

**GUIDE**  
**on the admissibility conditions for a reference to the High Court of Cassation and Justice**  
**for a preliminary ruling in civil matters**

Contents

<b>I. Preliminary matters</b> .....	2
<b>II. Holder of the complaint</b> .....	3
<b>III. Analysis of the conditions of admissibility by reference to the case-law of the High Court of Cassation and Justice - Panel for Preliminary Ruling on Questions of Law</b> .....	3
1. Existence of a pending case.....	3
2. The panel using the mechanism established by the provisions of Article 519 of the Code of Civil Procedure to hear the case at last instance .....	3
3. The existence of a real, genuine question of law capable of giving rise to different interpretations, for which a resolution in principle is required .....	4
4. The substantive settlement of the pending case depends on the question of law the clarification of which is required .....	9
5. The novelty of the question of law the clarification of which is sought .....	10
6. The matter of law have not been the subject of the statute of the High Court of Cassation and Justice, nor the object of a pending appeal in the interest of the law .....	11
7. The case in which the complaint is filed must have started under the new Civil Procedure Code .....	12

**GUIDE**  
**on the admissibility conditions for a reference to the High Court of Cassation and Justice**  
**for a preliminary ruling in civil matters**

**I. Preliminary matters**

The **seat of the matter** is to be found in the Code of Civil Procedure, Book I - *General Provisions*, Title III - *Provisions on ensuring uniform practice*, Chapter II - *Referral to the High Court of Cassation and Justice for a preliminary ruling on points of law*, Articles 519 - 521:

**Art. 519** - *If, in the course of the trial, a panel of the High Court of Cassation and Justice, the Court of Appeal or the Tribunal, hearing the case at last instance, finding that a point of law, on the determination of which the decision on the merits of the case depends, is new and has not been ruled on by the High Court of Cassation and Justice and which is not the subject of an appeal in the interest of the law pending before it, may refer the matter to the High Court of Cassation and Justice for a preliminary ruling.*

**Art. 520** - *(1) The referral to the High Court of Cassation and Justice shall be made by the panel after adversarial hearings, if the conditions laid down in Article 519 are met, by a ruling which shall not be subject to any appeal. If by the judgment the reference is made, it shall contain the reasons supporting the admissibility of the reference under Article 519, the views of the panel of judges and of the parties. [...]*

**Article 521** - *(1) The Panel for Preliminary Ruling on Questions of Law shall rule on the application by means of a decision only on the question of law submitted for determination. [...]*

*(3) The resolution on questions of law shall be binding from the date of publication of the decision in the Official Gazette of Romania, Part I, and for the court that requested the resolution, from the date of the decision. [...]*

According to constitutional provisions, the main role of the High Court of Cassation and Justice is to unify judicial practice, and civil procedural law ensures this through two mechanisms: the *preliminary question* and the *appeal in the interest of the law*. The judgments delivered by the High Court of Cassation and Justice through these procedures have the same legal nature, providing interpretations of the law, and are binding on all national courts from the date of their publication in the Official Gazette of Romania.

The mechanism established by the *preliminary question* is an *a priori* unification mechanism, established by the legislator in order to prevent the emergence of divergent case law and to ensure, in this way, the security of legal relationships. Some of the conditions of admissibility distinguish it from an *appeal in the interest of the law*, the latter being a unification mechanism which intervenes *a posteriori*, after the formation of a non-uniform practice.

In the following, we will refer to the admissibility conditions assumed by the preliminary question mechanism, as they are regulated by the relevant regulatory framework and are outlined in the case law of the High Court of Cassation and Justice - the panel for preliminary ruling on questions of law.

Prior to examining the substance of the question of law submitted for debate, the High Court of Cassation and Justice - Panel for Preliminary Ruling on Questions of Law is required to ascertain whether, in relation to the question referred by the applicant, the conditions for admissibility for the purposes of a preliminary ruling, as laid down in Article 519 of the Code of Civil Procedure, are cumulatively satisfied.

## II. Holder of the complaint

According to Article 519 of the Code of Civil Procedure, the possibility of referring a case to the High Court for a preliminary ruling belongs to the panels of the tribunals, courts of appeal or the High Court of Cassation and Justice.

