KEY THEME[1]
Article 6 (civil)
The obligation to give reasons for a refusal to make a preliminary reference to the Court of Justice of the European Union

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Introduction

Article 6 § 1 of the Convention requires that domestic courts give reasons for their decisions. It follows that there is an obligation on domestic courts to give reasons, in the light of the applicable law, for any decisions in which they refuse to refer a preliminary question to another national or international authority (*Ullens de Schooten and Rezabek v. Belgium*, 2011, § 60).

In the member States of the European Union (EU), when a question is raised concerning, in particular, the interpretation of the Treaties, the Charter of Fundamental Rights of the EU or of measures taken by EU institutions in a case pending before a national court, that court *may* bring the matter before the Court of Justice of the European Union ("CJEU") for a preliminary ruling. When such a question is raised in a case pending before a national court of last instance, that court is *required* to refer the matter to the CJEU for a preliminary ruling, pursuant to Article 267 of the Treaty on the Functioning of the European Union.

However, this obligation on courts of last instance under EU law is not absolute. In its *Cilfit* judgment[2], the CJEU clarified that national courts are not required to refer a question to the CJEU in the following three cases: (i) when they have established that the question raised is irrelevant, (ii) when the provision of EU law in question has already been interpreted by the CJEU, or (iii) when the correct application of Community law is so obvious as to leave no scope for any reasonable doubt.

Principles drawn from the current case-law

- The Convention does not guarantee, as such, any right to have a case referred by a domestic court to the CJEU for a preliminary ruling (*Ullens de Schooten and Rezabek v. Belgium*, 2011, § 57; *Baydar v. the Netherlands*, 2018, § 39; *Sanofi Pasteur v. France*, 2020, § 69).
- The Court does not however rule out the possibility that a court's refusal to grant a request for such a referral may, in certain circumstances, infringe the fairness of proceedings. The same is true where the refusal proves arbitrary, that is to say where there has been a refusal even though the applicable rules allow no exception to the principle of preliminary reference or no alternative thereto, where the refusal is based on reasons other than those provided for by the rules, and where the refusal has not been duly reasoned in accordance with those rules (*Ullens de Schooten and Rezabek v. Belgium*, 2011, § 59).

[1] Prepared by the Registry. It does not bind the Court.
[2] Judgment of the Court of Justice of 6 October 1982, in *CILFIT v. Ministero della Sanità*, C-283/81, EU:C:1982:335; see also the judgment of the Grand Chamber of the CJEU of 6 October 2021, in *Consorzio Italian Management e Catania Multiservizi*, C-561/19, EU:C:2021:799 and that of 15 October 2024, in *Kubera*, C-144/23, EU:C:2024:881.

- This means that national courts against whose decisions there is no remedy under national law and which refuse to refer to the CJEU a preliminary question on the interpretation of EU law that has been raised before them are obliged to give reasons for their refusal in the light of the exceptions provided for in the case-law of the CJEU (*Ullens de Schooten and Rezabek v. Belgium*, 2011, § 62; *Sanofi Pasteur v. France*, 2020, § 70.
- When the Court hears a complaint alleging a violation of Article 6 § 1 on this basis, its task consists in ensuring that the impugned refusal has been duly accompanied by such reasoning. That being said, whilst this verification has to be made thoroughly, it is not for the Court to examine any errors that might have been committed by the domestic courts in interpreting or applying the relevant law (*Ullens de Schooten and Rezabek v. Belgium*, 2011, §§ 60-61; *Sanofi Pasteur v. France*, 2020, § 69.
- The question of whether or not a national court has failed to fulfil the obligation to provide reasons can only be determined in the light of the circumstances of the case (*Baydar v. the Netherlands*, 2018, § 40), taking into account the purpose of the duty imposed by Article 6 § 1 of the Convention and regard being had to the proceedings as a whole (*Harisch v. Germany*, 2019, § 42).
- Thus, where a superior domestic court has rejected a request with summary reasoning because it raised no fundamentally important legal issues or had no prospects of success, it is acceptable for that court to refrain from dealing explicitly with the request for a referral submitted in that context (*Baydar v. the Netherlands*, 2018, § 42). The same applies where the application was declared inadmissible for failing to comply with the conditions of admissibility (*Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos v. Greece* (dec.), 2017, § 47), or when a request to obtain a preliminary ruling is insufficiently pleaded or where such a request is only formulated in broad or general terms (*John v. Germany* (dec.), 2007). In such cases, the replies to the questions envisaged, whatever they might be, would have no impact on the outcome of the case (*Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos v. Greece* (dec.), 2017, § 47).
- The reasons for the rejection of the request for a preliminary ruling under the *Cilfit* criteria can be inferred from the reasoning of the remainder of the decision given by the court in question (*Krikorian v. France* (dec.), 2013, §§ 97-99) or from the reasons given in the decisions of lower courts (*Harisch v. Germany*, 2019, §§ 37-42).

