

Case C-762/23

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

12 December 2023

Referring court:

Curtea de Apel București (Romania)

Date of the decision to refer:

27 November 2023

Appellants:

QN

RL

VS

JT

AX

MR

Respondent:

Curtea de Apel București

Intervening party:

Consiliul Național pentru Combaterea Discriminării

Subject matter of the main proceedings

Appeal brought by the appellants against the civil judgment of the Tribunalul București (Regional Court, Bucharest) of 9 May 2023 dismissing their claim on the ground that it had been brought prematurely against the defendant Curtea de Apel București (Court of Appeal, Bucharest), seeking an order that the defendant

pay compensation corresponding to seven gross monthly seniority allowances, in accordance with the provisions of Article 81(1) of Legea nr. 303 din 28 iunie 2004 (Law No 303 of 28 June 2004) on the rules governing of judges and magistrates, reassessed on the basis of the inflation rate from the date on which the right arose, until the date of actual payment of the sum, together with statutory interest on arrears, payable in respect of the sum due, from the time the right arose, namely from the date of cessation of duties on account of retirement, until the date of actual payment.

Subject matter and legal basis of the request

On the basis of Article 267 TFEU, the interpretation of the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 TEU, is sought.

Question referred for a preliminary ruling

Must the second subparagraph of Article 19(1) TEU (read in conjunction with Article 2 TEU) be interpreted as meaning that the principle of judicial independence precludes the repeal, in respect of Romanian judges with 20 consecutive years' service in the judiciary, of the right to receive, on retirement or on termination of service for other reasons not attributable to them, a sum equal to seven gross monthly seniority allowances, in the event that the exercise of that right to remuneration is suspended prior to repeal, on a continuous basis and for a prolonged period, for reasons connected principally to the need to eliminate an excessive budget deficit (the legislature expressly invokes the threshold of 3% of gross domestic product laid down in the Treaty on the Functioning of the European Union)?

Provisions of European Union law and case-law relied on

Article 2 and the second subparagraph of Article 19(1) TEU

Commission Decision 2006/928 of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption

Judgment of the Court of Justice of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117

Provisions of national law and case-law relied on

National law

Legea nr. 303/2004 privind statutul judecătorilor și procurorilor (Law No 303/2004 on the rules governing judges and prosecutors)

Article 74

‘1. For their work, judges and prosecutors shall be entitled to remuneration determined in accordance with the level of the court or public prosecutor’s office, the duties performed, seniority in the judiciary and other criteria laid down by law.

2. The rights of judges and prosecutors to remuneration may be reduced or suspended only in the cases provided for in this Law. The remuneration of judges and prosecutors shall be set by a special law. (...)’.

Article 81

‘1. Judges and prosecutors with 20 consecutive years’ service in the judiciary shall, on retirement or on termination of service for other reasons not attributable to them, receive an allowance equal to seven gross monthly seniority allowances, taxed in accordance with the law.

2. The allowance provided for in paragraph 1 shall be granted only once in the course of a judge or prosecutor’s career and shall be recorded in accordance with the law.

(...)’.

Legea nr. 285/2010 privind salarizarea în anul 2011 a personalului plătit din fonduri publice (Law No 285/2010 on the remuneration in 2011 of staff paid from public funds)

Pursuant to Article 13(1), the statutory provisions relating to the granting of retirement assistance or, where applicable, pensions, allowances for being placed in the military reserve, termination of service or being subject to military retirement are not to apply in 2011.

The following legal acts subsequently extended that suspension until 2023, including: Legea nr. 283/2011 privind aprobarea Ordonanței de urgență a Guvernului nr. 80/2010 pentru completarea articolului 11 din Ordonanța de urgență a Guvernului nr. 37/2008 privind reglementarea unor măsuri financiare în domeniul bugetar (Law No 283/2011 approving Decree-Law No 80/2010 supplementing Article 11 of Decree-Law No 37/2008 on the regulation of financial measures in budgetary matters); Ordonanța de urgență a guvernului nr. 103/2013 privind salarizarea personalului plătit din fonduri publice în anul 2014, precum și alte măsuri în domeniul cheltuielilor publice (Decree-Law No 103/2013 on the remuneration in 2014 of staff paid from public funds and other measures relating to public expenditure); Ordonanța de urgență a guvernului nr. 83/2014 privind salarizarea personalului plătit din fonduri publice în anul 2015, precum și alte măsuri în domeniul cheltuielilor publice (Decree-Law No 83/2014 on the remuneration in 2015 of staff paid from public funds and other measures relating to public expenditure; ‘Decree-Law No 83/2014’); Ordonanța de urgență a guvernului nr. 57/2015 privind salarizarea personalului plătit din fonduri publice

