Inadmissibility of notification to the High Court of Cassation and Justice in order to obtain some preliminary rulings on matters of criminal law – a prerequisite for the reflection process on the formulation of questions that become the subject to notification

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Abstract:

The introduction in the Code of Criminal procedure of a new legal institution, which has consolidated the mechanism of providing consistent legal practice consisting in notification of the High Court of Cassations and Justice in order to give a prior decision for solving some matters of law gives through means of the court resolutions rendered, consistency to the process of interpreting and application of legal dispositions of criminal nature that were the object of such a notification.

This new legal institution has led to a relatively large number of jurisprudence cases by offering solutions for admitting the complaints formulated, but also solutions for rejecting some complaints as inadmissible.

The solution of rejection as inadmissible of the notification, might bring us to the conclusion that there appear negative consequences over the process of uniformization of legal practice, which cannot be sustained, as decisions from the supreme court, on the considerations exposed have highlighted what exactly has determined the ruling of such a decision, imposing a need for a careful conduct on behalf of the court of notification regarding the way in which the question is formulated and a more careful analysis of the conditions stipulated in the paragraph 475 from the Code of Criminal Procedure.

The existence of a jurisprudence of the judge panels for solving legal matters regarding the rejection solution, as inadmissible of the notification of the High Court in the period May 2014 - May 2017 has been a preoccupation for us and it is at the core of the present study, with the goal of contributing to the improvement of the process of ensuring a consistent legal practice.

Key words*: solution, inadmissibility of the intimation, consistent practice, type of formulation, conditions, conduct of the court of law in charge with instituting the proceedings.*

I. General considerations

During the broad reform process that has taken place in recent years for the criminal law proceeding activity in Romania, there have been changes at institution level and at legal dispositions level, following the entry into force of the new Criminal Code and the Code of Criminal Procedure on February 1st 2014, that both of them contain new approaches, by introducing new institutions of substantial criminal law but also some of criminal procedure law.

Referring to the latter one it may be included here those facts that constitute Section 2 "Referral to the High Court of Cassation and Justice, with the purpose of issuing a preliminary decision for legal ruling" from Chapter VI: "Dispositions on ensuring a consistent legal practice" from Title III "Judgment".

This legal institution along with the recourse in the interest of law is subject to regulations, however being meant, through court procedure, object, content and effects of the decisions, through the termination or modification of the effects of the decision, to ensure a much more efficient and faster interpretation of a legal dispositions, which is therefore a matter of law, on whose explanation depends the resolution on the merits of the case in which the notification was formulated to, which gives a new dimension over the judicial process meant to ensure uniform and consistent practice in relation with another mentioned judicial institution.

The need for such a tool for interpretation of laws has been assessed as a result of the fact that the appeal in the interest of the law, has as its main objective the pronunciation by the High Court of Causation and Justice on matters of law that have been dealt with differently by courts, through final decisions, which triggers a longer process of analysis and with effects and consequences in the future.

However, in order to give a prior decision on issues of law, as it is regulated, it ensures the legal interpretation of the less clear legal provision, in a reasonable timeframe, subsequently the Court which notified, pronouncing the judgment in relation to the interpretation of the Supreme Court, which ensures a consistent and clear solution in the application of law.

In the case of this legal instrument aimed at ensuring a unified practice there is coordination, in real time, between the competent court of law and the court in charge with the interpretation and consistent application of the law, in order to effectively ensure the justice act, in accordance with the specific competencies of each of the courts.

Following the court proceedings over the notifications with which panels for solving matters of law have been invested, these have given two types of solutions, either some of admittance, that led to the interpretation of the unclear disposition, which was subject of the notification, existing previously to the process of interpreting the legal matter, an examination over the admissibility of the notification, from the perspective of fulfilment of the express conditions shown in paragraph 475 from the Code of Criminal Procedure, either some of rejection, as unacceptable of the notification, as a consequence of unfulfilling one of more conditions from the contents of the mentioned norm, which has as a consequence, failure to analyse the object of law for which the supreme court has been notified.

