, published in ECJ Collection of 1976.

[4] Former art. 177 of the EEC Treaty

[5] On December 13, 2007, under Portuguese presidency, there was adopted and concluded the Treaty of Lisbon,

considering in the same time that such proceeding is based by a separation of functions[6].

Later on, this category of actions gained a new dimension by taking over from the national criminal law of member states and expressly consecration under the last paragraph of art. 234 from the TEC of a provision specific to criminal law, according to which "*if such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court shall act with the minimum of delay*". Thus, by this new provision the principle was constituted of rapidly judging the criminal cases[7], which is also found in the Romanian criminal law[8], as deduced from the practice of criminal courts and jurisprudence in this field.

Although the principle is not *expresis verbis* set forth in the current national criminal legislation, it is the opinion of many authors[9], that the minimum delay or rapidness represents one of the basic rules of the criminal trial, rather a *sine quo non* condition of the efficacy and optimization of the entire judicial activity, which consists in the rapid settlement of the criminal cases, as well as in the simplification of the activity in the criminal trial, when the case, also reinforced and regulated by the Treaty of Lisbon[10].

UNDERTAKING THE MATTER OF PROCEDURAL ASPECTS REGARDING REFERENCES FOR PRELIMINARY RULINGS

Recourses[11] or references having as object preliminary rulings are part of the category of mediated or indirect actions, which we can divide into:

a. references having as object preliminary rulings, which we shall analyze in the following and
b. legal actions referring for licenses, approvals, when ECJ can rule decisions of bounding nature, although they do not refer to a certain action.

In the specialized literature[12] it is considered that preliminary rulings represent

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Portugal. Among the most important institutional novelties there was the change in the name of the European Communities Court of Justice into the European Court of Justice (ECJ), by amending art. 9, as well as the introduction of a new article 9F, stipulating that "*(1) The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialized courts. It shall ensure that in the interpretation and application of the Treaties the law is observed*"

[6] Stephen Weatherill, *Cases and materials on EU Law*, Oxford University press, sixth edition, 2003, p. 188 unofficial translation.

[7] This principle is also known as "*efficiency in the criminal trial", "rapidness"* or *"celerity*" - Ion Neagu, *Drept procesual penal*, partea generală, Tratat, Publishing House Global Lex, Bucureşti, 2006, p.100.

[8] Idem.

[9] Idem; Nicolae Volonciu, *Drept procesual penal*, Bucuresti, Publishing House Didactica si Pedagogica, 1972, p.71-72; Nicolae Volonciu, *Tratat de procedură penală. Partea generală,* volumul I, Publishing House Paideia, Bucuresti, 1996, p.126-129.

[10] The Treaty of Lisbon was published in JOUE series C no. 306 of 17.12.2007.

[11] According to Augustin Fuerea, when we refer to the term of "*recourse*"we shall consider its sense of "*legal action, and not means of appeal, as it is considered in the Romanian law. This sense is set forth by the Community Treaties and was taken over by most Romanian and foreign doctrinarians*" Augustin Fuerea, *Institutiile Uniunii Europene*, Publishing House Universul Juridic, Bucuresti, 2002, p.136. The same explanation is also given by Ovidiu Tinca, quoted paper, p.329. Thus, in the present paper we shall maintain the official name used by the European Court of Justice, namely "*references for preliminary rulings*".

[12] Augustin Fuerea, *Instituțiile Uniunii Europene,* quoted paper, p.142-143; Fabian Gyula *Curtea de Justiție Europeană, instanța de judecată supranațională*, quoted paper, p.124; Fabian Gyula, *Drept instituțional comunitar*, quoted paper, p.321; Ovidiu Tinca, quoted paper, p.381-400. These recourses are also referred to as: *preliminary rulings* or *Le renvoi préjudiciel*) or preliminary actions.

"*an action of community law by means of which the national courts of the Communities' member states can or have to refer to the Court of Justice asking for support by ruling on the interpretation of the origin treaties; on the validity and interpretation of the normative acts of the EEC, Euratom and ECB bodies; on the interpretation of the statutes of the institutions founded by the Council if the provisions of such allow it, as well as on the validity of the Commission's and Council's deliberations in case a pending litigation before such raises interpretation problems of the said or objecting to their validity* "[13].

The role of this action is confirmed by the Information note of the Luxemburg Court regarding references from national courts for preliminary rulings[14], according to which "*a fundamental mechanism of European Union law aimed at enabling national courts to ensure uniform interpretation and application of that law in all the Member States*". In other words, this legal action is a cooperation mechanism, establishing the participation of the Court of Justice in settling the cases filed with national courts[15].