în anul 2016, prorogarea unor termene, precum și unele măsuri fiscal-bugetare (Decree-Law No 57/2015 on the remuneration in 2016 of staff paid from public funds, the extension of certain time limits and certain fiscal and budgetary measures); Ordonanța de urgență a guvernului nr. 9/2017 privind unele măsuri bugetare în anul 2017, prorogarea unor termene, precum și modificarea și completarea unor acte normative (Decree-Law No 9/2017 on certain budgetary measures in 2017, the extension of certain time limits and amendments and additions to legislative acts); Ordonanța de urgență a guvernului nr. 90/2017 privind unele măsuri fiscal-bugetare, modificarea și completarea unor acte normative și prorogarea unor termene, (Decree-Law No 90/2017 on certain fiscal and budgetary measures, amendments and additions to legislative acts and the extension of certain time limits); Ordonanța de urgență a guvernului nr. 114/2018 privind instituirea unor măsuri în domeniul investițiilor publice și a unor măsuri fiscal-bugetare, modificarea și completarea unor acte normative și prorogarea unor termene (Decree-Law No 114/2018 on the introduction of measures in the field of public investment and certain fiscal and budgetary measures, amendments and additions to legislative acts and the extension of certain time limits); Ordonanța de urgență a guvernului nr. 130/2021 privind unele măsuri fiscal-bugetare, prorogarea unor termene, precum și pentru modificarea și completarea unor acte normative (Decree-Law No 130/2021 on certain fiscal and budgetary measures, the extension of certain time limits and amendments and additions to legislative acts); Ordonanța de urgență a guvernului nr. 168/2022 privind unele măsuri fiscal-bugetare, prorogarea unor termene, precum și pentru modificarea și completarea unor acte normative (Decree-Law No 168/2022 on certain fiscal and budgetary measures, the extension of certain time limits and amendments and additions to legislative acts; ‘Decree-Law No 168/2022’)

Legea nr. 303/2022 privind statutul judecătorilor și procurorilor (Law No 303/2022 on the rules governing judges and prosecutors), which came into force on 16 December 2022, repealed Law No 303/2004 on the rules governing judges and prosecutors on that date

Legea nr. 304/2022 privind organizarea judiciară (Law No 304/2022 on the organisation of the courts), Article 142 (2) and (5) of which provides:

‘2. The budget of the appellate courts, higher courts, specialised courts and courts of first instance approved for the staff costs of those bodies, as well as the budget approved for other categories of expenditure intrinsically linked to staff costs, shall be included in the budget of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) and shall be managed by it; the President of the High Court of Cassation and Justice shall be the chief authorising officer for expenditure for the courts in respect of those categories of expenditure.

(...)

5. The rights to remuneration or other entitlements relating to remuneration of judges in the bodies referred to in paragraph 2, including interests and other

entitlements intrinsically linked to rights to remuneration, shall be guaranteed by the High Court of Cassation and Justice and acts relating to the remuneration and other entitlements relating to remuneration of judges of those bodies shall be adopted by the President of the High Court of Cassation and Justice.’

Legea nr. 24/2000 privind normele de tehnică legislativă pentru elaborarea actelor normative (Law No 24/2000 on technical legislative standards for the drafting of legislative acts)

Article 66

‘1. In specific cases, the application of a legislative act may be suspended by another legal act of the same rank or higher. In such a situation, express provision shall be made for the date on which the suspension commences and its duration.

2. At the end of the period of suspension, the legislative act or provision subject to suspension shall automatically re-enter into force.

3. The extension of the suspension or the amendment or repeal of the suspended legislative act or provision may be the subject of a legislative act or an express provision taking effect on the date of expiry of the suspension.’