In the case of the second solution that may be pronounced, namely the one of rejecting the notification on grounds of being unacceptable, as we are going to demonstrate on the occasion of our research, we will emphasize the fact that the High Court of Cassation and Justice has brought arguments for the failure of fulfilling the

conditions from paragraph 475 from the Criminal Procedure Code, having a variety of aspects related to the interpretation of one of the prerequisites stipulated by the law maker in order to be able to rule on the matter of law, even offering criteria for examination by the referral court, resulting in a reflection on how questions are formulated on the question of law to be solved at the competent court. We believe that such analysis might guide competent courts to ask questions related to solving of law issues in a clear, concise manner on whose clarification depends the settlement on the merits of the case for the question in which the notification was issued.

II. Contents

The law maker has regulated within the contents of paragraph 475 from the code of Criminal Procedure referring to the object of notification, express conditions, cumulative and imperative, some with a positive character, while some of negative character, regarding such aspects as: the procedural stage when the notification may take place, competent courts that may formulate the notification, the type of the question of law and the consequence that this will have over the merits of the case, as well as the inexistence of a resolution given at the previous High Court of Cassation and Justice, either by a prior decision, either by recourse in the interest of law, absence of any recourse in the interest of the law currently pending to be resolved.[1]

Throughout this study we do not intend to make some kind of quantitative or percentage evaluation of the importance and weight of the rejection solution, dismissed as inadmissible of the notification, in relationship with the solution of acceptance, that has its role by all means, but with this study we are aiming to analyse the conditions that the courts have violated and which have made the Supreme Court, to reject, as inadmissible the notification.

Thus, regarding the condition concerning the nature of the courts that may appeal to the supreme court, the lawmaker has ruled that only "a panel of judges from the High Court of Cassation and Justice, of the court of appeal or the courthouse, invested with resolving the case as a last resort... will be allowed to request from the High Court of Cassation and Justice to deliver a judgment through which to offer a solution in principle to the points of law for which it has been notified".

By examining the decisions given, in one decision[2] it was mentioned that "the sentence by which the appeal court resolves the appeal against execution introduced

[1] Art. 475 reproduced as it has been modified by art 102 point 284 from Law nr 255/2013, respectively the „Subject of Notification" Regulating the conditions of admissibility of the motion. If, during the trial, a panel from the High Court of Cassation and Justice, appeal court or court house, entrusted with solving a case as a last resort it is ascertained the existence of an issue of law of whose settlement depends the ruling of the case and upon which the Supreme Court has not ruled yet by a prior decision or an appeal on points of law nor is subject to any such appeal, to refer the matter to the High Court of Cassation and Justice in order to give a ruling by which to settle as a matter of law principle the given legal issue."

[2] Decision nr. 18 from 4th June 2015 of the panel of judges from Criminal Division of the High Court of Cassation and Justice for solving legal matters pertaining to criminal law in the file number 1.098/1/2015 by which it was rejected as inadmissible the notification issued by the Appeal Court from Galați – Department for criminal cases and for cases involving under age in court file nr. 93/44/2015 regarding the issue of preliminary ruling for deciding in relation to certain points of law in the criminal matter: "Given the case of people tried and finally convicted in Italy, who were transferred to Romania to continue the completion of their sentence and who benefit from the early release ordinance, the

against a decision of acknowledging a decision given in a member state of the European Union through which it was disposed to transfer the convicted person to execute the prison sentence in a Romanian penitentiary can be challenged by appeal, the law enforcer providing for the rule of double jurisdiction. Thus, the High Court notices that the Court that has made the notification, namely the Appellate Court of Galati, has not judged the case as the last resort, therefore not being fulfilled the first imperative condition imposed by the dispositions of art 475 from the Criminal Procedure Code."

