



Application of the European Union law in a MS court

IEVA FREIJA - PECCATI

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Role of the courts of a MS

The MS courts are the main actors applying the EU law

The MS courts should provide legal protection that the persons have under the EU law and full effectiveness of the EU law (see e.g. *Cresco Investigation*, 22.01.2019., C-193/17 EU:C:2019:43, 78.p.)

It includes the obligation, by its own initiative, not to apply any national legal provision which contradicts the EU law without asking or waiting for it to be cancelled according to the legislation procedure or any other method provided by the constitution (see e.g. *XC etc.*, 24.10.2018., C-234/17, EU:C:2018:853, 44.p.)



Preliminary ruling procedure -



the “cornerstone” of the EU law

- It is based on the dialogue between the European Court of Justice (ECJ) and the MS courts
- It provides coherent and uniform interpretation of the EU law, as well as its autonomy and full effect
- It provides interpretation of the EU law or evaluation of validity of EU legislation
- It is mandatory for the last instance court and if there are doubts regarding validity of the EU legislation
- It is optional in other cases (TFEU 267.p., Foto-Frost, 314/85)



Request to issue a preliminary ruling



- I) Requirements to ensure that the ruling is examined on its merits
(would not be rejected as not acceptable)
- II) Practical recommendations to ensure that the reply by ECJ is helpful to the MS court



Article 94 of the Court Rules of Procedure -

- a) the subject-matter of the dispute and the relevant findings of fact
- b) the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law;
- c) a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of European Union law, and the relationship between those provisions and the national legislation applicable to the main proceedings

Substantiation of formal requirements

- The reason behind a request to issue a preliminary ruling **is not issue of advisory conclusions on general or hypothetic matters, instead a ruling should be objectively needed** to resolve a dispute at the MS court (see, for example, C-208/20, 18.p.)
- The reply provided by the ECJ should be **useful** to the national court (see, for example, C-628/21 27.p.)
- On the basis of this ruling, the ECJ should be able to verify its **competence**
- The request to issue a preliminary ruling is sent to **Member States and EU institutions** and it serves as the basis for them to provide considerations to ECJ.

What is comprised by the criterion of “necessity”?



ECJ uses the assumption that, if the MS court has asked a question regarding interpretation or validity of the EU law, it needs this answer (see, for example, C-628/21, 26.p.)

However:

- There should be a dispute and the interpretation of the EU law should be able to affect the outcome of this dispute (see, for example, C-55/20, 55.p.)
- The dispute should be there both at the moment of submission of the request to issue a preliminary ruling and at the moment when ECJ issues its ruling (see, for example, C-391/20, 40.p.)
- The above criterion is not satisfied if it is obvious that the requested interpretation of the EU law is not related to the circumstances of fact or the subject matter of the main proceedings or the defined issue is hypothetical (see, for example, C-628/21, 26.p.)



What is comprised by the criterion of “usefulness”?



The ECJ reply should be such that the MS court can apply for resolution of the dispute.

Therefore, a request to issue a preliminary ruling:

- should provide sufficient and full information about important national legal provisions and the facts of the proceedings - in this regard ECJ uses the facts provided by the national court and the interpretation of national provisions provided by it
- specify all the information allowing to understand the reasons behind asking the question
- indicate procedural peculiarities, if they are important



Verification of the competence of ECJ

- ECJ may only decide on interpretation and validity of the EU law and not apply this law, interpret the law of a Member State or resolve a dispute on its merits

- ECJ may only decide on the request to issue a preliminary ruling if the EU law is applicable in the main proceedings

- If a MS court requests to interpret the EU Charter of Fundamental Rights, it should be clearly substantiated that the legal situation is within the scope of application of the EU law. The provisions of the Charter per se do not establish the competence of the ECJ (see, for example, C-203/20, 39.p.)

Determination of applicability of the Charter

- EU legislation is applicable to a dispute - the applicability of the EU law means that the Charter is also applicable to the situation

- A Member State implements the EU law for the purpose of Article 51 of the Charter, in particular, it (including local governments and other subjects of the public power) performs the obligations imposed to it by the EU law.
 - 1) cases when EU law obliges a Member State to act
(Åkerberg Fransson, C-617/10)

 - 2) cases when a Member State refers to the exceptions provided by the Treaty to substantiate a restriction of fundamental freedoms (free circulation of persons, goods, services and capital) or exercises the powers of evaluation provided by the EU legislation.
(for example the Commission/ Hungary, C-235/17)

Practical recommendations for an answer to be useful

- A request should be structured by clearly stating all its elements, separating the court's conclusions and findings from the parties' opinions. Rulings of Latvian courts are very good in this regard
- The analysis by the national court is very useful
- All the essential information should be in the very ruling, annexes are not translated.
- Not more than 10 - 15 pages.
- It should be remembered that requests to issue a ruling will be examined by lawyers who do not know the legal system of the relevant country
- It should be remembered that rulings are translated, however, if they are too long, less important parts are not translated (this assessment may be subjective)
- It should be remembered that the ECJ will only rely on the facts specified by the MS court- facts should be comprehensive and sufficient
- References to the national legislation should include also the data of their publication and the version applicable to the dispute



