REFERENCE FOR A PRELIMINARY RULING ON CJEU: THOUGHTS AND OBSERVATIONS IN CRIMINAL MATTERS

REFERÊNCIA PARA UM JULGAMENTO PRELIMINAR NO TJUE: PENSAMENTOS E OBSERVAÇÕES EM MATÉRIA PENAL

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SUMMARY: Introduction. 1 Admissibility profiles of the reference for a preliminary ruling. 2 The notion: "court of one of member states". 3 Optional and mandatory reference. 4 Questions referred to a preliminary ruling. 5 Questions for a preliminary ruling concerning validity. 6 The procedure concerning the examination of questions referred to a preliminary ruling. 7 Value and effects of preliminary rulings. 8 Precautionary measures and preliminary reference. 9 A "transversal" interpretation and the future of the European Union's judicial system. Conclusion. References.

ABSTRACT: Purpose of this investigation is to give answers and make a technical/procedural overview on preliminary reference in criminal matters as well as to examine the application of art. 267 TFEU in the context of criminal proceedings. Over the last eight years, therefore, the urgent preliminary ruling procedure, initially dictated by the material nature of dispute, has evolved into an institution closer to specific requirements of criminal procedural law, where the request for urgent procedure takes place based on person's situation involved in the trial before the referring court. System rationale reflects the realization of an ever-increasing integration of EU law into national law, even in criminal matters which has always been reserved for the exclusive competence of states.

Keywords: preliminary reference. european union law. european procedural law. emergency proceedings.

RESUMO: *O objetivo desta investigação é dar respostas e apresentar uma visão geral técnica/processual sobre a o julgamento preliminar em questões criminais, bem como examinar a aplicação do art. 267 TFUE no contexto de um processo penal. Nos últimos oito anos, portanto, o procedimento de decisão preliminar urgente, inicialmente ditado pela natureza material da controvérsia, evoluiu para uma instituição mais próxima dos requisitos específicos da lei processual penal, onde o pedido de procedimento urgente ocorre com base na situação da pessoa envolvida no julgamento perante a referida Corte. A lógica do sistema reflete a realização de uma integração cada vez maior do direito da UE no direito nacional, mesmo em questões criminais que sempre foram reservadas à competência exclusiva dos Estados.*

Palavras-chave: *referência preliminar. direito da união europeia. direito processual europeu. procedimentos de emergência.*

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Artigo recebido em 06/02/2019 e aceito em 03/06/2019.

Como citar: LIAKOPOULOS, Dimitris. Reference for a preliminary ruling on CJEU: thoughts and observations in criminal matters. **Revista de Estudos Jurídicos UNESP,** Franca, ano 23, n. 37, p. 13-75. jan/jun. 2019. Disponível em: https://ojs.franca.unesp.br/index.php/estudosjuridicosunesp/issue/archive.

INTRODUCTION

According to art. 267 TFEU (ex 234 TEC) CJEU may or should be referred to the court for a preliminary ruling on matters concerning Union law which arise in proceedings instituted before a "court of one of member states" (CJEU, C-241/15; C-60/12;C-396/11). This article presents some lexical variations as "jurisdictional bodies" instead of "jurisdictions" but also some major changes that we will analyze in the next paragraphs. The preliminary ruling procedure is the mechanism by which the cooperation between courts of member states and CJEU serves as the administration of justice in the legal order of the union, in order to guarantee the uniform interpretation and application of internal law to all state systems (CJEU, C-16/65).

The competence foreseen by art. 267 TFEU distinguishes itself clearly from other competences attributed by treaties to CJEU, understood as a judicial institution inclusive of CJEU in the strict sense of general and specialized courts according to art. 19 TEU (CJEU, C-327/18)[1]. All others are direct, full and exclusive skills. The parties entitled to activate them by submitting their questions directly to CJEU judge. On the basis of preliminary ruling, CJEU is aware of certain questions of EU law by referral made by a national court in the context of a judgment initiated and intended to be brought before the national court itself. This requires CJEU to rule on certain issues because: "it considers it necessary to issue a decision on this point" (article 267, letter 2, TFEU) (CJEU, C-310/18). CJEU ruling has a preliminary nature both in a temporal sense because it precedes the judgment of the national judge and in a functional because it is instrumental to the enactment of that sentence.

This is an indirect responsibility because the initiative to apply to CJEU is not taken directly by the interested parties but by the national court and also limited competence since CJEU can only examine the matters of EU law raised by the national court. The latter remains competent to rule on all other aspects of EU law in respect of which the national court has not decided to request CJEU to give a ruling. It is questionable whether it is an exclusive competence. The competence referred to in art. 267 TFEU is exclusive in that only CJEU can give preliminary rulings on questions of EU law. It cannot be defined in absolute terms since the same national judgments can rule these issues if they choose not to apply to CJEU. Even

[1] For further details see: K. LENAERTS, I. MASELIS, K. GUTMAN, European Union procedural law, Oxford University Press, Oxford, 2014.

in cases of obligatory postponement, the obligation to refer is not absolute, as there are cases in which the national court can decide on its own.

National judge is the only one with direct knowledge of the facts of the case as well as the arguments of the parties and that he will have to take responsibility for the emanating ruling is in the best condition to assess with full knowledge of the relevance of the questions of law raised by the dispute he is facing and the need for a preliminary ruling to be able to issue the sentence (CJEU, C-338/85; C-369/89; C-368/89; C-186/90; C-127/92; C-30/93)[2]. There is a presumption of relevance of the questions referred by the national courts for a preliminary ruling that can only be excluded in exceptional cases if it is manifestly apparent that the requested interpretation of the provisions of EU law has no relation with the reality, the object of principal case, the hypothetical problem, CJEU's factual and legal elements necessary to properly resolve the issues submitted to it. It is for the national court to decide on the basis of considerations of economy and procedural usefulness at which stage of the procedure to refer a question to CJEU (CJEU, C-72/83; C-348/89)[3] even CJEU has had the opportunity to make the referral once it has been defined the issues of fact and law in order to obtain a better evaluation and thus allow this procedure to make the most of its effects. Similarly, confirming the existence of a hierarchical relationship between CJEU and national courts, except for the obligation of the latter to comply with CJEU decisions, it was considered that it is not for CJEU to decide on national court jurisdiction or the admissibility of the action before him or to ascertain whether the provision in question was adopted in accordance with the rules of organization and the procedural rules of national law. CJEU must comply with the order for reference issued by the national court until it has been annulled following an appeal which may be covered by national law (CJEU, C-19/68; C-65/81). If it is not for CJEU to intervene in resolving the problems of jurisdiction which may raise in internal legal system the definition of certain legal situations based

[2] For further details see: T. STOREY, A. PIMOR, Unlocking EU law, ed. Routledge, London & New York, 2018. K. LIMBACH, Uniformity of customs administration in the EU, Hart Publishing, Oxford & Oregon, Portland, 2015.

[3] For further details and analysis see: A. HARTKAMP, C. SIBURGH, W. DEVROE, Cases, materials and text on European Union law and private law, Hart Publishing, Oxford & Oregon, Portland, 2017, pp. 282ss. K. LENAERTS, I. MASELIS, K. GUTMAN, European Union procedural law, Oxford University Press, Oxford, 2014, pp. 133ss. M. WIERZBOWSKI, A. GUBRYNOWICZ, International investment law for the 21st century, Oxford University Press, Oxford, 2015. A.H. TÜRK, Judicial review in European Union law, Edward Elgar Publishers, Cheltenham, 2010. L. WOODS, P. WATSON, Steiner & Woods European Union law, Oxford University Press, Oxford, 2017, pp. 37ss

on Union law in such cases there is an interest in indicating to the internal judge the elements which can contribute to the solution of the competence problem that it must solve (CJEU, C-179/84). The jurisprudence affirmed the power that CJEU reserved itself to control the preliminary ruling procedure not only against abusive deviations but also by verifying the conditions for its pronunciation in order to safeguard its effect beyond the division of powers affirmed in principle by constructing in a vertical way the relationship of cooperation between national judgments and CJEU, rather than on the equal character that the article and the meaning of the cooperation itself seem to require.

The reasons which led to the inclusion of a preliminary ruling among the other competences of CJEU are linked to some characteristics typical of EU legal system. On the one hand, the decentralized system of application for which the task of applying EU legislation to the subjects of internal legal systems is entrusted to the administrative authorities of each member state. On the other hand, the characterization of Union rules as rules with direct effect which are therefore likely to determine new legal positions for or against the subjects of internal legal systems or at least to influence the pre-existing legal positions. Both these characteristics make frequent the establishment of national disputes before the national courts for whose solution it is necessary to proceed with the interpretation or evaluation of the validity of the name of the Union. The purpose governed by art. 267 TFEU is twofold. It tends to prevent each national court from interpreting and verifying the validity of Union's name on an autonomous basis, as if it were a matter of rules belonging to the legal system of its own member state, with the risk of infringing the unity of Union's law. It aims to offer national judges an instrument of collaboration to overcome the interpretative difficulties that the law of the union can raise as it is a system with its own characteristics and purposes. For this reason, the preliminary ruling jurisdiction is not intended only to prohibit differences in the interpretation of EU law which the national courts must apply "but also and above all" to guarantee this application by offering the judge the means to overcome the difficulties that may arise from the imperative to give Union law full force in member states legal systems (CJEU, C-166/73), a guarantee of the correct application and uniform interpretation of Union law (CJEU, C-283/81)[4].

[4] See for further analysis: C. BARNARD, S. PEERS, European Union law, Oxford University Press, Oxford, 2017, pp. 788ss.E. BERRY, M.Y. HOMEWOOD, B. BOGUSZ, Complete European Union law. Texts, cases and materislas, Oxford University Press,

The preliminary ruling has made an invaluable contribution to the development of this right. Suffice it to say that fundamental principles such as direct effectiveness of the rules of the treaties (CJEU, C-26/62; C-56/65; C-43/71; joined cases C-162 and 258/85)[5]; direct effectiveness of directives (CJEU, C-41/74)[6]; primacy on incompatible internal rules (CJEU, C-6/64; C-106/77; C-213/89); member states responsibility for damages resulting from infringements of EU law (CJEU, C-213/89; joined cases C-6/90 and C-9/90; GEIGER, et. al.) have all found their affirmation and their progressive development in rulings made by CJEU pursuant to art. 267 TFEU. The mechanism envisaged by art. 267 involved firsthand the national judges and also the persons who appeal to these judges in an effort to ensure that Union law is correctly interpreted and applied by and within member states, multiplying exponentially the occasions in which this control can take place (CJEU, C-26/62; FOLSOM, 2017). Proof of this is the hardness with which CJEU itself has taken a stand against any national provision that hinders or limits judges' right to make a referral pursuant to art. 267 TFEU (CJEU, C-670/16; C-367/16; C-579/15; C-289/15)[7].

In accordance with art. 256, par. 3, sub-paragraph 1 TFEU, "the court has jurisdiction to hear questions referred for a preliminary ruling,

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Oxford, 2013. G. CONWAY, European Union law, ed. Routledge, London & New York, 2015. F. NICOLA, B. DAVIES, European Union law stories, Cambridge University Press, Cambridge, 2017.J.USHERWOOD, S. PINDER, The European Union. A very short introduction, Oxford University Press, Oxford, 2018.

[5] See also: J.L. DA CRUZ VILAÇA, European Union law and integration. Twenty years of judicial application of European Union law, Hart Publishing, Oxford & Oregon, Portland, 2014.

[6] For further analysis see: K. AMBOS, European criminal law, Cambridge University Press, Cambridge, 2018. J. WOUTERS, C. RYNGAERT, T. RUYS, International law: a european perspective, hart Publishing, Oxford & Oregon, Portland, 2018.