In another decision[3], it was stated that reporting the notification on giving the preliminary ruling to prerequisites imposed by article 475 from the Code of Criminal Procedure, it is noted that previously mentioned prerequisites are not cumulatively fulfilled in the sense that, although the notification is given related to an ongoing trial (Court Case nr 10.640/196/2015 from Panciu Courthouse) and the matter of law referred to is not subject to a recourse in the interest of law, and the High Court of Cassation and Justice has not ruled any decision about the legal matter that is subject to the notification, condition imposed by art 475 from the Criminal Procedure Code is not to be found in the present case, as the notification of the High Court, supreme instance has been issued by a district court. Thus from writing of the aforementioned legal text it becomes clearly that a panel of judges belonging to a district courthouse cannot notify the High Court of Cassation and Justice with a view of getting a preliminary decision, even if the respective legal actions are to be judged ultimately at the district courthouse.

A further condition stipulated of a negative nature that may conduct to the notification of the High Court of Cassation and Justice, with a view to rule a preliminary decision is that the supreme instance not to have previously decided through a previous decision over the legal matter with which it is again notified and asked to solve.

So, within one decision it has been argued that [4] "In conclusion, Decision nr. 7 from 2nd March 2016 of the High Court of Cassation and Justice – the panel for criminal law

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duration of early release is deducted from the imposed sentence, as it is viewed and considered as time served when calculation is performed for the mandatory minimum part needed for granting conditional release, according to Romanian law, should not exceed the date of early release according to the Italian legislation." published in Official Gazette of Romania, Part I nr 538 from 20th July 2015.

[3] Decision no. 23 of October 25, 2016 of the panel for legal matters within the Supreme Court of Cassation and Justice, file no. 2608/1/2016 dismissing, as inadmissible, the complaint filed by the Panciu District Court in file no. 10.640 / 196/2015, requesting a preliminary ruling on the following principle: "if, in application of the provisions of Art. 264 of the Code of Criminal Procedure with reference to Art. 269 paragraph (4) of the Criminal Procedure Code, it is compulsory for the postman to communicate the procedural documents within 24 hours of receiving the documents for communication ", published in the Official Gazette, Part I, no. 1003 of December 14, 2016.

[4] Decision no. 12 of April 25, 2017 of the panel for legal matters within the High Court of Cassation and Justice in file no. 389/1/2017 dismissing, as inadmissible, the complaint filed by Ialomița District Court in File no. 4.953 / 312/2016, requesting a preliminary ruling on the question of law: "If, in application of the provisions of art. 585 par. (1) Letter. A) of the Criminal Procedure Code, in the case of a plurality of offenses consisting of an offense for which, according to the previous Criminal Code, a punishment with suspension under custody of the execution was imposed according to art. 86 1 of the previous Criminal Code and, respectively, an offense for which, according to the new Criminal Code, a punishment with suspension under custody of the execution under art. 91 of the Criminal Code, the establishment and execution of the punishment following the cancellation of the suspension under supervision shall be carried out according to art. 16 par. (1) of Law no. 187/2012 referring to art. 86 5 par. 1 of the previous Criminal Code or according to art. 97 of the Criminal Code referring to art. 583 of the Criminal Procedure Code, with the consequence of the modification of the method of execution of the punishment for the first time during the execution ", published in the Official Gazette, Part I no. 412 of 31 May 2017.

matters offers not only the criteria based on which the referring court may establish the applicable criminal law for the sanctioning treatment in the case of a multitude of offenses similar in nature to the one retained by submitting a document instituting the proceedings, but also even the solution for this legal matter. In this context, to make a new preliminary ruling on the issue of the law applicable to a variety of offenses of the kind of the incidental one means in fact, to resume, using substantially similar terms, the solving of the legal matter that has already been given a plurality of offenses such as the one in question means practically resuming, in substantially similar terms, the solution already given to the question of law by an earlier decision of the Supreme Court, which is contrary to a requirement of admissibility expressly provided by Art. 475 of the Code of Criminal Procedure.