## III. Analysis of the conditions of admissibility by reference to the case-law of the High Court of Cassation and Justice - Panel for Preliminary Ruling on Questions of Law

As a preliminary point, it should be noted that, in the preliminary ruling procedure, **the High Court of Cassation and Justice does not replace the fundamental role of the courts in interpreting and applying the law**, but merely helps the judge to eliminate ambiguities or difficulties in certain legal texts, an aspect which has also been noted in the case law of the High Court. (*Decision No 45/2021; Decision No 47/2021; Decision No 21/2023; Decision No 27/2023; Decision No 32/2023; Decision No 41/2023; Decision No 45/2023*)

In the case-law of the Panel for Preliminary Ruling on Questions of Law, in interpreting and applying the provisions of Article 519 of the Code of Civil Procedure, the following conditions for the admissibility of the reference for a preliminary ruling have been established:

### 1. Existence of a pending case

○ The reference for a preliminary ruling made by the decision itself by which the referring court disposed of the case renders the application inadmissible, since the approach taken with regard to the interpretation of the point of law at issue is devoid of finality and the resolution cannot be used in the proceedings in which it was initially considered necessary. (*Decision No 29/2019*)

### 2. The panel using the mechanism established by the provisions of Article 519 of the Code of Civil Procedure to hear the case at last instance

○ Where the judgment to be delivered by the appellate court in the case in which the reference for a preliminary ruling was made is subject to recourse, this condition of admissibility laid down in Article 519 of the Code of Civil Procedure is not met (*Decision No 61/2017; Decision No 6/2018; Decision No 37/2018; Decision No 47/2018; Decision No 30/2019*).

- In the unifying practice of the supreme court, it has been held that this condition of admissibility is also met when the application has been made in an extraordinary appeal. (*Decision No 26/2019; Decision No 48/2020*)

**3. The existence of a real, genuine question of law capable of giving rise to different interpretations, for which a resolution in principle is required**

○ The question of law which is in dire need of clarification must present a **sufficiently great difficulty, able to call for the intervention of the supreme court in order to solve the issue of law in principle** and to remove any uncertainty that may arise over the security of the legal relations deduced to the judgment. (*Decision no. 24/2015; Decision no. 6/2016; Decision no. 10/2016; Decision no. 16/2016; Decision no. 6/2017; Decision no. 52/2017; Decision no. 62/2017; Decision no. 90/2017; Decision no. 18/2018; Decision no. 46/2018; Decision no. 39/2019; Decision no. 6/2020; Decision no. 20/2021; Decision no. 34/2021; Decision no. 45/2021; Decision no. 50/2021; Decision no. 54/2021; Decision no. 74/2021; Decision no. 77/2021; Decision no. 8/2022; Decision no. 9/2022; Decision no. 18/2022; Decision no. 27/2022; Decision no. 40/2022; Decision no. 45/2023; Decision no. 44/2023; Decision no. 41/2023; Decision no. 28/2023; Decision no. 27/2023; Decision No 6/2023, etc.*)

○The question of law to be decided must be one which raises **serious difficulties of interpretation of imperfect, incomplete or contradictory legal provisions, requiring the resolution of the question of law in principle** in the preliminary ruling procedure, and not the performance of operations of interpretation and application of a legal text in relation to the particular circumstances characterising each dispute, or the existence of simple obstacles which could be removed by a more thorough reflection of the judge of the case. (*Decision No 16/2016; Decision No 9/2017; Decision No 62/2018; Decision No 32/2020; Decision No 1/2021; Decision No 34/2021; Decision No 45/2021; Decision No 69/2021; Decision No 77/2021; Decision No 59/2022; Decision No 60/2022; Decision No 6/2023; Decision No 12/2023; Decision No 27/2023; Decision No 45/2023; Decision No 41/2023; Decision No 54/2023 etc.*)

○As a matter of principle, both the doctrine and the case-law of the High Court have subordinated the "question of law" contained in Article 519 of the Code of Civil Procedure to the rules of positive law, customary rules and/or, possibly, principles of law, *lato sensu*, regulatory rules among which, in essence, the clarification of the meaning, scope and effects of the preliminary ruling, by means of which a uniform interpretation of a particular rule of law is ensured, notwithstanding its generally binding effects, cannot be included. (*Decision No 14/2021*)