Thus, in the procedure for preliminary ruling, the role of the Court is "*to give an interpretation of Community law or to rule on its validity, not to apply that law to the factual situation underlying the main proceedings, which is the task of the national court. It is not for the Court to decide issues of fact raised in the main proceedings or to resolve differences of opinion on the interpretation or application of rules of national law*"[16].

By applying the cooperation principle, as stipulated by art. 10 of the TEC[17], according to the European Court of Justice, national courts are called to undertake the juridical protection of the justice maker, the effect of which arises from the juridical effect of the European Union law[18].

The legal grounds of the prejudicial matters[19] can be found in the origins and derived community law. In this respect, the main texts are the following:

1. The Luxemburg Protocol of 03.06.1971 on the interpretation of the Convention of 29.02.1968 regarding the reciprocal acknowledgment of trading companies and legal entities[20];
2. The Convention regarding (trading) company trademarks of 15.12.1989;
3. The Lugano Convention of 16.12.1988 concluded between the member states of the EC and of the European Free Trade Association (EFTA) regarding the competency of courts of justice in enforcing court rulings in the civil and commercial field.

Prior the Treaty of Nice only ECJ could

[13] Fabian Gyula, *Curtea de Justiție Europeană, instanța de judecată supranațională*, quoted paper, p.124, p.321, 371 and the following.; G.Gornig, I.E.Rusu, *Dreptul Uniunii Europene*, ediția a II-a, Publishing House C.H. Beck, Bucureşti, 2006, p.79 and the following.; Octavian Manolache, *Drept comunitar,* editia a 4-a revised and updated, Publishing House All Beck, 2003, p.787-789; Stephen Weatherill, quoted paper, p. 187 and the following.

[14] Published in JOUE series C no.143 of 11.06.2005, p. 1.

[15] Case C- 16/65 Schwarze vs. Einfuhr-und Vorratsstelle für Getreide und Futtermittel, published in Collection ECJ of 1965; Case C-13/61 Bosch vs. De Geus and others, published in Collection ECJ of 1962.

[16] Information note of the Court of Justice, published in JOUE series C no.143 of 11.06.2005, p. 2.

[17] Art.10 of the TEC stipulates that: „*(1) Member States shall take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. (2) They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty*"

[18] Ovidiu Tinca, quoted paper, p.381.

[19] Fabian Gyula, *Curtea de Justiție Europeană, instanța de judecată supranațională*, quoted paper, p.372.

[20] „*Convention traité de Bruxelles sur la reconnaissance mutuelle des sociétés et personnes morales*", published in JOCE, no.2 of 1969.

issue preliminary rulings. At the present moment, article 225 par. (3) of the TEC stipulates that the Court of First Instance (CFI) also has jurisdiction to hear and determine questions referred for preliminary rulings "*under Article 234, in specific areas laid down by the Statute*". Thus, in case CFI considers that a case raised before it "*considers that the case requires a decision of principle likely to affect the unity or consistency of Community law, it may refer the case to the Court of Justice for a ruling*"[21].

In the same time, in exceptional cases "*decisions given by the Court of First Instance on questions referred for a preliminary ruling may […] be subject to review by the Court of Justice, under the conditions and within the limits laid down by the statute, where there is a serious risk of the unity or consistency of Community law being affected*"[22].

The Treaty of Lisbon[23], according to which under new article 9F, sets forth among others under paragraph (3) that the community court „*shall, in accordance with the Treaties […] (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions*".

Thus, in applying these community norms in case of prejudicial matters, the Court of Justice shall not interfere directly by annulling or amending the rulings of the member states' courts, nor shall it settle litigation referred to the member states' courts. However, the Court of Luxemburg shall be able to interfere:

- *Either by means of recourse in interpreting European Union law*, situation in which it shall impose correct application of such by the national courts in the internal juridical order at any time it settles the prejudicial issues in interpreting European Union juridical norms;
- *Or by means of recourse in setting forth the validity of the European Union law, situation in which it shall impose* the compliance with the principle of lawfulness within the community, at any time it settles prejudicial assessment issues[24].

