

# Preliminary Ruling Procedures

*Judicial dialogue to ensure the rights of persons with disabilities*



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# **The nature and function of the reference for a preliminary ruling**

- The procedure is founded on cooperation
- The national court is the first court of the Union
- Consistent, effective application of Union law

# The purpose of preliminary rulings

- Article 267 TFEU
- References on a question of interpretation / references on a question of validity
- The CJEU neither interprets nor rules on the validity of national law
- Cases where national law refers to EU law (cf. judgment of 18 October 1990 in cases 297/88 and 197/89, *Dzodzi*)

# Who can make a reference?

- Any court or tribunal in a Member State
- Notion of “court or tribunal” → an autonomous concept in the law of the Union:
  - ❖ It must be established by law
  - ❖ It must be permanent
  - ❖ Its jurisdiction must be compulsory
  - ❖ Its procedure must be inter partes
  - ❖ It must apply rules of law
  - ❖ It must be independent
- The decision to make the reference lies solely with the national judicial body!

# When can a reference for a preliminary ruling be made?

- There must be a genuine dispute, not a fictitious one (see judgment of 16 December 1981 in case 244/80, *Foglia v. Novelo*)
- The question must be relevant to resolving the dispute (presumption of relevance in favour of the reference; see, for example, the judgment of 17 February 2011 in case C-52/09, *TeliaSonera Sverige*)
- Hypothetical questions are not admissible (e.g. judgment of 15 April 2010 in case C-215/98, *E. Friz*)
- A provision of national law must not prevent the national court from submitting a reference (judgments of 16 December 2008 in case C-210/06, *Cartesio*, and 22 June 2010 in cases C-188/10 and C-189/10, *Melki and Abdeli*)

# When must a reference for a preliminary ruling be made?

- When the question is raised before a national court or tribunal against whose decisions there is no judicial remedy under national law (Article 267 (3) TFEU)
  - Exception: theory of *acte claire* (judgment of 6 October 1982 in case 283/81, *CILFIT*)
  - Preliminary ruling procedure and responsibility of States: judgment of 30 September 2003 in case C-224/01, *Köbler*
- The *Foto-Frost* case-law

# Submitting the reference – practical aspects

- When is the right time to submit the reference for a preliminary ruling?
- Form and content of the reference order
- Translation requirements
- The CJEU Secretariat
- Costs and free legal assistance
- Reformulation of the question by the CJEU

# The procedure before the CJEU

<b>Written stage</b>
Decision by the national court or tribunal to submit a reference Translation into all official languages of the European Union Publication of the questions for preliminary ruling in the Official Journal of the European Union (series C) Notification of the parties, Member States, EU institutions, EEA countries and EFTA Surveillance Authority Written comments by the parties, States and institutions
Drafting of a preliminary report by the Judge Rapporteur General meeting of Judges and Advocates General Assignment of the case to one of the formations of the Court of Justice [Measures of inquiry]
<b>Oral stage</b>
[Opinion of the Advocate General]  Deliberations by the Judges of the Court  Judgment



# Effect of preliminary rulings

- Legally binding on the referring national court
- Legally binding on all other judicial bodies
- *ex tunc* effect
- Scope for limiting the retroactive effects of the judgment

# A victim of its own success?

- Growing number of references for preliminary rulings
  - 2007 → 265
  - 2011 → 423
- Average duration of the procedure
  - 2007 → 19.3 months
  - 2011 → 16.4 months
- Expediting requests for a preliminary ruling: the accelerated procedure and the urgent procedure