Prior to the request to issue a preliminary ruling, it is necessary to assure:

- whether there are substantial doubts regarding interpretation of the EU law?
- whether all the essential facts have been established and the essential matters of the national law have been analysed in the main proceedings?
- whether the ECJ has already issued a ruling in similar proceedings? Whether the circumstances of the relevant proceedings are sufficiently different to submit a new request and whether a solution cannot be arrived at based on the settled case-law?
- whether the request is aimed at clarifying interpretation of the EU legislation, or its applicability in the particular case? The latter is not within the scope of the ECJ competence?
- whether interpretation of the national law or its validity and compatibility with the EU law is not requested?



Obligations of the MS court after receipt of a preliminary ruling



- The obligation of the MS courts to ensure priority of the EU law over the national law of any ranking and to ensure full effect of the EU law follows from the superiority and direct effect of the EU law (See, for example, C-261/20 Thelen Technopark Berlin)
- In order for the EU legal provision to be applicable by the MS court, the provision should have a direct effect.
- What action should be taken in a case when its provisions do not have a direct horizontal effect?



Obligation to interpret the MS law as **compliant with the directive as possible**



- the national law should be interpreted as compliant as possible with the text and goal of the relevant directive to achieve the outcome provided there
- the national law as a whole should be considered and the interpretation methods recognised therein should be applied,
- the MS court should perform all the actions within its competence to ensure the full effect of the relevant directive and to arrive to the solution compliant with the goal of the directive
- it includes the obligation of the MS courts to modify the settled case-law if it is based on the interpretation of the national law not compatible with the goals of the directive, when needed.
- the MS court may not justly consider that it cannot interpret the relevant national provision in compliance with the EU law just because the relevant provision has been continuously interpreted in a way not compatible with this law
- Limit - the general legal principles and interpretation contra legem (see C-261/20 Thelen Technopark Berlin, C-684/16 Max Planck)



Situations when the provisions of the directive do not create rights, but clarify them instead



For example: Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, details the general principle of prohibition of discrimination established by Article 21 of the Charter, in particular:

- prohibition of discrimination due to age (C-555/07, Küçükdeveci)
- prohibition of discrimination due to disability (C-16/19)
- due to sexual orientation (C-507/18)
- due to religion and belief (C-193/17)



In this case the Charter provision should be applied



Direct horizontal application of the Charter provisions - conditions



- The provision is imperative by nature.
- The provision is sufficient per se to provide subjective rights to individuals which can be referred to in proceedings, it does not need to be clarified based on the national or EU law
- The **principles** provided by the Charter do not have direct effect, they can only be introduced by the EU or MS legislation. The Charter provisions are applicable at court only in interpretation of such legislation and in adopting a decision on their lawfulness (Charter, Art. 52(5))



Judge's obligations by applying Article 21(1) of the Charter



➤ The national court should, according to its competence, provide legal protection arising for a person under the EU law and should guarantee its comprehensive application by disapplying any national legal regulation which contradicts the principle of non-discrimination.

➤ A national court may not rely on the principle of legitimate expectations to continue application of a national legal provision which contradicts the general principle of non-discrimination.

(Dansk Industri (DI) C-441/14, EU:C:2016:278, 35.-41.p)

➤ A national legal provision contrary to Article 21 should not be applied even if the court, in a dispute between private persons, can be forced to balance conflicting fundamental rights arising for the parties to the dispute from the provisions of the TFEU or the Charter, and if it can even be obliged to ensure compliance with the principle of proportionality within the scope of the examination to be performed by it.

➤ The obligation to find the balance between various concerned interests does not affect the possibility of referring to the relevant rights in any way.

(Egenberger C-414/16, EU:C:2018:257, 78-81)



Judge's obligations by applying Article 21(2) of the Charter



➤ Where discrimination contrary to EU law has been established, as long as measures reinstating equal treatment have not been adopted, observance of the principle of equality can be ensured only by granting to persons within the disadvantaged category the same advantages as those enjoyed by persons within the favoured category. Disadvantaged persons must therefore be placed in the same position as persons enjoying the advantage concerned

➤ A national court must set aside any discriminatory provision of national law, without having to request or await its prior removal by the legislature, and must apply to members of the disadvantaged group the same arrangements as those enjoyed by the persons in the other category. That obligation persists regardless of whether or not the national court has been granted competence under national law to do so.

(Cresco Investigation, C-193/17, 79., 80)





Recommended sources

Documents defining the process at the ECJ (The Court Statute and Rules of Procedure)

Recommendations to national courts regarding starting of the proceedings of a preliminary ruling

Accessible at the ECJ website:

https://curia.europa.eu/jcms/jcms/Jo2_7031/lv/

ECJ case law

https://curia.europa.eu/jcms/jcms/P_106308/lv/



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