Prejudicial issues or preliminary rulings[25] can have as object:

1. **Law interpretation** meaning establishing the sense of the European Union norm, particularly in regard to its compatibility with the internal law. Such preliminary issue does not transfer the jurisdiction of the case from the national court to the Court, as the national judge remains seized, but it only allows for such to help the court of the member state referring to the ECJ in ensuring the primordial nature of the community law;
2. **Establishing the direct governing of the community legislation**;

[21] Paul Craig and Grainne de Burga, *EU Law, text, cases and materials*, third edition, Oxford University Press, 2003, p.432 unofficial translation.
[22] Art.225 par.(3) of the Treaty establishing the European Community.
[23] The Treaty of Lisbon was drafted in the Inter-Governmental Conference set up by the German presidency of the European Union between January 1 and June 30, 2007, following the summer European Council of June 21-22, 2007 in Brussels. The starting point was represented by the project of Constitutional Treaty, signed at Rome in October 2004, and which was not agreed by all European Union member states, France and Nederland being the countries which did not ratified such by the organized referendums. Thus, this Treaty amended the two European Union constitutive treaties, namely the Treaty on European Union and the Treaty establishing the European Community. The last mentioned one was renamed the Treaty on the Functioning of the European Union. The Treaty of Lisbon was published in JOUE series C no.306 of 17.12.2007.
[24] Ovidiu Tinca, quoted paper, p.381.
[25] Ovidiu Tinca, quoted paper, p.382 and 393.

3. **Validity of the secondary or derived community law** meaning the application of the lawfulness principle in the Community and imposing the respect of hierarchy for community norms.

Referrals having as object a preliminary ruling are *sui-generis* actions comprising elements of non-contentious proceedings, as well as characteristic elements from community normative acts annulling, yet remaining distinct from all other actions, in respect with the proceeding conditions for filing, commencing the action, as well as its functions in the community law system[26].

We also mention that the procedure of preliminary actions represents the "*connection between ECJ and the national courts, between internal law and the community law, aiming to ensure that no member state faces the crystallizing of jurisprudence inconsistent with the community*",[27] and as a principle it is similar to the one in case of direct actions, namely: written phase, verbal phase and giving the ruling.

Considering the above mentioned, we adopt the standpoint asserted in the community[28], regarding to which three categories of preliminary rulings exist, *the first* of them being incontestably regulated by art. 234 of the TEC.

The second category comprises the acts adopted by community institutions in the areas stipulated under Title IV of Part three from the Treaty establishing the EC "*Community Policies*" regarding the regime of visa, asylum, immigration and other policies regarding persons' free circulation and especially in respect with jurisdiction matters and acknowledging and enforcing court rulings. Thus, the possibility for filing a referral with the Court for a preliminary ruling only belongs to the courts settling the case in the last jurisdiction level, according to art. 68 of the TEC[29].

Finally, ***the third category*** of actions or preliminary matters is regulated by art. 35 of the TEC, referring to the entire Pillar III, regarding "*Police and judicial cooperation in the criminal field*"[30].

According to the constitutive and consolidate treaties, *active procedural legitimacy* is not for natural individuals or legal entities[31], *but only for national courts*[32] which, when raising such referral to the Court, have to suspend the pending lawsuit, because such procedure is stipulated as „*inter-court*

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[26] Fabian Gyula *Drept institutional comunitar*, quoted paper, p.372.

[27] Fabian Gyula *Drept institutional comunitar*, quoted paper, p.373.

[28] Paul Craig si Grainne de Burga, quoted paper, p.434 unofficial translation.

[29] Art.68 of the TEC stipulates: "*(1) Article 234 shall apply to this title under the following circumstances and conditions: where a question on the interpretation of this title or on the validity or interpretation of acts of the institutions of the Community based on this title is raised in a case pending before a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon. (2) In any event, the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security. (3) The Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of this title or of acts of the institutions of the Community based on this title. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become res judicata*".

[30] Paul Craig and Grainne de Burga, quoted paper, p.434 unofficial translation.

[31] Paul Craig and Grainne de Burga, quoted paper, p.432 unofficial translation.

[32] Consequent to interpretation of the ECJ regarding the subjects which can raise matters before the community court regarding this sort of references, the conclusion has been reached that the courts of any rank which fulfill certain material and formal conditions, also including the national supreme courts of member states, can file such references when they face difficulties in interpreting community juridical norms or when they have doubts regarding the validity of

procedure"[33].

As regards to raising such referrals to the community Court, grounded on art. 234 of TEC, the ECJ practice has not maintained "*any sacramental formula*", and such have to comprise the same elements as in the case of filing civil actions to any national court, or as in the case of filing recourses or legal actions to the community courts, namely: object, case, parties[34].

