

The preliminary ruling procedure provides a mechanism for interaction between the national courts of Member States and the Court of Justice of the European Union (“the Court”), which is designed to ensure the uniform interpretation and application of the EU law. This mechanism is regulated in Article 267 of the Treaty on the Functioning of the European Union (TFEU) at the EU level and in Article 628 *et seq.* of the Code of Civil Procedure (CCP applicable to civil and administrative cases) at the national level.

Referring Court or Tribunal

National courts or tribunals make a request to the Court for interpreting the TFEU or for ruling on the validity of the acts issued by institutions, bodies, services or agencies of the Union. Unlike the TFEU which defines the competent body to submit a reference for a preliminary ruling as “any court or tribunal of a Member State”, the Bulgarian CCP defines the competent body as “the court”. This wording raises the question whether other Bulgarian bodies have the competence to submit a reference for a preliminary ruling to the Court. As well as courts, some administrative authorities, as prescribed by the law, can have judicial competence in Bulgaria, such as the Competition Protection Commission (CPC) and the Anti-Discrimination Commission (ADC). The Arbitration Tribunal at the Bulgarian Chamber of Commerce and Industry (BCCI) and *ad hoc* arbitration bodies, too, make decisions of a judicial nature, although they are outside the court system in Bulgaria.

In its case law concerning the admissibility of references for preliminary rulings since the beginning of the application of Article 267 TFEU (ex Article 234 of the Treaty of the European Community), the Court has outlined the criteria for the admissibility of a reference for a preliminary ruling procedure.

In its judgment in the *Vaassen-Goebbels* case (Case 61-65), the Court held that a body with competence to submit a reference for a preliminary ruling procedure must be defined in accordance with Community criteria and not pursuant to national law. On that premise, the Court laid down the requirements that the court or tribunal be established by law and be permanent, that its procedure be *inter partes* and its jurisdiction compulsory and that it apply rules of law. In his Opinion in the *Umweltanwalt von Kärnten v Alpe Adria Energia SpA* case (Case C-205/08), the Advocate General warned the Court that the application of those criteria

and the opening-up of the preliminary-ruling procedure to bodies with functions similar to those of a court or tribunal raised the risk of involvement in the preliminary-ruling proced of quasi-judicial bodies which do not have a judicial function.

Notwithstanding the warning of the Advocate General, the case law of the Court reveals that the decision-making process of a judicial nature of the requesting institution has consistently been used as the main criterion for the admissibility of preliminary-ruling proceedings.

In the *Job Center Coop. Arl.* case (Case C-111/94), the reference of a question for a preliminary ruling was considered inadmissible, although it had been made by an Italian court in non-contentious proceedings for the registration of a legal person. The judgment of the Court was substantiated with the non-contentious nature of the proceedings in that particular case. After the appeal against the refusal to register the legal person and the re-submission of the reference to the Court already in *inter partes* proceedings, the Court considered the reference for a preliminary ruling to be admissible.

The Court has ruled also on questions referred for a preliminary ruling within the framework of pending interlocutory proceedings, accepting that the activity of the requesting institution is aimed at hearing and resolving a legal dispute. That is the case with the interlocutory proceedings for an interim order in the *Hoffman-La Roch* case (Case 107/76).

As to the competence of arbitration bodies to submit a reference for a preliminary ruling, the Court does not apply a straightforward set of criteria.

Some references by arbitration bodies were considered admissible. In the *Vaassen-Goebbels* case cited above, the Court held that an arbitration tribunal established under public law, having a compulsory nature, working on the basis of rules approved by a Minister and having the competence to resolve a certain category of disputes with the prior consent of the parties has the competence to submit a reference for a preliminary ruling to the Court.

That was not the case with the *Nordsee* case (Case 102/81), in which the Court held that an arbitrator chosen to give an award in the dispute on the basis of the agreement of the parties to the contract by virtue of a clause inserted to that effect in the contract was not sufficiently close to “a court or tribunal of a Member State”. The reasons of the Court were that the

parties were under no obligation, whether in law or in fact, to refer their disputes to arbitration and that the public authorities in the Member State were not involved in the decision to opt for arbitration nor they were called upon to intervene automatically in the proceedings before the arbitrator.

Given the opinion of the Court that an arbitration tribunal established at the request of the parties with competence based on the contract between them, neither the Arbitration Tribunal at the BCCI nor *ad hoc* arbitration bodies have the competence to refer a question for a preliminary ruling to the Court. Indeed, the Arbitration Tribunal meets most of the criteria – it is a permanent body, it is involved in *inter partes* proceedings, its awards have the force of *res judicata* and they are enforceable. Nevertheless, arbitration before it is not compulsory by law and the members of the arbitration panel are chosen by the parties in each individual case without any intervention on part of a public authority.

