

To refer or not to refer?

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Introduction

865

Cases completed (2019)

601

Preliminary Ruling Proceedings

= 69%

Purpose

The PRP is an instrument to secure the

- **legal unity within the EU**
- **further development of Community law**
- **protection of individual rights**

Purpose

Legal unity within the EU

- **uniform application of Community law**
- **uniform interpretation of Community law**

Purpose

Further development of Community law

New question of general interest

- **uniform application and interpretation**

Existing case-law not sufficient

- **necessary guidance**

Purpose

Protection of individual rights

- **PRP has the role of indirect legal proceedings**

Doubts?

Do you have **doubts** about

- how a provision is to be interpreted?
- the validity of a provision?

➤ interpretation of **Union law**

Is **Art. 45 TFEU** to be construed/understood as stipulating that it ...?

➤ validity of **Union law**

Is **Art. Y of the EU directive/regulation** void?

Questions

You do not want to apply a national law, because it violates a rule of Union law.

Reference?

Answer

➤ **NO: no doubts about Union law**

Questions

You do not want to apply a national law, because it violates a rule of Union law.

Lawyer argues that the rule of Union law is void.

Reference?

Answer

- **NO: no doubts on the side of the judge; presumption for the validity of Union law**

You must make a reference if you have

- 1. Doubts**
- 2. about the interpretation or validity**
- 3. of Union law**

...

Relevance

Your question must be **relevant** to solve the case

- **presumption for relevance**
- **exception: misuse of the procedure**

You must make a reference if you have

- 1. Doubts**
- 2. about the interpretation or validity**
- 3. of Union law**
- 4. relevant to solve the case**

...

Discretion or duty?

Legal/Judicial remedy on the national level?

- **NO** (final instance): **obligation** to refer
 - exception 1: extraordinary judicial remedy?
 - exception 2: proceedings for interim orders?
- **YES** (non-final instance): **discretion** to refer
 - exception: doubts about validity of Union law?

Discretion or duty?

Only the CJEU may declare Union law to be void.

- **doubts about validity of Union law
= duty to refer**

Questions

You think Art. X of a EU regulation is void. You do not want to apply it. There is no legal remedy against your decision.

Reference?

Answer

- **YES: doubts about the validity of relevant Union law**

Questions

You think Art. X of a EU regulation is void. You do not want to apply it. There is a legal remedy against your decision.

Reference?

Answer

- **YES: doubts about the validity of Union law = unwritten duty to refer**

Questions

**You have doubts about the interpretation of Union law.
You want to decide according to your way of
interpretation. There is a legal remedy against your
decision.**

Reference?

Answer

- **Discretion: doubts about the interpretation of relevant Union law but there is a legal remedy**

Checklist

You must make a reference if you have

- 1. doubts**
- 2. about the interpretation or validity**
- 3. of Union law**
- 4. relevant to solve the case and there is**
- 5. no legal remedy (interpretation)**

or

you do NOT apply Union law (validity).

Exceptions

Acte éclairé:

= a **materially identical question** had already been answered by the CJEU

- similar case
- no matter what nature of proceedings

Exceptions

Acte clair:

= the correct interpretation of Union law is obvious

?

Exceptions

Acte clair:

Equally obvious

- to all courts of the other Member States**
- in all language versions**
- in all different legal terminologies**
- in the light of Union law as a whole**

Checklist

You must make a reference if you have

- 1. doubts**
- 2. about the interpretation or validity**
- 3. of Union law**
- 4. relevant to solve the case and there is**
- 5. no legal remedy (interpretation)**

or

you do NOT apply Union law (validity).

Exceptions:

1. The CJEU had previously ruled on a materially identical question (**acte éclairé**) or
2. the correct interpretation of applicable Union law is obvious (**acte clair**)
 - *to all courts of the other MS*
 - *in all language versions of the applicable Union law*
 - *in the terminology of all legal systems of the MS*
 - *in the light of Community law as a whole.*

Thanks for your attention!