The object of the referral is different depending on whether the law interpretation or ascertaining of community law validity is pursued.

Thus, **in the case of interpreting the law**, the object of the referral consists in interpreting not only the constitutive treaties, but also the protocols and annexes to such, as well as the acts of the community institutions or international agreements concluded by the European Communities[35] (either they are mandatory or recommendations, or if they have a direct effect or not, or if they refer to the categories of acts set forth by the treaties). The interpretation of the general principles can be achieved directly or indirectly, by taking into consideration a set of community law rules which is clarified by referral to general principles[36].

In return, "*internal law of the member states cannot be subjected to the interpretation of the Court of Justice*", as mentioned in the jurisprudence of the Court and in the specialized literature[37], and neither to the acts of community institutions such as: Court of Accounts, the Economic and Social Committee (ESC), the Committee of the Regions (CoR), or the European Parliament, because such are not competent to adopt acts such as those issued by the European Commission (EC), the Council of the European Union (CUE) or the European Central Bank (ECB)[38] and the European Investments Bank, the last two mentioned ones as acts of bodies with their own legal personality[39]. Nonetheless, this measure is relative given the fact that any time "*the internal legal norm refers to the community law, and if in order to apply the said it is necessary to interpret community law, then the prejudicial matter can be subjected to the Court, which will only limit to interpreting the community law, whilst the national court remains to rule on the internal norm of the member state*"[40], according to its internal legislation in that field.

Thus, from the above mentioned it results that by the interpretations of the community law by preliminary rulings, the Court of Justice maintains upon an abstract activity, without applying the community law to one particular case or another[41].

such, and not by prosecutors' offices, administrative bodies or arbitral courts, especially those which can privately can decide *ex aequo et bono*, the labor chambers or other jurisdictional bodies - Fabian Gyula, *Drept institutional comunitar*, quoted paper, p.380-384.

[33] Fabian Gyula, *Drept institutional comunitar*, quoted paper, p.380.

[34] Fabian Gyula, *Drept institutional comunitar*, quoted paper, p.374.

[35] The first agreement of this sort concluded by the Community was with Greece Case C -181/73 Haegeman II, published in Collection ECJ 1974.

[36] Ovidiu Tinca, quoted paper, p.382; Case 240/87 Deville published in Collection ECJ din 1988.

[37] Ovidiu Tinca, quoted paper, p.384; Case 93/1975 Adlerblum vs. Caisse Nationale d'Assurance, published in Collection ECJ of 1975.

[38] By the Treaty of Lisbon, from the interpretation of these acts, were removed those of ECB, considering that they did not have the juridical power of the acts of the Commission and of the Council, in order to make object to such claims. By analogy, we consider that those of the EIB should no longer make object to such claims.

[39] Grounded on art. 108a and art.198d and 198e from the Treaty of Maastricht website: http://www.eurotreaties.com/maastrichtec.pdf.

[40] Case C-37/92 José Vanacker and André Lesage and SA Baudoux combustibles, published in Collection ECJ of 1993; case C-197/88 Dzodzi vs. Belgia, published in Collection ECJ of 1990.

[41] Ovidiu Tinca, quoted paper, p.385.

Regarding the **prejudicial matters for assessing the validity of the derived community law**, we mention that the said pursue the application of the lawfulness principle in the Community and impose for the community norms' hierarchy to be complied with. The object in this case consists in the validity of the community law norms, covering all the deeds of the community institutions (but for those issued by the Central European Bank, consequent to the recent amendments in this area, by the Treaty of Lisbon), as well as constitutive treaties and acts assimilated to such. In return, it is not admitted to verify the validity of the resolutions of the Court of Justice, because the said are not invested with the power of settled case, whilst the rulings of the CFI can be appealed by recourse in front of the ECJ, but also in this case the issue shall not be raised of their validity in front of the national courts[42].

In respect with the validity of the secondary or derived community law the question is raised if the courts of the member states are authorized (and *mutatis mutandis* the authorities) so that upon their own accountability to verify the validity of the community law norms, and potentially to deny upon legal consequences the fact that the norm has no jurisdiction in the lawsuit and would not any prohibitive effect compared to the incompatible state law[43]?

