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The role of the national judge in applying the EU Equality Directives: relationship with national legal orders and the preliminary ruling procedure

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Non-discrimination and Equality

- The principle of equality and non-discrimination are often associated and treated together although they do not have exactly the same function.
- The equality of treatment principle (art. 20 CFREU) is a general principle of EU law, while the principle of non-discrimination (art. 21 CFREU) is one of its expressions.

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Non-discrimination and Equality (II)

•The new generation right to non-discrimination represents the implementation of the principle of substantial equality as set forth in art. 3, paragraph 2 of the Constitution.

• The general EU principle of equality is analogous to that foreseen in many Constitutions of the Member States, which also include the two different aspects of equality and non-discrimination.

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Non-discrimination and Equality (III)

•In reality, there has been a renewed interest and an increase in the practical cases on the subject as a result of recent modifications in Labour Law and in the legislation governing protection against unfair or unjustified dismissals.

• When old art. 18 of the Workers' Charter was still in force, the dismissed worker did not need to demostrate that he had been discriminated agaist when dismissed by his employer to get reinstated by means of judicial proceedings (since the worker only had to demonstrate the absence of a legitimate reson for dismissal.) Now, due to the changes brought to the law in 2012, the demonstration of the discriminatory nature of dismissal is often the only way to obtain real protection.

• With respect to this new phenomenon, the notion itself of discrimination is much more used in practice and it is not uncommon in appeals to find cases in which the discriminatory nature of dismissal is identified with the sole fact that the only worker to have been dismissed was the appellant and not other workers, in clear breach of all principles of good faith and fairness in the choice of the workers to be dismissed.

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Non-discrimination and Equality (IV)

The need to adapt the rules of repartition of the burden of proof to European standards, which are more favourable to workers since they contain a presumption of discrimination and the following questions for the interpreter:

1) Are discrimination factors to be considered absolute or not?

2) Is it possible to have an extensive interpretation of non-discrimination foreseen by the law?

3) What is the objective notion of discrimination?

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Non-discrimination and Equality (V)

- The problem is that the guarantee, which once protected the right to working stability, today only supports the right not to be discriminated against.
- In a certain sense, the protection against unjustified dismissal has been narrowed down because maintaining reinstatement only in the case of dismissal on discriminatory grounds means that the right to working stability is no longer the most protected right of our legal system.
- In fact, in itself, dismissal on discriminatory grounds is not a general means to guarantee workers' rights to working stability, nor does it guarantee workers as such: it protects women as women or the disabled as disabled but it doesn't protect anyone as workers.
- In the case of discrimination, reinstatement expresses the will to punish the employer for a serious offence against the individual infringement of the right to non-discrimination) but not against the breach of his interests in working stability.
- Technically speaking, discrimination occurs only when one can prove one has been badly treated because of one's belonging to a specific category or protected group, in comparison to others who are in similar conditions but who do not belong to that same category or protected group.

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Non-discrimination and Equality (VI)

- The area of dismissal on the grounds of discrimination is, therefore, more restricted than what was protected by unjustified dismissal with the mechanism of reinstatement.
- The assessment of unjustified dismissal does not require a comparative judgement between the treatment received by two workers but rather aims at ascertaining the existence or not of a causal connection between the reasons presented by the employer and the worker's dismissal, to evaluate its verifiability, proportionality and adequacy.
- It is now necessary to recalibrate the manner in which judges examine these issues, focusing on the protection of the personality and of fundamental workers' rights.
- The right to non-discrimination, which primarily derives from Europe, must be connected (even in relation to the constitutional traditions of the Member States) to the principles of equality and of equal social dignity; it must respect a general clause that prohibits discrimination on the grounds of personal and social conditions in the sphere of the protection of the personality rights recognised to each single individual as such and the social contexts in which that person expresses his personality (including his working environment).