Ensuring the compulsory character of the solution of the questions of law on which the Supreme Court has ruled within the mechanism of the preliminary ruling expressly acknowledge by art. 477 par. (3) of the Code of Criminal Procedure implies not only the future compliance with the requirements of the decision, but also the proper application of all the legal reasoning which necessarily preceded it.

Preliminary rulings resulting from the unification of practice provided by Article 475 of the Code of Criminal Procedure contain resolutions of principle of legal issues, clarifying the way in which the legal provisions which generated that problem are to be interpreted in the future.

The solution of the Supreme Court is therefore applicable not only to the case in which the mechanism of unification of the practice under consideration intervened, but in all cases where a substantially similar question of law arises and where the particularities of the procedure under consideration do not significantly affect the coordinates of that law problem".

In another decision[5], it was essentially stated that "in regard to a condition of a matter of law on whose clarification depends the solution on the substance of the case pending at the referring court.

In this regard it is retained that the notification should aim to obtain an interpretation *in abstracto* of determined legal dispositions, and not the implicit solution of some issues that are connected to the specificity of the case in its substance referring to legal dispositions (interpreting art 175 from the Criminal Code regarding the profession of medical doctor) that formed previously the subject of the same procedure (decision nor 14 from May 12th 2015, given by the High Court of Cassation and Justice (HCCJ) – Division for Criminal Law, published in the Official Monitor of Romania, Part 1 nr 454 from June 24th 2015).

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[5] Decision nr. 5 of 28 February of the panel from the High Court of Cassation and Justice, in the court case 4087 /1/2016 that has rejected as inadmissible, the notification formulated by Appeal Court from Constanta – Criminal Department and for cases involving under age and family matters in the case file nr 4318/118/2015 on issuing a preliminary ruling for the next issue of law: He/she is public officer in the grounds of art 175, paragraph 1, letter b) second thesis from the Criminal Code or he/she is considered a public officer in the grounds of art 175, paragraph 2 the physical person acting a Medical Doctor –chief of department from a state hospital, as the art 163 from the law 95/2006, based on an administration contract, stipulated by art. 185 paragraph. (5) from Law nr. 95/2006 without having, at the same time, signed a separate individual employment contract for an indefinite period with that public hospital, regarding his/her activity as treating physician in the department he is managing", Published in The Official Gazette, Part I nr. 254 of 12th April 2017.

Moreover, in order to be examined under the scope of procedure stipulated by Art 475 from the Criminal Procedure Code, the question of law must come from an unclarity regarding the law, as it cannot be classified as question of law the solution given to a specific situation. Thus the specific situation of having an administration contract, instead of employment contract, is rather imposing an adjustment to this factual circumstance by referring to the considerations of Decision 26 from 3rd December 2014 of the panel of the criminal law department

Thus, he particular situation of the existence of a management contract, instead of an employment contract, requests an adaptation to that factual circumstance in the light of the recitals of Decision No. 26 of 3 December 2014 of the Criminal Law Enforcement Unit and a clarification of the case-law, and not the use of the High Court's petition, which has previously interpreted the provisions of Art. 175 of the Criminal Code referring to the profession of physician, but being bound by the limits of the investiture, did not mention in the operative part of the judgment an exhaustive list of situations which might arise in the practice of the courts....

It is clear from the wording of the question that the defendant acted as a chief medical officer at a public hospital, although he had not been held to commit the bribery offense in the exercise of the managerial role for which he had been employed under a management contract but to commit that offense as a physician, member of the surgical team who performed the surgery on the denouncing witness.

Therefore, the solution to the question of law does not meet the condition of being connected with the outcome of the case, since the referring court states that the defendant "acted" as a chief doctor of a department at a public hospital and the offense with which he was charged, according to the factual situation resulting from the decisions of the court of first instance, is not related to the exercise of the duties of head of department.