Case-law of the Curtea Constituțională

Decizia nr. 541 din 14 iulie 2015 referitoare la excepția de neconstituționalitate a dispozițiilor articolului 13 alineatul (1) din Legea nr. 285/2010 privind salarizarea în anul 2011 a personalului plătit din fonduri publice (Decision No 541 of 14 July 2015 on the allegation that the provisions of Article 13(1) of Law No 285/2010 on the remuneration in 2011 of staff paid from public funds are unconstitutional), in which the Curtea Constituțională (‘the Constitutional Court’) refers to its case-law, according to which persons retiring are subject to the legal provisions in force on the date of acquisition of entitlement to a pension, in accordance with the principle *tempus regit actum*. As regards a possible infringement of the right to property, the Constitutional Court recalls the case-law of the European Court of Human Rights (judgment of 8 November 2005, *Kechko v. Ukraine*, paragraph 23), in which it was held that it is within the State’s discretion to determine what benefits are to be paid to its employees out of the State budget. The State can introduce, suspend or terminate the payment of such benefits by making the appropriate legislative changes.

The decision of inadmissibility of 6 December 2011, given in joined cases Nos 44232/11 and 44605/11, *Felicia Mihăieș v. Romania and Adrian Gavril Senteș v. Romania*, paragraphs 15 and 19, in which the European Court of Human Rights recalls that, thanks to their direct knowledge of their own society and its needs, national authorities are, in principle, better placed than the international court to determine exactly what is ‘in the public interest’, expresses the same view. Consequently, in the context of the system of protection established by the Convention, it falls within the competence of national authorities to rule first on

the existence of a question of general interest. Taking the view that it is natural that the margin of appreciation available to the legislature in implementing economic and social policies should be a wide one, the Constitutional Court respects the legislature's judgment as to what is in 'the public interest', unless that judgement is manifestly without any reasonable foundation.

In addition, the Constitutional Court noted that the assistance or allowances referred to in Article 13(1) of Law No 285/2010 do not fall within the category of fundamental rights, and that therefore the legislature is free to decide on the content, limits and conditions for granting them and to order grants of such assistance or allowances to be reduced or even halted, without it being necessary for the conditions laid down in Article 53 of the Constitution to be satisfied.

Decizia nr. Decizia nr. 284 din 7 mai 2019 referitoare la excepția de neconstituționalitate a dispozițiilor [mai multor acte normative] (Decision No 284 of 7 May 2019 ruling on the review of the constitutionality of the provisions [of several normative acts])

After recalling the provisions of Article 41(2) of the Constitution, according to which employees are entitled to social protection measures concerning: employees' health and safety, working conditions for women and young people, the setting of a gross minimum wage per country, the weekly rest period, paid leave, work performed under difficult or special conditions, vocational training, 'as well as other specific conditions, as stipulated by the law', the Constitutional Court found that there was no constitutional obligation on the part of the legislature to regulate the granting of retirement assistance or pensions, allowances for being placed in the military reserve, termination of service or being subject to military retirement.

As regards the provisions of Article 47(1) and (2) of the Constitution, it recalled its case-law, according to which 'the determination of the standard of living which may be regarded as decent must be assessed on a case-by-case basis, on the basis of a number of economic factors. The economic situation of the country, the resources available to the State to achieve that objective, and the level of development of society, the level of culture and civilisation at a given time and the organisational arrangements for society are also indications that must be taken into consideration when assessing a 'decent' standard of living. In conclusion, the assessment of the detailed arrangements and the extent to which the State is able to discharge its obligation to ensure a decent standard of living must be based on those factors, since it is not possible to establish a fixed, immutable standard.' In the light of those considerations, the Constitutional Court held that the contested legal provisions could not be regarded as undermining the constitutional right to a decent standard of living, but rather as introducing a set of measures to be adapted to existing economic and social conditions.

As regards the reliance on Article 53 of the Constitution, the Constitutional Court recalls its case-law according to which retirement assistance or allowances, and

allowances for placement in the military reserve, termination of service or being subject to military retirement ‘constitute benefits granted to certain socio-occupational categories by virtue of their special status, without, however, having a constitutional basis’, so that the legislature is free to decide on the content, limits and conditions for granting them and to order grants of such assistance or allowances to be reduced or even halted, without it being necessary for the conditions laid down in Article 53 of the Constitution to be satisfied.

