


# The preliminary reference procedure in EU law and the role of the national judges in ensuring respect for the rights of persons with disabilities



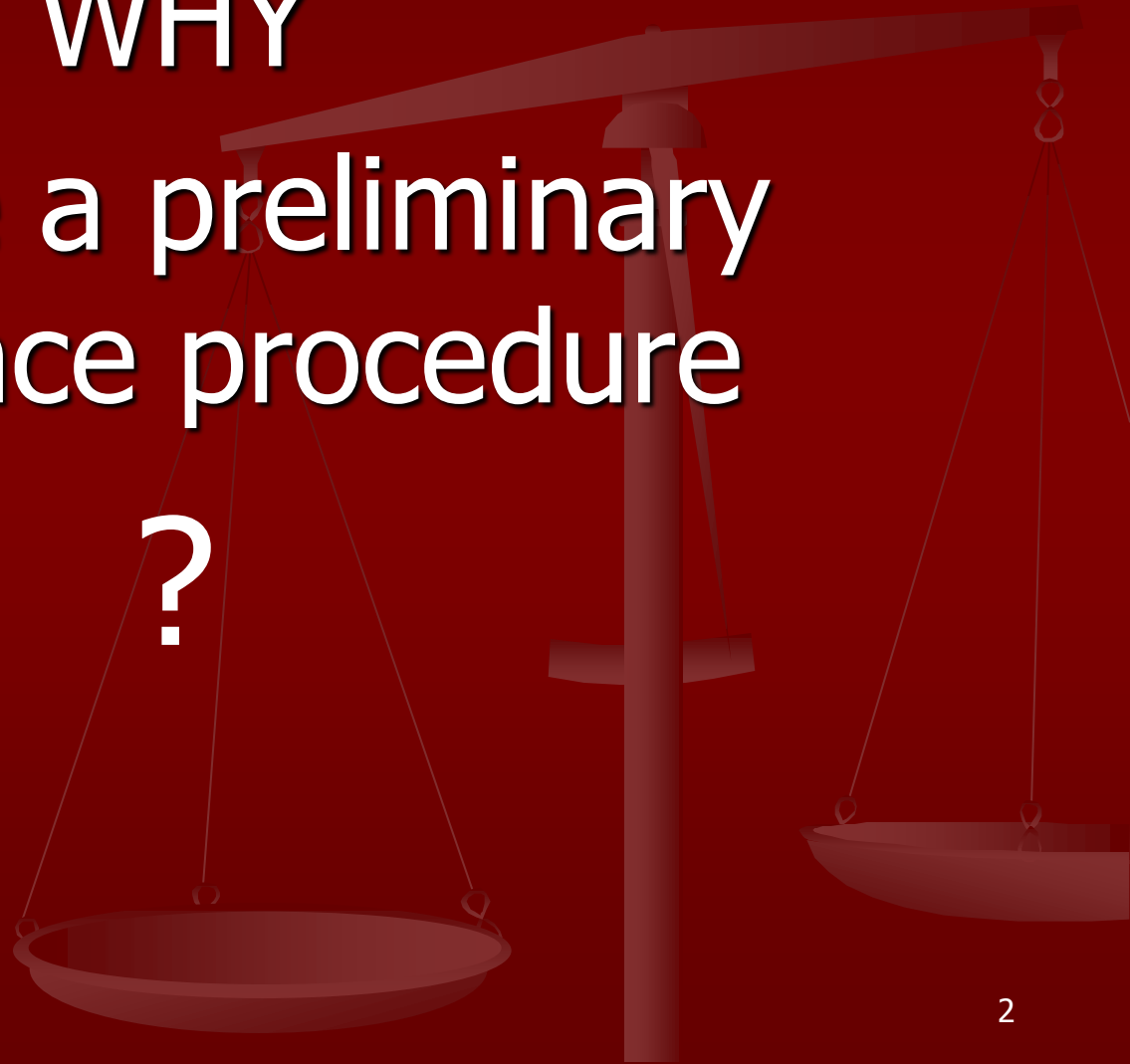
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WHY

is there a preliminary  
reference procedure

?