○The question of law at issue must be a **qualified one, relating to the possibility of interpreting a legal text differently either because it is incomplete, or because it is not correlated with other legal provisions**, or because there is a question that it is no longer in force or that its effects may extend beyond the date of its repeal (ultra-activity). (*Decision No 5/2022; Decision No 25/2022*)

○The issue before the court **must be susceptible to different and controversial interpretations**, because of the lack of clarity of the legal rule, its incompleteness, its susceptibility to several meanings or meanings equally justified by the vagueness of the wording of the legal text. (*Decision No 16/2016; Decision No 32/2020; Decision No 46/2023; Decision No 21/2023*)

○The subject-matter of the proceedings is an incomplete or unclear rule of law, a legal text which, on the basis of interpretation by means of adequate, consistent legal reasoning, may be given divergent meanings and applications in quasi-identical situations and may ultimately lead to non-uniform case-law (*Decision No 70/2022; Decision No 32/2023*).

○The question of law identified must be capable of giving rise to different or contradictory interpretations of a text of law, of a doubtful, vague or unclear rule, and the establishment of difficulty as a condition of admissibility is absolutely necessary in order to ascertain whether the supreme court is

being asked to give a ruling in principle on a genuine question of law, as required by the provisions of Article 519 of the Code of Civil Procedure, or is called, in fact, to solve a simple problem of interpretation of certain legal provisions. (*Decision No 16/2016; Decision No 32/2020; Decision No 8/2022; Decision No 6/2023*).

○ **The complex or, as the case may be, precarious nature of the legislation, such as to lead ultimately to different interpretations, and the difficulty for the panel in adopting a particular interpretation must be reflected in the ruling for the referral**, which must be reasoned and capable of reflecting the various possible interpretations, with the corresponding arguments, and in such a way as to make explicit the threshold of difficulty of the question and the extent to which it goes beyond the ordinary duty of the court to interpret and apply the law in the resolution of a dispute, since a mere dilemma as to the meaning of a rule of law cannot constitute grounds for triggering the preliminary ruling mechanism. (*Decision No 88/2017; Decision No 2/2018; Decision No 62/2018; Decision No 32/2020; Decision No 45/2021; Decision No 50/2021; Decision No 74/2021*)

○ The provisions of Article 520 of the Civil Procedure Code establish the obligation to formulate a point of view on the question of law that is the subject of the referral, the High Court of Cassation and Justice – the Panel for Preliminary Ruling on Questions of Law stating in its case-law that such an omission is not permitted. (*Decision no. 2/2018; Decision no. 1/2019; Decision no. 53/2019; Decision no. 12/2020; Decision no. 15/2021; Decision no. 76/2022; Decision no. 32/2023*)

○ **The ruling for the referral shall include the reasons supporting the admissibility of the referral under Article 519, the point of view of the panel and of the parties.** It is incumbent on the referring court to identify, in particular, the question of law which requires interpretation, the aspects which confer the difficulty or the dichotomic character, which is antagonistic to the interpretation of the rule of law, and the different way it can be interpreted.

The point of view expressed by the referring court has a certain complexity, be so designed as to demonstrate a real difficulty in discerning which possible interpretation of the rule of law is most appropriate.

From the ruling for the referral of the supreme court with the delivery of a preliminary ruling must result the difficulty of the question of law that is required to be clarified, including by presenting the different interpretations that it can arouse and the obstacles that have prevented the panel of judgment, in fulfilling the obligation of the courts to interpret and apply the law in the resolution of a dispute, from deciding on the correct interpretation.

The court's point of view requires a real examination of the case, i.e. its own interpretation of the normative text under debate, to be reflected in the view of the panel, as regulated in the provisions of Article 520 of the Code of Civil Procedure.

The requirement of the norm also requires that the view of the court explicitly foresees what the difficulty threshold of the question is and to what extent it exceeds the ordinary obligation of the court to interpret and apply the law in the settlement a dispute.

It must also include a justification for how the question of law which is the subject of the referral is susceptible to different interpretations, thus requiring a ruling of principle.