Case-law of the High Court of Cassation and Justice

Decizia nr. XXIII/2005 privind recursul în interesul legii cu privire la aplicabilitatea [unor dispoziții referitoare la acordarea primei pentru concediul de odihnă] (Decision No XXIII/2005 on the appeal in the interest of the law regarding the applicability [of certain provisions concerning the granting of the holiday bonus] in which the High Court of Cassation and Justice (ICCJ) ruled that the suspension of the exercise of the right does not amount to its elimination and that in order for a right that has been provided for not to become a mere obligation devoid of content, reduced to *nudum ius*, which would constitute an unlawful limitation of its exercise, it may not be held that such a right did not exist during the two years for which its exercise was suspended but not eliminated. Consequently, it is necessary that the holders of rights that have been recognised are not hindered in the effective enjoyment of those rights during the period in which they have been provided for by law. The ICCJ thus found that the courts had acted correctly in holding that the right to appeal in respect of the calculation and payment of the holiday bonus arose on the date on which any ground for suspension or non-application of the provisions of that article ceased to exist.

Decizia nr. 79/2017 a Înaltei Curți de Casație și Justiție, Completul pentru dezlegarea unor chestiuni de drept, cu trimitere la Decizia nr. 16/2015 – ICCJ, Completul pentru dezlegarea unor chestiuni de drept (Decision No 79/2017 of the High Court of Cassation and Justice (ICCJ), Chamber with jurisdiction to rule on questions of law with reference to Decision No 16/2015 – ICCJ, Chamber with jurisdiction to rule on questions of law in which, by examining the question of the effects produced by the legislative measures with regard to the suspension of the right introduced by Article 81(1) of Law No 303/2004, the ICCJ found that those texts govern benefits of a financial nature, in respect of which, on the basis of identical considerations applicable to other regulated benefits for other socio-professional categories, the ICCJ has already ruled in Decisions Nos 16/2015 and 11/2017. It thus refers to its case-law, under which it is clear from the interpretation of the legal provisions laid down that the intention of the legislature was not to abolish the benefits granted to certain socio-professional categories, namely the cessation of the existence of the right to the grant of assistance/allowances, but only to suspend the exercise of that right.

Decizia nr. 5/2018 a Înaltei Curți de Casație și Justiție, Completul competent să judece recursul în interesul legii (Decision No 5/2018 of the High Court of Cassation and Justice, Chamber with jurisdiction to hear the action in the

interests of the law in which the ICCJ found that, in the context of repeated suspension by legislative acts recognised as constitutionally legitimate, the entitlements at issue did not form part of the assets of the beneficiaries, since their content was continuously abstract, their concrete recognition being subordinate to a new expression of the law on the part of the legislature, which is why they cannot be regarded as assets from that point of view. Nor can there be a legitimate expectation that those entitlements will actually be reinstated, particularly since, subsequently, they have been repealed (moreover, Law No 24/2000 recognises the possibility of repeal in the case of provisions that have been suspended). Furthermore, it cannot be argued that the entitlements provided for by provisions whose application has been suspended have in fact become part of the assets of the beneficiaries initially referred to, in a situation where their effectiveness has been suspended on several occasions and no other legal provision or case-law judgment has altered the effect of the legislative measures bringing about that suspension. Therefore, the appeals brought during that suspension have been brought prematurely, since the right is not a current one. In order to benefit from the legal protection of appeal, the subjective right, in addition to being recognised and protected by law, must also fulfil the condition of being current.

Succinct presentation of the facts and procedures in the main proceedings

- 1 Under an appeal listed in the docket before the Tribunalul Bucureşti – Secţia a VIII-a conflicte de muncă și asigurări sociale (‘the Regional Court of Bucharest, Seventh Division for Cases concerning Labour Disputes and Social Insurance’), the appellants QN, RL, VS, JT, AX and MR, in a case between them and the Court of Appeal of Bucharest, the defendant, claimed that the defendant should be ordered to pay compensation corresponding to seven gross monthly seniority allowances, in accordance with Article 81(1) of Law No 303/2004, reassessed on the basis of the inflation rate from the date on which the right arose, until the date of actual payment of the sum, and an order that the defendant pay statutory interest on arrears, payable in respect of the sum due, from the time the entitlement arose, namely from the date of cessation of duties on account of retirement, until the date of actual payment. In the statement of reasons, in essence, the appellants stated that they had worked as judges and that their duties had ceased when they retired.
- 2 By civil judgment of 9 May 2023, the Regional Court of Bucharest, –Seventh Division for Cases concerning Labour Disputes and Social Insurance, upheld the plea of prematurity and dismissed the application as premature. It considered that, as regards the situation of the appellants, who ceased their duties on retirement, the provisions concerning suspension for the 2019-2022 period, depending on the date on which they ceased their duties, were relevant.
- 3 Since the Constitutional Court has held that ‘persons retiring are subject to the legal provisions in force on the date of acquisition of entitlement to a pension, in accordance with the principle *tempus regit actum*’, the failure to grant the above-

