Preliminary Ruling Procedures

Judicial dialogue to ensure the rights of persons with disabilities

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The nature and function of the reference for a preliminary ruling

- The procedure is founded on cooperation
- The national court is the first court of the Union
- Consistent, effective application of Union law
The purpose of preliminary rulings

• Article 267 TFEU
• References on a question of interpretation / references on a question of validity
• The CJEU neither interprets nor rules on the validity of national law
• Cases where national law refers to EU law (cf. judgment of 18 October 1990 in cases 297/88 and 197/89, Dzodzi)
Who can make a reference?

- Any court or tribunal in a Member State
- Notion of “court or tribunal” → an autonomous concept in the law of the Union:
  - It must be established by law
  - It must be permanent
  - Its jurisdiction must be compulsory
  - Its procedure must be inter partes
  - It must apply rules of law
  - It must be independent
- The decision to make the reference lies solely with the national judicial body!
When can a reference for a preliminary ruling be made?

- There must be a *genuine dispute*, not a fictitious one (see judgment of 16 December 1981 in case 244/80, *Foglia v. Novelo*).
- The question must be *relevant* to resolving the dispute (presumption of relevance in favour of the reference; see, for example, the judgment of 17 February 2011 in case C-52/09, *TeliaSonera Sverige*).
- Hypothetical questions are not admissible (e.g. judgment of 15 April 2010 in case C-215/98, *E. Friz*).
- A provision of national law must not prevent the national court from submitting a reference (judgments of 16 December 2008 in case C-210/06, *Cartesio*, and 22 June 2010 in cases C-188/10 and C-189/10, *Melki and Abdeli*).
When **must** a reference for a preliminary ruling be made?

- When the question is raised before a national court or tribunal against whose decisions there is no judicial remedy under national law (Article 267 (3) TFEU)

  → Exception: theory of *acte claire* (judgment of 6 October 1982 in case 283/81, *CILFIT*)

  → Preliminary ruling procedure and responsibility of States: judgment of 30 September 2003 in case C-224/01, *Köbler*

- The *Foto-Frost* case-law
Submitting the reference – practical aspects

• When is the right time to submit the reference for a preliminary ruling?

• Form and content of the reference order

• Translation requirements

• The CJEU Secretariat

• Costs and free legal assistance

• Reformulation of the question by the CJEU
The procedure before the CJEU

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Effect of preliminary rulings

- Legally binding on the referring national court
- Legally binding on all other judicial bodies
- *ex tunc* effect
- Scope for limiting the retroactive effects of the judgment
A victim of its own success?

- Growing number of references for preliminary rulings
  - 2007 ➔ 265
  - 2011 ➔ 423
- Average duration of the procedure
  - 2007 ➔ 19.3 months
  - 2011 ➔ 16.4 months
- Expediting requests for a preliminary ruling: the accelerated procedure and the urgent procedure