



**PRELIMINARY
RULING PROCEDURE**

a useful tool within the national judicial system

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Tallinn, september 2024

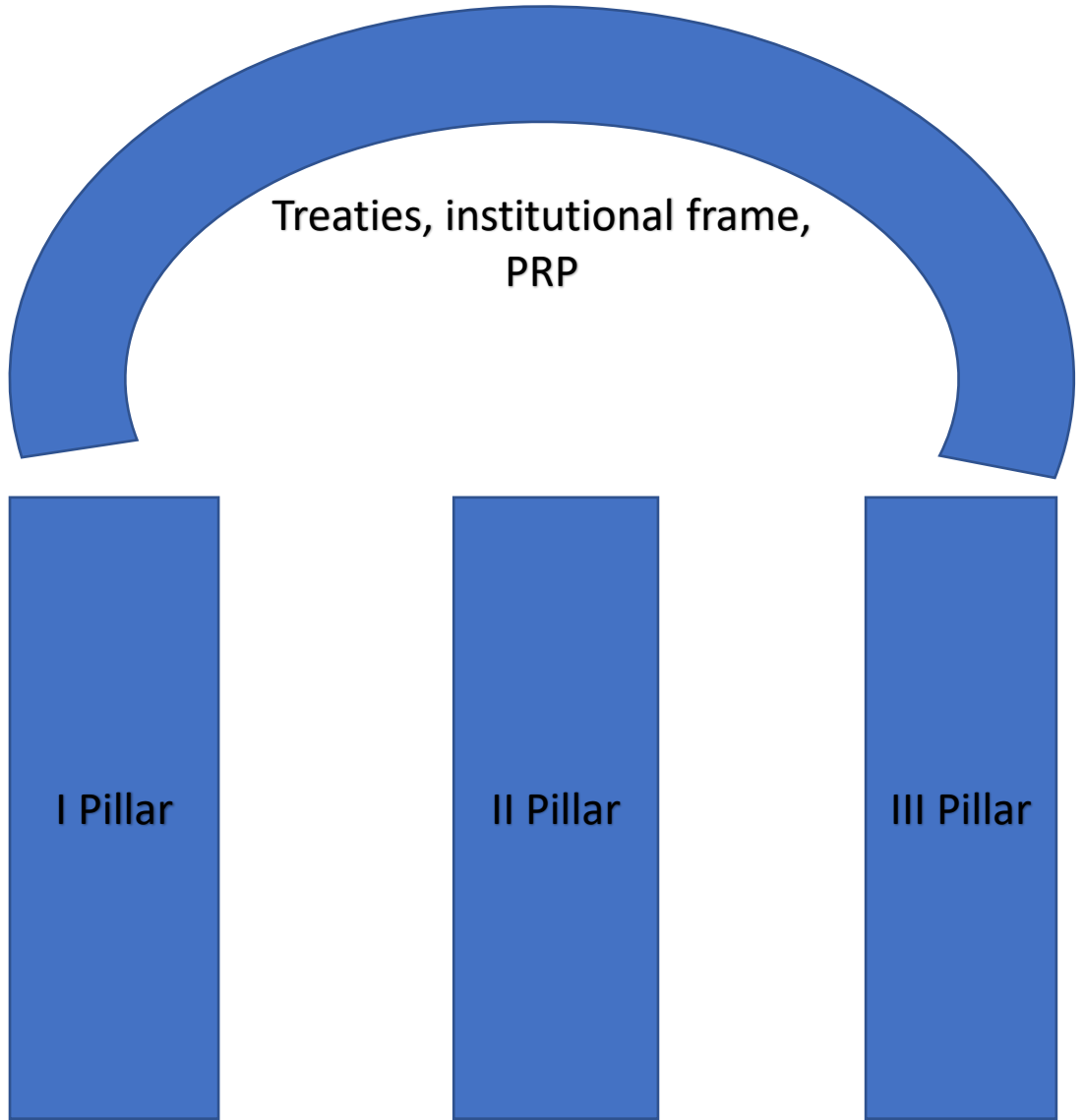
We will discuss:

- Une peu d'histoire
- Art. 267 TFEU – the keystone of EU judicial system
- Judicial independence
- Change in competence