# Supreme Court of the United States

D.C. Court of Appeals

11 U.S. Courts of Appeals

Administrative Agencies

FCC  
Review Board  
ALJ  
Bureau

3 U.S. District Courts  
w/ federal  
& local  
jurisdiction  
(Canal Zone,  
Guam, VI)

U.S. District  
Courts with  
federal  
jurisdiction  
(89 districts  
in 50 states,  
1 Puerto Rico,  
1 D.C.)

State  
Court  
systems



# Legal Source Texts

All available on [www.curia.europa.eu](http://www.curia.europa.eu)

- Article 267 TFEU
- Statute (Protocol No 3 to TFEU): Arts 23 and 23a
- Rules of Procedure (OJ 2012 L265, p.1), Articles 93 to 118
- Recommendations to national courts and tribunals (OJ 2012 C338, p.1)

## 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.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

# Can you make a reference?

- Notion of “court or tribunal”
- Question about interpretation or validity of Union law
- Decision on the question is necessary

# Do you have to make a reference?

- Courts of last instance; except:
  - Acte clair
  - Acte éclairé

Cases 283/81 *Cilfit* and C-495/03 *Intermodal Transports*

- Questions about the validity of Union law or acts or Union institutions

Case 314/85 *Foto Frost*




# Should you make a reference?

- How much relevant case law is there? How confident are you deciding without a reference?
- Will the questions have to be resolved by the ECJ at some point in any event?
- Is the case a good “test case”?
- Are the parties well represented?
- Is a reference in the parties’ (as opposed to their lawyers’) interests?
- Are other cases raising the same questions already pending?

# Examples of References

C-480/04-1

 Tribunale di Viterbo

n. 40/04 R. M.C.R.

Il Tribunale di Viterbo, composto dai signori magistrati

Il Tribunale di Viterbo, composto dai signori magistrati DR. I. E. BENTARO ..... PRESIDENTE DR. S. FANTI ..... GIUGURNO DR. T. MARINELLI ..... GIUGURNO	Registro della Corte di Giustizia sotto il no. <u>315.003</u> L. 18-11-2004 Per il Cancelliere Fax / E-mail: <u>g. m. m. m.</u> Deposizioni lit. <u>17.11.04</u> Amministrativa giustizia
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riunito in Camera di consiglio il giorno 9.11.2004 ha pronunciato la seguente


**ORDINANZA**

*nel ricorso per rinvio proposto dal D. Antonic...*  
*Costanzello il 15 del 2004,*  
*il quale da allo stato si occupa delle*  
*cause della stessa addestrate in*  
*subordine*

*Donne*

*la trascrizione del liti alle liti et fidi;*  
*in delle Cause Evome a et 24 p. e,*  
*In liti nelle date a partire dal 2004 n. 64349*  
*Evome, 11/04/04 in causa n. 101/04*  
*Evome, e relazione all'atto, l'atto et*  
*due cause et sub concessione italiana di*  
*pubblicità privata e non solo agli atti precedenti*  
*di "book practice" stranieri d'ottimo per evi*

C-492/09-7



<b>Δοθιός 1638/2009</b> <b>ΤΟ ΣΥΜΒΟΥΛΙΟ ΤΗΣ ΕΠΙΚΡΑΤΕΙΑΣ</b> <b>ΤΜΗΜΑ Δ'</b>	Η αίτηση στο αρμόδιο του Διοικητικού είναι τον αριθμό <u>532245</u> Συμβολογή 29 OCT. 2009 Ημερομηνία/ώρα 9:41:19 Ρωμάνος J Σέρης Κατάλογος της Κατάλογος διαδικασίας
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Συνεδρίασε δημόσια στο ακροατήριό του στις 30 Ιανουαρίου 2007, με την εξής σύνθεση: Μ. Βροντάκης, Αντιπρόεδρος, Πρόεδρος του Δ' Τμήματος, Π. Κοτσώνης, Δ. Γρατίσας, Σύμβουλοι, Μ. Σωτηροπούλου, Χ. Μπυλώφη, Πάρεδροι, Γραμματέας η Α. Τριάδη, Γραμματέας του Δ' Τμήματος.