ECJ gave a negative answer to this question in the ruling in the Foto Frost case[44], by not admitting that national courts are competent to establish the invalidity of derived community law acts, jurisdiction which according to art. 234 from TEC is only for the Court. In this respect, ECJ set forth that for the courts in each member states it is forbidden to ascertain invalidity of the acts issued by community institutions and bodies (namely from the secondary community law). In return, such can verify and potentially to ascertain their validity, yet without being allowed to rule in respect with their not being valid. Therefore, if they get to be convinced that a very important regulation in making a decision is unlawful, then it can choose not to apply it only if such invalidity has been obligatorily ascertained previously by ECJ. For this purpose, the court of that state shall suspend the lawsuit and refer to ECJ by preliminary ruling proceedings (former art. 177 from TEEC) in respect with the validity question.

In the same time, "*the jurisprudence of ECJ has emphasized that the recourse regarding the validity of the community acts represents a lawfulness control modality regarding the said similar to recourse for annulment*"[45].

In assessing the validity of the acts of community institutions, the Court of Luxemburg noticed that it had to perform a lawfulness exam both from a formal and from a material standpoint, by assimilating validity with lawfulness.

Thus, the ruling by which the Court ascertains the validity of a community act bounds the court of the member state to apply such. The ascertaining of invalidity will determine the said or for the national acts issued grounded on it to not be enforced, and any national judge shall "*deem that act as not being valid for the decision he is about to rule*" considering that the community institution having "*issued the invalid act is obliged to*

[42] Ovidiu Tinca, quoted paper, p.394.

[43] Website: http://www.scoala.fxhigh.com/referate/detail/php/Drept/www.referat.fxhigh.com%20-%20DREPT_ECUNITAR_-_NOTE_DE_CURS5095d29a8.php.

[44] Case C-314/85 Foto Frost vs. Hauptzollamt Lübeck-Ost, published in Collection ECJ of 1987.

[45] Ovidiu Tinca, quoted paper, p.395.

conform to the ruling and, hence, to withdraw that act from the juridical circuit"[46].

"*The effects* [our note of the preliminary rulings] *can affect only a part of the community act (partial effect) or it can affect the entire referred act (total effect)*", their effects are retroactive and as a principle they are binding for the case in which ECJ has been referred. In the same time, they cannot be objected by internal or community means of appeal, "*whereas it is a ruling of ECJ, which is the higher court in the community law*". We consider that such preliminary rulings have a similar effect such as those of unitary interpretation ruled by the higher courts of member states, as in the case of the rulings issued by the United Sections of the Higher Court of Cassation and Justice, as per the provisions of Law no. 56 of 1993[47] on the Higher Court of Justice. Also, the ruling of the Court of Justice is equally binding for the other national courts referred to by identical matters[48].

Moreover, in case the European Court of Justice is seized by a preliminary referral, the interpretation ruling has a limited *erga omnes* effect, while the resolution by which the unlawfulness of an act is ascertained has an extended *erga omnes* effect[49].

In case the national court fails to comply with the provisions of art. 234 of TEC, avoiding referring to ECJ for a prejudicial matter in order to obtain a preliminary ruling, then the European Commission shall apply the provisions of art. 226-228 from TEC, being entitled to initiate the procedure for ascertaining the breach of the community obligation by a member state, whereas the liability of that state is engaged by the action and inaction of one of its internal body, among which the court of law[50].

CONCLUSIONS

From the aspects analyzed herein, it results the particular importance the referrals for preliminary rulings have played in the general actions by which community courts can be called to rule, from the moment when the said were regulated in the constitutive treaties and until the most recent amendments marked by the adoption and ratification of the Treaty of Lisbon, by 11 member states, out of which the last one has been Denmark, on April 24, 2008.

In the present paper there has been attempted to briefly present the matter of referrals for preliminary rulings, the consequences of such, and the action possibility against a member state benefiting from the ruling any times it is ascertained that it has breached the community obligation in its charge.

In the same time, we have attempted to briefly mention the most important proceeding aspects governing this category of mediated actions, which can be usually filed with the ECJ and as an exception with the CFI.

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[46] Ovidiu Tinca, quoted paper, p.397.

[47] Published in Official Gazette Part I no. 159 of 13.07.1993 as subsequently amended and completed, republished in Official Gazette Part I no.56 of 08.02.1999.

[48] Website: http://curia.europa.eu/ro/instit/presentationfr/index_cje.htm

[49] G.Gornig, I.E.Rusu, quoted paper, p.82.

[50] The first action of this type was initiated in 1985 by the Commission against Germany, consequent to the repeated refuse from Bundehfinanzhof to comply with prejudicial decisions of the ECJ Ovidiu Tinca, quoted paper, p.398; Fabian Gyula, *Drept institutional comunitar*, quoted paper, p.387.

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