The role of the panel initiating the complaint is to show, certainly and categorically, the norm whose interpretation is requested, its determinant character in the substantive solution of the case, but also to highlight the arguments that support the complex or, where appropriate, precarious nature of the regulation, which ultimately lead to different interpretations, as well as the difficulty of the panel in in adopting a particular interpretation, thus demonstrating the need to appeal to the mechanism of unification. (*Decision no. 20/2015; Decision no. 31/2015; Decision no. 21/2016; Decision no. 2/2018; Decision no. 32/2020; Decision no. 57/2020; Decision no. 15/2021; Decision no. 26/2021; Decision no.*

50/2021; Decision no. 5/2022; Decision no. 24/2022; Decision no. 35/2022; Decision no. 36/2022; Decision no. 42/2022; Decision no. 47/2022; Decision no. 59/2022; Decision no. 65/2022; Decision no. 76/2022; Decision no. 26/2023; Decision no. 6/2023; Decision no. 31/2023; Decision no. 32/2023)

○ **The referring court has to establish the rule of law applicable to the legal relationship deduced to the judgment, depending on the concrete claims made by the complaining party, a task which it cannot delegate, by way of a preliminary question, to the supreme court.** This operation is incumbent upon it and cannot be avoided by resorting to the preliminary ruling mechanism, since it cannot be diverted from the reason for its regulation, which is to provide for a legal settlement in principle and not to subrogate itself to the jurisdictional powers of the court (*Decision no. 64/2021; Decision no. 8/2022; Decision no. 25/2022; Decision no. 35/2022; Decision no. 43/2022; Decision no. 55/2022; Decision no. 56/2022; Decision no. 70/2022; Decision no. 21/2023; Decision no. 44/2023; Decision no. 28/2023*)

○ **The difficult nature of the question of law cannot be compensated for by the quantitative factor of the large number of cases recently brought before the courts,** which have not yet been definitively decided and which may give rise to a considerable amount of divergent judicial practice as a result of divergent interpretations, if the question of law itself is not identified as such in the referral. (*Decision no. 23/2021; Decision no. 27/2023*)

○ The referral must relate exclusively to questions of interpretation of the law, and not to particular elements of the case before the court, and in order to constitute a question of law, the premise on which the question forming the subject-matter of the referral is based must have its source in legal provisions, and not in a state of fact, the application of the law to the factual situation, as established by the evidence submitted, being the exclusive responsibility of the court hearing the case. (*Decision no. 28/2023*)

○ The interpretation and application of the law in the specific circumstances of each case are the responsibility of the court seised of the case and not of the supreme court, which is seised in the preliminary ruling procedure to decide a point of law. It is for the judge in the case to resolve any difficulties of interpretation or correlation of legal rules, whether unclear or incomplete, using methods of interpretation of the law in accordance with the principles of law and with the relevant doctrinal and case-law, provided that the interpretation of substantive and procedural law is a distinct and absolutely necessary stage in the process of applying a specific factual situation. (*Decision no. 8/2022*)

○ Clarification of the interpretation and application of legal rules within the preliminary ruling mechanism is intended to make it easier for the judge to eliminate ambiguities or difficulties in certain legal texts, but it remains the exclusive task of the referring court to decide the case before it. The task of interpreting and applying legal provisions to the various circumstances of each case is part of the day-to-day work of the court and is an obligation which has been elevated to the rank of a fundamental principle, enshrined in Article 5 para. (2) of the Code of Civil Procedure. (*Decision no. 6/2020; Decision no. 52/2020; Decision no. 1/2021; Decision no. 5/2021; Decision no. 16/2021; Decision no. 25/2021; Decision no. 77/2021; Decision no. 24/2022; Decision no. 40/2022; Decision no. 63/2022; Decision no. 77/2022*)

○ In the procedure of the preliminary ruling, the High Court of Cassation and Justice does not substitute the fundamental attribute of interpretation and application of the law of the courts, but it is limited to facilitating the judge to eliminate ambiguities or difficulties of some texts of law (*Decision no. 45/2021; Decision no. 21/2023; Decision no. 27/2023; Decision no. 32/2023; Decision no. 41/2023; Decision no. 45/2023*)

○ The indication of the question of law, the mere assertion that all the admissibility conditions for referral to the High Court of Cassation and Justice are met and the expression of the different views of the members of the panel which, concisely reasoned, do not indicate in concrete terms any difficulty justifying referral to the Supreme Court in view of the unclear nature of the rules of law, are not

sufficient, since it is necessary to set out the arguments for which there is a real difficulty of interpretation requiring a ruling in principle by the Supreme Court, since Art. 519 of the Code of Civil Procedure refers to the actual interpretation of the content of legal provisions in order to resolve in principle a real, essential and controversial question of law which presents a sufficiently great difficulty resulting from doubtful, vague provisions of particular complexity. The mere existence of a difference of opinion, in the absence of the difficulty of the question of law, does not justify the admissibility of the reference for a preliminary ruling. (*Decision no. 22/2023*)

