



WORKING SESSION

Exchange of best practice among national judges

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1. You are a judge of a last instance court in your country. One of the parties requests a reference for a preliminary ruling and submits seven very elaborated questions on the interpretation of EU law.

- a) Is it possible to reduce the number and/or to rephrase the questions or even to add new aspects?
- b) The party opposes. How will you proceed?

2. You are a judge of a last instance court according to your domestic law. You are considering asking *ex officio* a preliminary question on the interpretation of EU law. You inform the parties on this and:

- a) You draft the questions and invite the parties to express their position in order to observe the contradictorality principle?
- b) You restraint for drafting the questions in details before deciding the referral as the parties might recuse you as you implicit disclose your views on the matter when drafting the content of the preliminary questions.
- c) You decide on your own motion without considering the parties position.
- d) Is the situation different if this situation takes place before a first instance court?

3. You are a judge of a last instance court in your country. During the public hearing, one of the parties to the proceedings submits two requests: a constitutional complaint and in the same time, a referral for preliminary ruling before Court of Justice.

- a) Is it possible?
- b) The defendant states that the referral to the Constitutional Court has to be debated and decided prior to the request for the preliminary ruling. He underlines that if you seize the Constitutional Court, during the constitutional proceedings, the party have the possibility to ask the referral to the Court of Justice according to Article 267 TFEU.
- c) Considering that both requests are admissible from a substantial point of view, how will you proceed from a procedural point of view? Based on your national law, if you seize the Constitutional Court, the domestic proceeding will be stayed until the Constitutional Court decides the case.
- d) In similar cases, your Constitutional Court stated that the national domestic system shall be applied by the national judge prior to other EU provisions.
- e) As the proceedings before both courts usually last at least 18 months, the respondent party opposes to the referral of the preliminary ruling to the Court of Justice invoking a breach of his right to a reasonable length of the proceedings as a whole.

Analyse the abovementioned aspects. How will you proceed in your court in a similar scenario?

4. The subject matter of EU law before you has not been addressed so far by the Court of Justice. Nevertheless, you (court of last resort) consider that it is an *acte claire* situation. One of the parties to the proceedings submits:

a) case law of other courts from your country where in similar cases some courts referred the matter to the Court of Justice without any consideration of CILFIT exceptions.

b) case law of other courts from your country where in similar cases the national judges refused to submit a preliminary question to the Court of Justice without a clear reasoning of this refusal.

c) case law from courts of other Member States in which the national courts decided to refer the matter to the Court of Justice.

Discuss on the possible approach in each situation.

5. Before a first instance court, the national judge decides on the merits of the case brought before him based on his interpretation of the relevant EU law (*acte claire* scenario). In appeal proceedings, the Court of Appeal quashes the judgment, refer the case back before the first instance court for a retrial with a binding decision that the case shall be decided only based on the national law.

Assume that the first instance judge assessment on the applicability of EU law in this case was correct.

How he will retrial the case in this situation?

6. The case is decided by a court of last resort according to your national jurisdiction. In extraordinary appeal on points of law, one of the parties submits for the first time that the Charter of Fundamental Rights of the European Union provided for a higher protection of his/her rights and the lower courts did not applied the Charter.

Should the court of last resort refer a preliminary question concerning the interpretation of the provisions of the Charter of Fundamental Rights of the European Union?

7. The eventual application of EU law in the case before the first instance court depends on the establishment of the facts based on the evidence to be produced, namely an expert opinion in fiscal matters. Taking into account the complexity of the matter, you asses that it will take at least 18 months for the expert to draft his opinion.

a) in order to respect the requirement of the reasonable length of your proceedings, is it advisable to ask the preliminary question at an early stage underlying in your referral to the Court of Justice the hypothesis of EU law being applicable in your case?

b) there is no obligation for a first instance court to refer to the Court of Justice, thus, no dilemma will arise in this case at this procedural stage, the referral being a matter only for the superior court to deal with.

8. Before your court, the matter of asking a preliminary question on the interpretation of EU law is raised in several files more or less during the same period of time. The referral is admissible. How you will deal with the procedural aspects?

a) you decide in each individual case to refer and to stay the proceedings at domestic level. After receiving the referrals, only the Court of Justice can decide to join the cases according to the Rules of Procedure.

b) you refer to the Court of Justice the preliminary question in only one file; then, you will stay the proceedings in the other files based on the referral.

c) you join all the files, even if your national code of procedure does not allow it, in order to submit to the Court only one referral.

How will you proceed?

9. The case before you concerns the regime of the disciplinary proceedings against judges. You decide to refer to the Court of Justice and the applicant, a judge sanctioned by the Judicial Inspection, asks that urgent preliminary procedure or expedited procedure should be applied in this case. He underlines that the excessive length of the disciplinary proceedings taken into conjunction with the length of the preliminary ruling procedure constitute a cause of uncertainty concerning the effectiveness of his actions. Secondly, he points out that the question referred is of great importance as it relates to the organisation and operation of a Judicial Inspectorate body.

How will you proceed?



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