

Ensuring the effectiveness of EU law

Findings of the Court of Justice of the European Union

The CJEU was asked to answer the following questions:

1. Must Article 267 TFEU and Article 94 of the Rules of Procedure, read in the light of the second paragraph of Article 47 and Article 48(1) of the Charter, must be interpreted as precluding a national rule being interpreted in such a way that it obliges a referring court to disqualify itself from a pending case on the ground that it sets out, in its request for a preliminary ruling, the factual and legal context of that case?
2. Must EU law, and in particular Article 267 TFEU, be interpreted as precluding the possibility, after the delivery of the preliminary ruling, of the referring court making no change to the findings of fact or law made in the request for a preliminary ruling or, on the contrary, the possibility, after that delivery of the preliminary ruling, of the referring court hearing the parties again and undertaking further inquiries, which might lead it to alter those findings of fact or law?
3. Must EU law be interpreted as precluding the referring court from applying a national rule, such as that at issue in the main proceedings, which is deemed to be contrary to EU law, on the ground that that rule ensures a higher degree of protection of the parties' fundamental rights?

As regards the first question, the Court observed that where a referring court presents, in its request for a preliminary ruling, the relevant factual and legal context of the main proceedings, that is a response to the requirement of cooperation that is inherent in the preliminary reference mechanism and cannot, in itself, be a breach of either the right to a fair trial, enshrined in the second paragraph of Article 47 of the Charter, or the right to the presumption of innocence, guaranteed by Article 48(1) of the Charter.

A national rule, such as that of Article 29 of the NPK, may lead a national court to choose to refrain from referring questions for a preliminary ruling to the Court, in order to avoid, on the one hand, being disqualified and exposed to disciplinary penalties or, on the other, lodging requests for preliminary rulings that are inadmissible. Consequently, such a rule is detrimental to the prerogatives granted to national courts and tribunals by Article 267 TFEU and, consequently, to the effectiveness of the cooperation between the Court and the national court and tribunals established by the preliminary ruling mechanism.

In the light of all the foregoing, the answer given by the Court to the first question referred to it is that EU law precludes a national rule which is interpreted in such a way as to oblige a referring court to disqualify itself from a pending case, on the ground that it set out, in its request for a preliminary ruling, the factual and legal context of that case.



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As regards the second question, the Court first recalled its settled case law, according to which Article 267 TFEU solely requires the referring court to give full effect to the interpretation of EU law provided by the Court. Neither that article, however, nor any other provision of EU law, requires the referring court, after the delivery of the preliminary ruling, to alter the findings of fact or law made in a request for a preliminary ruling. Equally, no provision of EU law prohibits the referring court from altering, after the delivery of the preliminary ruling, its findings in respect of the relevant factual and legal context. Article 267 TFEU, must, thus, be interpreted as meaning that it does not require the referring court to hear the parties again and to undertake further inquiries, nor does it prohibit the referring court from doing so, provided that the latter gives full effect to the interpretation of EU law adopted by the Court.

In response to the third question, the Court made reference to its findings with regards to the first question, i.e. to the fact that when a national court sets out, in the request for a preliminary ruling, the factual and legal context of the main proceedings that is not, in itself, a breach of the fundamental right enshrined in article 47 CFR. Consequently, the obligation to disqualify itself cannot be considered as serving to enhance the protection of that right. The Court then proceeded to remind that according to its settled case law, the referring court is obligated to refuse of its own motion to apply any conflicting provision of national law, and to alter established case-law, where necessary, if that is based on an interpretation of national law that is incompatible with EU law. It follows that, in this case, the referring court was obliged to ensure that Article 267 TFEU is given full effect, and if necessary to disapply, of its own motion, Article 29 of the NPK as interpreted by the Varhoven kasatsionen sad (Supreme Court of Appeal), where that interpretation is not compatible with EU law.