○ The expression of the referring court's point of view also helps to establish whether the question of law on which the supreme court is asked to rule is real and difficult, and is intended to be persuasive and, from that point of view, that the conditions of admissibility laid down in Article 519 of the Code of Civil Procedure are met. (*Decision no. 2/2018; Decision no. 41/2021; Decision no. 5/2023; Decision no. 7/2023; Decision no. 14/2023*)

○ Not every question of law can be subject to interpretation through this mechanism of case law unification, but only that which raises the problem of the precariousness of the legal texts, their dual and complex character. Otherwise, the role of the supreme court would become one of direct adjudication of the case before it and would neutralise the role of the legally empowered court, which is to adjudicate directly and effectively, a role enshrined in the Constitution. The supreme court cannot be entrusted, in the context of this procedure, with the interpretation and application of the law with a view to the effective resolution of the case pending before it, an attribute which must necessarily remain within the exclusive competence of the court legally entrusted with the resolution of the case. (*Decision no. 26/2023*)

○ **The clarification that can be given by activating this mechanism must be one of principle**, having the valences of a clarification of the content and purpose of the legal texts subject to interpretation, i.e. to identify the will of the legislator, and not to determine a particular way of applying the legal regulation to a litigious situation that the author of the referral considers complex. It should also be emphasised that the function and role of the courts is to interpret and apply the law to the specific case before them, in order to resolve it in relation to the legal rules of the active legislative background, and not to sanction in any way certain legislative policies which may be considered to affect the quality of the law. (*Decision no. 34/2021*)

○ **The referral must lead to the interpretation *in abstracto* of certain legal provisions, and not to solving some issues related to the particularities of the case.**

○ The question referred in the preliminary procedure must relate to a specific point of law, so that the solution given in this procedure is qualified and not generic and purely hypothetical.

○ The question of law must be real and not apparent, it must concern a different or contradictory interpretation of a legal text, an unclear, incomplete or, as the case may be, uncertain customary rule or the incidence of general principles of law, the content or scope of which are questionable. (*Decision no. 14/2023*)

○ **The request to determine the rule applicable to the legal relationship at issue does not meet the requirements of Article 519 of the Code of Civil Procedure**, because it does not seek to resolve a question of law in principle, but, on the contrary, it seeks to obtain a legal qualification of the substantive legal relationship at issue, depending on the specific claim of the plaintiff, by indicating the applicable rule of law.

○ **It is for the referring court to determine the rule of law applicable to the legal relationship at issue** in the light of the specific claims put forward by the applicant, **which it cannot delegate to the supreme court by way of a preliminary question**. That task is incumbent on it and cannot be circumvented by recourse to the preliminary ruling mechanism, since that mechanism cannot be diverted from the reason for its regulation, which is to ensure that the law is resolved in principle and not to

subrogate itself to the judicial powers of the court. (*Decision no. 8/2022; Decision no. 25/2022; Decision no. 35/2022; Decision no. 43/2022; Decision no. 55/2022; Decision no. 56/2022; Decision no. 70/2022; Decision no. 21/2023; Decision no. 28/2023; Decision no. 44/2023*)

○The referral must relate exclusively to questions of interpretation of the law, the operations of identifying and applying the relevant legal texts to the circumstances of each dispute cannot be transferred to the panel constituted to deliver a preliminary ruling, but are the responsibility of the court hearing the case. (*Decision no. 53/2021; Decision no. 28/2023*)

○The clarification that can be given by going through this procedure must be one of principle, having the valences of a clarification of the content and purpose of the legal texts subject to interpretation, i.e. the identification of the legislator's will, and not the determination of a particular way of applying the legal regulation to a litigious situation that the author of the referral considers complex. (*Decision no. 34/2023*)

○The resolution of legal relations between the parties necessarily implies an application of the rule of law to the factual situation, because this is the content of the jurisdictional function, i.e. to say the law to the factual situation (*da mihi factum dabo tibi ius*), so that the assessment of the compatibility of a legal qualification made in relation to a concrete legal relationship and an impersonal resolution of a question of law, by means of the procedural instrument regulated by Art. 519 et seq. of the Code of Civil Procedure, is a matter which only the court hearing the case can assess.