[7] For further details and analysis see: A. HARTKAMP, C. SIBURGH, W. DEVROE, Cases, materials and text on European Union law and private law, Hart Publishing, Oxford & Oregon, Portland, 2017, pp. 282ss. K. LENAERTS, I. MASELIS, K. GUTMAN, European Union procedural law, Oxford University Press, Oxford, 2014, pp. 133ss. M. WIERZBOWSKI, A. GUBRYNOWICZ, International investment law for the 21st century, Oxford University Press, Oxford, 2015. A.H. TÜRK, Judicial review in European Union law, Edward Elgar Publishers, Cheltenham, 2010. L. WOODS, P. WATSON, Steiner & Woods European Union law, Oxford University Press, Oxford, 2017, pp. 37ss C. BARNARD, S. PEERS, European Union law, Oxford University Press, Oxford, 2017, pp. 788ss.E. BERRY, M.Y. HOMEWOOD, B. BOGUSZ, Complete European Union law. Texts, cases and materislas, Oxford University Press, Oxford, 2013. G. CONWAY, European Union law, ed. Routledge, London & New York, 2015. F. NICOLA, B. DAVIES, European Union law stories, Cambridge University Press, Cambridge, 2017. J.USHERWOOD, S. PINDER, The European Union. A very short introduction, Oxford University Press, Oxford, 2018.

pursuant to art. 267 TFEU in specific subjects determined by the Statute" (CJEU, C.636/16). The jurisdiction of the court for preliminary rulings is not directly provided for by TFEU but is postponed to a subsequent amendment of CJEU statute which should define the "specific matters" for which the same competence should apply. So far no changes have been made to this effect, so that at the moment court's preliminary jurisdiction remains purely virtual. It should be noted that contrary to the main jurisdiction of the court (article 256, par. 1 TFEU), the jurisdiction which could be attributed to the court would be a first and last instance jurisdiction since it is not foreseen that the court rulings may normally be the object of appeal before CJEU. The court itself may refer the case to CJEU "if it considers that the case requires a decision of principle that could compromise the unity or consistency of Union law" (article 256, par. 3, sub-par. 3)[8]. In reality, art. 256, par. 3 provides 2 safeguard clauses. If the court considers that the case requires a decision of principle that could jeopardize the unity or the coherence of EU law, it could refer the case to CJEU for a ruling. Court's decisions on preliminary questions could exceptionally be re-examined by CJEU in the event of serious risks to the unity or consistency of Union's law. The conditions and limits of this review are determined by the articles of association. Article 62 of the new CJEU statute gives the Advocate General the initiative to propose the review within one month of court's ruling. The proposal will be subject to a preliminary decision by CJEU on whether or not to proceed with the review. For both provisions the devolution of part of the preliminary ruling has not yet taken place. With regard to the division of competences between CJEU and the court concerning preliminary reference, reference is made to art. 19, par. 2 TEU (USHERWOOD; PINDER, 2018).

Ultimately it is still a procedure of judicial cooperation of a dialogue from judge to judge that can certainly bring concrete benefits to the parties that suggest the use but which must structurally be understood as a procedure aimed at a correct interpretation and application of Community law rather than as a means of judicial protection of the rights of individuals towards member states. This does not exclude that the performance of the preliminary ruling procedure is to be understood as included in the baggage of the guarantees that Union law makes available to individuals so that the judicial proceedings can be considered fair. As proof of this, it

[8] For further analysis see: T. CAMPBELL, K.D. EWING, A. TOMKINS, The legal protection of human rights. Sceptical essays, Oxford University Press, Oxford, 2011, pp. 269ss.

is worth pointing out that in German and Spanish law, the non-execution of the reference for a preliminary ruling is sufficient reason to consider the procedure for failure to involve the natural judge to be incorrect.

1 ADMISSIBILITY PROFILES OF THE REFERENCE FOR A PRELIMINARY RULING

The mechanism of preliminary ruling constitutes an instrument for cooperation between national courts and CJEU. It can be said that the former and the second play a complementary role in order to find a solution to the concrete case that is in conformity with Union law. It cannot be said that there is a hierarchy for which national courts would in some way be subordinated to CJEU.

The absence of a hierarchical relationship explains why CJEU does not exercise any type of control over the jurisdiction of the national court to ascertain the judgment in which the questions referred were raised (CJEU, C-435/97), or the regularity of the judgment itself and in particular of referral provision (CJEU, C-472/93). These are aspects that are not governed by EU law but by the domestic law of national court and must therefore be resolved by the national court itself. CJEU is held bound to reply to questions referred for a preliminary ruling until the referral order is revoked or withdrawn by the national court itself or annulled by a higher court following an appeal (CJEU, C-65/81).

CJEU has set out requisites concerning the content that the referral provision must have. CJEU requires that when the questions refer to the "competition sector, characterized by complex factual and legal situations", the national judge "defines the factual and legal context in which the questions raised are inserted or explains at least the factual assumptions on which these issues are raised" (CJEU, C-65/81). In the absence of sufficient indications in this regard, CJEU could not "arrive at an interpretation of EU law which is useful for the national court" (CJEU, joined cases C-320/90, C-321/91 and C-322/91; C-380/05)[9]. Other parties and member states authorized to submit written observations to CJEU pursuant to art. 23 of the Statute would not be able to make specific observations (CJEU, C-458/93)[10].

[9] See also: M. BROBERG, N. FENGER, Preliminary references to the European Court of Justice, Oxford University Press, Oxford, 2014. P. CRAIG, EU administration law, Oxford University Press, Oxford, 2018.

[10] See also: R. MILES GOODE, Principles of corporate insolvency law. Sweet & Maxwell, London, 2011.

CJEU reserves the right not to reply to questions referred for a preliminary ruling. CJEU provides for the inadequacies of the referral order by using elements that can be obtained from the file sent by the national court or by parties' observations (CJEU, joined cases C-51/97 and C-191/97; joined cases C-180/98 and C-184/98).

Naturally, CJEU does not verify the necessity of the postponement and questions relevance of EU law with respect to case settlement pending before the national court. According to the system of art. 267 TFEU the national judge turns to CJEU "if it considers it necessary to issue its sentence on the point" (GEIGER; KHAN; KOTZUR, 2016). The same solution also applies to last resort courts (article 267, sub-par. 3 TFEU), which according to CJEU: "have the same power of assessment of all other national courts in determining whether a ruling is necessary on the point of (Union) law to enable them to decide" (CJEU, C-77/83). At the outset, CJEU considered that it was for the national court to assess the need for the referral and the relevance of the questions referred for a preliminary ruling. Subsequently a sometimes improper and even abusive use of the preliminary reference by parties and national judges led CJEU to change its attitude.

CJEU has thus reserved the power to check the relevance of questions referred for a preliminary ruling in order to check whether it is competent to reply and whether there is no "pathological" hypothesis identified by the case-law. Issues placed in the context of fictitious disputes; disputes in which the parties agree with each other on the interpretation to be given to Union's rules and only want to obtain a ruling by CJEU on this point because of erga omnes effectiveness (CJEU, C-104/79; BROBERG; FENGER, 2014); issues that are manifestly irrelevant due to the manifest inapplicability of the union rule to be interpreted in the case in question (CJEU, C-13/68; C-126/80; C-172/84)[11]; purely hypothetical questions, defined as such because of their generality or the fact that they do not meet an effective need of the national judge in view of resolving the dispute (CJEU, C-83/91; C-428/93; C-571/10). CJEU does not always proceed to such verification but only where the formulation of the referral provision clearly gives rise to suspicions or when the parties authorized to submit written observations pursuant to art. 23 CJEU Statute raise specific objections.

[11] For further details see: B. THORSON, Individual rights in EU law, ed. Springer, Berlin, 2016, pp. 363ss.

CJEU's attitude seems to be oriented towards great prudence. It starts from the principle that if the questions raised by the national court relate to the interpretation of a (Union) rule, in principle CJEU is required to give a ruling (CJEU, C-343/90; joined cases C-94 and C-202/04; C-45/09)[12]. CJEU is often satisfied that the national court has indicated the reasons which lead it to consider the reply to questions referred to be necessary (CJEU, joined cases C-223/99 and C-260/99; C-183/00; C-283/09;)[13]. In recent years there have been few cases of inadmissibility on the presence of one or the other pathological hypothesis.

2 THE NOTION: "COURT OF ONE OF MEMBER STATES"

Preliminary jurisdiction may be activated by bodies which may be qualified as a "court of one of member states". CJEU reserves the right to verify that the body making the reference for a preliminary ruling actually falls within that concept, considering it to be an autonomous concept and therefore not necessarily coinciding with the definitions derived from the legal systems of member states. To recognize the character of the court, CJEU has indicated as decisive the existence of certain characteristics such as: legal basis of the activity, permanent nature, mandatory jurisdiction, adversarial procedure, application of legal rules and independence (CJEU, joined cases C-9/97 and 118/97; C-516/99). The notion of a court by its own nature can only designate an authority which is third with respect to those are called to judge. The request for a preliminary ruling made by the Director of the Luxembourg Tax Office during a procedure in which he was called upon to decide on the appeal against a measure of an office with which he was organically connected is thus inadmissible (CJEU, C-24/92, par. 15-17). Likewise, the Greek national competition authority lacking the requirements of independence and mandatory jurisdiction cannot submit questions. Firstly, because the institution is subject to the supervision of Minister for Development and secondly, since it works in close cooperation with the commission and can be deprived of its competence if the committee initiates a competition procedure . The exercise of jurisdictional functions with the competition and the approval

[12] For further details see: I. BENOHR, EU consumer law and human rights, Oxford University Press, Oxford, 2013.

[13] For further analysis see: R. CARANTA, E. EDELSTAM, M. TRYBUS, EU public contract law: Public procurement and beyond, ed. Bruylant, Bruxelles, 2013. W. SAUTER, Coherence in EU competition law, Oxford University Press, Oxford, 2016.

of public authorities has been identified as decisive (CJEU, C-246/80; BROBERG; FENGER, 2014).

According to the formula adopted by CJEU, the possibility for a given body to make a reference for a preliminary ruling depends on a series of elements such as the legal origin of the body, its permanent nature, the binding nature of its jurisdiction, the contradictory nature of the proceedings, the fact that the body applies legal rules and is independent" (CJEU, C-54/96; joined cases C-69 and 79/96; C-92/00; C-53/03; C-246/05; C-8/08; C-501/06; C-118/09; C-196/09; C-118/09)[14]. Jurisprudence examination reveals how CJEU approach is characterized by considerable elasticity and how the presence of elements mentioned in the formula above is not systematically verified. Procedure's contradictory nature is not required (CJEU, C-107/96; BROBERG;FENGER, 2014). Not only does CJEU content itself with the adversarial procedure only at a stage in the procedure following the reference for a preliminary ruling but it also ascertains the reference made in proceedings which are entirely devoid of contradictory character (CJEU, C-55/96)[15]. The absence of body's independence requirement also intended as a third party has been interpreted in a variable manner (CJEU, C-24/92; joined cases C-110/98 and C-147/98). CJEU attitude was more rigorous with regard to the requirement of legal origin. The absence of such a requirement precludes the admissibility of a reference for a preliminary ruling by an arbitral tribunal (CJEU, C-102/81; C-126/97, par. 35; C-393/92)[16] admitting that the referral can be made by the ordinary judges in the appeal or exequatur judgment, even if only a formal judgment is required (CJEU, C-393/92; BROBERG; FENGER, 2014). The referral by an arbitral tribunal is instead possible if the parties are by law obliged to turn to a court of this type and the law determines the composition and jurisdiction of the court (CJEU, C-61/65; C-2/67; THIES, 2013). CJEU faced with a preliminary ruling ordered by an arbitrator set up by a contract stipulated between private individuals, has detected the similarities that the arbitration presents with

[14] See also: M. CREMONA, Market integration and public services in the EU, Oxford University Press, Oxford, 2011.

[15] "(...) it follows from the principles of the primacy of Community law and of its uniform application, in conjunction with Article 5 of the Treaty, that a court of a Member State to which an appeal against an arbitration award is made pursuant to national law must, even where it gives judgement having regard to fairness, observe the rules of Community law, in particular those relating to competition law (...)" (LÓPEZ-GALDOS, 2016).

[16] For further details see: C. BARNARD, EU employment law, Oxford University Press, Oxford, 2012, pp. 527ss. A. SÁNCHEZ GRAELLS, Public procurement and the EU competition rules, Hart Publishing, oxford & Oregon, Portland, 2011.

the activity of the ordinary national courts. If it takes place within the scope of the law, the arbitrator must decide according to the law and its award is liable to take on the efficacious parts of what is judged being able to constitute an enforceable title once obtained by the exequatur.

Those analogies are not sufficient to give the arbitrator the status of a member state's body when at the time of conclusion of the contract there is no obligation for the parties to resolve the dispute by arbitration, the public authorities are not involved in the choice of arbitration as a means of resolving disputes and cannot intervene in the proceedings before the arbitrator. In the absence of such circumstances, the link between arbitration and remedies organization provided for is not sufficiently strict for the arbitrator to qualify the latter as a court of a member state (CJEU, C-102/81; C-125/04). The exclusion of arbitrators from the mechanism of referral to CJEU, while avoiding an excessive increase in the dispute before it, raises the risk of discrepancies in the interpretation and application of EU law. The impossibility for referees to refer the matter to CJEU in combination with the limitation to exceptional cases of the appeal for infringement of EU law raises critical profiles.

Even if the jurisprudential formula referred to does not make any mention of it, it is necessary that the reviving body has the function of issuing a decision on a dispute between parties. Lacking this function the presence of some elements resulting from the same formula is insufficient. CJEU has not admitted preliminary references made to public prosecution bodies in criminal judgments (CJEU, joined cases: C-74/95 and C-129/95)[17] by bodies that perform advisory functions in administrative proceedings (CJEU, C-318/85)[18] of CJEU in the exercise of the post-clearance control function on administrative activity regularity by a national court (CJEU, C-210/06; C-497/08; C-55/94). Competition authorities of member states are not jurisdiction under article 267 TFEU whereas it is quite possible that a question referred for a preliminary ruling be raised in the context of the appeal against the measures of those authorities (CJEU, C-198/01; BROBERG; FENGER, 2014).