At the same time, the application of the requirements accepted by the Court to the requesting body leads to the conclusion that administrative bodies which make decisions of a judicial nature by virtue of the law, such as the CPC and the ADC, have the competence to submit references for a preliminary ruling.

Questions on the Interpretation of the Treaties

The competent national courts submit their questions in full conformity with the *ex officio* principle. In accordance with the Bulgarian CCP, the question is to be submitted by the court before which the proceedings are pending either on its own motion or at the request of a party. Notwithstanding the right of a party to initiative, it is entirely within the discretionary powers of the court to decide whether to grant the request of the party for the submission of a question or not. Although the CCP contains a provision that if it is to rule a final enforceable judgment, the court is under the obligation to refer a question to the Court, the refusals of the courts to refer questions are typically substantiated with reference to the exception that the answer to the question is derived clearly and unequivocally from previous judgments of the Court or that the meaning and substance of the provision or act are so clear that they do not raise any doubt. A further exception when the Court is not bound to give an answer is when the question raised is manifestly irrelevant for the purposes of deciding the case, i.e. it

does not determine the outcome of the proceedings pending before the national court (*Lourenço Dias v Director da Alfândega do Porto*, Case C-343/90).

The refusal of the national court to refer a question for a preliminary ruling and its assessment of the reasons for the refusal are not subject to higher-instance legal review.

National courts refer questions to the Court when the interpretation of a provision in the EU law or the validity of an act of EU bodies is relevant to the appropriate adjudication in the main proceedings. Neither Bulgarian courts nor the Court accept questions formulated in a way which warrants a consultative opinion of the Court on hypothetical questions. (See *Stoilov i Ko EOOD v Nachalnik Mitnitsa Stolichna*, Case C-180/12).

The question referred for a preliminary ruling has to be relevant to the subject-matter of the case and to the applicability of the EU law to the circumstances in the specific case. It must concern the subject-matter of the case, not issues of fact raised in the main proceedings, and only those matters which relate to the interpretation of a provision or of the EU law. In its judgment in the *Danske Slagterier v Bundesrepublik Deutschland* case (Case C-445/06), the Court held that the preliminary-ruling procedure is an instrument of cooperation between the Court and the national courts, by means of which the Court provides the national courts with the points of interpretation of Community law which they need in order to decide the disputes before them.

On the basis of the interpretation given by the Court, the national courts should apply the relevant rule and decide the dispute brought before them. They do not have the competence to interpret the EU law or to disapply a rule of the EU law on invalidity grounds, as they have to refer the issue to the Court. They should act in a similar way when doubts exist as to a possible conflict between a national rule and the EU law. Therefore the subject-matter of the reference for a preliminary ruling is the interpretation of a specific rule of the EU law in the context of the national legal framework applicable to the specific dispute so as to establish the discrepancy between the national law and a rule of the EU law on the basis of that interpretation. The legal effect will be to disapply the contradicting national rule to the specific case. Nevertheless, the interpretation of the national rule is outside the subject-matter of the preliminary ruling and the procedure always refers to the interpretation or

validity of the EU law.

Application of the Charter of Fundamental Rights of the European Union

Parties to national proceedings often request the court to refer a question for a preliminary ruling on grounds of alleged infringement of the fundamental rights set out in the Charter of Fundamental Rights of the European Union. However, the Court admits only those questions which relate to the implementation of the EU law by the national court though the application of the relevant national rules in the specific dispute (*Åkerberg Fransson*, Case C-617/10).

The Court rules that the fundamental rights of the EU are not applicable where the EU rules in the relevant area do not envisage any obligation of the Member States in relation to the subject-matter of the main proceedings (*Torralbo Marcos*, Case C-265/13).

Even when the national rule is within the scope of EU competences, where its purpose is not to apply the EU law, the Court accepts that the EU law does not apply in such cases (*Julian Hernández et al.*, Case C-198/13).

Conclusion

The Court is consistent in its approach to its competence concerning the interpretation of the EU law and the validity of acts of EU bodies, and the prevention of any excessive intervention in resolving legal disputes by the courts of Member States through the application of national rules that are not related to the EU law.

This approach is closely related to the attainment of the main objective of the preliminary-ruling procedure – the uniform application of the EU law in all Member States. It is precisely this objective that makes it possible for several references for a preliminary ruling to be joined in a single case. Thus if the main proceedings are terminated for one or another reason (out-of-court settlement, rejection, withdrawal of the claim, etc.) and the referring court withdraws its question subsequently, the Court is still able to rule on the admissible references for a preliminary ruling in a judgment that will be binding on the courts of all Member States.