

Preliminary ruling references under Article 267 TFEU as a useful tool within the national judicial system

Admissibility, acte clair and acte éclairé in the light of recent case-law

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Admissibility (and jurisdiction)

Article 53(2) of the Court's rules of procedure:

Where it is clear that the Court has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.

No jurisdiction where EU law other than the Charter of Fundamental rights does not apply to the case before the national court or tribunal

- As regards the **Charter**, a case before a national court may raise an issue falling within the scope *ratione materiae* of a Charter provision.
- The Court's jurisdiction however only extends to those and other specific rights where their alleged violation would be within the Charter's scope of application as defined in its Article 51(1) -> "implementation of EU law"
- Indeed, the fundamental rights guaranteed within the Union legal order are designed to be applied in all situations regulated by Union law. Beyond those situations, the Court has no jurisdiction to rule on it and **Charter provisions relied upon cannot, of themselves, establish jurisdiction.**
- There must be evidence in the order for reference that the objective of the main proceedings concerns the interpretation or application of a rule of Union law other than those set out in the Charter.

No jurisdiction where EU law other than the Charter of Fundamental rights does not apply to the case before the national court or tribunal

Example I: right to legal aid for legal persons

- Given that Directive 2003/8 on legal aid does not envisage the grant of legal aid to legal persons, national proceedings concerning the granting of legal aid to legal persons would not yet come within the Charter's scope of application (**C-258/13 Sociedade Agrícola**)
- But where the availability of legal aid for the purpose of introducing a State liability claim for a breach of EU law, the national proceedings come within the scope of the Charter (**C-279/09 DEB**)
- Likewise, the availability of legal aid for an action against a declaration of the enforceability of a seizure and attachment order pursuant to Article 43 of Regulation No 44/2001 comes within the scope (**C-156/12 GREP**)

No jurisdiction where EU law other than the Charter of Fundamental rights does not apply to the case before the national court or tribunal

- Example II: Applicability *ratione temporis* of acts of EU law
- The rule according to which the Court does not have jurisdiction to reply to a question referred for a preliminary ruling regarding a provision that is incapable of applying also covers the situation in which a contract has been concluded after the entry into force of the relevant EU law provision, but before the accession to the EU of the Member State concerned (see C-567/20, A.H. para. 41)

Preliminary ruling references in *purely internal* situations

- The provisions of the FEU Treaty on the freedom of establishment, the freedom to provide services and the free movement of capital do not apply to a situation which is confined in all respects within a single Member State (**C-268/15 Ullens de Schooten, para. 47**).
- When does the purely internal nature of a situation not prevent the Court from replying to a question referred under Article 267 TFEU?

When does the purely internal nature of a situation not prevent the Court from replying to a question referred under Article 267 TFEU?

- where it is not inconceivable that nationals established in other Member States are interested in making use of the fundamental freedoms for carrying on activities in the territory covered by the national legislation in question,
- where the referring court makes a request for a preliminary ruling in proceedings for the annulment of provisions which apply not only to its own nationals but also to those of other Member States,
- where national law requires the referring court to grant the same rights to a national of its own Member State as those which a national of another Member State in the same situation would derive from EU law
- in cases in which the provisions of EU law have been made applicable by national legislation, which, in dealing with situations confined in all respects within a single Member State, follows the same approach as that provided for by EU law

C-268/15 Ullens de Schooten, para. 54

While that is so, the Court, on a question being referred by a national court in connection with a situation confined in all respects within a single Member State, cannot, where the referring court does not indicate something other than that the national legislation in question applies without distinction to nationals of the Member State concerned and those of other Member States, consider that the request for a preliminary ruling on the interpretation of the provisions of the FEU Treaty on the fundamental freedoms is necessary to enable that court to give judgment in the case pending before it. The specific factors that allow a link to be established between the subject or circumstances of a dispute, confined in all respects within a single Member State, and Article 49, 56 or 63 TFEU must be apparent from the order for reference.

C-268/15 Ullens de Schooten, para. 55

Consequently, in a situation which is confined in all respects within a single Member State, it is for the referring court to indicate to the Court, in accordance with the requirements of Article 94 of the Rules of Procedure of the Court, in what way the dispute pending before it, despite its purely domestic character, has a connecting factor with the provisions of EU law on the fundamental freedoms that makes the preliminary ruling on interpretation necessary for it to give judgment in that dispute.