[17] See also: A.L. YOUNG, Democratic dialogue and the constitution, Oxford University Press, Oxford, 2017, pp. 275ss.

[18] See also: E. FRANTZIOU, The horizontal effect of fundamental rights in the European Union, Oxford University Press, Oxford, 2019, pp. 94ss

3 OPTIONAL AND MANDATORY REFERENCE

With respect to the reference for a preliminary ruling, the position of national courts varies according to whether they issue decisions against which it is possible to propose a judicial remedy under domestic or not law. Reference is the subject of a simple faculty while the judge is subject to a deferment obligation according to sub-par. 3 of art. 267. The ratio of this distinction is twofold. On the one hand, only in the case of a court of last resort would there be no remedy for any erroneous solution of questions of EU law to which this judge comes by itself, without activating the jurisdiction for a preliminary ruling. From this point of view, the obligation of referral by the court of last resort constitutes the extreme form of protection offered to the subjects involved in the correct judicial application of Union law. On the other hand, the erroneous solution given by a court of last resort to Union law matters risks to be accepted in numerous other judicial decisions and to consolidate despite its non-correctness as a result of the principle of being decisis proprio of common law or only as a consequence of the prestige and diffusion enjoyed by the judgments of these judges.

The notion of a court of last resort pursuant to sub-par. 3 of art. 267 depends on the concrete possibility of proposing an appeal against judge's decisions and not only from the rank he occupies in the national judiciary. In order to establish whether there is the possibility of proposing a judicial remedy of domestic law, only ordinary remedies should be taken into consideration.

The right of referral that is up to courts not of last resort implies that they are free to choose whether or not to raise the issues of EU law before CJEU independently of the request of the parties, that is also ex officio (CJEU, C-126/80; BROBERG; FENGER, 2014). On the respective role of the judge and the parties the sentence in case: C-104/10, Kelly of 21 July 2011[19] noted that according to CJEU this freedom extends to the choice of the moment in which to carry out the reference even if according to CJEU could be appropriate that the facts have already been ascertained and that domestic law's questions have already been resolved (CJEU, joined cases C-36/80 and 71/80). In interpreting the obligation to refer to

[19] See, C. TEITGEN, COLLY, La Convention europèenne des droits de l'homme: 60 ans et après?, ed. LGDJ, Paris, 2013. W.A. SCHABAS, The European Convention on Human Rights: A commentary, Oxford University Press, Oxford, 2015, pp. 1755ss. D. LIAKOPOULOS, European integration and its relation with the jurisprudence of European Court of Human Rights and private international law of European Union, in Homa Publica.Revista Internacional de Direitos Humanos e Impresa, 2 (2), 2018..

the courts of last resort, CJEU has introduced some elements of flexibility such as to make the distinction less clear than the other judges. CJEU also stated that the courts of last resort according to Cilfit judgment: "(...) have the same power to assess all other national courts in determining whether a ruling on the point of Community law is necessary to enable them to decide (...)" (GEIGER; KHAN; KOTZUR, 2016).

The mere fact that the parties have raised questions of EU law does not imply an obligation to refer. CJEU has identified some hypotheses in which, even in the presence of relevant issues, reference can be omitted. The referral from mandatory becomes purely optional also for judges of last resort: when the question: is materially identical to another question, raised in relation to a similar case, which has already been decided by way of preliminary ruling (CJEU, C-28-30/1962); when the answer to questions arises: "from a consistent jurisprudence of CJEU that, regardless of procedure's nature in which it was produced, resolves the point of litigious right, even in the absence of a strict identity between the matters of the dispute"; when the correct application of EU law requires: "with such evidence that it leaves no reasonable doubt on the solution to be raised to the question raised" but the judge must first conclude in this sense a) to convince himself that the same solution it would also impose on the courts of other member states and CJEU, b) compare the different language versions of Union rules, c) take into account the unnecessary coincidence between the meaning of the same legal notion in EU law and in law indoor; (d) relocating the Union standard in its context and in the light of its purpose (GEIGER; KHAN, KOTZUR, 2016).

Despite the extreme caution with which CJEU has defined the third hypothesis of non-obligatory reference (clear act theory), it has been criticized by the doctrine for the risk of abuse that it entails. This risk is exacerbated by the absence of remedies available in the event of an unjustified failure to refer (CJEU, C-294/16).

The failure to refer a preliminary ruling by a court of last resort may however lead to liability for damages to the member state to which the judge belongs as long as the other conditions required by CJEU jurisprudence, in particular the manifest character of the breach of obligation to refer (CJEU, C-173/03; C-224/01). According to the European Court of Human Rights (ECtHR) such behavior could constitute a violation of fundamental rights to an effective judicial remedy consecrated by art. 6,

n. 1, EctHR (2000)[20] if the omission of the reference was not adequately motivated in relation to cases identified by CJFU jurisprudence of CJEU (LIAKOPOULOS, 2018).

The distinction between judges of last resort and of the lower instances has been further attenuated with reference to the questions of institutions acts validity. CJEU has denied that a judge of last resort can independently autonomously declare an act of the institutions invalid (CJEU, C-314/85)[21]. It follows that if the court considers the grounds of invalidity alleged by the parties to be well founded, he is bound to refer the relevant question to CJEU. As an alternative to reference, the judge can only suspend the proceedings pending CJEU decision on the action for annulment brought against the same act (CJEU, C-344/98). The judge is obliged to refer even if doubting the validity of a Union Regulation to order as a precautionary measure the suspension of the execution of a national administrative provision based on this Regulation (CJEU, joined cases C-143/88 and C-92/89) and /or grant other provisional measures (CJEU, C-465/93)[22].

4 QUESTIONS REFERRED TO A PRELIMINARY RULING

It results from the text of art. 267 TFEU that CJEU jurisdiction can be exercised with regard to questions of interpretation or questions of validity. The questions of interpretation can have as its object; a) treaties, b) acts performed by institutions, bodies or Union organs (GEIGER; KHAN, KOTZUR, 2016).

The Treaty of Lisbon has eliminated the letter c) of the old art. 234 TEC, which referred to "institutions of organisms created by act of the Council, when it is foreseen by statutes". The statutes mentioned in letter c), in reality as contained in Council's acts are included in letter b).

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[20] See, A.O. EDWARD, R. LANE, Edward and Lane on European Union law, Edward Elgar Publishers, Cheltenham, 2013

[21] For further details see: A. BARAV, Judicial enforcement and implementation of EU law, ed. Bruylant, Bruxelles, 2017

[22] For further analysis see: X. GROUSSOT, G.T. PETURSSON, The EU Charter of the Fundamental Rights five years on. The emergence of a new constitutional framework?, in S. DE VRIES, U. BERNITS, S. WEATHERILL, The EU Charter of Fundamental Rights as a binding instrument. Five years old and growing, Oxford University Press, Oxford, 2015. S.I. SÁNCHEZ, The Court and the Charter: The impact of the entry into force of the Lisbon Treaty on the ECJ's approach to fundamental Right, in Common Market Law Review, 49 (5), 2012, pp. 1566ss .

Art. 234 TEC is referred only to the "present treaty", ie TEC. This change had the effect of extending CJEU jurisdiction to all TEU and TFEU provisions with the exception of those relating to CFSP. Those provisions relating to the area of freedom, security and justice which remained in Title VI TEU (Pillar III: Police and Judicial Cooperation in Criminal Matters, articles 29 to 42 EU) and which have now merged into the new Title V TFEU, particularly in Chapters 4 and 5 (articles 82-89 TFEU). With regard to the provisions relating to SLSG which had already been transacted in TEC as a result of the Treaty of Amsterdam (articles 61 to 69), the special rules governing the preliminary ruling contained in art. 68 TEC are now entirely subject to art. 267 TFEU (DECHEVA, 2018; BARNARD; PEERS, 2017; FOSTER, 2016).

We must take into consideration that art. 267 also applicable to CJEU jurisdiction pursuant to: "exercising the powers relating to the provisions of Chapters 4 and 5 of Part Three, Title V concerning the area of freedom, security and justice, CJEU is not competent to examine the validity or proportionality of transactions conducted by the police or other law enforcement agencies of a member state or the exercise of the responsibilities incumbent on member states for the maintenance of public order and the safeguarding of internal security" (BARNARD; PEERS, 2017).

The formula of "treaties" is comprehensive in the Charter of Fundamentals Rights of the European Union (CFREU). This is one of the effects of assimilation contained in art. 6, par. 1, sub-par. 1 TEU according to which CFREU "has the same legal value as the treaties"[23]. It must however be stated that in order for CJEU to be competent to interpret CFREU provisions for a preliminary ruling, CFREU must be applicable to the case pending before the national court and concerns the legality of measures implementing an act of Union institutions by a member state (CJEU, C-457/09; C-339/10).

For treaties we mean the text of TEU and TFEU in the version applicable ratione temporis to the facts of the case pending before the national court, including the attached Protocols (article 51 TEU) and taking into account the amendments made pursuant to art. 48 TEU or the adaptations on the accession of new member states pursuant to article 49 TEU. The transitional provisions of the accession agreements can also be interpreted by CJEU (CJEU, C-179/00).

[23] See also: N. ZIPPERLE, EU international agreements. An analysis of direct effect and judicial review pre-and post lisbon, ed. Springer, 2017.

The formula that is found in letter b) of sub-par. 1 is broader than that of the corresponding provision of art. 235 TEC, which spoke only of acts carried out by institutions and ECB and therefore left in doubt the possibility for CJEU to give preliminary rulings on the interpretation of acts carried out by Union organs not designated as institutions. On the other hand, the new formula refers in an encompassing way to the acts carried out by the institutions, bodies or Union organs.

The new formula also means that the acts adopted by the institutions in matters of police and judicial cooperation in criminal matters fall within the jurisdiction for a preliminary ruling. The optional disciplinary jurisdiction regulated by art. 35, par., I-5 TEU states that member states could accept the acts adopted under the deleted Pillar III. The competence referred to in art. 35 however, survives for a period of five years for acts adopted before the Treaty of Lisbon. As for the acts adopted before the Lisbon Treaty under Title IV TEC, the deletion of article 68 of the same treaty without any transitional provision having been established, they are now subject to ordinary preliminary rulings. The most important consequence is that the reference for a preliminary ruling can also be ordered by judges who are not of last resort, differently from what art. 68 and Weryński judgment noted. The latter makes reference for a preliminary ruling concerning a regulation issued under Title IV TCE4 (CJEU, C-171/16) although formulated during the period in which the Treaty of Lisbon had been signed but had not yet entered into force.

The notion of acts performed by institutions is very broad and includes the acts belonging to the various types envisaged by art. 288 TFEU, including recommendations (CJEU, C-113/75), opinions (CJEU, joined cases C-142/80 and 143/80; BROBERG; FENGER, 2014) and acts without direct effect (CJEU, C-9/70; BROBERG; FENGER, 2014). This notion also includes the non-typified denomination acts such as Council Resolutions and European Council acts (CJEU, C-9/73; BROBERG;FENGER, 2014), for the opposite solution before the Treaty of Lisbon (CJEU, C-253/94; BROBERG; FENGER, 2014). CJEU considers as "acts carried out by the institutions" (CJEU, C-181/73; BROBERG; FENGER, 2014) international agreements with third states pursuant to art. 218 TFEU as well as "mixed agreements" concluded by the Union together with member states (CJEU, C-87/75; C-53/96; Joined cases C-300/98 and C-337/95, par. 23)[24]. The same solution has been applied to acts adopted

[24] For further analysis see: M. WIBERG, The EU services directive. Law or simply policy?, ed. Springer, Berlin, 2014.

by the bodies established by these agréments (CJEU, C-192/89). In the past, CJEU jurisdiction has been exercised also in respect of agreements concluded by member states before the institution of EU but with respect to which a sort of succession would have occurred in favor of the latter (CJEU, joined cases C-267-269/81). On the other hand, CJEU's jurisdiction for preliminary rulings does not automatically fall under the agreements or conventions concluded between member states, even if they were concluded in implementation of art. 293 TEC. And in order for CJEU to be able to exercise a preliminary ruling on these conventions, it was necessary that jurisdiction be established directly by each of these Conventions or by specific Protocols on the interpretation of Brussels Convention of 27 September 1968 on jurisdiction and execution of judgments in civil and commercial matters and Protocol of 19 December 1988 concerning the interpretation of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations. Both of these agreements have in the meantime been replaced by Regulations adopted pursuant to art. 81 TFEU (BARNARD; PEERS, 2017).