Non-discrimination and Equality (VII)

In this sense, a fundamental role is played by the Charter of Fundamental Rights of the European Union:

- art. 20 – equality before the law
- art. 21 – inclusion of non-discrimination among the the fundamental rights of the individual, and, therefore, in the sphere of the general principles of Community Law.
- art. 23 – equality between men and women must be guaranteed in all areas, including employment, work and pay.

The shift from a formal idea of the principle of equality to a substantial one, with the explicit definition of the concept of indirect discrimination and the introduction of positive actions, is the result of a long path in which Luxembourg case-law has played an important role.

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Non-discrimination and Equality (VIII)

Starting with equal pay for men and women (now art. 157 TFEU), the principle of equality has taken on an important role in the construction of a common *jus* and today represents the magnifying glass through which each new national legislative intervention must be looked at to verify its compatibility with Community law.

Conferring the widest possible extension to the principle's originally small sphere of application, the Court of Justice has played a decisive role, configurating the concept of pay in «all-inclusive» terms, outlining a protection well beyond strictly economic terms; thus, the principle of equal pay has acquired direct and horizontal effectiveness; it has put individuals in legally advantageous situations to be played out before the national judge in case of discrimination deriving from laws, regulations, collective agreements and individual work contracts (cf. Defrenne judgement II 1976: the principle of equal pay is clear and leaves no room for doubt; Member States have no discretionary powers on this issue. It moreover corresponds to the application of a general principle of equality which belongs to the common ideological heritage of Member States).

It represents the Community legal system's shift from a purely economic vision to one more concerned with employment and social issues.

Case Study

Scarce use of the special procedural and collective mechanisms foreseen by the Equal Opportunities Code for gender discrimination,

On the contrary, there are many cases of discrimination regarding transfers and dismissals, especially connected to maternity.

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Case Study (II)

The evolution of the legislation and case-law of the S.C. in synergy and dialogue with the CJEU, has led to a shift in defining the burden of proof imputable to woman workers from the sphere of simple presumption to allegation (obviously supported by facts) of the discriminating factor and of less favourable treatment.

Easing the ordinary laws of evidence, favouring in such a way the claimant, who might be in a situation, in which it is difficult to prove the existence of discriminatory acts.

It is up to the defendant to prove the causes for exclusion:

- in case of direct discrimination: essential requirement of the service
- in case of indirect discrimination: legitimate objective, appropriate and necessary means.

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Case Study – merits

Turin Court of Appeal 19/12/2013

- Transfer of a working mother of a child just over one year old, 150 km. away from her previous workplace (three days after the child's first birthday); this in comparison to the many other practical alternatives the employer had available to meet his productive requirements was, concretely speaking, the most detrimental for the working mother.
- - Objective causal relationship between the protection factor (gender) and less favorable treatment, no evidence given by the company of specific facts proving an alternative legitamate cause for exercising *ius variand*i - discriminatory nature of the transfer - objection of default pursuant to art. 1460 Civil Code. – illegitimacy of the disciplinary dismissal notified to the worker because she was unwilling to start work in the new place of destination.
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Case Study – merits (II)

Rome Court of Appeal 27/10/2014

- Dismissal for a justified objective reason (job suppression)
- Lack of proof (evidence to be presented by the employer) of a decrease in the activity in the sector in which the working woman was employed and of the impossibility of employing her in another sector.
- The time coincided perfectly with the worker's return to work after maternity leave.
- The joint evaluation of these circumstances (no objective reason for dismissal, dismissal upon return from maternity leave) – inclusion of the condition of being a new mother in the discrimination category contained in Directive 2002/73/EC – qualification of dismissal as discriminatory on the grounds of sex - invalidity of dismissal – reinstatement protection.