Article 94 of the Court's rules of procedure

- **Content of the request for a preliminary ruling**
- In addition to the text of the questions referred to the Court for a preliminary ruling, the request for a preliminary ruling shall contain:
- (a) a summary of the subject-matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the questions are based;
- (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.

Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (para. 15)

In the absence of one or more of the above [Article 94 (a), (b), or (c)], the Court may find it necessary, notably on the basis of Article 53(2) of the Rules of Procedure, to decline jurisdiction to give a preliminary ruling on the questions referred or dismiss the request for a preliminary ruling as inadmissible.

C-19/14 Talasca, order of 3 July 2014

- [F]irst of all, the order for reference does not contain any information on the factual context of the main proceedings.
- Next, there is a dearth of information on the national legal context too, save for a mere reference to certain provisions, none of the wording of which is reproduced.
- Finally, although the national court requests the interpretation of provisions of EU law, it gives no further details to that effect, save for the reference in the document lodged at the Court on 7 February 2014 to the observations set out in the application made by Ms Talasca in the main proceedings.

C-561/19, Consorzio Italian Management, para. 70

- [T]he referring court has failed, [...] in breach of Article 94(c) of the Rules of Procedure, to state with the requisite precision and clarity the reasons why it considers that the interpretation [sought] is necessary or useful for the purpose of resolving the dispute in the main proceedings or the relationship between EU law and the national legislation applicable to those proceedings. Neither does the referring court specify the reasons which prompted it to inquire about the interpretation of the other provisions and measures mentioned in the second and third questions referred,[...], but merely sets out, in essence, the questions of the applicants in the main proceedings in that regard [...]without giving its own assessment.

-> questions inadmissible

Inadmissibility *ratione personae* – Court or tribunal

- reference may only be made by a body required to give a ruling in complete independence in proceedings which are intended to result in a judicial decision
 - (-) Joined Cases C-74/95 and C-129/95, X, Judgment of 12 December 1996 – EU:C:1996:491
 - (+) Case 14/86, Judgment of 11 June 1987, Pretore di Salò v Persons Unknown – EU:C:1987:275
- “Issuing judicial authority” under the EAWFD vs. “Court or tribunal”
Case C-509/18, Judgment of 27 May 2019 – EU:C:2019:457 – *PF*

Acte clair / acte éclairé

- **Article 99 of the Court's rules of procedure**

Where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge- Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

Acte clair / acte éclairé

- Acte clair:
- **C-463/15, A, order of 25 September 2015**
- Article 2(4) and Article 4.1 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as precluding a situation in which surrender pursuant to a European arrest warrant is subject, in the executing Member State, not only to the condition that the act for which the arrest warrant was issued constitutes an offence under the law of that Member State, but also to the condition that it is, under that same law, punishable by a custodial sentence of a maximum of at least twelve months.

Acte clair / acte éclairé

- Acte éclairé:
- **C-37/23 Giocevi, order of 18 March 2024**
- Articles 2, 206 and 273 of the VAT Directive, read in conjunction with the principle of fiscal neutrality, must be interpreted as precluding national legislation that provides, for taxable persons affected by the earthquake that struck the region of Abruzzo, for a 60% reduction of the VAT amount normally payable by those persons for the period from April 2009 to December 2010.

Acte clair / acte éclairé and the duty to refer

- **C-561/19, Consorzio Italian Management, para. 66**

A national court or tribunal against whose decisions there is no judicial remedy under national law must bring before the Court a question concerning the interpretation of EU law that has been raised before it, unless it finds that that question is irrelevant or that the provision of EU law in question has already been interpreted by the Court or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the characteristic features of EU law, the particular difficulties to which the interpretation of the latter gives rise and the risk of divergences in judicial decisions within the European Union.

Some facts and numbers

≈ 1700 PR requests made and closed since 1/1/2020

≈ 87 from the Baltic States

≈ 130 Orders Art. 53 RP overall since 1/1/2020

≈ 2 for the Baltic States

≈ 180 Orders Art. 99 RP overall since 1/1/2020

≈ 2 for the Baltic States