CJEU accepts to interpret union rules even if they are not applicable to the present case as such but by virtue of a reference made by internal norms according to the joined cases 297/88 and C-197/89, Dzodzi v. Belgium of 18 October 1990 (BROBERG; FENGER, 2014), where CJEU stated that Union's legal system has "(...) manifestly interest, to avoid future divergences of interpretation, to guarantee a uniform interpretation of all the provisions of Community law, regardless of the conditions in which they will be applied (...) although, then, it is for national courts to apply the provision interpreted by CJEU, taking into account the factual and legal circumstances of the case before them, and also to determine the exact scope of the reference to EU law (...)" (CJEU, joined cases C-297/88 and C-197/89). CJEU follows the opposite solution if it is a matter of union norms whose formulation is only partially reproduced in internal norms according to case: C-346/93, Kleinwort Benson v. City of Glasgow district Council of 28 March 1995 on the provisions of the Brussels Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (LIAKOPOULOS, 2018).

The letter of art. 267 TFEU rules out that, in the context of a question of interpretation, CJEU can itself apply EU rules to the situation which is the subject of the proceedings pending before the national court. Article 267 TFEU implicitly opposes interpretation to application of EU

law and attributes to CJEU only the first function, reserving the second for the national court (CJEU, joined cases C-28-30/62). Nonetheless, the answers provided by CJEU often go beyond a merely abstract interpretation of the Union rule. In the area of Common Customs Tariff, CJEU appears to be in fact proceeding directly to the classification in this or that item of the product examined by the national court (CJEU, C-63/77; BROBERG; FENGER, 2014).

Likewise, it is not foreseen that CJEU can interpret the rules of member states or the incompatibility of a national with Union rules (CJEU, C-33/65; BROBERG;FENGER, 2014). Both of these tasks belong to national judge who made the reference.

As regards questions referred to CJEU by the national court for a ruling on compatibility of specific internal rules with EU law, CJEU, while maintaining the principle of its incompetence to answer such questions, does not declare them inadmissible, but reformulates them in such a way as to provide the national court with all the elements of interpretation enabling it to assess such compatibility for the purpose of resolving the case (CJEU, C-369/89; BROBERG; FENGER, 2014). This allows the reference for a preliminary ruling to be used by national courts to obtain a judgment by CJEU, even if it is indirect, on the compatibility of internal rule with EU law, with effects not very different from those of a judgment issued against the member state in question pursuant to article 258 TFEU (this is an alternative use of the reference for a preliminary ruling) (BARNARD; PEERS, 2017).

5 QUESTIONS FOR A PRELIMINARY RULING CONCERNING VALIDITY

Preliminary ruling concerning validity can only cover "acts carried out by institutions, bodies or Union organs". These issues allow CJEU to carry out a check on the validity of such acts to supplement the control that CJEU exercises through legitimacy as per art. 263 TFEU, the validity exception referred to in art. 277 TFEU and indirectly the action of damages from non-contractual liability as per art. 268 TFEU.

Analogy with art. 263 TFEU means that all acts against which an action for annulment may be subject of a question for a preliminary ruling concerning validity. Also the grounds of invalidity that can be asserted are the same as those mentioned in the second sub-paragraph of art. 263

TFEU. However, the question of validity concerning a regulation or a decision addressed to third parties is not subject to the restrictive conditions referred to in the fourth sub-paragraph of the same article. Likewise, the two-month time-limit laid down in the sixth sub-paragraph shall not apply. It follows that a question of validity can also be proposed after years. Where it is not disputed that the subject addressed to national court could have brought an action for annulment of Union act in question and did not leave the time limit referred to in the sixth sub-paragraph of article 263, the national court can no longer raise a question for a preliminary ruling on validity (CJEU, C-188/92).

The proposition of questions of validity becomes necessary also for judges who are not of last resort if they consider the grounds of invalidity put forward by the parties to be uninformed.

CJEU judge on the validity of Union acts, rendered in the context of a preliminary ruling procedure, is distinct from that of the annulment decision pursuant to art. 263 TFEU. If reference should be made to identify defects whose presence entails the invalidity of Union act, the particularities of the preliminary ruling procedure allow act invalidity to be pronounced even outside the cases in which art. 263 TFEU allows the appeal. The person concerned that has not brought an appeal against it pursuant to art. 263, 2nd sub-paragraph TFEU must have in accordance with a general legal principle expressed in art. 277 TFEU which guarantees to any party the right to challenge in order to obtain the annulment of a decision that concerns it directly and individually, the validity of previous acts of constituting institutions, the legal basis of the contested decision. The possibility in an appeal brought under national law against an internal measure to plead the illegality of the decision of the commission on which the national measure adopted is based and obtain the submission of the matter to CJEU (CJEU, C-216/82).

Act identification with respect to which the question of validity can be proposed it was considered a non-binding act (CJEU, C-322/88; BROBERG; FENGER, 2014) since the article does not contain the limitation provided for by art. 263 TFEU. Unlike what happens during the cancellation procedure when it is pronounced for a preliminary ruling, CJEU cannot annul the act that it considers to be illegitimate but only declaring the invalidity in relation to the specific case. Recipient of the decision finding that illegitimacy is only the judge who addressed CJEU. The ruling constitutes, although, for any judge a necessary reason to

consider such an act invalid, i.e. a tribute to law's certainty requirements. The application by other judges of the act declared invalid could also create serious uncertainties regarding the law to be applied (CJEU, C-66/80; BROBERG; FENGER, 2014).

Analogically, it also applies to the preliminary ruling concerning the validity. According to art. 264, second sub-paragraph TFE, CJEU can indicate the effects of an invalid declared Regulation to be considered definitive (CJEU, C-114/99; BROBERG; FENGER, 2014). Such power appears to be a logical consequence of the general effectiveness that CJEU jurisprudence attribute to the sentences rendered under the article, when they declare the invalidity of a Regulation. Where case law excluded from the effectiveness of the declaration of invalidity, the deed or acts themselves subject of the dispute before the referring court would raise serious doubts as to the compatibility of the rule allowing such a ruling with the essential content of the right to judicial protection.

The hypothesis in which the sentence issued in the incidental judgment could not be applied in the main proceedings. This would be in contradiction with the nature of a preliminary ruling. The right to a judge and a judgment would be deprived of content if the judge, who doubts the legitimacy of a rule that he should apply, was to be answered by the court. The rule in such a case is not assessed and the invalidity has no effect in the dispute subject of the main proceedings that must be decided on the application of a recognized illegal rule. Faced with a possible violation of a fundamental principle, the primary demands of the uniform application of Union law and legal certainty could be invoked. Both requirements would not be jeopardized if, without prejudice to the regressed effects of the invalidated Regulation, the effectiveness of the ruling in the main proceedings and the judgments already initiated before the national courts before the date of enacting the invalidating sentence remained unaltered. CJEU has found that a national jurisdiction can examine the validity of a Union act and if it considers groundless the complaints put forward by the parties can reject them by concluding that the act is valid. The exercise of this power does not affect the existence of Union act.

The power to declare invalid acts of the Union is not recognized to national court. This derives from the attribution to CJEU of the skills indicated in the article. A centralized mechanism is envisaged to ensure the interpretation and uniform application of EU law by the judgments of member states. This need for uniformity is particularly stringent

when it comes to discussing the validity of a Union act since differences between national courts on the point of validity of that act would be likely to jeopardize the very unity of the legal order of the union. The datum is confirmed by the parallelism with art. 263 TFEU since it provides for the exclusive competence of CJEU for the annulment of a Union act, the consistency of the system requires that the power to ascertain the invalidity of the same act is reserved to CJEU even if the matter were raised before a national judge.

6 THE PROCEDURE CONCERNING THE EXAMINATION OF QUESTIONS REFERRED TO A PRELIMINARY RULING

The proceedings before the national court which precede the decision to refer are mostly governed by judge's national law. National procedural law cannot be structured in such a way as to limit or condition the exercise of the faculty or the fulfillment of the obligation of referral by the judge. In particular, they were found to be incompatible with art. 267 itself and therefore inapplicable. The prohibition for the judge to raise issues of Union law ex officio when this also results in the impossibility of making a reference to CJEU pursuant to art. 267 (CJEU, C-213/89; C-465/93).

It comes from the system of art. 267 TFEU that in case of reference the judge is obliged to suspend the judgment before him. It is not excluded that the judgment can continue with regard to the granting of precautionary measures admitted by the jurisprudence.

The form of the order for reference is determined by national law. The possibility of challenging the referral decision is also subject to national law, but CJEU considers itself adjourned until the referral order is revoked by the referring court.

Once the reference has been decided, the judge must notify the relevant decision to CJEU (article 23, sub-paragraph 1 of CJEU Statute). It is not prescribed but it is advisable that the relevant documents of the dossier be also notified. CJEU Registrar shall notify national court's decision "to parties in question, member states and the commission as well as to Union institution or body which has adopted the act whose validity or interpretation is contested" (BARNARD; PEERS, 2017). These subjects have the right to submit written observations within two months.

Following the procedure, it does not change with respect to the procedure that applies in CJEU's direct competences case, except for the

particularities that follow. With regard to representation and appearance of parties to national proceedings, does not apply art. 19 CJEU Statute but: "CJEU takes into account (...) procedural rules in force before the national courts that carried out the reference" (article 97, paragraph 3, CJEU Regulation) (BARNARD; PEERS, 2017). The discussion hearing must be claimed with a motivated request by the parties who are entitled to submit written observations pursuant to art. 23 CJEU Statute. Even in the presence of an application, CJEU may decide to hear the Advocate General to omit the hearing, unless the application is formulated by a person who, despite having the right to do so, has not submitted written observations (article 76, CJEU Regulation). The possibility is foreseen by CJEU, always heard the Advocate General to request clarification from the national judge (according to article 101, CJEU Regulation).

CJEU decides with sentence CJEU Procedure Regulation which provides that in some cases the procedure can be concluded with a reasoned order. Article 99 allows CJEU to decide by reasoned order "when the question referred is identical to a matter on which CJEU has already ruled, when the answer to that question can be clearly inferred from the case-law or when the answer to the question referred does not give rise to no reasonable doubt" (CJEU, C-283/81; C-30/00; C-80/01). It is not clear whether CJEU can resort the instrument of the reasoned order in the event of its manifest incompetence (article 100, par. 2 CJEU Rules of Procedure) or of manifest inadmissibility. The provision referred to in the past by CJEU for this purpose also in the context of judgments for preliminary rulings is no longer present in the new version of the Rules of Procedure. On the other hand, the corresponding provision is dictated for direct appeals and does not seem applicable to judgments pursuant to art. 267 TFEU. CJEU does not decide on the expenses, since this task is entrusted to the national judge according to art. 102 CJEU Regulation.

It should be noted that art. 23-bis of CJEU Statute provides for two types of summary or simplified procedures for examining some references. The first of these proceedings is called an accelerated procedure and is governed by articles 105 and 106 of CJEU Procedural Rules. According to art. 105 "at the request of the referring court or exceptionally, ex officio when the nature of the case requires its rapid treatment" the President of CJEU after hearing the judge-Rapporteur and the Advocare General can decide to treat a preliminary reference according to an "accelerated procedure". In this case the date of the hearing is fixed by the president

of CJEU and immediately notified to the parties referred to in art. 23 of CJEU Statute to which the same president assigns a reduced term of not less than fifteen days to file written observations.

If a question for a preliminary ruling concerning the validity of a Union institution decision has been put by the referring court on an ex-officio basis and not at the request of a person who, although he may bring an action for annulment against him, has not done in terms provided for by art. 263 final sub-paragraph TFEU, the question referred for a preliminary ruling cannot be declared inadmissible on the ground of that last circumstance.

Articles 107-114 of CJEU Procedural Rules govern the urgent preliminary ruling procedure (CJEU, C-404/15; C-659/16; C-129/14). It applies only if a reference for a preliminary ruling "raises one or more questions relating to the areas covered by Title V of the third part" TFEU, i.e. a sector falling within the area of freedom, security and justice (art. 107) (BARNARD; PEERS, 2017). This is a special procedure in a well-defined ratione materiae field of application. It is usually followed at the request of the same national court which is required to state "the circumstances of law and fact which prove urgency and justify the application of such derogatory procedure" (BARNARD; PEERS, 2017) indicating as far as possible "the answer that it proposes to the questions referred for a preliminary ruling (art. 107, let.2) (BARNARD; PEERS, 2017). The urgent procedure can exceptionally be requested by the president of CJEU "if the appeal to this proceeding seems to be imposed prima facie" (sub-par. 3) (BARNARD; PEERS, 2017). On the treatment of the referral according to the emergency procedure, CJEU section is appointed pursuant to art. 108. The same section will also decree the merit of reference unless it requests that the decision be taken by a broader training (article 113). In order to save time, it is possible to omit the written phase of the procedure "in which extreme urgency" and go directly to the oral phase (article 111) (BARNARD; PEERS, 2017).