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Corte di Appello di Roma

Case Study – Cassation

Cass. 28147/2005

Assessment regarding the existence of discriminatory treatment vis-à-vis certain employees of a Company on the grounds of sex (in this case, discrimination in career progression), is carried out to verify whether criteria that would disadvantage to a proportionally greater extent the workers of one or of the other sex concerning requirements not directly connected to working activities have been adopted (In this case, the S.C. confirmed the judgement on merits, which had excluded discrimination vis -à-vis the women employees of an electronics company; as the preferential qualification for career advancement, the company, in fact, requested an engineer's diploma, obtainable by both sexes although more common amongst men and considered it a fundamental requirement to carry out activities in such a highly specialised sector such as the electronics one).

Distretto della
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Case Study – Cassation (II)

Cass. 23562/2007

In matters of recruitment requirements, when secondary legislation prescribes an identical minimum height for both men and women, in contrast with the principle of equality, wrongly presupposing the non-existence of different heights between men and women, thus involving indirect discrimination against the latter sex, the ordinary court appreciates the legitimacy of the law, concretely considering the usefulness of the requested requirement for the job to be carried out. (In this case, the S.C. overruled the decision of the ordinary court on the grounds that it had simply limited itself to considering, in recruiting for Rome's Underground, the minimum height of 1.55 m. requirement – as in d.m. n. 88 of 1999 - for both men and women, as a guarantee for the safety of both personnel and users, without verifying what jobs the plaintiff could have attended to despite the fact that her physical height was lower than the one requested.

Distretto della
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Case Study – Cassation (III)

Cass. 14206/2013

As to the discriminatory behaviour of employees, Art. 40 p.o. Code, - in setting out a principle applicable both in the case of special non-discrimination proceedings and in ordinary ones, promoted by workers or by the equal opportunities adviser – does not establish a reversal of the burden of proof, but only a lowering of the ordinary system of evidence, foreseeing that the defendant supplies, in line with the provisions of art. 19 of EC Directive n. 2006/54 (as interpreted by the EU Court of Justice), proof of the non-existence of discrimination, but this only after the appellant has supplied the judge with the facts, even gathered from statistical data, concerning the lamented discriminatory behaviour, as long as they are able to establish, in accurate terms (that is, determined by their historical reality) and in concordant terms (that is, based on a plurality of known facts that all converge towards the demonstration of the unknown fact), even if not serious, the presumed existence of discriminatory actions, pacts or behaviour on the grounds of sex. (In the case at issue, in which a bank employee had complained that she had been discriminated against in her career progression, the S.C. overruled the ruling, which had been in favour of the appellant, considering the burden of proof produced by the appellant as unsatisfactory, even if attenuated; the production of two questions tabled in Parliament and an interim opinion on the part of the Investigative Board of the National Committee on Equal Opportunities were considered insufficient to presume indirect discrimination; these sources were deemed devoid of the scientific reliability required by the legislation with reference to statistical data and - respectively – of the indication of the criteria of how the data in the evaluation was collected).

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Corte di Appello di Roma

Case Study – Cassation (IV)

Cass. 6575/2016

The invalidity of discriminatory dismissal derives directly from the violation of specific legislation of National Law, such as art. 4 of l. n. 604 of 1966, art. 15 of the Workers' Statute and art. 3 of l. n. 108 of 1990, and also of European Law, like the ones contained in directive n. 76/207/EEC on gender discrimination, so, in contrast to the hypothesis of retaliatory or unfair dismissal, a decisive unjust reason is not necessary, pursuant to art. 1345 of the Civil Code, nor may discrimination be excluded by the existence of other finalities, even if legitimate, such as an economic reason. (In this case, the S.C. confirmed the judgement on merits of the discriminatory nature of a dismissal after a woman employee communicated her intention to be absent from work for a few days to undergo medically assisted fertilization).

