


- The Role of the national judge in applying EU equality law
- Applying EU Law in domestic proceedings
- Practical tips for submitting a preliminary ruling procedure

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Preliminary Reference Procedure Definition and key rules

- ***How does the preliminary ruling procedure work in practice?***
- The preliminary reference procedure is used when a national court in **a pending case** refers a question of EU law to the Court of Justice of the EU for a preliminary ruling.
- The purpose of the preliminary ruling procedure is to clarify the interpretation or validity of EU law in all Member States;
- **The procedure is set out in Article 267 of the Treaty on the Functioning of the European Union**

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Key regulations

- ▶ **THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION:**
 - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT> article 267;
- ▶ **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=EN>
- ▶ **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=EN>
- ▶ **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)

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Practical tips for drafting a sentence of a reference for a preliminary ruling to the CJEU

- **Identify the provision of EU law whose interpretation we are seeking;**
- Do not ask questions about national law - never do - the Court of Justice is only responsible for interpreting EU law;
- Try to present the reference in the easiest way for the reader to understand.

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Written statement of grounds for the question referred for a preliminary ruling

- **Basic principles:**

- a concise statement of the subject-matter of the dispute and of the relevant facts, or at least an indication of the facts on which the questions are based;
- the content of the national provisions applicable to the case and, where appropriate, an indication of the relevant case-law of the national courts;

AND

- Explain why the court asking the question is considering the interpretation or validity of specific provisions of European Union law,
- Above all, we explain and convince the CJEU that the answer to the question is decisive for the outcome of the case. We do not ask anything that is not relevant to the case, even if it relates to a similar problem.
- A question referred for a preliminary ruling may not be posed in a hypothetical manner, for example in Case C-467/04 (Gasparini) of 28.09.2006.(§§44) or Case Falciola Angelo SpA v. Comune di Pavia, C- 286/88

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An example of an effective question to the CJEU

C-178/15 Alicja Sobczyszyn v. Szkoła Podstawowa w Rzeplinie

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=181109&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2030181>

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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 thereof, pursuant to which:
- ‘1. The provisions of [the] Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing EU law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
- 2. 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
- **Judgment of 6 March 2014, Siragusa (C-206/13, EU:C:2014:126)**

The Court of Justice of the European Union interprets EU law in the context of a preliminary reference only within the scope of the jurisdiction conferred upon it (see the judgments of the Court of Justice of the European Communities of 15 November 2016, C-268/15; of 27 March 2014, C-265/13; and the judgment of the Court of Justice of the European Communities of 27 March 2014, C-265/13). C-265/13 and the case-law cited therein).

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The obligation to refer a question to the CJEU for a preliminary ruling

General rule - Article 267(2) TFEU and case Costa v. Enel 1964 :

- Any court or tribunal of a Member State may refer a question to the CJEU for a preliminary ruling if it considers that a decision on the question is necessary to enable it to give judgment;
- A national court whose decisions are final **MUST** refer the question to the CJEU

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Liability for arbitrary refusal to refer to the Court of Justice

- In Köbler, C-224/01, the Court of Justice held that a national court's failure to comply with its obligation to refer a question for a preliminary ruling under Article 267 TFEU is one of the factors determining the manifest nature of the error of law, one of the conditions for Member States' liability for damages.
- Similar reasoning is contained in the judgment of the CJEU of 4 October 2018. (C-416/17), which held that the failure of the French Conseil d'Etat to make a reference for a preliminary ruling constituted a failure to fulfil its obligations under the third paragraph of Article 267 TFEU.

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Liability for failure to make a request for a preliminary ruling in the case law of the European Court of Human Rights

- - Article 6(1) of the Convention for the Protection of Human Rights requires national courts to state, in the light of the applicable law, the reasons for their decision not to make a reference for a preliminary ruling;
- - When the Court is dealing with an application alleging a violation of Article 6 § 1 on that basis, it must ensure that the contested refusal is duly accompanied by such reasons;
- - while this examination must be thorough, it is not the Court's function to review errors of interpretation or application of the relevant legal provisions which may have been made by the national courts
- ECHR judgment of 28 August 2018 in the case of Somorjai v Hungary - application no. 60934/13
- Judgment of the ECtHR of 8 April 2014 in the case of Dhabhi v. Italy application no. 17120/09
- ECtHR judgment of 10 April 2012 in the case of Verguaven v Belgium - application no. 4832/04

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The Acte éclairé principle (Da Costa en Schake)

- This principle - states that if the Court of Justice of the European Union (CJEU) has already given a ruling on the interpretation of a particular provision of EU law, this ruling will also apply in subsequent cases and that a preliminary ruling on the provision in question is not mandatory and the previous CJEU ruling on the matter is binding.
- Judgment of 27 March 1963 Da Costa en Schaake NV, Jacob Meijer NV, Hoechst-Holland NV v Administration fiscale néerlandaise

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„Acte Clair principle” - Judgment of 6 October 1982 in Case C-283/81 „CILFIT”

According to this principle, a court or tribunal is not obliged to refer a question to the Court of Justice for a preliminary ruling if:

- a decision on the interpretation of European Union law is not necessary in order to give judgment in the case,
- the questions of law raised have already been dealt with in previous decisions of the Court of Justice, irrespective of the nature of the proceedings which gave rise to those decisions, even if the questions raised are not entirely identical,
- - the application of Union law is so obvious as to be beyond doubt.

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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.**

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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*) *Judgement 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).

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Useful links and tips for better application of EU law in practice

https://curia.europa.eu/jcms/jcms/p1_1043150/en/ - Fact sheets

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Thank you

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