C-296/08 PPU, Santesteban Goicoechea of 12 August 2008 was the first criminal case relating to the application of the urgent procedure in criminal matters, being a question concerning a person who was in custody, and maintaining the latter depended on the answer requested to CJEU. Continuing with C-278/12, Atiqullah Adil v. Minister for Immigratie, Integratie en Asiel case of 19 July 2012 clarifying the nature of PPU and its applicability on CJEU. PPU Advocate General , states that: "(...) it is

an exceptional procedure that can only be initiated for the causes that really need an urgent solution. Within CJEU it requires the concentrated use of both judicial and administrative resources. Because of this, if the proceeding is the subject of an excessive number of questions, it will jeopardize the treatment of the other causes of which the CJEU is invested. Evidently it should not be required (for example) with the intent of getting a response more quickly if the underlying facts do not justify it. For these reasons an application for admission to PPU can be submitted only if the circumstances justifying it are really present.

Therefore, the national court is obliged to state in its order for reference all legal and factual circumstances which demonstrate urgency and justify the application of PPU. This obligation is the counterpart of the principles of solidarity and cooperation governing relations between national judges and CJEU (Regulation (EU) 2016/95 of the European Parliament and of the Council of 20 January 2016 on the abstraction of certain acts in the sector of police cooperation and judicial cooperation in criminal matters). National court should not omit elements which are relevant to the assessment of CJEU. Afterwards, the note information also provided further clarification regarding the issues of interpretation, dispensing the court of last resort from the obligation to refer "if there is already a jurisprudence on the matter (and the new context does not raise any real doubt about the possibility to apply this jurisprudence) or where there is no doubt as to the correct interpretation of the rule of law in question (...)" (CJEU, C-278/12).

When such circumstances arise, that court may itself decide on the exact interpretation of EU law and its application to the factual situation which the order for reference must be sufficiently complete and contain all relevant information so as to enable CJEU, as well as those entitled to submit observations and to correctly understand the factual and legal context of the dispute in national proceedings. In particular, the order for reference must: contain a brief description of dispute's subject-matter, as well as of the relevant facts as established, or at least clarify the factual assumptions on which the question referred is based; report the contents of national provisions that can be applied and identified; identify accurately the relevant Union law provisions in this case; clarify the reasons which led the referring court to raise questions concerning the interpretation or validity of certain provisions of EU law and the link which it establishes between those provisions and the national legislation applicable to the

main proceedings; possibly include a summary of the essential part of the relevant arguments of the parties to the main proceedings.

Finally, the referring court, if it is considered able to do so, can briefly indicate its point of view on the solution to be given to the questions referred for a preliminary ruling and the question or questions referred must be set out in a distinct and clearly identified part of the decision referral, usually at the beginning or end of this.

The Treaty of Lisbon has foreseen with the new sub-paragraph of art. 267 according to which in case of questions referred for a preliminary ruling: "a judgment pending before a national court and concerning a person in custody, CJEU shall act as quickly as possible" (CHALMERS; DAVIES; MONTI, 2014). By not providing for the Rules of Procedure an ad hoc procedure for these cases it is to be assumed that the urgent or accelerated procedure will be applied according to the subject matter of the preliminary reference.

The judgment or order defining the preliminary ruling procedure is sent to the national court. The continuation and conclusion of the proceedings before the national court are entirely governed by the applicable national law. The rejection of the application by a national court is possible if it is manifestly apparent that the interpretation of EU law or the examination of the validity of a Union rule requested by that court have no relevance to the effectiveness or the object of the main proceedings or that the provision is manifestly inapplicable in the specific case. In the same way, even if there is a legal link between questions and a dispute pending before the referring body, this body is not called upon to apply the rules of union law whose interpretation it seeks. CJEU is not competent to rule on the questions raised since they do not concern an interpretation of EU law that responds to an objective and current need for the decision of the referring body (CJEU, C-428/93; C-147/91; C-2/96; C-361/97; C-314/96; C291/96; BROBERG; FENGER, 2014).

The national court is obliged to define the legal framework in which the required interpretation must be located and to provide CJEU with the elements enabling it to identify Union law issues requiring interpretation. In this light, CJEU can be advantageous in circumstances that the facts of the case are established and that the problems of pure national law are resolved at the time when the request for a preliminary ruling is put forward to enable CJEU to know all the elements relevant to the interpretation it must give (CJEU, joined cases C-71 and 72/89). The

power conferred on national court to refer CJEU is intended solely for the purpose of enabling it to resolve a dispute pending before it by applying EU law which is the subject of interpretation. For the same reason it was considered that CJEU is not competent to decide on a postponement when the procedure before the judge is already closed (CJEU, C-338/85; C-355/89; C-159/90)[25].

It is not also CJEU's task to express opinions on abstract or hypothetical questions within a function of a consultative function (CJEU, C-93/78; C-149/82; C-251/83; C-83/91; C-343/90; C-571/10)[26]. The preliminary ruling function is preordained to the composition of actual conflicts of interest through the contribution to the affirmation of the right in real and not eventual cases (CJEU, C-212/04; C-165/03).

7 VALUE AND EFFECTS OF PRELIMINARY RULINGS

Judgments given by the CJEU in a proceeding pursuant to art. 267 TFEU first of all bind the judge who carried out the reference (Benedetti v. Munari 52/76 of 3 February 1977) (CJEU, C-52/76). The latter cannot depart from it (CJEU, C-173/09) but can only refer to CJEU again for further clarification (CJEU, C-69/85).

The interpretation of an EU rule given by CJEU in the exercise of the competence attributed to it by the article clarifies the meaning and scope of the law (CJEU, C-62/93). The interpreted rule must also be applied by the judge to juridical relationships that have arisen and constituted before the interpretative sentence if the conditions are satisfied. Only exceptionally could CJEU be induced on the basis of a general principle of legal certainty inherent in Union legal order and taking into account the serious upheavals that the ruling could cause in the past in legal relations established in good faith to limit the possibility of those concerned to assert the interpreted provision in order to call into question those legal relationships. Such a limitation may be allowed only in the judgment concerning the interpretation required. The fundamental requirement of the uniform and general application of Union law implies the exclusive

[25] For further details see: B. VAN LEEUWEN, European standardisation of services and its impact on private law: Paradoxes of convergence, Hart Publishing, Oxford & Oregon, Portland, 2017, pp. 218ss.

[26] For further details see: D. LIAKOPOULOS, Legal basis and "trasversal" interpretation of the ultimate reforms of the European Union jurisdictional system, in Lex et Scientia, XXV (2), 2018, pp. 80-104.

competence of CJEU to decide on temporal limits to be applied to the interpretation given by it (CJEU, C-61/79).

The binding effect of the preliminary ruling does not preclude the national court of destination from considering that it is necessary to turn to CJEU again before deciding the main dispute, because of difficulty in understanding or applying the sentence to submit a new legal question to CJEU, or finally to provide new assessment data to induce CJEU, to resolve an already raised issue otherwise. The right to turn to CJEU again cannot allow the validity of the sentence already issued to be contested because otherwise the division of jurisdiction between national courts and CJEU (CJEU, C-69/85) would be called into question. Also to the interpretive judgments of CJEU must be extended the principle that regulates the relationships between Union legal system and national order already established in relation to the normative discipline positively produced by the European institutions.

Given the objective nature of jurisdiction exercised by CJEU in these cases, the scope of judgment goes beyond the boundaries within which the questions had been raised. The existence of a judgment handed down in the context of a preliminary ruling procedure makes the proposition of a new referral on the same or similar questions superfluous by another court and exempts him from the obligation of referral provided for by the third sub-paragraph of art. 267 TFEU.

This solution implies that courts other than those whose court is located at the base of the preliminary ruling may or rather must adapt themselves to the ruling. The principle was affirmed with particular clarity in the case of preliminary rulings declaring the invalidity of institution act (CJEU, C-66/80; BROBERG; FENGER, 2014) but it is peacefully accepted also with reference to the preliminary rulings for interpretation. In principle all preliminary rulings have ex tunc value. The interpretation contained in a preliminary ruling in fact clarifies the meaning and scope of the provision which must or should have been understood and applied from the moment of its entry into force and the rule thus interpreted "can and must be applied by the judge also to legal relations created or established before the interpretative judgment and to make the conditions that allow you to bring to the courts a dispute concerning the application of that rule" (CJEU, C-61/79).

CJEU reserves the power to limit over time the scope of its judgments, which are so much interpretative (CJEU, C-43/75;

BROBERG; FENGER, 2014), in particular with respect to the principle of legal certainty. The existence of a challenge to the validity of an EU measure before the court is not sufficient to justify a question to CJEU for a preliminary ruling, since the judges can examine the validity of an EU measure and consider the grounds for refusal to be unfounded. On the other hand, when the courts consider one or more grounds for invalidity advanced by the parties to be fundamental or, if appropriate, they must suspend the proceedings and bring them before the CJEU for a preliminary ruling on grounds of invalidity (CJEU, C-344/04; BROBERG; FENGER, 2014). The article is essential for the protection of the unitary nature of the law established by the Treaties. Its purpose is to avoid divergences in the interpretation of EU law which national courts are called upon to apply both to guaranteeing such an application by providing the national court with the means of overcoming the difficulties which may arise from the imperfection of conferring that right fully effective within the legal systems of member states (CJEU, C-166/73; C-146/73; C-25/67; C-52/76). At the same time it provides, the internal judges and the individuals administered on the occasion and by means of national judgments, an instrument of direct participation in the construction of Union system and the protection of the positions identified. By means of a reference for a preliminary ruling, a centralized mechanism for interpreting Union law and verifying the validity (with characteristics different from those set out in article 263 TFEU) of the acts issued by the institutions, on the request of a national judge during the course, a judgment pending before him when he has doubts or doubts about the meaning or validity of a European Union law. CJEU also following some decisive positions taken by national courts is without prejudice to the possibility of invoking the preliminary ruling on the part of those who have proposed a judicial action or an equivalent complaint before the sentence itself (CJEU, C-41/84).

The right of reference cannot be limited by a possible contrary agreement of parties and/or by rules of domestic law as is also known through the case: C-166/73, Rheinmühlen Düsseldorf v. Einfuhr-Und Vorratsstelle Fuer Getreide and Futtermittel of 16 January 1974, where CJEU has ruled in this sense that: "(...) a rule of domestic law that obliges courts of the last instance to comply with legal assessments emanating from a judge of higher grade, cannot deprive these judges of the right to ask CJEU for a preliminary ruling of the rules of Community law on which the legal assessments relate (...)" (CJEU, C-166/73, par. 4).

After CILFIT ruling in judgment: Schipani v. Italy of 21 July 2015 of ECtHR were absorbed CILFIT criteria that had to be limited in the light of a more rigorous system of review of national judgments by the courts of last resort. CJEU judges in Strasbourg ,followed a wide margin of action granted to courts of last resort by CJEU, did not seem to conciliate with art. 6 ECHE. ECtHR in Strasbourg assessed whether the national court of last instance had provided adequate justification (in the context of exceptions set out in CILFIT ruling) to refuse to submit to CJEU the interpretative issues raised by the parties in the proceedings before it. In the refusal by the national court of last resort to refer to CJEU matter without giving any reason to justify its decision, it recognized a violation of article 6 ECHR, or of the right to a fair trial. The Schipani case confirmed the position already adopted by ECHR in Dhahbi v. Italy case of 8 April 2014. In both cases, was a sentence of the same Italian court, i.e. Court of Cassation, and in both of its decisions, the Court of Strasbourg did not assess whether the refusal to refer the matter to CJEU was legal or illegal, but only if it had been motivated or not. However, the Dhahbi v. Italy case of 8 April 2014 was not taken unanimously. In fact, judge Wojtyczek has issued an interesting dissenting opinion right from his statement: "(...) in this case I voted with my colleagues to find a violation of the Convention, however, I do not convince the thesis developed by the majority (...) it is undeniable that the right to a fair trial includes the obligation to adequately justify judicial decisions (...) (RAINEY; WICKS; OVEY, 2017; COSTA, 2017; TIMMERMANS, 2013).