Case Study – Cassation (V)

Cass. 23286/2016

On protection against sexual harassment at work, the equivalence with gender discrimination laid down in Art. 26 para. 2 Code p.o., according to the interpretation most in conformity with the aims of Community law, extends to the rules of evidence pursuant to Art. 40 of the same decree, both for the absence of exemptions to the general principle and for the possibility of establishing the "tertium comparationis" in the negative differential treatment towards workers of a different sex who are not subjected to the same conduct. (In the present case the S.C. confirmed the decision of the judge who had emphasised the witness statements corroborated by statistical evidence, seen in the rapid "turn over" among young female employees who, shortly after being recruited, would resign without apparent reason).

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Case study – CJEU

CJEU – judgement in the case C-300/06 Ursula Voß / Land Berlin

A national law declaring that part-time workers shall be paid less than full-time workers for the same number of hours worked infringes the principle of equal pay if it harms a significantly larger number of female workers than male workers and if it is not objectively justified by objective factors not connected with any discrimination based on sex.

The principle of equal pay precludes not only direct discrimination, but also any difference of treatment in the application of criteria not based on sex, if it harms a significantly higher percentage of female than of male workers.

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Case study – CJEU (II)

CJEU – judgement in case C-236/09 Association belge des Consommateurs Test-Achats ASBL e a.

Directive 2004/113/EC 1 prohibits any discrimination based on sex as regards access to goods and services and their supply. The differences in premiums and benefits resulting from the use of sex as a factor in their calculation should have been abolished by 21 December 2007, excepting transition periods established by national legislation.

In the absence of a provision in the directive regarding the duration of application of these differences there is the risk that the exemption to the equal treatment of men and women, laid down by the directive, is allowed by EU law indefinitely.

A provision allowing the Member States involved to maintain an unlimited exemption to the rule of unisex premiums and benefits is contrary to the fulfilment of the objective of equal treatment of men and women and must be considered invalid at the end of an adequate transition period.

Consequently, the Court declares that, in the insurance services sector, the exemption from the general rule of unisex premiums and benefits is invalid as of 21 December 2012.

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The role of the national judge

•The national judge is the basic organ of the European judicial area.

•The *primauté* of European law over national law, together with the direct effect and the national judges' obligation of disapplication are now the key to the interpretation and understanding of the relationship and the health of the relationship between the judicial systems of the Member States and the European Union.

• The Court of Justice's " interpretative function" has the fundamental role of ensuring the uniform enforcement of EU law on the part of the Member States and in particular their national courts.

•This position of "hermeneutic privilege" is guaranteed through the obligation of the preliminary ruling, which grants the EU judge incisive control, in that it is not an unsuccessful party's means of appeal against a judgement, but is an indirect procedure that can be applied ex officio at every stage and level of proceedings.

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The role of the national judge (II)

•Balancing the interpretative judgements of the Court of Justice and the internal principles involves overcoming any contrast between European law and national law, with a view to perfecting the dialogue between internal and supranational law in terms of integration.

•The national judge applies national legislation + European legislation, in a mechanism of integration and osmosis.

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The role of the national judge – consistent interpretation and disapplication

"Prohibitions of discrimination are one of the classic instances of the direct efficacy of Community law. This is true not only for prohibitions on discrimination laid down in primary law (in particular in the fundamental rights and in laws such as Art. 141 EC), and for some prohibitions that the Community legislator has established in secondary law, especially in some directives regarding labour and social legislation" (Advocate General's conclusions in the Impact case – 2008)

Establishing compatibility, by way of interpretation, between the internal legislative context and the European framework.

From the direct effect of consistent interpretation – primacy of the "structural effect" of Community law, in that it aims to ensure the continuous adjustment of internal law to the objectives of Community law. Consistent interpretation is inherent to the Treaty's system and it extends to national law as a whole (including collective agreements - Pfeiffer case - 2004).

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The role of the national judge – consistent interpretation and disapplication (II)

Consistent interpretation is expressed as the obligation of all those who interpret national law to consider all the measures in internal law – and to use all means of interpetation (*as far as possibile)* - to reach a result in conformity with Community law.