For the above-mentioned arguments, it is considered that the condition that the High Court of Cassation and Justices has not been upheld on the matter is not satisfied by a prior decision.

At the same time, it is noted that the requirement of a matter of law whose clarification depends on the substance of the case pending before the referring court is also not met. As, it is found that two of the admissibility conditions provided by art. 475 of the Code of Criminal Procedure ... "

The panel of judges for solving matters of law within the considerations of the given decision[6] has retained that „…according to its jurisprudence, the High Court of Cassation and Justice– the panel for solving legal matters of criminal nature has established that for solving certain matters of law in criminal matters, it has established, with reference to the meaning to be given to the phrase 'a matter of law which depends on the substance of the case', that it is necessary for the referring court to refer to the interpretation *in abstracto* of certain legal provisions rather than the implicit resolution

[6] Decision no. 4 of 28 February 2017 of the panel for solving law matters within the Supreme Court of Cassation and Justice in the file no. 4020/1/2016, dismissing as inadmissible the appeal filed by the Court of Appeal Constanța - the Criminal Division And for juvenile and family cases in File no. 685/36/2015, requesting a preliminary ruling on the principle of the following legal issue: "If, in interpreting and applying the Constitutional Court's Decision no. 397 dated June 15, 2016, regarding the conclusion of a mediation agreement regarding the offenses for which reconciliation may take place, the provisions of Art. 5 of the Criminal Code. ", Published in the Official Gazette, Part I no. 255 of 12 April 2017.

of certain issues related to the peculiarities of the case of the case (Decision No. 22 of October 25, 2016, published in the Official Gazette of Romania, Part I No. 1.057 of December 28, 2016).

Or, regarding this case, by notifying the High Court of Cassation and Justice we tend, on the one hand, to resolve a procedural incident, namely resolving a misunderstanding between the members of the panel of judges at the deliberation day, and, on the other hand, takes into consideration a particular situation, generated by the way in which the judgment in question was conducted (the existence of a mediation agreement concluded after the publication of the Decision of the High Court of Cassation and Justice - the panel of judges named for the resolution of criminal law issue no. 9 of 17th of April, 2015, which did not recognize its effects until the date of publication of the Constitutional Court's Decision no. 397 in 15th of June 2016).

Beyond the imprecise character of the question of law subject to analysis, it can be noted that the notification of the supreme court through the mechanism of unification of the jurisprudence provided by art. 475 of the Code of Criminal Procedure, essentially questions the interpretation and application of the Constitutional Court's Decision no. 397 of 15th of June, 2016 ..."

Other aspects relating to the non-fulfilment of the condition that refers to the matter of law, on whose clarification depends the settlement of the respective cause targets " nature of the appeal" (recourse, appeal or contestation) although it influences the structure of the court panel and, consequently, the legality of the judgment given by means of the appeal, it does not, however, determine the fulfilment of the condition for the admissibility of the application for a preliminary decision, since it does not lead to the establishment of a dependence relationship between the law question submitted and the solution to be put in the way of appeal with which that court is invested; the interpretation aims to know the exact meaning of the norm, clarifying its meaning and purpose, so that the preliminary procedure cannot be used in case the correct application of law is imposed in a way so obvious that leaves no doubt about how to handle the settlement method of the issue addressed.

Concerning the matter for which a solution is requested, namely persons who may file an appeal in annulment, there is no evidence of any element of novelty which would make mandatory the interpretation of these provisions, the situation being solved identically, both, in the new criminal procedural provisions, as well as in previous procedural regulations[7];" in regards to the manner in which the question was formulated by the referring court, it is ascertain that the conditions for the admissibility of the notification are not fulfilled, the issue which arose not being an object of law but more on the application of the law to the issue in fact, as a result of establishing the patrimony or patrimonies in which are located the resulting damage / resulting damages from the criminal activity.