The supreme court cannot be entrusted, in the context of these proceedings, with the verification of factual circumstances or the application of the law for the purpose of resolving the cases in question, since such a task falls and must remain within the jurisdiction of the courts.

○Where the referring court gives a clear and reasoned interpretation of the point of law at issue, without presenting and arguing various possible interpretations of the legal text or elements leading to the conclusion that it is complex or precarious - imperfect, incomplete or contradictory - it cannot be considered that there is a genuine point of law justifying a preliminary ruling. (*Decision no. 50/2022*)

○The preliminary ruling procedure **may not be used for the purpose of interpreting the rules of law laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms**, given, on the one hand, that the exclusive right to interpret the rules of the Convention is conferred on the European Court of Human Rights by the provisions of Art. 32 of the Convention and, second, that the application of the case-law of the European Court of Human Rights in the domestic legal order of the Member States follows from the provisions of Article 46 of the Convention, the priority of the more favourable international rules relating to fundamental human rights being laid down in Article 20(2) of the Romanian Constitution, in case of identification of inconsistencies between domestic laws and international covenants and treaties on fundamental human rights to which Romania is a party. (*Decision no. 29/2011; Decision no. 1/2012; Decision no. 37/2019; Decision no. 29/2020; Decision no. 55/2022*)

○The uniform interpretation and application of the legal provisions given to the supreme court **refers to the content of the normative acts and not to the content of the decisions of the Constitutional Court or to the effects that the latter produce**. The Constitutional Court has ruled that the ruling on the effects of its decisions by the High Court of Cassation and Justice, in the context of a unified interpretation of the law, constitutes a breach of the exclusive jurisdiction of the constitutional forum. [Decision no. 206/2013 and Decision no. 454/2018]. (Decision no. 63/2021)

○In so far as, **by the date of the decision on the application, the question of law has been settled by legislation, either by amending the legal rule in respect of which the question of interpretation and application was previously raised, or by the adoption of other legal provisions clarifying the question of law at issue**, the very premise of a preliminary ruling disappears which, in essence, concerns the existence of doubtful, incomplete or unclear legislation which needs to be clarified



in terms of interpretation in order to prevent its inconsistent application. (Decision no. 13/2022; Decision no. 26/2022)

**In conclusion, the existence of a real, genuine question of law, capable of giving rise to different interpretations, for which a resolution of principle is necessary, implies:**

- **difficulties in interpreting legal provisions which are imperfect, incomplete, contradictory or inconsistent with other legal provisions;**
- **the difficulty of the legal problem is sufficiently great to require the intervention of the supreme court for the purpose of resolving it in principle;**
- **the question of law must be susceptible to different and controversial interpretations;**
- **the resolution that can be reached by activating this mechanism must be one of principle, i.e. it must lead to the interpretation *in abstracto* of specific legal provisions and not to the resolution of questions relating to the specific features of the case;**
- **the grounds for the referral must contain the reasons for the admissibility of the referral, the views of the panel and the parties and must reflect the complex or, as the case may be, precarious nature of the legislation, which is likely to lead to different interpretations, and the difficulty for the panel in adopting a particular interpretation;**
- **it is for the referring court to determine the rule of law applicable to the legal relationship at issue, which it cannot delegate to the supreme court by way of a preliminary question;**
- **the preliminary ruling procedure may not be used to interpret the European Convention on Human Rights or to interpret the effects of decisions of the Constitutional Court.**

**4. The substantive settlement of the pending case depends on the question of law the clarification of which is required**

**o The question of law must be essential**, in the sense that its clarification depends on the substantive solution of the pending case in which it arises. (*Decision no. 1/2013; Decision no. 9/2016; Decision no. 36/2020; Decision no. 81/2022; Decision no. 32/2023*)