Kücükdeveci ruling -2010 - primary role of the CJEU as a privileged interpeter in the elaboration of the Community system of fundamental rights – before a general principle of Community law, as the meta-principle of equality and non-discrimination, with an overarching and immediately applicable scope, the conflicting internal legislation must be disapplied, regardless of the binding nature of the Community law invoked.

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The role of the national judge – consistent interpretation and disapplication (III)

•The function of the national judge as a European Union judge implies that he shall have the delicate function of guaranteeing the supremacy of Community law over internal law: this is made necessary by its process through the general principle of equality.

•Kücükdeveci Judgment: the national judge is the central link in the interpretative chain when there is controversy between private persons; the obligation to guarantee observance of the principle of non-discrimination on the grounds of age – as effectively deriving from Directive 2000/78 but as the expression of the general principle of Community law, overarching, horizontal and immediately applicable – will oblige him to disapply,if necessary, any provision that is contrary to national legislation, irrespective of the exercise of his faculty, in the cases set forth in Art 267, second paragraph, TFEU, to submit to the Court a preliminary question on the interpretation of this principle.

Distretto della
Corte di Appello di Roma

The role of the national judge – consistent interpretation and disapplication(IV)

•Dansk Industri judgement – 2016 – completes the process of consolidation of the national judge's powers in applying the overarching and immediately applicable principle of equality.

•Addressing the question of the relative possibility for the national judge to balance the general principle of non-discrimination on the grounds of age, with the principle of legal certainty and the protection of legitimate expectations, the Court refers first of all to its own case-law, according to which, when they are called to settle a dispute among private persons in which the national legislation at issue is contrary to EU law, national judges shall ensure to individuals the legal protection deriving from the provisions of EU law and guarantee their full effect.

•Secondly, the Court declares that if the obligation for Member States, deriving from a directive, to achieve the result foreseen by the latter, and also their duty to adopt all the general or particular measures to guarantee fulfilment of this obligation, are imposed on all the authorities of the Member States, including, within their sphere of responsibility, jurisdictional obligations.

•In applying internal law, the national judges called to interpret it must consider the set of rules in that law and apply the hermeneutic criteria recognised by the same in order to interpreti it as far as possible in the light of the wording and the purpose of the directive at issue, so as to achieve the result established by the latter.

Distretto della
Corte di Appello di Roma

The role of the national judge – consistent interpretation and disapplication (V)

•Whenever he believes it is impossible for him to give an interpretation in comformity with the national legislation in question, the national court judge shall disapply this law.

• The principle of equality, in the interpretation provided by Dansk Industri, cannot be balanced.

•Development of CJEU case-law - from the faculty of disapplying any provision contrary to national legislation also in disputes between private individuals, to the obligation of disapplication, if it is impossible to give a consistent interpetation.

The role of the national judge – consistent interpretation and disapplication (VI)

•Association Belge des Consommateurs judgement: noting the contrast between Art. 21 and Art. 23 of the Nice Charter and the European Union law that without objective reasons departs from the prohibition of discrimination on the grounds of sex, as a founding principle of Community law, the Court of Justice, in its role as a European constutional judge, declared as unlawful and cancelled the EU provision (Art. 5 of Directive 2004/13) starting from 21 December 2012.

•The principle of equality, according to the Court, now has direct horizontal efficacy and a precise preceptive content, which determines its immediate enforceability.

The preliminary ruling

- **CJEU – 2012 - RECOMMENDATIONS to the national judges, relative to the presentation of requests for a preliminary ruling**
- The national judges of Member States may have recourse to the Court to interrogate it as to the validity of European law in the context of a pending case.
- A preliminary ruling is not an appeal against a European or national law, but a query on **the enforcement of European law**.
- A preliminary ruling therefore promotes active cooperation between national jurisdictions and the Court of Justice and also the uniform enforcement of European law throughout the EU.

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The preliminary ruling (II)

Article 267 TFEU states that national jurisidictions of last instance are obliged to apply to the Court of Justice to request a preliminary ruling, except in the case that the Court already has case-law on the subject or if the interpretation of the EU law at issue is evident.