Even if the national court has a certain margin of discretion in the selection of subjects and in the admission of evidence, the latter must however justify his actions by indicating the reasons for his decision. However, this does not mean that article 6 of the Convention requires a detailed answer for each topic. The extent of the obligation to state reasons may in fact vary according to the nature of the judicial decision in question and must be examined in the light of the circumstances of the case. According to judge Wojtyczek, the decision on the violation of article 6 ECHR for non-referral should not rely on an "automatic" criterion, by which it is sufficient for the judge to fail to justify his refusal to refer for a preliminary ruling the CJEU to trigger a violation of article 6 ECHR (RAINEY; WICKS; OVEY, 2017). Consequently, a question raised by the parties and based on EU law oriented on the obligation to submit a preliminary ruling to CJEU should correspond (in view of the principle

enunciated by the majority in Schipani) a particularly accurate response from part of the national judge. In this way, if the parties raise issues and arguments relating to EU law, they should be treated more favorably than other matters and arguments raised by the parties, especially criminal liability matters (ECtHR, 2011). According to judge Wojtyczek, this preferential treatment does not seem sufficiently justified on the basis of ECHR. These, in place of an "automatic approach", defends the applicability of the more cautious approach adopted by CJEU of Strasbourg in the Pronina v. Ukraine case of 18 July 2006, where CJEU stated that "(...) the question of whether a court has failed to state its decision (...) can therefore be examined only in the light of the circumstances of the case (. ..)" (HARRIS; O'BOYLE; WARBIRCK, 2014).

In fact, there are "Recommendations for the attention of national judges, concerning the presentation of requests for preliminary rulings" published since 6 November 2012 (Recommendations for the attention of national courts, concerning the presentation of requests for preliminary rulings, 2012 / C 338/01, Official Gazette 6/11/2012), which are in addition to the "information note on references for preliminary rulings by national courts"[27], adapting it to the changes introduced by the new Rules of Procedure which came into force on 1 November 2012. Recommendations have been elaborated by CJEU itself and are devoid of binding value. Point 6 of these, in fact, states: "these recommendations, which have no binding value, aim to integrate the third title of CJEU Rules of Procedure (articles 93-118) and to guide member states courts on the appropriateness of make a reference for a preliminary ruling, as well as provide practical information concerning the form and effects of such a reference". Nonetheless, CJEU, in C-292/09, Calestani and Lunardi of 13 January 2010 (CJEU, C-292/09)[28], referred for the first time the information note, reproaching, in essence, the

[27] For further details see: E. REID, Balancing human rights, environmental protectiun and international trade: Lessons from the EU experience, Hart Publishing, Oxford & Oregon, Portland, 2015.

[28] For further details see: U. KILKELLY, Children's rights, ed. Routledge, London & New York, 2017. X. GROUSSOT, G.T. PETURSSON, The EU Charter of the Fundamental Rights five years on. The emergence of a new constitutional framework?, in S. DE VRIES, U. BERNITS, S. WEATHERILL, The EU Charter of Fundamental Rights as a binding instrument. Five years old and growing, Oxford University Press, Oxford, 2015. S.I. SANCHEZ, The Court and the Charter: The impact of the entry into force of the Lisbon Treaty on the ECJ's approach to fundamental Right, in Common Market Law Review, 49 (5), 2012, pp. 1566ss. T. TRIDIMAS, Fundamental rights, general principles of EU law and the Charter, in Cambridge Yearbook of European Legal Studies, 16 (3), 2014, pp. 364ss. H. VON DER GROEBEN, J. SCHWARZE, A. HATJE, Europäisches Unionsrecht, ed. Nomos, Baden-Baden, 2015, pp. 820ss.

Italian court for not having consulted it in advance to correctly introduce a reference for a preliminary ruling. The request for a preliminary ruling did not make it possible to distinguish with exact certainty what the provisions of EU law specifically referred to by the judge for the interpretation.

The Recommendations under consideration also provide some clarifications on how the referral provision should be designed and drafted in order to enable it to provide a useful answer to the referring court. First of all, in the interests of the referring court and the parties to the main proceedings, which come from the most varied legal cultures and do not necessarily master the technical jargon or the court system of the referring court, it is therefore necessary to simplify the problems as much as possible of the case and the legal issues underlying it, as the doctrine comments, exposing them with simple language and without resorting to excessively long sentences. A similar style reflects, on the one hand, the work style of CJEU and, on the other hand, helps to simplify the work. In the Recommendations, under the heading "form and content of the request for a preliminary ruling", it is stated that the request must be motivated in a succinct but complete manner and must contain all relevant information so as to enable CJEU, as well as the interested parties, to submit comments, to correctly understand the legal and factual background of the dispute in national proceedings.

By the way in C-20/05, Schwibbert of 8 November 2007 (BROBERG; FENGER, 2014), CJEU had stated that because the information provided in the preliminary ruling decisions should allow it to provide useful answers as well as giving member states governments and other interested parties the opportunity to submit comments pursuant to art. 20 of the Statute, it falls within its competence to ensure that this possibility is safeguarded, taking into account the fact that, pursuant to the aforementioned provision, only the referral decisions are notified to the interested parties. Thus, "(...) it is essential that the national court which raises the question provides a minimum of explanations on the reasons for the choice of (EU) rules of which it seeks interpretation and on the relationship which exists between those provisions and the national legislation applicable to the dispute (...)" (CJEU, C-20/05). Later, in point 25 of Recommendations, it is stated that the order should be structured using titles and subtitles and, above all, by numbering the paragraphs, as CJEU makes in its rulings. This undoubtedly favors the work of translation and the control of the various passages of the translated text. On the other

hand, in point 22, it is stated: "about ten pages is often sufficient to present the context of a request for a preliminary ruling in an appropriate manner". It is, in fact, useless to dwell on superfluous information that is not strictly necessary for the understanding of the issues raised and, in addition, an excessively long order risks to be partially translated or extracted. Point 22 goes on to point out that, although succinct, the order for reference must contain an exhaustive statement of the facts, an illustration of the elements of law which may be relevant and the reasons which led the national court to refer the matter to CJEU and, where appropriate, a reconstruction of the arguments developed by the parties in the main process, as well as, of course, the text of the question formulated at CJEU. In reality, as stated by CJEU in C-172/08, Pontina Ambiente case of 25 February 2010 (CJEU, C-172/08) the wording of the question is a relatively accessory element of the referral provision.

In that case, in fact, CJEU defended the position that, although the referring court had not expressly formulated questions, he had nevertheless provided sufficient information concerning both the factual and law elements which characterized the main proceedings, enable CJEU to understand the subject-matter of the request for referral and provide it with an interpretation of the relevant provisions of EU law that could be useful for the resolution of the dispute. As regards point 24 of Recommendations, finally, the referring court can, if it is considered able to do so, also succinctly indicate its point of view on the solution to be given to the questions referred for a preliminary ruling. In addition, as regards anonymity, since in the course of the preliminary ruling procedure CJEU takes over, in principle, the information contained in the order for reference, including the personal or personal data, it is therefore for the referral, if it deems it necessary, in itself, in its request for a preliminary ruling, to conceal certain data or to cover, with the anonymity, one or more persons or bodies involved in the main proceedings.

In conclusion, we can say that the interpretation binds in addition to the referring court even the higher courts that will be called to rule on the same cause in successive stages and degrees of judgment (e.g. endoprocessual effects). The effectiveness of interpretative sentences also extends beyond the main judgments (i.e. extra-judicial effects). This is for two reasons. These judgments, even though originating from a specific dispute, are of an abstract nature since they are intended to clarify the interpretation and the scope of Community provisions at stake. Because

of this declarative interpretation of CJEU unfolds its effects beyond the main quarrel. From this it follows that these judgments produce erga omnes effects not by virtue of their own regulatory force but by effect of the binding door of the same provisions interpreted. It must be considered that one of the fundamental aims of the reference for a preliminary ruling is to ensure the uniform application of Community law. The problem of temporal effects of preliminary rulings on interpretation must also be resolved having regard to the abstract nature and the declarative scope of such judgments. The described effect of incorporating the interpretation of CJEU into the text of the interpreted provision has as its logical consequence the retroactive effectiveness of the judgments in question.

8 PRECAUTIONARY MEASURES AND PRELIMINARY REFERENCE

CJEU has held that the principle of effective judicial protection of the rights conferred on individuals by EU law must be interpreted as meaning that it requires in member state's legal system that provisional measures may be granted until the competent court is pronounced on the compliance of national provisions with European law, when the granting of such measures is necessary to ensure the full effectiveness of the subsequent judicial decision on the existence of such rights (CJEU, C-432/05).

The national court may grant one or more precautionary measures on the condition that: the judge has serious reservations about the validity of the Union act and is directly responsible for making the reference for a preliminary ruling. The details of urgency should be used in the sense that provisional measures are necessary to prevent serious and irreparable damage. The judge takes full account of Union's interest. In assessing all these assumptions, the national judge respects CJEU decisions or of the court concerning the legitimacy of Regulation or an order in the interim proceedings aimed at granting the right in the union of similar precautionary measures (C-465/93).

Personal precautionary measures require for their application: the existence of serious indications of guilt and precautionary requirements. For these "precautionary requirements" we mean: a) the risk of pollution of the tests, provided that it is a concrete and current hazard; b) the risk of flight of the accused (the accused has fled or there is a real danger of his escape), provided that the judge considers that a sentence of more than

two years imprisonment may be imposed; c) the risk of recurrence of the crime, i.e. the existence of concrete danger that the investigated subject commits with the use of weapons or other means of personal violence or directed against the constitutional order or crimes of organized crime, or rather more frequent of the same species than that for which it proceeds. In the latter case, precautionary custody may be ordered only if the maximum penalty provided for the crime in question is equal to or greater than four years. C-167/15, X v. Presidency of the Council of Ministers of 28 February 2017 (CJEU, 2017) deals with the general system of compensation for victims of crime. In particular, the national court questions CJEU about the interpretation of art. 12, par. 2, of Directive 2005/80/EC.

Since these are procedures of a different nature, they cannot be formally gathered pursuant to art. 54 of CJEU Rules of Procedure, but nothing excludes and indeed it is reasonable to believe that CJEU will dispose a joint discussion hearing for the two cases, according to what is allowed by art. 77 of its Regulation (CJEU, C-108/16). Directive 2004/80/EC of the Council of 29 April 2004 relating to compensation to crime victims (EUROPEAN UNION, 2004, P. 15-18) is also of the same spirit. To this is added the Resolution 2897 of the European Parliament of 15 December 2011 on detention conditions in EU, which invited the Commission and EU institutions to make a legislative proposal on the rights of persons deprived of their liberty and to develop and apply minimum rules for prison and detention conditions, as well as uniform standards for the compensation of unjustly detained or convicted persons. In particular, EU Parliament considers that common minimum standards of detention should be applied in all member states and underlines the importance of granting specific protection to the detained mothers and their children, including through the use of alternative measures to detention in the best interest of the child.

Regarding the procedural road of emergency measures, we recall article 104b which provided for the urgent preliminary ruling procedure, simplifying the various stages of the proceedings before CJEU and which could only be requested if it was absolutely necessary for CJEU to rule on referral as soon as possible. The circumstances of law and fact that proved urgency should also be set out in the application, highlighting the risks that would have been incurred if the reference had followed the normal course of the preliminary ruling procedure. This is to allow CJEU to quickly decide whether or not the conditions exist for the application of PPU. Rules of Procedure, in art. 104 ter of the old Rules of Procedure, in a text

substantially incorporated the new Regulation, identified the procedure to be followed, establishing that this could be requested by the national court, illustrating the circumstances of law and fact that, in its opinion, "urgency and justify the application of this derogatory procedure".

In that request, which did not necessarily have to be contextual to the actual reference, the national court was also required to indicate, and "as far as possible", the solution to the questions which it considered most appropriate. If there had been no request to do so, but the use of PPU would appear appropriate in the light of the characteristics of the main proceedings, the President of CJEU, exceptionally, could also solicit the assignee of the case to verify the need for submit the reference to the said procedure. The decision to refer a matter to the urgent procedure was adopted by the section, once the report by the judge Rapporteur has ended and after hearing the Advocate General. The article then continued prescribing the duties of notification (whether the judge decided to submit or that he decided not to do so) referred to in article 23, letter. a) of the Statute under the conditions provided for in that provision and stated that the decision referring to the urgent procedure set the deadline by which the persons referred to in art. 23 could file memoranda or written observations. Furthermore, the decision could specify the points of law on which those pleadings or written observations were to concern and could also set the maximum length of those writings. Nonetheless, the section, in cases of extreme urgency, was free to decide to omit this written phase. As soon as the notification referred to above was made, the reference for a preliminary ruling and the decision to refer or not the urgent procedure were also communicated to the persons referred to in article 23 of the Statute other than the addressees of the notification, the latter and the data subjects were informed as soon as possible of the foreseeable date of the hearing. The preliminary reference to the urgent procedure, as well as the written submissions or observations filed, were notified to the interested parties referred to in article 23 of the Statute, different from the parties. Finally, as regards the designated section, art. 104b to the fifth paragraph, established that it could decide to meet in the college of three judges or to refer the case to the CJEU for the purpose of its assignment to a wider judging panel.