**o Between the point of law sought to be clarified and the decision given by the court seized of the case at last instance, there must be a relationship of dependence**, in the sense that the decision of the supreme court delivered in these proceedings must be such as to have a practical effect on the content of the judgment, the requirement of relevance being an expression of the usefulness which the resolution of the question of law relied on in principle must have for the resolution of the dispute. Prior to the referral to the supreme court, it is necessary to establish and demonstrate the existence of a close link between the manner in which the point of law is resolved, in relation to the possible interpretations envisaged, and the resolution of the case, since only in those conditions can the usefulness and interest in promoting that approach be demonstrated. (*Decision no. 81/2022; Decision no. 46/2022; Decision no. 47/2022*)

**o The requirement that the question of law must be connected to the decision on the merits of the case must necessarily be related to the limits of the referral to the referring court, which means that the question of law referred to the supreme court for a decision in principle must be **directly relevant to the outcome of the case before it****. (*Decision No 6/2021; Decision No 73/2021; Decision No 62/2022*)

**o It is not possible to initiate this procedure in order to respond to a theoretical interest or to a hypothetical question of law, even if it is related to the matter in dispute.** (*Decision No 41/2022*)

o If the factual situation of the case does not fall within the hypothesis of the legal rule which requires interpretation, the condition relating to the existence of a point of law on the determination of which the resolution of the substance of the application pending before the court depends is not satisfied. (*Decision No 7/2023*)

**In conclusion, this condition presupposes that the question of law has to be:**  
**- essential;**  
**- directly relevant to the settlement of the case;**  
**- within the limits of the jurisdiction of the referring court.**

**5. The novelty of the question of law the clarification of which is sought**

o The novelty of the point of law which is the subject-matter of the question referred for a preliminary ruling is a **distinct condition from the fact that the High Court of Cassation and Justice has not previously ruled** on that point of law or that there is no pending appeal in the interest of the law.

o This condition is met when the question of law has its source in **regulations that have recently entered into force** and the courts have not yet given it a certain interpretation and application at case-law level or if certain clarifications are required in a new or modified legislative context compared to a previous one, such as to require a re-evaluation or reinterpretation of the rule of law under analysis. (*Decision No 4/2014; Decision No 13/2015; Decision No 41/2016; Decision No 29/2021; Decision No 62/2021; Decision No 64/2021; Decision No 76/2021; Decision No 7/2023; Decision No 5/2023; Decision No 22/2023; Decision No 44/2023*)

o The novelty is lost as soon as the question of law has been settled by the courts, following interpretations embodied in established case law, when the stage of incipient practice has been exceeded. Where there is a significant number of judgments which have settled a point of law, sometimes in different ways, the legal mechanism for unifying judicial practice is that which has a regulatory function - an appeal in the interest of the law, and not a preliminary ruling. (*Decision no. 10/2014; Decision no. 37/2020; Decision no. 47/2020; Decision no. 49/2020; Decision no. 57/2020; Decision no. 5/2021; Decision no. 13/2021; Decision no. 30/2021; Decision no. 32/2021; Decision no. 71/2021; Decision no. 76/2021; Decision no. 76/2021; Decision no. 10/2022; Decision no. 25/2022; Decision no. 33/2022; Decision no. 34/2022; Decision no. 36/2022; Decision no. 40/2022; Decision no. 47/2022; Decision no. 72/2022; Decision no. 49/2022; Decision no. 69/2022; Decision no. 71/2022; Decision no. 53/2023; Decision no. 26/2023; Decision no. 6/2023; Decision no. 29/2023; Decision no. 48/2023; Decision no. 34/2023; Decision no. 15/2023; Decision no. 12/2023; Decision no. 8/2023*)

o Overcoming the stage of an incipient practice in training and outlining a practice related to the legal issue that is the subject of the referral reveals that the purpose of preventing the non-unitary practice can no longer be achieved, so you can no longer talk about a new point of law. (*Decision no. 10/2022; Decision no. 24/2022; Decision no. 48/2022*)

o Where essential aspects leading to the resolution of the point of law which is the subject of the referral **are explained in the recitals of another preliminary ruling or judgment given in the appeal in the interest of the law**, or, even if it does not actually address, in a punctual manner, the interpretation of the provisions invoked in the application, the question of law has lost its novelty character. (*Decision no. 60/2022*)