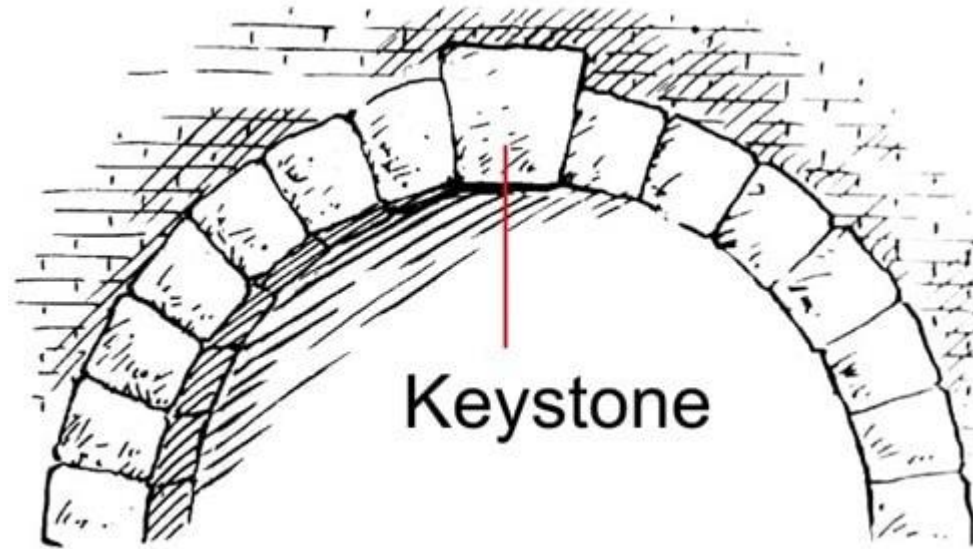
Un peu d'histoire

- Art. 267 TFEU – Art. 41 ECSC (Art. 177, Art. 234 Rome)
 - inspiration from various reference systems in the founding MS
 - first form of advanced cooperation between national courts and an international court
 - the first preliminary reference in 1961 (C-13/61 *Bosch*)
 - mid -1990s conditions under which a national court may make a reference and requirements regarding the formulation
 - decentralised enforcement
 - direct effect
- Court of Justice of the European Union
 - Court of Justice
 - General Court
- Role
 - it gives national courts access to help in resolving interpretative issues concerning EU law
 - it helps to ensure the uniform interpretation of EU law throughout the Union
 - it develops EU law
 - it helps to ensure the effective application of EU law
 - it plays an important role in the integration of the EU

EU at birth



Art.267 TFEU



- “[T]he **keystone** of the judicial system established by the Treaties is the preliminary ruling procedure provided for in that provision, which, by setting up a **dialogue** between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, has the object of securing uniformity in the interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties.”(A.B. e.a., C-824/18, paragraph 90)
- Widest **discretion** for national courts in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity (*Elchinov*, C-173/09, paragraph 26)
- A rule of **national law cannot prevent a national court** from exercising that discretion, or complying with that obligation, which are an inherent part of the system of **cooperation** between the national courts and the Court of Justice and of the functions of the court responsible for the application of EU law entrusted by that provision (art. 267 TFEU) to the national courts (*A. K. and Others*, C-585/18, C-624/18 and C-625/18, paragraph 103).
- Similarly, in order to ensure the effectiveness of that discretion and that obligation, **a national court must be able to maintain** a reference for a preliminary ruling after it has been made (*Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, paragraph 58).

Judicial independence

- The role of Art. 267 TFEU in protecting judicial independence
- Judicial independence = dialog between judges
= mutual trust
- *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117
- *A. K. and Others*, joined cases C-585, 624 & 625/18, EU:C:2019:982
- *RH*, C-8/19 PPU, EU:C:2019:110
- *Miasto Łowicz*, joined cases C-558/18 & C-563/18, EU:C:2020:234
- *IS*, C-564/19, EU:C:2021:949
- *CEDO synergy*

Transfer of competence

- **Consolidated version of the Treaty on the Functioning of the European Union**
PROTOCOL (No 3) ON THE STATUTE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union)
- Areas of competence of General Court:
 - the common system of value added tax
 - the Customs Codex
 - compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services;
 - excise duties
 - the tariff classification of goods under the Combined Nomenclature
 - system for greenhouse gas emission allowance trading
- **Court of Justice will retain jurisdiction** to hear and determine requests for a preliminary ruling that raise **independent questions** relating to the interpretation of
 - primary law,
 - public international law,
 - general principles of Union law or
 - the Charter of Fundamental Rights of the European Union.

Transfer of competence

It is not referring courts or tribunals themselves that decide the question as to which court has jurisdiction to hear and determine a request for a preliminary ruling:

- legal certainty and expedition,
- every request for a preliminary ruling should be submitted to the Court of Justice, which should determine, in accordance with detailed rules set out in its Rules of Procedure, whether the request falls exclusively within one or several specific defined areas laid down in the Statute
- TRANSFER to the General Court.

*To
be
continued*

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