

**INTRODUCTION
- PRELIMINARY RULING
PROCEDURE**

Beatrice Ramascanu, 18 – 20 March 2015 Bucharest

“preliminary ruling”

- fundamental mechanism of EU law aimed at enabling the courts and tribunals of the Member States to **ensure uniform interpretation and application** of that law within the EU
- cooperation between the Court of Justice and the courts and tribunals of the MS
- “dialogue “ between judges

Statistics

(7832 between 1961-2012)

Germany	1953
Italy	1165
France	862
Netherlands	833
Belgium	713
UK	547

Legal framework – Art. 267 TFUE

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Key elements

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Who?

- Art. 267 TFUE

When?

- In cases where EU law is applicable

Why?

- Because is relevant/necessary for a MS court in order to decide the case

How?

- Carefully!

Actors

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- **National court:**
 - the initiative
 - remains the master of the case (can withdraw the question – Article 100 Rules)
 - is absent in the procedure before the ECJ but remains the partner in dialogue

- **Court of Justice :**
 - (Rules of procedure – Title III)

- **National court :**
 - Will apply the ruling of the ECJ to the facts of the case

Types

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Object

(art 267 par. 1 TFUE)

Interpretation of EU law
(treaties and
secondary legislation)

Validity of the secondary
legislation

Type of jurisdiction/procedural phase

- Art. 267 par (2) TFUE

- Art. 267 par (3) TFUE

Article 267 par. 2

- Where such a question is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.
- **Option**

Article 267 par. 3

- Where any such question is raised in a case pending before a court or tribunal of a Member State, **against whose decisions there is no judicial remedy under national law**, that court or tribunal **shall bring** the matter before the Court of Justice.

Obligation

- Highest courts
- Courts of last instance (there is no remedy available against their decision, except wholly exceptional judicial remedies)

What are the limits of the obligation incumbent to the courts according to paragraph 3?

Judgment of 6 October 1982, CILFIT, 283/81,
Rec., p. 3415

Limits (interpretation)

- Irrelevant questions
- Identical or similar questions
- The correct application of EU law is obvious, leaving no scope for any reasonable doubt (« acte clair »)

However, attention must be paid to the characteristic features of EU law.



No obligation to send the request

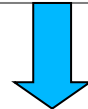
Attention! ECHR – *Dhahbi v. Italy*, 2014

- violation of Article 6 § 1 (right to a fair trial) ECHR noting that the Italian courts had failed to comply with their obligation to give reasons for refusing to submit a preliminary question to the Court of Justice of the European Union (CJEU) in order to determine whether the Euro-Mediterranean Agreement allowed the authorities to refuse to pay the allowance in question to a Tunisian worker.

Steps

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- “Court” within the meaning of Article 267 par. 2, 3?
- Is EU law applicable in your case?
- Is this interpretation of EU law necessary for solving the case?
- Research of ECJ’ s case-law



Request for a preliminary ruling

Format and content of the request

□ See:



**Rules of the Court
Article 94**

Format and contents of the request

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RECOMMENDATIONS to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2012/C 338/01)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:EN:PDF>

Romanian template

- **Question/s** regarding the interpretation of Article ... of the TFEU and/or article ... of Regulation .../Directive ... , considering that a decision on the question is necessary to enable the present court to give judgment in the present case
- **Subject-matter of the dispute.** Relevant facts
 - Claim
 - Defence
 - Facts established by the court

Romanian template

- **Romanian law. Relevant case law**
- **European Union law**
- **Reasons which prompted the court to inquire about the interpretation of European law**
 - ▣ *identification of the matter of law, for example: the way an EU provision should be interpreted **OR** the existence of an apparent conflict between national provisions and EU provisions **OR** the manner in which EU law should be applied etc.)*

Romanian template

- 9. *precisely why a decision on this particular matter is (also) necessary to enable the court to give judgment in the case*
- 10. ... *(succinct analysis of the CJEU jurisprudence on the issue **OR** a statement to the effect that the court did not identify any relevant CJEU case law on the matter; succinct analysis of the way in which Romanian courts interpret(ed) and/or applied the EU law provision/s and/or case law and, if applicable, the existence of national divergent case law and summary of the main arguments)*

Romania template

- 11. ... (*identification of circumstances that are different in the present case which make the court doubt the answer to the question, in light of the CJEU case law previously summarised*)
- 12. ... (*if applicable, the existence of previous preliminary references from Romania on the same matter, already closed or still pending, identification of differences*).
- (*brief summary of the arguments of the parties or the statement that the parties chose not to express their views may be included at points 9-12 above*)

Romania template

- **View of the court** (*optional*)
- **Reasons which prompted the court to ask for the application of the expedited procedure/urgent preliminary ruling procedure** (*if applicable*)
- **Structure/Style**
 - **In conformity with the national rules**
 - **Clarity**
 - **Identify clearly the questions!!!**
 - **No documents/files attached** (C-441/10, Anghel)

Motivation -

- Expedited procedure – Article 105
- Urgent procedure - Article 107