



REPUBLIC OF SLOVENIA
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CONSEJO GENERAL



IN COOPERATION WITH



FACULTY OF LAW,
ECONOMICS
AND FINANCE

Submodule 5:

The preliminary reference before the CJEU



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A. The submission of the preliminary reference

- The preliminary reference must be sent by post to the register of the CJEU
- Only in cases requiring some urgency may the preliminary reference be sent by e-mail
- However, after sending the preliminary reference by e-mail, the documents will have to be sent by post too
- What information must be included in the reference for a preliminary ruling sent to the CJEU? (Article 94 [Rules of Procedure of the Court of Justice](#)):
 - The questions referred to the CJEU
 - A summary of the subject-matter of the dispute and the relevant facts
 - The national provisions likely to apply in the case and, where appropriate, the relevant national case law
 - A statement of the reasons which have led the national court to question the interpretation or validity of certain provisions of Union law

B. The consequences of the preliminary reference on the national proceeding

- When a preliminary reference is submitted, what does it happen with the national proceeding in which the preliminary reference is made?
 - According to the CJEU's official [recommendations](#) to national courts on the preliminary reference procedure 'the lodging of a request for a preliminary ruling (...) calls for the national proceedings to be stayed until the Court has given its ruling'
 - The referred recommendations also state that 'the referring court or tribunal may still order protective measures'
 - For instance, the Spanish Code of Civil Procedure used to have a provision stating that 'in the case of a preliminary ruling already pending before the CJEU, the court could stay the proceedings if it considered the decision of the CJEU necessary to decide the dispute, after hearing the parties and the Public Prosecutor's Office' (former Article 43bis)

C. General overview of the preliminary reference procedure

- Following Article 23(1) of the [CJEU Statute](#) the decision to refer a preliminary ruling is notified, by the CJEU Registrar, to the parties of the original proceedings, to the Member States, to the Commission, and to the EU institution, body, office or agency that adopted the act whose validity is being questioned
- Within two months of the notification, the entities to which the preliminary reference was notified may submit written observations
- This first written phase of the preliminary reference procedure is generally followed by an oral hearing – though this is not always the case
- During the oral hearing, the parties will have the opportunity to expose their position on the interpretation or validity of the EU law provision. The oral hearing is closed by the Opinion of the Advocate-General
- The oral hearing is followed by the Judges' deliberations that take place behind doors
- The judgment is drafted by the Judge-Rapporteur

D. The deadline to render the judgment

- What is the deadline for the Court of Justice to give its ruling in the preliminary ruling procedure?
 - There is no deadline: the Statute of the CJEU nor in the Rules of Procedure of the CJEU establish any deadline
 - It depends on the complexity of the case
 - The time taken by the Court of Justice to give a ruling has varied over the years:

Year	2006	2007	2008	2009	2010	2019	2020	2021	2022	2023
Number of months	19,8	19,3	16,8	17,1	16,1	15,5	15,9	16,7	17,3	16,8

E. Accelerated and urgent preliminary reference procedure

- There are two special preliminary reference procedures in which the CJEU has to render its decision in a short
- These special procedures are:
 - **The Urgent Preliminary Reference:** It can be used in matters that fall within the Area of Freedom, Security, and Justice such as family or criminal law (. In a research note published by the Research and Documentation Directorate of the CJEU, it was indicated that Urgent Preliminary Reference could be issued in cases where there is a 'Risk of deterioration of the parent/child relationship' or 'privation of liberty'. This is in line with what Article 267(3) of the TFEU. This provision
 - **The Expedited Preliminary Reference:** Unlike for the Urgent Preliminary Reference, the rules of Rules of Procedure of the CJEU do not explain the scope of the Accelerated Preliminary Reference. It is up to the CJEU to determine whether an Accelerated Preliminary Reference is required based on the nature of the case. CJEU case law shows that this procedure has been used in cases concerning a 'serious environmental damage' when there is a risk 'of fundamental rights being adversely affected'

