

The role of the national Judge in applying the EU non-discrimination directives: relationship with national legal orders and the preliminary ruling procedure

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The significance of the preliminary ruling procedure

Three fundamental functions of the preliminary ruling procedure:

1. Instrument for the uniform interpretation of EU law.
2. Tool for the protection of human rights.
3. Lever for the development and evolution of EU law.

Case examples: Van Gend and Loos C-26/62
Costa ENEL C-6/64

Article 267 TFEU

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal **shall** bring the matter before the Court.

Checklist of prerequisite conditions for the obligation/competence to request a preliminary ruling

- a) A Member State court
- b) that has doubts on the interpretation or the validity of EU law provisions (NOT national law provisions)
- c) related to a pending case
- d) and there is no judicial remedy against its decision, shall bring the matter before the Court and request a preliminary ruling. If there is judicial remedy against its decision, it shall do so only in case the validity of EU law is checked.

	Non-irrevocable decision	Irrevocable decision
Interpretation questions	COMPETENCE	OBLIGATION
Validity check	OBLIGATION	OBLIGATION

(a) EU Member State Court

Case C-196/09 Paul Miles v. European Schools

For the criteria to determine which entities can be regarded as courts or tribunals within the meaning of Article 267 TFEU, the following are taken into account:

1. whether the body is established by law,
2. whether it is independent and permanent,
3. whether its jurisdiction is compulsory,
4. whether its procedure is inter partes,
5. whether it applies rules of law.

(b) Doubts on the interpretation or the validity of EU law provisions

Interpretation of the EU primary legislation

(TFEU, TEU, Protocols and their annexes, the Fundamental Rights Map and the general law principles developed in the case-law)

Interpretation or validity of the secondary EU legislation

(all acts of EU institutions, such as directives, regulations, framework-decisions, recommendations etc even of non-compulsory nature)

Interpretation of the national law by the CJEU

Principle of jurisdiction distinction between CJEU and national court:
the CJEU shall refrain from interpreting national law.

Case C-293/14 Hiebler (rule)

Articles [...] of Directive 2006/123 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which limits, in all respects, a license to trade as a chimney sweep to a particular geographical area, if that legislation does not seek to attain, in a consistent and systematic manner, the objective of public health protection, **which is a matter to be determined by the national court.**

Case C-148/15 DPV (exception)

Article 36 TFEU must be interpreted as if the national legislation providing for a fixed single price for medicines administered solely upon medical prescription, cannot be justified on the grounds of health and human life protection within the scope of the said article, since it is not appropriate for achieving the pursued aim.

(c) Relevance between the referred question and the case

Rule: The presumption of relevance of the question referred for preliminary ruling by the national judge.

Exception: The assessment of the circumstances under which a question is referred for preliminary ruling.

Cases C-104/79 Foglia I and C-244/1980 Foglia II

The Court shall investigate the circumstances under which the national judge referred a question to it, while investigating its own jurisdiction.

Evolution of the Foglia law-case

The CJEU refuses to answer the question referred for preliminary ruling, due to lack of competence, in the following cases:

- 1) The CJEU has no real and legal evidence in order to effectively answer to the questions referred.
- 2) The question on EU law interpretation is not related whatsoever to the subject-matter of the case in the main proceedings
Case C-343/90 Dias
- 3) The nature of the question is hypothetical.
Case C-467/04 Gasparini

(δ) Obligation or competence

Parameters: Validity or interpretation

Final or irrevocable delivered judgment

Exceptions have been established by the law-case as regards to the reference obligation:

- 1) The question intended to be addressed by the national court to the CJEU is similar to a question already referred for preliminary ruling and answered in the past (*acte éclairé*).
- 2) The correct interpretation is so obvious that there is no need for referring a question for preliminary ruling (*acte clair*).

Case C-283/81 Srl CILFIT

Potential contribution of the obvious interpretation (*acte clair*) must be taken into account along with the following:

- The answer is equally obvious to the courts of other member states as well as the CJEU,
- Upon comparison of the various linguistic versions in the official EU languages
- In the view of the differentiation of legal concepts between different national laws.
- In the light of the overall EU law provisions and its aims at the moment of applying the relevant provision.

16° ECHR Protocol

- Competency of Supreme Courts to refer questions for preliminary ruling on human rights protection issues to ECtHR (ECHR and Protocols)

Conclusion

The need for dialogue between the jurisprudence of national Judges and the Court of Justice of the European Union, aiming at the optimal protection of the EU citizens' rights, is timeless.

Thank you!

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