

REFERENCES FOR A PRELIMINARY RULING TO THE EUROPEAN COURT OF JUSTICE

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Abstract

References for a preliminary ruling are specific to Community law. Whilst the European Court of Justice is, by its very nature, the supreme guardian of Community legality, it is not the only judicial body empowered to apply Community law. That task also falls to national courts, in as much as they retain jurisdiction to review the administrative implementation of Community law, for which the authorities of the Member States are essentially responsible; many provisions of the Treaties and of secondary legislation - regulations, directives and decisions - directly confer individual rights on nationals of Member States, which national courts must uphold. National courts are thus by their nature the first guarantors of Community law. To ensure the effective and uniform application of Community legislation and to prevent divergent interpretations, national courts may, and sometimes must, turn to the Court of Justice and ask that it clarify a point concerning the interpretation of Community law, in order, for example, to ascertain whether their national legislation complies with that law. Petitions to the Court of Justice for a preliminary ruling are described in art.234 of the Treaty.

Key words

Community law; European Court of Justice; Community legality.

Preliminary action is the most significant action brought before the European Court of Justice, which ensures uniform application and interpretation of European law.

According to art.234 of the Treaty forming the European Community, if before a court of a Member State it is raised an issue of interpretation of Community law, that court can (and if it is a supreme court, whose decision can not be contested according to the national procedure is required) ask the European Court of Justice to rule by a decision of interpretation on EU rules. Therefore, to ensure uniform interpretation of Community law, a system of cooperation was preferred which stated that European Court of Justice has to be consulted by national courts when the latter have to apply a provision of Community law in a dispute with reference to them. They have

to know if this provision is valid or to specify the meaning that they intend to give it.¹

Of particular importance to obtain a response from the European Court of Justice is the wording of a question affected by the national court. The questions raised by them have certain limits well established namely: questions must be in connection with the trial pending before them and they have to refer to the interpretation or validity of EU rules, so no general or policy questions are to be made. In such cases the Luxembourg Court pointed out that the problem posed by national courts would not require clarification and recalls also the conditions on which this has to be form.

Interpretation or assessment of the validity of EU rules, amended by the European Court of Justice is required both by the mandatory court (and for all other courts that are called in the national remedies to adjudicate the same issue), and by other courts before which the text in question will be raised.² On the other hand, the EU court case is off the idea that the obligation to use the procedure is no preliminary question for the national court if the meaning of community is so clear, that it leaves no place to reasonable doubt or if the provision has formed the subject of the questions in the past and the European Court has already ruled.³ Therefore, the national judge himself becomes the Community courts. After all, finding disability national law against the norm is not the attribute of Community European Court of Justice, but the seised national court. That is why there is a need of knowledge by the national judge of the *acquis communautaire*, which includes, as already noted, the positive rules of Community law and their interpretation by the European Court in Luxembourg.

¹ Jurisprudence has shown that different issues relevant for a preliminary ruling is based on a specific interpretation of another national law than that of their national courts, in connection with the interpretation chosen it is hypothetical, it is especially necessary to give reasons for decision reference to this issue. Thus, the issues to be sent are inadmissible in the situation that the national court gives no explanation of why they consider the interpretation invoked the only possible;

² On *Matheus* decision the European Court of Justice showed that a question on the possibility of accession of Spain, Portugal and Greece to the European community is not of its competence;

³ Procedure of the prior actions of the validity of the Community legal norm is an incidental procedure. However, European Court of Justice on the validity of a Community legal rule will check in terms of form and drawbacks of the background material naturally in the context of all EU rules and under the preceding rule with respect for the hierarchy Community rules. In this hierarchy of rules first place is occupied by original law, the second place is the generally accepted principles of law of the Member States and third place is the public international law treaties concluded by the European community with other subjects of Public International Law. These three categories are followed by secondary Community law, within which there is also a hierarchy between the Community regulations and the execution, Fabian Gyula, European Court of Justice – Supranational Court of Justice, *op.cit.*page164.

The national court when deciding to address to the European Court a question, it will have to submit an application through a decision which will become the document instituting the Court and on its submission to the Registry Court that will mark the start of proceedings preliminary action. This decision has the character of a conclusion and can be linked to the conclusion that it has granted a new term or an expert in Romanian law.