Noteworthy examples

- *John v. Germany* (dec.), 2007 – applicants' obligation to give express and precise reasons for the request for a preliminary reference to the CJEU.
- *Ullens de Schooten and Rezabek v. Belgium*, 2011 – principle that domestic courts have an obligation to give reasons, in the light of the applicable law, for any decisions in which they refuse to refer a preliminary question to the CJEU.
- *Vergauwen and Others v. Belgium* (dec.), 2012 – example of domestic courts' compliance with the obligation to give reasons for refusing to refer preliminary questions to the CJEU.
- *Baydar v. the Netherlands*, 2018 – acceptance of a complaint's dismissal using summary reasoning, without dealing explicitly with the request for a preliminary reference to the CJEU.
- *Harisch v. Germany*, 2019 – due consideration given to the purpose of the duty to provide reasons for court decisions and to the proceedings as a whole: the reasons for refusing a request for a preliminary reference can be inferred from the reasons given by the lower courts.

- *Sanofi Pasteur v. France*, 2020 – obligation on the domestic court to refer explicitly, in the light of the circumstances of the case, to one of the three situations provided for by the CJEU's *Cilfit* judgment, provided that the request for a preliminary ruling was very precisely worded in accordance with the requirements of domestic law, and that the appeal on points of law was not dismissed as inadmissible or as lacking arguable grounds of appeal.

Recap of general principles

- General principles: *Baydar v. the Netherlands*, 2018, §§ 39-44; *Sanofi Pasteur v. France*, 2020, §§ 68-71.

Further references

Case-law guides:

- Guide on European Union law in the Court's case-law
- Guide on Article 6 (civil) - Right to a fair trial

KEY CASE-LAW REFERENCES

Leading cases:

- *Ullens de Schooten and Rezabek v. Belgium*, nos. 3989/07 and 38353/07, 20 September 2011 (no violation of Article 6 § 1);
- *Baydar v. the Netherlands*, no. 55385/14, 24 April 2018 (no violation of Article 6 § 1);
- *Sanofi Pasteur v. France*, no. 25137/16, 13 February 2020 (violation of Article 6 § 1).

Other cases under Article 6 § 1:

- *Moosbrugger v. Austria* (dec.), no. 44861/98, 25 January 2000 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *John v. Germany* (dec.), no. 15073/03, 13 February 2007 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Vergauwen and Others v. Belgium* (dec.), no. 4832/04, 10 April 2012 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, 11 June 2013 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Ryon and Others v. France* (dec.), nos. 33014/08 and 5 others, 15 October 2013 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Krikorian v. France* (dec.), no. 6459/07, 26 November 2013 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Dhahbi v. Italy*, no. 17120/09, 8 April 2014 (violation of Article 6 § 1);
- *Schipani and Others v. Italy*, no. 38369/09, 21 July 2015 (violation of Article 6 § 1);
- *Wind Telecomunicazioni S.P.A. v. Italy* (dec.), no. 5159/14, 8 September 2015 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos v. Greece* (dec.), nos. 29382/16 and 489/17, 9 May 2017 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Somorjai v. Hungary*, no. 60934/13, 28 August 2018 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Harisch v. Germany*, no. 50053/16, 11 April 2019 (no violation of Article 6 § 1);
- *Repcevirág Szövetkezet v. Hungary*, no. 70750/14, 30 April 2019 (no violation of Article 6 § 1);
- *Bley v. Germany* (dec.), no. 68475/10, 25 June 2019 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Bio Farmland Betriebs S.R.L. v. Romania*, no. 43639/17, 13 July 2021 (violation of Article 6 § 1);
- *Silvestri and Others v. Italy* (dec.), nos. 76571/14 and 13 others, 28 June 2022 (Article 6 § 1: inadmissible – manifestly ill-founded);
- *Rutar and Rutar Marketing d.o.o. v. Slovenia*, no. 21164/20, 15 December 2022 (violation of Article 6 § 1);
- *Georgiou v. Greece*, no. 57378/18, 14 March 2023 (violation of Article 6 § 1)
- *Jesus Pinhal v. Portugal**, no. 48047/15, 8 October 2024 (Article 6 § 1: inadmissible – manifestly ill-founded).