[7] Decision Nr. 3 from 10 February 2016 of the panel from the High Court of Cassation and Justice in the case 4292/1/2016, through which was rejected as inadmissible, the notification formulated by the Court of Appeal from Bucharest,– Division II Criminal Law in the case file nr.4.796/2/2015, by which it is required to give a preliminary ruling for solving the legal matter." If in applying dispositions of art 427 paragraph 1 from the Code of Criminal procedure referring to art 426 letter a from the Code of Criminal procedure, the legal person or physical person that did not have the capacity to be a party in the criminal lawsuit has the procedural capacity to formulate an appeal in annulment as it was not summoned for the appeal, in the conditions in which his rights and interests were affected by a measure ordered by the appeal court by final decision.", published in the Official Gazette, Part 1 Nr. 195 from March 16th 2016.

Thus, the problem posed by the Court of Appeal from Iasi, as resulting from de facto situation exposed in the notification request Which the Iaşi Court of Appeal makes, as is apparent from the factual situation set out in the notice, is not that of a conflict between a general qualification (Article 215 of the Criminal Code of 1969) and a special one (Article 18^1 of Law No. 78/2000 on the prevention, detection and sanctioning of corruption offenses), but that of establishing the legal framing of the act in the case where the use or presentation of false or inaccurate or incomplete documents resulted in unfair of funds, both from the general budget of the European Union and from the state budget ...

In these circumstances, it is noted that what is required in the procedure provided by art. 475 and the following of the Code of Criminal Procedure is not the interpretation of legal provisions in abstracto, but by transforming its own opinion into the hypothesis of the question, the Iaşi Court of Appeal asks to establish the legal classification of the facts with which it has been notified [8];" the object of the referral is the aspect which is circumscribed to the scope of the rules relating to civil action, the object of which is to order the payment of material and moral damages to the defendant brought to trial for committing the offense of forgery in documents under private signature

Examining the conclusion by which the High Court was notified, it is observed that the court does not request the interpretation of legal provisions *in abstracto,* but the ruling on the admissibility of civil action, annexed to the criminal legal report brought before the court. However, the way of solving a civil action carried out inside the criminal trial is the sole attribute of the instance in charge with solving the case. As such, the question which may be raised by the High Court should be limited to issues of interpretation of the law and not matters of fact, the analysis of which is the exclusive attribute of the court"[9];"or, the establishment of the judicial body competent to resolve a request for review against a final order made by the judge of the preliminary chamber in the procedure regulated by art. Article 341 of the Code of Criminal Procedure, the type of decision to resolve such a request for review and the admissibility of the ordinary course of action against this judgment do not have the nature of decisive law matters to resolve criminal action or civil action in criminal proceedings, The substance of the case The subject matter of the case, where the present law matters arose is comprised from

[8] Decision no. 23 of September 16, 2015 of the Senate for the Delegation of Criminal Matters in the High Court of Cassation and Justice in file no. 2.195 / 1/2015 dismissing, as inadmissible, the appeal filed by the Iasi Court of Appeal - the Criminal Section and for the cases with juveniles in File no. 2.604 / 189/2013, requesting a preliminary ruling on the principle of the principle of legal separation: "if the offense of using or presenting false, inaccurate or incomplete documents, which results in unfairly obtaining funds from The general budget of the European Union or the budgets administered by it or on its behalf provided for in art. 18 1 paragraph (1) of Law no. 78/2000 on the prevention, detection and sanctioning of corruption acts can be retained in an ideal contest with the offense of deception provided by art. 215 par. 1, 2, 3 of the Criminal Code of 1969, only the offense provided by art. 18 1 of the Law no. 78/2000 on the prevention, detection and sanctioning of corruption acts in the case of a single damage caused to the contracting authority ", published in the Official Gazette, Part I no. 824 of November 4, 2015.