In reality, the provisions are almost repeated in the Regulation of CJEU procedures of 23 April 2015 without any particular news, if not the fact, of a reorganization of this discipline in a number of provisions, which facilitate its comprehension and operation. As a consequence, articles 107

and 108 consistently repeat what was stipulated in the old regulation of art. 104ter, par. 1 (CJEU, C-491/10). The only change is the replacement of the expression "national judge" with "referring court". PPU can be activated at the request of national court or, exceptionally, ex officio at the request of the president of CJEU. This exceptional nature of the request by the President is demonstrated by the fact that, to date, there has been only one urgent preliminary ruling procedure ordered ex officio. Of particular importance are the completeness and clarity of PPU application, since it must explain the circumstances of law and fact that prove urgency (even if no indication is given about the circumstances to prove the urgency) and the risks you would incur if the reference followed the normal procedure.

To the extent possible, the referring court is also invited to briefly clarify its point of view on the solution to be given to the question or proposed questions, so as to facilitate the position of interested parties involved in the procedure, as well as CJEU decision, thus contributing to the speed of the same. Article 109, on the other hand, with regard to the written procedure for the urgent procedure, prescribes that the decision to treat or not the reference for a preliminary ruling by an emergency procedure must be notified immediately to the referring court and to member state parties to which the referring court belongs to the European Commission and to the institution that has adopted the act on which its validity or interpretation is contested. As was the case in article 104b, the decision to treat the reference by an emergency procedure sets the time limit within which the latter may lodge written observations or written observations and may specify the points of law on which they must relate and the maximum length of those acts. Furthermore, where a request for a preliminary ruling refers to an administrative or judicial proceeding in a member state other than that to which the referring court belongs, CJEU may invite that member state to provide any clarification deemed useful. It should be noted that, given the nature of PPU, which is dealt with by an ad hoc section of CJEU, there is a limitation regarding the identification of the persons authorized to submit written observations, while participation in the hearing is extended to all set off. Also with regard to the written procedure, the new Regulation establishes that, after being notified, the request for a preliminary ruling must be communicated to the "interested parties referred to in article 23 of the Statute other than the recipients of the notification", and the decision to treat or not the postponement by an emergency procedure must be communicated to them as soon as the

referring court and the parties, to the member state to which the referring court belongs, he European Commission and to the institution which adopted the referral an act whose validity or interpretation is contested. In addition, the persons referred to in article 23 of the Statute must be informed as soon as possible of the foreseeable date of the hearing. Once the written procedure in the urgency procedure has ended, the reference for a preliminary ruling and the written submissions or observations filed must be notified to the persons referred to in article 23 of the Statute, other than the parties and persons referred to in the first paragraph of article 109.

As it was in art. 104b, the request for a preliminary ruling must be accompanied by a translation and possibly by a summary. Furthermore, art. 104 ter is also reported literally with regard to the notification of the pleadings or written observations and with regard to the date of the hearing. According to article 111, the written procedure can be omitted if decided by the designated section in cases of extreme urgency. Then, whether the written phase takes place or not, the designated section states, after hearing the Advocate General. As in the old Rules of Procedure, it may decide to meet in a panel of three judges: the chairman of the designated section, the judge and the first or, possibly, the first two judges appointed on the basis of the list provided for in article 28, paragraph 2, of Regulation. The section designated, as established by art. 113, can also ask CJEU to assign the case to a wider panel of judges and the urgent procedure continues before the new panel, if appropriate after the reopening of the oral procedure. To conclude, once again they do not reveal any new features with respect to art. 104-ter of the old Regulation as regards the transmission of procedural documents. Article 114 of the Rules of Procedure, in referring to art. 106 of the same document, provides that the transmission of documents to the registry can be done by "fax or any other technical means of communication available to CJEU and the recipient". In the old regulation, in the same way, the transmission of the documents in PPU took place by means of a "telecopier or any other technical means of communication available to CJEU and the addressee". It should be noted that the terms fax and fax are synonymous.

There are few innovations compared to the text of the old regulation, except for the important fact that today, unlike the old Regulation, the urgent preliminary ruling procedure is finally governed by a number of provisions that will make it easier to understand and operation. Lastly, it should be noted that, in the new Regulation, it is finally possible for CJEU to invite a member state other than that of the referring court

to submit written observations or to reply in writing to certain questions that may arise in the course of a PPU. The rationale for this prediction lies in the fact that during the course of its evolution, PPU has witnessed an increasing number of causes, such as those relating to the European arrest warrant and the surrender procedures between member states or related to the matter, i.e. marriage and parental responsibility, which often affect the interests of two, if not several member states. Once the discipline of the urgent preliminary ruling procedure contained in the Rules of Procedure of CJEU has been dealt with, it is necessary to conclude with the discipline deriving from the second part of the Recommendations we have analyzed in the first chapter regarding the preliminary reference, entitled "Special provisions concerning urgent references for preliminary rulings". In case: C-241/15, Niculaie Aurel Bob-Dogi of 1st June 2016 (CJEU, C-241/15), CJEU is called once again to rule on the interpretation of Framework Decision 2002/584/JHA on the European Arrest Waarant (EAW) and the delivery between member states. In particular, it must establish (1) whether, for the purposes of the application of art. 8, par. 1, lett. c) of the aforementioned Framework Decision, with the expression "existence of an arrest warrant" should be understood as a national-internal arrest warrant issued in accordance with the rules of criminal procedure of the issuing member state, and therefore distinct from the EAW, and (2) if the answer to the first question is in the affirmative, if the non-existence of a national-internal arrest warrant may constitute a ground for implicit non-execution by EAW.

The second part of Recommendations (for the attention of national courts, concerning the presentation of requests for preliminary rulings, 2012/C 338/01, OJ 6/11/2012) opens the conditions for applying the accelerated procedure and the procedure urgency and stating that the application of such proceedings is decided by CJEU, on the basis of a reasoned request by the referring court or, exceptionally, ex officio, where the nature or specific circumstances of the case make it appear indispensable. Subsequently, in order to illustrate the constraints related to the urgency procedure, CJEU traces the features of the accelerated procedure stating that, given that this procedure imposes relevant constraints to all the participants in the same and, in particular, to the whole of the invited member states to submit written or oral observations in much shorter terms than ordinary ones, its application must be requested only in special circumstances, which justify a quick ruling by CJEU on the issues

proposed. Having said that on the accelerated procedure, therefore, CJEU affirms that the urgent procedure, which only applies in the areas referred to in Title V of Part Three of TFEU, concerning the area of freedom, security and justice, imposes more stringent to the participants "since it limits, in particular, the number of parties authorized to submit written observations and allows, in cases of extreme urgency, to completely omit the written phase of the proceedings before CJEU" (OPPERMANN; CLASSEN; NETTSHEIM, 2016).

Consequently, CJEU continues, "the application of this procedure must be applied only in circumstances where it is absolutely necessary for CJEU to rule on questions referred by the referring court as soon as possible(...)" (OPPERMANN; CLASSEN; NETTSHEIM, 2016). Then, in point 40, Recommendations provide examples of such circumstances (without providing an exhaustive list). CJEU states that "in particular because of the diversified and evolving nature of Union's rules governing the area of freedom, security and justice, it may be appropriate for a national court to decide to submit an application for an urgent preliminary ruling procedure, example, in the case referred to in the fourth subparagraph of article 267 TFEU, of a person detained or deprived of liberty, if the solution given to the question raised is decisive for assessing the legal position of that person" (OPPERMANN; CLASSEN; NETTSHEIM, 2016).

Recommendations invite the referring court to set out precisely the legal and factual circumstances which demonstrate the urgency and, in particular, the risks involved if the postponement were to follow the ordinary procedure, in order to allow CJEU to decide quickly whether the urgent preliminary ruling procedure should be applied. Moreover, "as far as possible", the referring court must briefly specify its point of view on the solution to be given to the questions proposed. This clarification, emphasizes CJEU, "facilitates the position of the parties to the main proceedings and of the other interested parties involved in the proceedings, as well as CJEU decision, and thus contributes to the speed of the procedure (...)" (OPPERMANN; CLASSEN; NETTSHEIM, 2016). Point 43 further states that the application for the accelerated procedure or the urgency procedure must be presented in an unambiguous form, allowing CJEU Registry to immediately ascertain that the file requires specific treatment. The referring court wishing the criminal case to be dealt with by an emergency procedure will therefore have to specify the type of procedure requested and include in its application a reference to the

relevant article (article 107) of the Rules of Procedure. This mention must appear in a clearly identifiable point in the decision to refer (for example, in the heading or by a separate judicial document) or, possibly, in a letter accompanying the referring court which can properly mention the request. Furthermore, compared to the ordinary referral procedure, CJEU submits that the summary nature of the order for reference is even more important if it is an urgent preliminary ruling procedure because it contributes to the speed of the procedure. Furthermore, communications with the referring court and with the parties to the proceedings also need to be speeded up and facilitated. For this reason, the judge submitting an application for the accelerated or the urgency procedure is asked to indicate the e-mail address, and possibly the fax number, which can be used by CJEU, as well as e-mail addresses, and possibly fax numbers, representatives of the parties involved. The discussion of postponement and application can start from the receipt of this copy, but the original of these documents must however be sent to CJEU Registry as soon as possible.

Recommendations we have just dealt with play a very specific role in our discussion. These go to provide a kind of link between the provisions of the Rules of Procedure, which are binding rules governing the operation of the preliminary ruling procedure to CJEU (CJEU, C-388/08) and the practice developed by CJEU itself through its jurisprudence. Although lacking a compulsory nature, these provide useful information to the referring courts who are preparing to appeal to CJEU. The vast majority of CJEU judges have had the opportunity to deal with a case which is the subject of a request for an urgent preliminary ruling procedure and five judges have always taken part in the work of sections which have always been competent, even though pursuant to article 104b, paragraph 5 of the Rules of Procedure (which is no longer in force and replaced by articles 107 and 108 of the new Regulation), the designated section may decide to meet in a panel of three judges. Only in case: C-357/09, Kadzoev of 30 November 2009 (CJEU, C-357/09; BROBERG; FENGER, 2014), the designated section decided to refer the case to CJEU for the purposes of its allocation to a larger panel (the Grand Section) (CJEU, C-195/08; C-211/10; C-400/10; C-497/10)[29]. More importantly, what the rapporteur

[29] For further details see: C. BRIÉRE, A. WEYEMBERHG, The needed balances in EU criminal law: past, present and future, Hart Publishing, Oxford & Oregon, Portland, 2017. A. PIETER VAN DER MEI, The European arrest warrant system: Recent developments in the case law of the Court of Justice, in Maatricht Journal of European and Comparative Law, 24 (6), 2017, pp. 884ss. K. AMBOS, European criminal law, op. cit. M. BROBERG, N. FENGER, Preliminary references to the European Court of Justice, op. cit.,

draws the attention to is the fact that the management of the cases subject to the urgent procedure was, from time to time, particularly demanding for the section concerned.

Lastly, the last points raised by the rapporteur were: the practice followed by CJEU with regard to decisions to initiate the emergency procedure or not and the method of communication (CJEU, C-155/11). With regard to the first point, the Report highlights how the practice of PPU precludes a duty to state reasons for decisions that are favorable or contrary to the initiation of an urgent procedure. Furthermore, through an analysis of the factual and legal circumstances in which the urgent preliminary ruling procedure was granted, the President of CJEU pointed out that in two types of situations CJEU will promptly rule: a) when there is a risk of a irreparable impairment of the parent-child relationship, for example where repatriation of a child deprived of contact with one of his parents is involved (such as Rinau Detiček, Povse, McB, Aguirre Zarraga and Mercredi), or family reunification (in the case of Imran b) when the person is in custody and the maintenance of the latter depends on the answer requested to CJEU (instead in cases: C-296/08 PPU, Santesteban Goicoechea of 12 August 2008 (CJEU, C-296/08; BROBERG; FENGER, 2014), Leymann e Pustovarov, Kadzoev, Gataev e Gataeva (CJEU, C-105/10) and Hassen El Dridi) (CJEU, C-61/11; BROBERG; FENGER, 2014).

This practice does nothing more than conform to what CJEU stated in its information note of 28 May 2011 on the introduction of preliminary rulings by national courts. It was stated: "(...) a national court could decide to present a request for an urgent preliminary ruling procedure in the presence, for example, of the following situations: in the case referred to in art. 267, fourth paragraph, of TFEU, of a person detained or deprived of liberty, if the solution given to the question raised is decisive for assessing the legal situation of that person, or in a dispute relating to parental responsibility or custody of children, where the jurisdiction of the court seised under EU law depends on the solution given to the question referred for a preliminary ruling" (T. OPPERMANN, C.D. CLASSEN, M. NETTESHEIM, 2016). A further point of reference for CJEU's practice to apply the urgent preliminary ruling procedure in situations of deprivation of liberty; principle taken by article 267, lett. 4, TFEU. With regard to the second point, that is to say the means of communicating the documents (both within and with the interested parties), on the other hand, it is highlighted in the Report that this was done electronically thanks to

the preparation of "functional boxes", specifically devoted to exchanges relating to the urgent preliminary ruling procedure. The advantage of these "functional boxes", according to those who drafted the Editorial Staff, has become "relative to the speeding up of the transmission of the information that was expected", even if it should be recognized that they have allowed to place the communications relating to an urgent preliminary ruling procedure in a separate area, subject to particular and continuous attention, thus contributing to keeping all the subjects involved in a state of alert.