mentioned pecuniary entitlements for several subsequent years cannot be regarded as an event affecting the foreseeability of the provision. Entitlement to a pension and the conditions for retirement and the entitlements granted on retirement are those on the date on which entitlement to a pension is acquired and not those existing in the legislation at an earlier date, which are not in the nature of vested rights. On the date of the appellants' retirement and on the date of the application for payment of the allowance governed by Article 81(1) of Law No 303/2004, the provisions of that law did not apply. Under those circumstances, the claims seeking a declaration that the entitlement relied on has become current cannot be regarded as well founded.

- 4 As regards the legal nature of the entitlements claimed in the action, they constitute additional rights to remuneration, as the Constitutional Court has consistently held in its decisions, and as was also emphasised in Decision No 79/2017 of the High Court of Cassation and Justice. In view of the fact that the entitlements claimed are additional rights, and not fundamental rights enshrined and guaranteed by the Romanian Constitution, the repeated suspension of their exercise did not affect the substance of the right.
- 5 As regards compliance with the principles of foreseeability and predictability of the law, as long as the substance of the right recognised by the legislature has not been impaired, but the exercise of that right has merely been postponed, the appellants' claim alleging infringement of those principles cannot be accepted either.
- 6 The Regional Court of Bucharest also pointed out that the repeal of the legislation governing the right to compensation, which had been suspended on the date it was repealed, did not amount to the cessation of the ground for suspension. The ground for suspension governed by Decree-Law No 168/2022 exists, for the whole of 2023, since it entered into force when Law No 303/2004 was still in force.
- 7 The appellants appealed against those judgments, arguing, inter alia, that the failure to grant the entitlement claimed infringes the right to property, since the rights of judges and prosecutors to remuneration may be reduced or suspended only in the cases provided for by law, with reference to the independence of judges.

The essential arguments of the parties in the main proceedings

- 8 According to the appellants, the legal nature of the right provided for in Article 81(1) of Law No 303/2004 is that of a right to remuneration; although the exercise of that right was suspended for 12 years, a pension granted on retirement constitutes a possession within the meaning of Article 1 of the First Additional Protocol to the European Convention on Human Rights and the failure to grant the entitlement claimed amounts to a violation of the right to property. From the entry into force of Law No 303/2004 until the first suspension of the provisions of

Article 81 in 2010, that is to say, for a period of about six years, the allowance claimed was granted to all those who were entitled to it and, subsequently, the substance of the entitlement was not adversely affected, but merely the exercise of that right.

- 9 They also mentioned the fact that that entitlement is inherent in the constitutional status of judges, a status governed by organic law, in relation to a bonus payment for continuous activity in the judiciary for 20 years. The corresponding entitlement is granted to recognise professional loyalty, and for the deprivations, risks, prohibitions and incompatibilities imposed by the staff regulations and assumed by judges in the course of their career. To that effect, they rely on Article 19 of the Treaty on European Union and agree that a reference for a preliminary ruling should be made to the Court of Justice.
- 10 In the application on appeal, the appellants stated that the decision dismissing an appeal on the ground that it had been made prematurely because it concerned entitlements that did not exist at the date of acquisition of the right to a pension, but which existed in the legislation at an earlier date and were not in the nature of a vested right, was not only unfounded and unlawful, but also illogical, since there could be no question of the claim for an entitlement that no longer existed being premature. The statutory measure suspending the grant of the allowance laid down in Article 81(1) of Law No 303/2004 is unpredictable and cannot be regarded as foreseeable on the sole ground that the successive decree-laws that imposed it did not impair the substance of the entitlement conferred by the legislature, but merely delayed the exercise of that right.
- 11 In the present case, the legislative stability, certainty and consistency that it is reasonable to expect were disregarded. Article 1 of the First Additional Protocol to the European Convention on Human Rights has therefore been infringed. The statement of reasons for the subsequent suspensory legislative acts states, in essence, that the failure to adopt the proposed fiscal and budgetary measures under the emergency procedure would have additional repercussions on the deficit of the general consolidated budget, which would significantly harm the sustainability of public finances. From the point of view of ensuring the sustainability of the State budget, the condition of proportionality requires a sufficient statement of reasons as regards the means used, but also action by the State in a timely, appropriate and consistent manner.
- 12 Uncertainty, whether legislative, administrative or arising from the practices adopted by the authorities, is a factor that must be taken into account when assessing the State's conduct, in the course of an examination of the requirement of that interference be proportionate, in order to determine how and to what extent the exercise of the right affected by the contested interference has been restricted.
- 13 The appellants also rely on discrimination in relation to the judges of the Romanian Constitutional Court, noting the existence of categories of persons who were treated favourably, without any objective and rational justification, since