**A.** Για να δικάσει την από 20 Ιουλίου 2004 αίτηση της Βασιλικής Στυλιανού Βανδώρου, κατοίκου Αμαρουσίου Αττικής (Διονυσίου Αρεοπαγίτου 13), η οποία παρέστη με τον δικηγόρο Χ. Πολίτη (Α.Μ. 2740), που τον διόρισε στο ακροατήριο, κατά του Υπουργού Εθνικής Παιδείας και Θρησκευμάτων, ο οποίος παρέστη με την Β. Παπαθεοδώρου, Πάρεδρο του Νομικού Συμβουλίου του Κράτους.

Με την αίτηση αυτή η αιτούσα επιδιώκει να ακυρωθεί το υπ' αριθμ. 80/23.3.2004 πρακτικό του Συμβουλίου Αναγνώρισης Επαγγελματικής Ισοτιμίας Τίτλων Τριτοβάθμιας Εκπαίδευσης του Υπουργείου Εθνικής Παιδείας και Θρησκευμάτων και κάθε άλλη σχετική πράξη ή παράλειψη της Διοικήσεως.

**B.** Για να δικάσει την από 12 Ιανουαρίου 2005, αίτηση της Βασιλικής Στυλιανού Βανδώρου, κατοίκου Αμαρουσίου Αττικής (Διονυσίου Αρεοπαγίτου 13), η οποία παρέστη με τον δικηγόρο Σ. Βλαχόπουλο (Α.Μ. 17001), που τον διόρισε στο ακροατήριο, κατά του Υπουργού Εθνικής Παιδείας και Θρησκευμάτων, ο οποίος παρέστη με την Β. Παπαθεοδώρου, Πάρεδρο του Νομικού Συμβουλίου του Κράτους.

# Aim of the Order for Reference

- Permit Member States and Union Institutions to exercise their rights under Article 23 of the Statute
- Permit the ECJ to give a useful answer to the national court