E. Accelerated and urgent preliminary references

- The Urgent Preliminary Reference Procedure is often used in cases concerning judicial cooperation in criminal matters, in particular in cases concerning the European Arrest Warrant, which is one of the instruments scrutinized in the UpJudCoop Project:
 - [Joined Cases C-508/18 and C-82/19 PPU, OG and PI](#)
 - [Joined Cases C-566/19 PPU and C-626/19 PPU, JR and YC](#)
 - [C-414/20 PPU, MM](#)
 - [Joined Cases C-354/20 PPU and C-412/20 PPU, L and P](#)
 - [C-416/20 PPU, Generalstaatsanwaltschaft Hamburg](#)

E. Accelerated and urgency preliminary references

- While there is neither a specific deadline to render the decision in the accelerated or urgent preliminary reference procedure, statistics reveal that the average time require to render a judgment in these proceedings is way shorted than in a ordinary preliminary reference procedure:
 - Accelerated preliminary reference procedure:

2019	2020	2021	2022	2023
9,9 months	-	10,7 months	7,4 months	-

- Urgent preliminary reference procedure:

2019	2020	2021	2022	2023
3,7 months	3,9 months	3,7 months	4,5 months	4,3 months

F. Content of the judgment

- **What does the CJEU judgment have to contain?**

Article 87 Rules of Procedure of the Court of Justice

- a statement that it is the judgment of the Court, (b) an indication as to the formation of the Court,
- the date of delivery,
- the names of the President and of the Judges who took part in the deliberations, with an indication as to the name of the Judge-Rapporteur
- the name of the Advocate General
- the name of the Registrar,
- a description of the parties or of the interested persons referred to in Article 23 of the Statute who participated in the proceedings,
- the names of their representatives,

F. Content of the judgment

- Which is the content of a CJEU judgment?

Article 87 Rules of Procedure of the Court of Justice

- (i) in the case of direct actions and appeals, a statement of the forms of order sought by the parties,
- (j) where applicable, the date of the hearing,
- (k) a statement that the Advocate General has been heard and, where applicable, the date of his Opinion,
- (l) a summary of the facts,
- (m) the grounds for the decision,
- (n) the operative part of the judgment, including, where appropriate, the decision as to costs

G. The reception of the CJEU judgment by the national court

- Once the CJEU renders its judgment, the national court should be able to continue the proceeding in which the preliminary reference was formulated
- In the CJEU website, sometimes it is possible the national judgment that follows the CJEU judgment:

125/497 C-604/20 - ROI Land Investments [Affaire clôturée]

Procédure principale

Arrêt - 20/10/2022 - ROI Land Investments
Affaire C-604/20

Recueil de la jurisprudence
publié(e) au Recueil numérique (Recueil général)

Liens vers les textes

	Curia	EUR-Lex	Autres Liens
Conclusions ECLI:EU:C:2022:331			
Arrêt ECLI:EU:C:2022:807			
Décision nationale à la suite de l'arrêt préjudiciel ECLI:DE:BAG:2023:290323.U.5AZR55.19.0			



G. The reception of the CJEU judgment by the national court

- It may occur that the national court considers that the judgment given by the CJEU is not sufficiently clear to resolve the interpretative question that triggered the reference for a preliminary ruling
- In this case, the national court that submitted the reference for a preliminary ruling could submit a second reference for a preliminary ruling to the CJEU (Article 104 Rules of Procedure of the CJEU)
- For instance, in [C-324/17, *Gavanozov I*](#), a Bulgarian court submitted a reference for a preliminary ruling concerning the interpretation of the European Investigation Order. The referring Bulgarian court considered that the answer given by the CJEU did not clarify the legal issue it was asked about. Therefore, the Bulgarian court decided to submit a second preliminary reference ([C-852/19, *Gavanozov II*](#))



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