It is clear from the report analyzed here that the reference period made it possible to refine the urgent preliminary ruling procedure by CJEU. For this reason, what emerges is also the warning that, even if the resources were up to this moment sufficient for the efficiency of the system, the significant increase in motivated applications could have required considerable efforts to maintain the objectives repercussing on the treatment of the other causes. The rationale of the procedure in question, therefore, can only be understood in the light of the increasing legislative activity in the area of freedom, security and justice and in the light of the need in this area, as indeed for the application of all Union law, Union rules are implemented in a uniform manner throughout the EU territory.

It is important to note, in this regard, that the needs of the area of freedom, security and justice are often characterized by urgency (OPPERMANN; CLASSEN; NETTSHEIM, 2016), to which the ordinary preliminary ruling, which has a more complex procedure, cannot be answered quickly. The urgent procedure is therefore intended to enable CJEU to deal with the most sensitive issues, such as those involving the temporary deprivation of a person's freedom or those related to parental responsibility or custody of children, against which national judges, already worried about the time of national justice, could be unwilling to postpone the trial proceedings to CJEU, with the result of a further lengthening of the time trial. The notion of urgency (CJEU, C-477/16; C-453/16; C-452/16; C-439/16) should be understood and referred to the need to provide a judicial definition of hypothesis in which personal freedom or the physical and mental integrity of the person are at stake, as in the hypotheses, in fact, of custody of the children or relating to a detained person or deprived of freedom.

9 A "TRANSVERSAL" INTERPRETATION AND THE FUTURE OF THE EUROPEAN UNION'S JUDICIAL SYSTEM

The draft reform in question undoubtedly poses fewer "political" problems than those that led to the doubling of the number of EGC judges and therefore seems to be able to affirm that it should be able to be approved more quickly. At that point, the jurisdictional architecture of the Union would be really distorted with respect to the sketch drawn in Nice, as already art. 225 EC (now Article 256 TFEU), in par. 1, finally, that the articles of association may provide that the EGC is competent for categories of (direct) appeals in the first part of the rule and other than the jurisdiction in preliminary rulings, which is addressed by par. 3 of the same forecast. In any case, it should still be in line with-or at least not prejudice-at least two of the three objectives set out by the Group of Experts set up by the EC in 1999 to propose reforms to the Union's judicial system, in particular to ensure that maintaining uniformity and consistency of EU law and safeguarding the judicial protection afforded to citizens, Member States and institutions, and ensuring that the quality of the process is not undermined. On the contrary, not a few doubts arise-at least in relation to the first of the planned reforms-with regard to the third of the objectives identified by the Group of Experts, consisting of reducing the timing of decisions, possibly strengthening their impact in national laws.

If the project in question can be read as a positive signal to the extent that it reinforces the role (and the perception itself) of the CJEU as a (almost exclusively) "constitutional" (and) judge of the preliminary reference, it raises some doubts about effectiveness of the infringement procedure in a short time. And it seems then to be able to explain not so much in light of the need to reduce the workload of the CJEU-to retain the only (or almost) references for preliminary rulings-but to give new work to today's forty-seven (rectius, forty-six, as seen), and in the near future (as a result of the Brexit) fifty-four, judges of the EGC, thus confirming the need for their ("sweaty") doubling.

However, even the numbers of the infringement procedures instituted before the CJEU and those that it has decided in recent years have doubts about the real necessity of the reform (or at least reflect on its premature nature), even in the face of the number of causes that would continue to be judged by the apex judge in virtue of the exceptions dictated by the new art. 51, par. 1 of the Statute and the hypothesis of "postponement"

of the exercise of the competence from the EGC to the CJEU. And, what is worse, in view of the fact that the "generalized" referral of jurisdiction to the EGC risks reducing the deterrent effectiveness of the infringement procedure, in contrast to the changes that have always been made to it (and to the studies that followed over the years with the aim of finding solutions that would increase their deterrence, indeed, and certainly not reduce it). In fact, the jurisdiction entrusted to the EGC in first instance implies an overall extension of the procedure, the judgments adopted by it being able to be challenged and, therefore, of further scrutiny by the CJEU. It is true that the non-compliance is always crystallized at the expiry of the deadline set in the reasoned opinion, but the State would feel "free" to remain in default longer (or at least that risk is particularly high), until the decision of the CJEU. The disincentive seems to be the circumstance that the appeal does not normally have a suspensive effect and, therefore, the fact that the State should in any case eliminate the infringement already from the moment of its verification by the EGC. Just as it would serve, in our opinion, the corrective-referred to the aforementioned modification of the art. 61 of the Statute-for which the CJEU, in the pourvoi, would decide definitively without referring to the EGC: this because two degrees of judgment still require longer times than a single proceeding. Furthermore, the reduction in deterrence would also be found with respect to the possible launch of the second infringement procedure pursuant to art. 260, par. 2, TFEU, also postponed over time, not long-term-noting the fact that the coefficient of duration of the default to calculate the lump sum would in any case be determined in relation to a later time period.

It also can not go unnoticed as this temporal expansion of the procedure would have negative repercussions also on individuals (natural and legal persons): consider, for all, the jurisprudence on the responsibility of the State for violation of EU law which considers proven to be serious and manifest of the violation in the presence of a ruling to ascertain the non-compliance or preliminary ruling (which also identifies the non-compliance of national law with the law of the Union being interpreted) (LAZOWSKI; BLOCKMANS, 2016). Evidently, the longer it takes for the EU judge to ascertain the fault of the State, the harder it will be for the individual affected by the breach to prove the most difficult of the three conditions laid down by the Luxembourg court to obtain compensation for the damage suffered, precisely) the serious and manifest violation.

Even this last observation makes it clear that the Member States, on the other hand, should instead welcome the amendment in question, gaining time before it comes to a definitive assessment of the infringement (whose "faults", even at the level of internal politics, they may perhaps be leaning against the previous or subsequent Government).

In this perspective, if the aim should be to not see reduced the deterrence of the infringement procedure, little meaning would have really generalized, without exceptions and without possible referrals to the CJEU, the competence of the EGC, because in a greater number of cases we would find the negative effects tested. One might rather ask why not to ban the appeals of the decisions issued by the EGC, issued at the end of the infringement procedure. The States would hardly accept to be judged in first and only degree by the EGC, but because to assure them a double degree of judgment in a procedure that historically has never contemplated it and that, as seen, is not indispensable from the point of view of respect of fundamental rights, not being a criminal matter? (CRAIG; DE BÚRCA, 2015).

Perhaps, to enhance the role of the EGC (and ensure a workload appropriate to all judges, once it is in full ranks) and avoid an almost systematic appeal of its decisions with a consequent increase (rather than reduction) of the load of the CJEU (which at least formally seems a ratio underlying the reform) (COHEN, 2017), one could then at least envisage a system of filtering the appeals (also) with respect to the rulings of the EGC issued at the outcome of the infringement procedures. The eligibility criteria may be the same or similar to those envisaged by the reform project as regards the postponement of the jurisdiction from the EGC to the CJEU (which in fact coincides with the hypotheses in which article 256, paragraph 3, TFEU provides for a deferral of the preliminary ruling by the trial judge to the CJEU), and in particular the need to make decisions on matters of principle, or constitutional significance, and to ensure the unity and coherence of Union law. It is recalled that the draft reform of the Statute is currently being examined by the EP and the Council and that the position of the EC, called to provide an opinion pursuant to art. 281 TFEU and whose observations have always played an important role in the statutory changes (VON DER GROEBEN; SCHWARZE; HATJE, 2015).

Waiting to know the developments of the legislative process, it seems opportune still a brief reflection on the sidelines of the proposal in question, concerning a further modification of the art. 51 of the

Statute, also (as the second proposed reform today to be examined by the legislator) discussed internally at CJEU a few years ago, but never formalized. This is a revision aimed at granting the CJEU first and only instance the jurisdiction over damages actions (pursuant to article 268 TFEU) (MILITARU, 2013; GUTMAN, 2011; LECZYKIEWICKS, 2013) caused by one of the jurisdictions of the CJEU for violation of the principle of reasonable duration of the process. Although the practice has shown that these are marginal cases, since the cases now filed before the EGC due to an unlawful judicial request (although in different composition) are very limited, it is indeed reasonable that the CJEU decided not to submit to the EP. It is in fact quite clear that the current system of division of competences has proved to be absolutely unsatisfactory from the point of view of compliance with the reasonable period of judgment: almost four years after the introduction of compensation actions before the EGC, appeals are still pending before the CJEU.

CONCLUSION

In conclusion, we can say that the modification in question, on the other hand, in the face of a single degree of judgment, would allow us to obtain compensation more quickly, satisfying requirements of procedural economy and impartiality (full) of the judicial body. Of course such impartiality could be "cracked" again where the offense was challenged at the CJEU rather than at the EGC. Since it is not conceivable that the control of the CJEU's work is left to the primary care court, it could not re-propose the current operational solution for the EGC, namely the assessment of the responsibility of the CJEU by a different judicial section the offense is charged (DOMENICUCCI; MUGUET-POULLENNEC, 2017).

It is true, however, that the cases in which the infringement of the reasonable duration of the trial could be held responsible (exclusively) for the CJEU seem to be very limited. This does not seem to be foreseeable in the proceedings arising from a preliminary reference, given the increasingly reduced (and not further compressible) times in which the CJEU comes to a decision, even if it does not resort to the accelerated procedure or the urgent preliminary ruling procedure, nor does it resolve the case with an order pursuant to art. 99 RP CG, but operate according to the "ordinary" rules of the preliminary ruling procedure (BECK, 2012). In direct actions the CJEU has jurisdiction in the first and only degree (today still in all

infringement procedures and) with regard to inter-institutional conflicts and appeals promoted by the Member States according to the specifications set forth in art. 51 of the Statute: with respect to this dispute, it does not seem possible to establish an action of non-contractual liability brought by an Institution or, indeed, by a Member State against the Union (assuming that the matter is resolved on a different plan from the strictly legal one) (LIAKOPOULOS, 2018b). The same could be said about the possible transfer of jurisdiction to the EGC of the infringement procedures, with a judgment in the appeal before the CJEU. Finally, and more generally with respect to the pourvois-which can also be promoted by natural and juridical persons-the organizational and procedural changes made with the refinery in 2012 (GAUDISSART, 2012; GUTIERREZ-FONS, 2014) seem nevertheless to largely avert the risk in question (GREER; GERARDS; SLOWE, 2018).

The procedure to be followed, however, in the light of the new Rules of Procedure of CJEU, and as outlined in the case law, prescribes that the national court requesting urgent preliminary reference must illustrate the circumstances of law, prove the necessity and justify its application. In this request, which does not necessarily have to be contextual to the actual postponement, the national judge will be obliged to indicate also, and "as far as possible", the solution to the questions posed that it considers most appropriate. It is then possible, as pointed out above, the President of CJEU to solicit a ruling on the opportunity to follow this procedure. According to CJEU position, the text of art. 23 bis, which provides the establishment of preliminary ruling postponement relating to the area of freedom, security and justice, a procedure of urgency, does not appear suitable to put a limit to the same art. 267 TFEU, fourth paragraph. A different interpretation would make the rule of the Treaty meaningless. In fact, thanks to the emergency procedure, the protection of those citizens who are subject to restrictive measures of personal liberty is unquestionably high, providing that, under certain circumstances, CJEU is active and decides in the shortest possible time.

This innovation is nothing more than the acknowledgment by the Union of the ever-increasing pervasiveness of EU's legal system in all the legal systems of member states, even in those sectors which were once considered to be subject to the exclusive jurisdiction of the states. Article 267, fourth paragraph, therefore, arises from the development of the European integration system and the Union's material competences,

from the intense curial activity and from the need to protect particularly sensitive legal positions. The court of justice plays a fundamental role in this system. Not only that, it is now competent to give preliminary rulings, without restrictions, on all aspects of the area of freedom, security and justice, but contributes to the creation of a common area of criminal justice, to be achieved through the strengthening of procedural rights of suspects and defendants in criminal proceedings.

The preliminary ruling procedure provided for in article 267 TFEU thus constitutes the keystone of the judicial system in EU which, as stated by the Court (CJEU, C-614/14), establishes a judicial dialogue between CJEU and member states courts, aims to ensure the unity of interpretation of EU law, thus allowing the coherence, full effectiveness and autonomy of this right to be ensured and, ultimately, the special character of the legal system established by the Treaties.

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