

„EU GENDER EQUALITY LAW“; WEBINAR FOR MEMBERS OF THE JUDICIARY 3-4 SEPTEMBER 2020

The role of the national judge
in applying EU Equality Directives:

**relationship with national legal orders and the
preliminary ruling procedure**

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PRELIMINARY REFERENCE PROCEDURE DEFINITION AND KEY RULES

How does the preliminary ruling procedure work

- ▶ The preliminary reference procedure is used when a national court refers a question of EU law to the Court of Justice of EU for a preliminary ruling.
- ▶ The function of the preliminary reference procedure is to clarify interpretation and validity of EU law across all the Member States;
- ▶ The procedure is laid down in Article 267 TFEU:

'Where such a question is raised before any court of a Member State, that court may and sometimes must, require the Court of Justice to give an answer.'

USEFUL CASELAW THAT EXPLAINS WHY WE HAVE TO REFER TO THE CJEU

C-458/06 Skatteverket v Gourmet Classic Ltd

<http://curia.europa.eu/juris/liste.jsf?oqp=&for=&mat=or&jge=&td=%3BALL&jur=C%2CT%2CF&page=1&dates=&pcs=Oor&lg=&parties=Gourmet%2BClassic%2B&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=13061242>

In the **Gourmet Classic** case the Court of Justice underlined that the duty of the domestic courts is a basic cooperation between courts under article 267 of the treaty to ensure the uniform interpretation of EU law in all the member states. That obligation must prevent the national caselaw to become contrary to the EU law.

KEY REGULATIONS

▶ **THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION:**

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT%2Farticle%20267;>

▶ **Consolidated version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 3) on the statute of the Court of Justice of the European Union**

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E/PRO/03&from=PL>

▶ **Rules of Procedure of the Court of Justice of the European Union:**

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:ai0049&from=PL>

▶ **Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C380/01)**

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018H0720\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018H0720(01)&from=EN)

CONSTRUCTION OF THE PRELIMINARY RULING

Principles :

- ▶ The preliminary ruling has to be prepared as follows:
- **summary of the subject matter of the dispute and relevant fact findings as determined by the referring court and account of the facts on which the questions are based;**
- **the tenor of any national provisions applicable in the case and, where appropriate, the relevant national caselaw;**
- **a statement of the reasons which prompted the referring court to inquire about the interpretation or validity of certain provisions of the EU law and the relationship between those provisions and the national legislation applicable to the main provisions**
- **ACTE CLAIR principle (CILFIT 1982);**
- **the question must be prepared in clear not hypothetical way (Falciola C-286/88 and Gasparini 2006)**
- *Last but not least :*
- **Convincing the Court of Justice is crucial in order to get the Court opinion**

INTERACTION BETWEEN THE REFERENCE FOR A PRELIMINARY RULING AND THE NATIONAL PROCEEDINGS

- lodging of a request for a preliminary ruling requires the national proceedings to be suspended until the Court has given its ruling;
- the preliminary ruling procedure is predicated on there being proceedings actually pending before the referring court or tribunal, it is incumbent on that court or tribunal to inform the Court of any procedural step that may affect the referral and, in particular, of any discontinuance or withdrawal, amicable settlement or other event leading to the termination of the proceedings. The referring court or tribunal must also inform the Court of any decision delivered in the context of an appeal against the order for reference and of the consequences of that decision for the request for a preliminary ruling.
- **The CJEU may send the informal question to the national court**
- Example §§ 20, 21 of the C-149/16 Socha and others
<http://curia.europa.eu/juris/document/document.jsf?docid=194783&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=14299447>

PRACTICAL EXAMPLES OF THE PRELIMINARY RULING

C-178/15 *Sobczyszyn v Szkoła Podstawowa w Rzeplinie*

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=181109&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=14301400>

Must Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, according to which Member States are to take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice, be interpreted as meaning that a teacher who has taken convalescence leave as provided for in the Law of 26 January 1982 — Teachers' Charter (Karta Nauczyciela) (Dz. U. 2014 headings 191 and 1198) also obtains a right to the annual leave provided for in the general provisions of labour law in the year in which he exercised the right to convalescence leave?