On the other hand, national jurisdictions that do not make a pronouncement in the last instance do not have the obligation to issue this ruling, even if one of the parties requests it.

Preliminary rulings have a general scope and are obligatory, not only for the national jurisdiction that initiated the preliminary ruling, but also all the national jurisdictions of the Member States.

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The preliminary ruling (III)

•The widespread nature of the implementation of Community law involves a twofold obligation for the ordinary judge: to interpret, as far as possible, his national law in conformity with Community law and, if this is not possible, to disapply the national law that is incompatible with Community law.

•Under the general principle of the primacy of Community law, the conflict between a national law and a directly enforceable provision of the Treaty is resolved, for a national judge, with the enforcement of Community law, disapplying if necessary, the conflicting national law, and not declaring nullity of the national law, in that the responsibility of organisations and judges is reserved to each member State.

The preliminary ruling according to the CJEU

• judgement on Kücükdeveci – points 52 -56

•As regards the obligation for the national judge, hearing a dispute between private persons , to ask the Court to give a preliminary ruling on the interpretation of Community law, before being able to disapply a national law that he believes is contrary to that law, we must point out that from the referral decision it emerges that the grounds for this aspect of the question are that under national law, the preliminary ruling judge may not disapply a current provision in national law if it has not previously been declared unconstitutional by the Bundesverfassungsgericht (Federal Constitutional Court).

In this regard, we must stress that the necessity of guaranteeing full efficacy to the principle of non-discrimination on the grounds of age, as effectively expressed in Directive 2000/78, means that the national judge, in the presence of a national law coming within the sphere of application of EU law, that he deems incompatible with this principle and for which it is impossible to give an interpretation in conformity with the latter, shall disapply this provision, without being obliged to nor prohibited from applying to the Court for a preliminary ruling.

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The preliminary ruling according to the CJEU (II)

The faculty ackowledged by Art. 267, second paragraph, TFEU, of asking the Court for a preliminary interpretation before disapplying the national law contrary to Community law cannot however be an obligation, owing to the fact that national law does not allow the judge to disapply a national law that he believes to be contrary to the Constitution, if this provision has not previously been declared unconstitutional by the Constitutional Court. Indeed, by virtue of the principle of the primacy of EU law, also enjoyed by the principle of non-discrimination on the grounds of age, a contrary national law, within the sphere of application of EU law, must be disapplied.

From these considerations it emerges that the national judge, hearing a dispute between private persons, is not obliged, but has the faculty of asking the Court a preliminary question on the interpretation of the principle of non-discrimination on the grounds of age, as effectively expressed by Directive 2000/78, before disapplying a national provision that he believes to be contrary to this principle. The optional nature of this referral is independent of the methods imposed on the national judge, in internal law, for disapplying a national provision that he believes to be contrary to the Constitution.

In consideration of all the above, the question must be resolved, declaring that it is the responsibility of the national judge, hearing a dispute between private persons, to guarantee compliance with the principle of non-discrimination on the grounds of age, as effectively expressed by Directive 2000/78, disapplying, if necessary, any provision contrary to national legislation, irrespective of the performance of the function he has, in cases foreseen by Art. 267, second paragraph, TFEU, of asking the Court a preliminary question on the interpretation of this principle.

The preliminary ruling according to the CJEU (III)

judgement on Kelly 2011 – points 60-66

According to Court's established case-law, Art, 267 TFEU introduces a preliminary ruling mechanism with the aim of preventing differences in interpretation of EU law that national judges must enforce and tends to guarantee this enforcement, conferring on the national judge a means of eliminating the difficulties that may derive from having to fully enforce EU law in the framework of the member States' legal systems .

