

PRELIMINARY RULINGS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

[Kameliva Yotova, Attorney-at-law, Associate](#)

Since the accession of the Republic of Bulgaria to the European Union all public authorities have had the obligation to apply the *acquis communautaire*. When they observe a contradiction between a provision of a national legislative act and a provision of the community law, public authorities have to apply the latter if it has direct effect.

The opportunity to exercise the reference for a preliminary ruling is, undoubtedly, the most effective way to guarantee the equal application of the community law throughout the European Union. The preliminary ruling procedure is based on the cooperation between the national court and the Court of Justice of the European Union. It consists of two phases: the procedure for referral to the Court of Justice at the national court and the procedure for giving the preliminary ruling by the Court of Justice of the European Union.

Pursuant to Article 267 of the Treaty on the Functioning of the European Union (ex Article 234 of the Treaty Establishing the European Community signed in Rome on 25 March 1957 amended with the Treaty of Amsterdam of 2 October 1997), the Court of Justice of the European Union has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties, and the validity and interpretation of acts of institutions, bodies, offices or agencies of the Union. 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 give judgment, request the Court of Justice to give a ruling thereon. Where any such question is raised in a case before a court or tribunal of a Member State against whose decision there is no judicial remedy under the national law, that court or tribunal shall bring the matter before the Court of Justice. If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

The case law of the Court of Justice has led to the establishment of six criteria which need to be met cumulatively for determining “a court or tribunal” within the meaning of Article 267 of the Treaty on the Functioning of the European Union, i.e. the Court of Justice has to see whether: it is established by law; it is permanent and its jurisdiction is permanent; it applies rules of law; it has an *inter partes* procedure; and it is independent.

The opportunity to exercise the reference for a preliminary ruling has been introduced in Chapter Fifty-nine of the new Civil Procedure Code. When the interpretation of a provision of the European law or the interpretation or validity of an act of the bodies of the European Union are relevant to the appropriate resolution of the dispute in a case, the Bulgarian court will make a referral to the Court of Justice of the European Union. The national judge may refer to the Court of Justice *ex officio* or at the request of one of the parties involved in the dispute. If it does not act as a final resort, the requested court is free to grant or reject the request, and its decision will not be subject to appeal. However, if it acts as a final resort, the court is obliged to exercise the reference for a preliminary ruling, unless the answer to the question derives clearly and unambiguously from a previous judgment of the Court of Justice

of the European Union or the significance and the meaning of the provision or the act are clear beyond any doubt.

The major weakness of the law is the lack of an opportunity for appeal against the decision rejecting the request of the party to exercise the reference for a preliminary ruling. The lawmaker has ignored the fact that, in the absence of the interpretation given by the Court of Justice of the European Union, there exists the real threat for numerous national court decisions to be wrong and non-compliant with the community law.

The reference to the Court of Justice has to describe the facts of the case, the applicable national law, the precise provision or the act whose interpretation or validity is the subject-matter of the reference, the reasons which make the national judge believe that the preliminary ruling will be relevant to the appropriate resolving of the case, as well as the wording of the specific question referred for a preliminary ruling. The national judge may decide to send also a copy of the case file.

The national court stays the proceedings in the case upon the exercise of the reference. The stay of the proceedings is removed after the ruling of the Court of Justice of the European Union. It is interesting to see what happens if a preliminary ruling is requested and given in a specific case, while the national court has other pending cases the appropriate resolving of which is related to the answer of the Court of Justice on the same reference for a preliminary ruling. There is no specific legal provision in the Bulgarian legislation to regulate this type of legal relationships; however, the legal logic suggests that these cases, too, should be stayed until the Court of Justice gives its ruling so that the judgments of the national court could be made compliant with the answer of the Court of Justice of the European Union. Otherwise the case law would be contradictory and non-compliant with the ruling of the Court of Justice which is *ex lege* binding on all courts and institutions in the Republic of Bulgaria.

The law reads that, while proceedings are stayed, the national court may rule on appropriate provisional and precautionary measures at the request of the parties to the dispute.