As regards the formal requirements of that decision, because on Community level are not laid down such rules, courts are guided by their own procedural rules drafting sentences (France) or conclusions (Germany and England), the important issue being the decision to bring it from a national court, to include the question of the court and necessary reasons in fact and in law. It was noted that errors in forms are handled by the Court with great understanding, the following fact and substance of the question as it appears not even proceed to reformulate the question when it is too specific or too vague.

Question has been raised in practice which is the sanction for not recourse to the Court stated that such attitude of a court is a case of non-Community Treaties (the law), which can be repaired by means of an action under art.226 and art.227 of the Treaty. But, this action may be brought only by the Commission or a State Member of the Union. For ferenda law should be introduced an attack brought by parties to the dispute in the courts that decide ultimately and that refused referral to court, despite the fact there are arguments that this was necessary to resolve the dispute.

Court decision will be communicated directly to the Court of Justice, from the secretariat to the office or from graft to graft, and not through Ministry of Justice or other diplomatic channels, to improve cooperation between national courts and Community. Thus, the decision is sent to the Court in Luxembourg together with the entire file with or without an address written by the national court.

Since the national court is the one who refers to the European Court, he may withdraw at any time this referral. If the national court decision to refer to the Community is attacked by domestic remedies and the National Supreme Court suspended or revoked for reasons of illegality referral decision, the Court finds that the action has become obsolete and resolution. It should be noted that the onset of an appeal against the decision of the referral has no effect on dispute settlement proceedings before the European Court of Justice. Community is announced when the court registry after the national court that the appeal or appeal against the decision of referral have suspensive effect under national law, the Court suspends the process.

Regarding the interpretation and effect of Community law over national courts in preliminary rulings, the Treaty of Rome is silent, but the answer to this question was developed gradually by the Court. A preliminary ruling is mandatory for the national court that solicited it. Court of Justice ruled that the purpose of the preliminary ruling is to decide on the law and this

decision is binding for national courts in the interpretation of Community provision and Community act in question. National Court which judges one appeal against the decision of the first national court requested preliminary interpretation is bound by the decision of the Court, when national courts are not bound by substantive decisions of the supreme court of the Member State concerning the interpretation of Community law. Even if the supreme court to obtain a preliminary ruling from the European Court of Justice, the court is required to fund the preliminary ruling, not the National Supreme Court decision.

In principle, the court's interpretation of Community law is applicable at the time of entry into force and apply also to existing legal relationship before the decision. A provision declared by the Court to be invalid, must be regarded as such upon entry into force. In any event, under the principle of certainty of legal relations and declare invalid when a Community measure has considerable economic and legal onerous, the Court limited the temporal effects of its decision.

Due to the particular features of national legal systems of Member States where there can prior actions, would create a Community law for each Member State in the interpretation and enforcement of valid legal rules created by the bodies. The base for preliminary action is the report of collaboration, mutual trust between the Community courts and national courts with mutual respect skills.

It has been observed in practice, however, an action reserved towards the European Court of Justice by the national judges for the purposes of its referral of questions of interpretation due to incorrect knowledge or ignorance of mechanism and purpose of preliminary action. Higher courts, including, have this attitude and refuse to have a compliance obligation to notify the European Court. Also in practice it was found that the courts sometimes complain that the Court's decision making process takes too much discretion on the wording, clarifying questions asked and shows that judicial dialogue between national courts and Community courts can be improved. Also to be noted that in respect of proceedings before the European Court it takes a long time, which means a delay to resolve the dispute before the national court, which involves the negative rise of economic, social and financial consequences. Some practitioners consider that even translation of the allegations in French, and all documents sent to the Community courts are an impediment when refers to the Court in Luxembourg.

It is known that to relieve the Court of high volume of activity in 1989 was established the Court of First Instance or the Court of First Instance, but the division of powers has not brought urgency regarding the procedure prior actions, the power to resolve, they remain still below monopoly Court which decides in this case at first and in the last.

In conclusion we must state that most of the mentoring decisions, establishing general principles in matters of law were taken during this procedure. Recall here the validity of direct and priority application of Community law, the responsibility of the office of Member States, fundamental rights, fundamental freedoms of the common market or treatment nondiscriminatory in labour industry in terms of sexuality.

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