[9] Decision no. 16 of May 22, 2015, of the Senate for the Elimination of Criminal Matters in the High Court of Cassation and Justice, file no. 1.062 / 1/2015 / HP / P dismissing, as inadmissible, the appeal filed by the Timişoara Court of Appeal - the Criminal Section, file no. 2.834 / 325/2014, with a view to giving a preliminary ruling on the question of the law, if: "Civil proceedings for the payment of pecuniary and non-pecuniary damages in the criminal proceedings against the defendant sued for the offense False in documents under private signature ", published in the Official Gazette, Part I no. 490 of 3rd July 2015.

the request for revision, and the way in which its main cause it is settled depends neither on the High Court's clarification of the jurisdiction and competence rules in solving the claim nor on the determination of the way in which the judgment was given nor on the determination of its definitive or non-definitive character."[10] etc.

In our opinion we consider that the courts of law that initiate proceedings have all the criteria, in the jurisprudence of the High Court of Law and Cassation, from which we have exemplified a part of the relevant decisions, that contain arguments leading to the avoidance of formulating some unclear, ambiguous questions that are not relevant at all to the solution given on the merits of the cause.

Moreover, the judge panels specialized in solving matters of law whenever they had to interpret unclear dispositions and admit notifications, by which they have emphasized interpreting criteria, and later on, still the High Court of Cassation and Justice has been notified with a similar question, rejected the notification, as inadmissible, stating that the arguments of the decision by which previously the notification was accepted contained the criteria that ensured verification of those in the later situation, and there was the possibility of direct ruling on the merits by the court, no longer referring to the supreme court

Therefore, we have the opinion that in this moment, in relation with the existing case-law about the rejection solution, as unacceptable of the notification, in the conditions of unfulfilling the conditions stipulated by Art 475 from the Code of Criminal Procedure, the courts have the obligation to assume the verification of incidence or not of criteria presented by the Supreme instance and the delivery of a solution on the merits, with the explanation in the judgments of the mechanism which the High Court of Cassation and Justice detailed in the recitals of the judgments.

Thus, on one side notifications are avoided, that lead to the solution of rejection as inadmissible, and on the other hand there is a direct application of decisions ruled with a view to achieve uniform practise.

III. Conclusions

The study presented emphasizes the multitude of matters of law that the High Court of Cassation and Justice has been notified with, with the purpose of issuing a preliminary ruling for soling matters of law, that have conducted to the rejection solution as inadmissible, by analysing whether the pre-requisites from Art. 475 from the Criminal Procedure Code have been fulfilled or not, which has contributed to interpreting *in abstracto,* but also *in concreto* the condition: "object of law, on whose clarification depends the awarding of a solution on the main issue of the matter on trial."

[10] Decision no. 7 of April 17, 2015 of the Criminal Law Enforcement Unit of the High Court of Cassation and Justice in file no. 523/1/2015 dismissing, as inadmissible, the complaint filed by the Ploiesti Court of Appeal - the Criminal Section and for Minors and Family Affairs in File no. 555/42/2014 / a1 on giving a preliminary ruling on the resolution of the following issues of law: "1. If a request for review is filed against a ruling given by the preliminary chamber judge, according to art. 341 of the Code of Criminal Procedure, which is the judicial body competent to resolve such a request, the judge of the preliminary chamber or the court; What judgment is to be pronounced: a termination, as in the original proceedings, or a sentence as appealed against by the review; If the judgment given in such a case is susceptible of being subjected to any ordinary means of attack. ", Published in the Official Gazette, Part I, no. 359 of May 25, 2015.

We consider that the direct application of the decisions of the High Court of Cassation and Justice, even of those, by which they have been rejected as inadmissible, the notifications, as a follow up of examining the criteria that are considered, gives to the resolution that will be given subsequently, that led to the unitary interpretation and application of less clear legal dispositions.

In conclusion the rejection solution as inadmissible of the notification, is a premise for the reflection process over the way of formulating questions that make up the subject of notifications.