*C-42/07 Liga Portuguesa*, paras 40 and 41

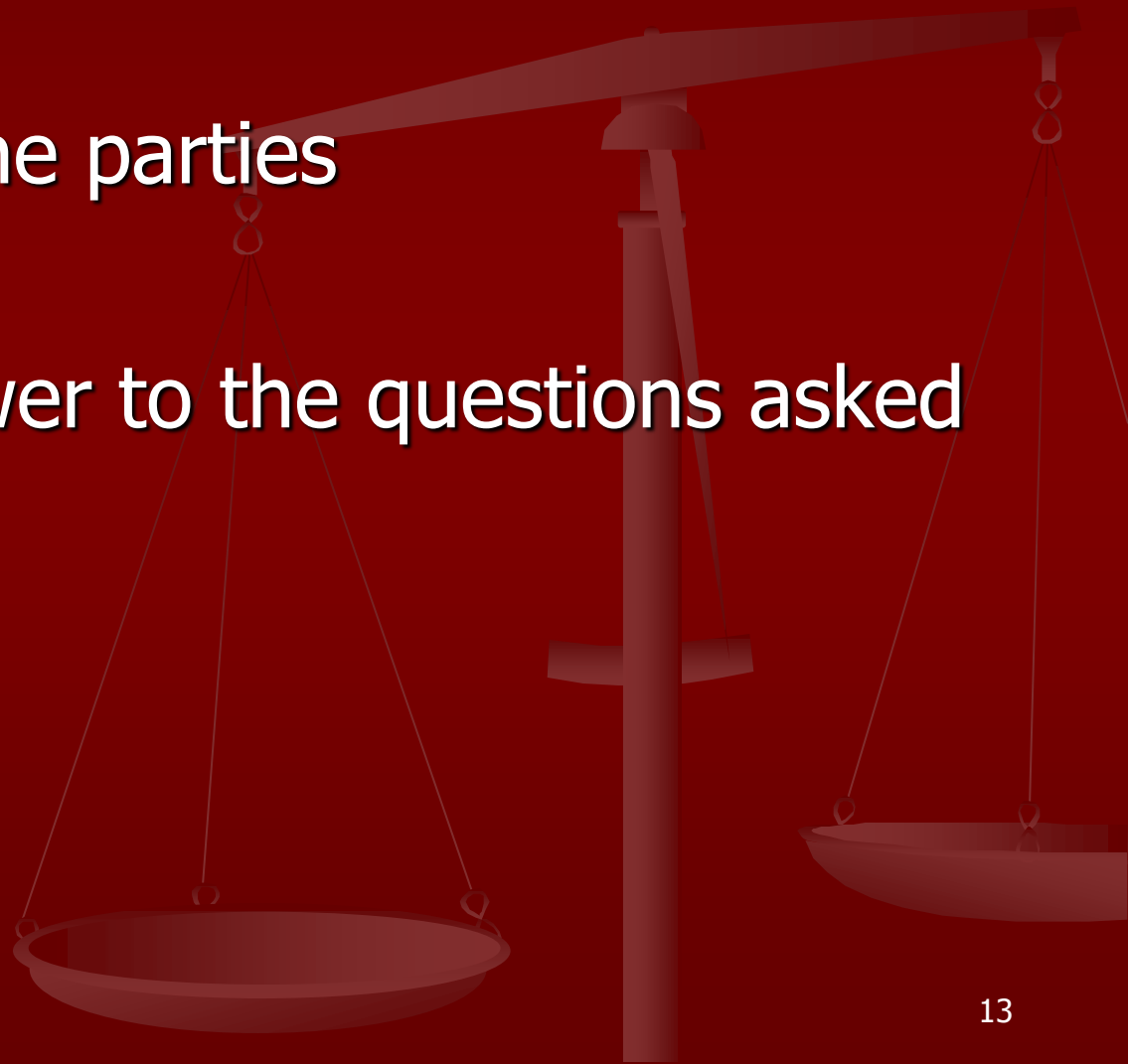
# Essential Elements

- Factual framework (including assumptions and hypotheses)
- Applicable national legal framework
- Rules of Union law considered relevant, including how they are linked to the facts and national law
- Question(s)

RP Art 94

# Optional Elements

- Arguments of the parties
- Suggested answer to the questions asked



# Drafting Suggestions

- Ask parties to prepare an agreed draft
- Cite important national legal provisions verbatim; explain any surprising interpretations of particular terms
- Concentrate on the individual dispute, and what you need to know to solve it
- Be aware of limits of ECJ's jurisdiction
- Be aware of 20-page translation limit

# After the Reference

- Appeal Against Order for Reference?
- Requests for additional information? (RP Arts 61, 62 and 101)
- Inadmissibility? (RP Art 53(2))
- Answer clear? (RP Art 99)
- Possible joinder with, or suspension pending, other case (RP Arts 54 to 56)





# Internal Procedure at the ECJ

- Allocation to a reporting judge by the President
- Allocation to an AG by the First AG
- Preliminary Report discussed by all members of the Court (28 Judges + 9 AGs) - Allocation to a Chamber (3, 5 or 15 judges)
- Hearing
- AG's Opinion
- Draft judgment by reporting judge
- Deliberations of judges leading to judgment
- Translation and handing down of the judgment



# Response to the Questions

- Limited to the factual and legal scenario as outlined by the referring court
- Will never opine on facts
- Will usually not opine on validity of national law
- Will be expressed in general, generic terms

Any Questions?

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