Indeed, Art. 267 TFEU confers on national judges the faculty – and may impose on them the obligation – of giving a preliminary ruling when the judge finds, whether on his initiative or at the request of one of the parties, that the merit of the dispute raises an aspect foreseen by the first paragraph of that article. Consequently the national judiciaries enjoy the wider faculty of referring to the Court if they consider that, in the context of a dispute pending before it, questions have arisen, essential for the decision on the case, implying an interpretation or an investigation of hte validity of the provisions of EU law.

Moreover, the Court has been able to declare that the system introduced by Art. 267 TFEU to ensure unity of interpretation of EU law in the Member States, introduces direct cooperation between the Court and the judges through a procedure unconnected with any initiative by the parties.

The preliminary ruling according to the CJEU (IV)

In this regard, the preliminary ruling is based on a dialogue between judges, whose commencement is based entirely on the evaluation of the relevance and the necessity of that ruling given by the national judge.

In this sense, if it is up to the national judge to evaluate whether the interpretation of a measure of EU law is necessary for him to rule on the dispute pending before him, in the light of the procedural mechanism laid down in Art. 267/78, it is for the judge to decide in which terms these questions must be formulated.

If it is also true that this judge is free to invite the parties in the dispute pending before him to suggest formulations that may be used in the frafting of the preliminary questions, the fact remains however that it is only the judge himself who must ultimately decide, both on the form and on the content of the questions.

Consequently, the obligation set forth in Art. 267, n. 3, TFEU does not differ according to whether the member State involved has an adversarial or an inquisitorial legal system.

Preliminary ruling and the Constitutional Court

Ruling on a question of constitutionality raised by a question of gender discrimination (treatment of female civil servants considered less favourable than male civil servants as regards retirement age), the Italian Constitutional Court, with judgement 111/2017, has effectively clarified the scope of the preliminary ruling with regard to the question of constitutionality.

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Preliminary ruling and the Constitutional Court (II)

The Const. Court, with ample reference to the CJEU, observes that:

-the principle of equal pay for men and women, hinging on the Rome Treaty since the establishement of the European Economic Community as the founding principle of the common market and as one of the «social aims of the Community, which is not limited to economic union, has been considered by the Court of Justice as binding for public entities and private persons, being aimed at preventing dicriminatory practices harmful to free competition and the fundamental rights of workers;

-the direct efficacy of this principle makes it obligatory for the national judge to set aside the provision of national law that conflicts with European law;

-the Court of Justice has also specified that the direct efficacy of the principle of equal pay cannot be eroded by any implementing legislation, be it national or Community legislation.

Preliminary ruling and the Constitutional Court (III)

- the referring court judge, deeming that the censured legislation is in contrast with Art. 157 of the TFEU, also in the light of the Court of Justice case law, recognising the direct efficacy of the provision, should not have enforced the measures conflicting with the pricniple of equal treatment, after recourse, if appropriate, to a preliminary ruling, when considered necessary, to question the Court of Justice itself about the correct interpretation of the relevant provisions of EU law and therefore clear up any residual doubts in relation to the existence of a conflict;
- once started, this process would make it superfluous to evoke the contrast with constitutional parameters in issues of constitutionality. Art. 157 of TFEU, directly enforceable by the national judge, obliges him to comply with European law, making the censured provisions unenforceable in the main proceedings, and the questions raised therefore irrelevant;

Preliminary ruling and the Constitutional Court (III)

- the non-enforcement of national law provisions, in no way equivalent to the hypothesis of repeal or exemption, nor to forms of time limiting or cancellation owing to their invalidity, is in effect one of the obligations of the national judge, bound by the obligation to comply with EU law and to guarantee the rights that it has generated, with the only limitation of respecting the fundamental rights of the constitutional order and the inalienable rights of the person;
- the complexity of the subject should all the more direct the judge towards preliminary ruling, so as to verify the effective incomparability of the national provision with the law and effectively equal treatment of men and women.

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THANK YOU FOR YOUR ATTENTION!

GRAZIE PER L'ATTENZIONE!

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