FIELD OF APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The scope of the Charter of Fundamental Rights of the European Union is defined in Article 51

The Charter does not extend the field of application of EU law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.'

Factors enabling a finding of the existence of a national measure of 'implementing EU law'

EU law places one or several specific obligations on the Member States, or the national situation is covered by a specific rule of EU law

Judgement of 6 March 2014, **Siragusa (C-206/13, EU:C:2014:126)**

OBLIGATION FOR NATIONAL COURTS TO REASON THEIR REFUSALS TO REFER TO THE CJEU AND RESPONSIBILITY OF THE STATE BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS FOR ARBITRARY REFUSAL OF ITS REFERRING

Judgements of the European Court for Human Rights :

Somorjai v. Hungary 28.08.2018 (application no. 60934/13)

The Court held on the question of the referral that the refusal to refer the case to the CJEU for a preliminary ruling or the lack of reasoning on that issue could not be seen as arbitrary. The applicant had not actually requested for such a reference to the CJEU in the relevant stage of the proceedings. Moreover, the domestic courts expressed their view that the Hungarian provisions and the EU law did not conflict. Accordingly, the complaint was rejected by the Court as manifestly ill-founded.

Dhabi v. Italy 8.04.2014 (application no. 17120/09) in that case, the ECtHR held that refusal by a national court of last instance to make a preliminary reference to the CJEU amounts to a breach of Article 6 ECHR if the national court does not provide reasons to justify its decision. In this case, the applicant alleged that the Italian Court of Cassation had ignored his request to have a preliminary question referred to the CJEU also failing to provide any reasons for its denial

UNREASONABLE TIME OF THE PROCEEDINGS AND PRELIMINARY REFERENCES - ECHR CASELAW

Case of Pafitis and Others v. Greece - 20323/92 the ECHR Judgment 26.2.1998 (Pafitis and Others, Case C-441/93 (12 March 1996)

The Court notes that the hearing initially set down for 2 November 1994 was put back so that it could be held on the same day as the hearing fixed for action no. 45/1994 (on 1 February 1995), on account of the related subject matter of the two cases (Article 246 of the Code of Civil Procedure). On 29 May 1995 the District Court decided to stay the proceedings pending the judgment of the Court of Justice of the European Communities and its own judgments in the previous cases.

There has therefore been no breach of Article 6 § 1 as regards these proceedings.

CASE OF KOUA POIRREZ v. FRANCE (Application no. 40892/98) Judgment 30.09.2003

With regard to the conduct of the parties, the Court considers that the applicant cannot be criticised for having taken full advantage of the remedies available to him. The Court also reiterates that the length of the proceedings before the ECJ, namely over eighteen months in the present case, cannot be taken into consideration (see *Pafitis and Others v. Greece*, judgment of 26 February 1998, Reports 1998-I, p. 459, § 95).

URGENT PRELIMINARY RULING PROCEDURE AND EXPEDITED PROCEDURE

An expedited or accelerated procedure has existed since 2000 and is now governed by Article 105 (and next) of the Rules of Procedure of the Court of Justice in the case of references for a preliminary ruling, and by Article 133 of those Rules in the case of direct actions.

The request that a case be dealt with pursuant to an expedited procedure is made by the referring court or tribunal, in the case of a reference for a preliminary ruling, and by the applicant or the defendant, in the case of a direct action. The Court immediately sets the hearing and the parties have 15 days for submitting documents.

The urgent preliminary ruling procedure was established in 2008 in response to the extension of the powers of the European Union and jurisdiction of the Court in the area of freedom, security and justice. The expedited procedure, which can be applied in all areas of EU law and to any type of proceedings, the urgent preliminary ruling procedure, governed by Article 107 of the Rules of Procedure of the Court, is reserved for references for a preliminary ruling that raise questions in the areas covered by Title V of Part Three of the Treaty on the Functioning of the European Union (FEU Treaty), relating to the area of freedom, security and justice.

THANK YOU

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