they did not suffer the effects of the suspension of payment of the entitlement at issue.

- 14 The pension is granted only on the basis of a judge's activity over a certain period, and not on the basis of other considerations. Now, since Decree-Law No 83/2014 came into effect, which introduced a single exception (that of the death of the judge, in which case the pension is granted to the husband/wife and dependent children), it appears that the legislature has even altered the objective taken into account when the allowance was introduced, transforming it from an ancillary right to the employment relationship into a survivor's pension, even though those are different institutions and are regulated in legally different manners.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 15 The Court of Appeal of Bucharest considers that the second subparagraph of Article 19(1) TEU is the relevant provision. Similarly, it relies on the case-law of the Court of Justice, according to which the receipt by judges of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence (judgment of 27 February 2018 in Case C-64/16, *Associação Sindical dos Juizes Portugueses*, EU:C:2018:117, paragraphs 30 to 37 and 42 to 46).
- 16 Like the factual situation in *Associação Sindical dos Juizes Portugueses*, the salary reduction measures at issue were adopted because of mandatory requirements linked eliminating the Romanian State's excessive budget deficit and in the context of obtaining EU financial assistance. In addition, various preparatory acts accompanying the decree-laws ordering the subsequent suspension of the payment of the allowance explicitly state that account was taken of the fact that, if those measures were not adopted as a matter of urgency, the budget deficit would exceed the threshold of 3% of gross domestic product laid down in the Treaty on the Functioning of the European Union, and would result in the initiation by the European Commission of the excessive deficit procedure, which determines the relevance of EU law in this case.
- 17 Law No 303/2022 on the rules governing judges and prosecutors, which came into force on 16 December 2022, provided that, on the date of entry into force of that law, Law No 303/2004 was repealed. Consequently, following the period 2010-2022, during which Article 81(1) of Law No 303/2004 was not applied, it was repealed with effect from 16 December 2022.
- 18 Although the Romanian Constitutional Court has held that retirement pensions do not fall within the category of fundamental rights, and that therefore the legislature is free to decide on the content, limits and conditions for granting them and to order grants of such pensions to be reduced or even halted, the question nevertheless arises, in the case of judges (or magistrates), of the infringement of their independence as a result of the prolonged suspension of the pensions, followed by their repeal.

- 19 Under Article 125 of the Basic Law, judges appointed by the President of Romania are irremovable; proposals for appointment, as well as the promotion and transfer of judges and sanctions against them, fall within the competence of the Consiliul Superior al Magistraturii (Superior Council of Magistracy) and the office of judge is incompatible with any other public or private office, with the exception of teaching duties in higher education.
- 20 Both in the case-law of the Romanian Constitutional Court and in the case-law of the constitutional courts of other countries, it has been held that the financial stability of judges constitutes one of the guarantees of judicial independence.
- 21 The principle of judicial independence cannot be limited solely to the amount of remuneration (which includes both salary and pension) of judges, as this principle implies a number of guarantees, such as the status of judges (the conditions of access to the office, the appointment procedure, strong guarantees ensuring transparency of procedures for the appointment, promotion and transfer of judges, and the suspension and termination of service), their stability or irremovability, financial guarantees, the administrative independence of judges and the independence of the judiciary from other powers of the State. On the other hand, judicial independence includes the financial security of judges, which also presupposes the assurance of a social guarantee. The financial stability of judges (including the receipt of a level of remuneration commensurate with the importance of the functions they carry out) is one of the guarantees of judicial independence. Article 19 TEU gives concrete expression to the value of the rule of law enshrined in Article 2 TEU. In that context, the Court of Appeal of Bucharest, – Section VII, considers it necessary to refer a question to the Court of Justice for a preliminary ruling.