- **The novelty of a point of law may arise** not only from a newly enacted rule but also from **an old one, provided that the court is called upon to rule on that point of law for the first time.** In order to examine that condition, it is necessary to check recent case-law to see whether, in the current process of applying the law, the courts have resolved the point of law referred to them by the referring court, and the existence and development of a consistent judicial practice in this area is important. (*Decision No 73/2020; Decision No 8/2023; Decision No 12/2023; Decision No 15/2023; Decision No 34/2023; Decision No 48/2023*)
- The fact that the opinions theoretically expressed by the judges of the courts who submitted opinions are not uniform does not justify the triggering of the mechanism governed by the provisions of Articles 519-520 of the Code of Civil Procedure, since the purpose of a preliminary ruling is to ensure consistency in the case-law, which presupposes the existence of specific case-law trends towards different solutions. (*Decision No 26/2023*)
- The novelty of a point of law may be justified when the practice of the courts reveals a difficulty in the application of the legal provisions, such as to create the conditions for the emergence of a non-uniform practice at national level, capable of requiring the intervention of the supreme court by way of a preliminary ruling (*Decision no. 44/2023*)

**The novelty of the question of law, the clarification of which is requested:**

- is a distinct condition from that of previous non-pronunciation;
- is fulfilled when the matter of law has its source in regulations recently entered into force;
- it may also be generated by an older norm, provided that the court is called to rule for the first time on the respective legal issue;
- is not fulfilled when essential aspects have been explained in the recitals of another preliminary ruling or decision rendered in the appeal in the interest of the law.

**6. The matter of law have not been the subject of the statute of the High Court of Cassation and Justice, nor the object of a pending appeal in the interest of the law**

The requirement that the High Court of Cassation and Justice has not given a preliminary ruling on the same or a similar question of law by the supreme court in the context of this specific power to ensure uniform practice at the level of all courts in the country through the mechanisms regulated by law for this purpose - the preliminary ruling on questions of law and the appeal in the interest of the law, respectively.

In accordance with Article 520 (2) of the **Code of Civil Procedure, when in the role of the High Court of Cassation and Justice - the - Panel for Preliminary Ruling on Questions of Law is a referral for the issuance of a preliminary ruling on a certain point of law, a, the courts which understand to refer the matter to the supreme court on the same matter of law should proceed to the suspension of the case, especially in cases where the referrals are made by the same panel, in the same hearing, only one referral is sufficient.**

○ Previous rulings on the same or related questions of law cannot have the significance of rulings given by the supreme court in the context of its functional substantive jurisdiction as an ordinary court of appeal or in the exercise of its purely jurisdictional powers. Thus, by reference to the provisions of Article 519 of the Code of Civil Procedure, according to the settled case-law of the Supreme Court, **the phrase of a prior unsettlement by the High Court of Cassation and Justice refers to the non-settlement of the question or point of law in another prior judgment or in a decision rendered in**

**an appeal in the interest of the law.** (*Decision no. 76/2018; Decision no. 80/2018; Decision no. 61/2019*)

o The condition of prior unsettlement by the supreme court on the question of law is not met, given the fact that the point of law previously solved in an appeal in the interest of the law is the same as the one subject to the analysis of the Panel for Preliminary Ruling on Questions of Law from the referral. (*Decision no. 48/2019; Decision no. 10/2022; Decision no. 46/2023*)

o **The condition imposed by the legal text is not fulfilled as long as by a previous referral one and the same point of law was referred to the resolution,** which was formulated in the same terms and supported by the same arguments. (*Decision no. 59/2019; Decision no. 17/2023*)

- **The term of previous unsettlement by the High Court of Cassation and Justice is intended to prevent the issue or problem of law from being pronounced by another previous prior judgment or by a decision rendered in the resolution of a decision appeal in the interests of the law, and not by a supreme court ruling.**

- **The condition imposed by the text of law is not fulfilled as long as one and the same questions of law was referred to a previous referral for resolution.**

**7. The case in which the complaint is filed must have started under the new Civil Procedure Code**

In relation to the provisions of Article 3 paragraph (1) and paragraph (2) of the Law no. 76/2012, the High Court of Cassation and Justice has consistently held in its case-law that the provisions of articles 519-521 of the New Civil Procedure Code applies only to proceedings started after its entry into force, February 15, 2013, in accordance with the rules for the application in time of the provisions of the new procedural law, and not to cases that are judged under the old civil procedural law, which did not regulate this mechanism of unification of judicial practice. (*Decision no. 8/2014; Decision no. 55/2019; Decision no. 58/2021; Decision no. 6/2022*)