

LVWVG



LANDESVERWALTUNGSGERICHT
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Preliminary Ruling Proceedings

- ▶ Purpose(s)
- ▶ Art 267 TFEU
 - Facultative (optional) and mandatory references
- ▶ Legal effects of the ruling
- ▶ Recommendations



Purpose

- ▶ „Decentralized“ application of EU law:
 - Every national judge is responsible for applying EU law when a case so requires (compare C-106/77, *Simmenthal*).
- ▶ “Court-to-Court” Dialogue established by the Treaties
 - 2023: 518 new references for a preliminary ruling
 - Length of proceedings: about 17 months



Purpose

- ▶ Provide national courts with assistance on questions regarding the interpretation of EU law
- ▶ Uniform application of EU law across the Union
- ▶ Conformity of secondary legislation with primary legislation
- ▶ Protection of rights
- ▶ Updating of the law („Rechtsfortbildung“)



Art 267 (1) TFEU

- ▶ The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:
 - a. the interpretation of the Treaties
 - b. the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union

Art 267 (2) TFEU

- ▶ Questions may be submitted
 - Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.
 - “Court or tribunal” – autonomous interpretation
 - The answer of the ECJ is “necessary”.



Art 267 (3) TFEU

- ▶ Questions must be submitted
 - Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

- ▶ Questions must be submitted
 - “No judicial remedy” – abstract or concrete perspective?
 - Exceptions
 - “Acte clair doctrine”
 - “Acte éclairé doctrine”
 - Concerning the validity of secondary legislation (all “courts or tribunals”)

Art 267 TFEU

- ▶ Consequences of not submitting (if obligatory)
 - Infringement proceedings (Art 258 TFEU)?
 - Damage/state liability, but: independence of judges (C-224/01, *Köbler*, “breach sufficiently serious”)
 - National legal system: Right to a lawful judge
 - Violation of Art 6 ECHR (“fair trial”)



National situation

- ▶ Answer of the ECJ must be necessary to solve the dispute
 - According to the national court
 - No answer
 - On too general or hypothetical questions
 - If there is no connection with the original legal dispute
 - No proper information provided to answer the question

Answer of the ECJ

- ▶ ECJ decides on questions of EU law; subsequently the national court decides the case pending
- ▶ ECJ does not – in proceedings under Art 267 TFEU – analyse the conformity of national law with EU law

Legal effects

- ▶ The Treaties are silent.
- ▶ Interpretation
 - Binding in the national proceedings the question was produced (*inter partes*)
 - No doctrine of binding precedent
 - *Erga omnes?* (compare C.I.L.F.I.T.; reference before deviation/divergence?)
- ▶ Validity
 - *Erga omnes?*



Recommendations

- ▶ ECJ, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (C/2024/6008), e.g. on:
 - The appropriate stage at which to make a reference for a preliminary ruling
 - The form and content of the request for a preliminary ruling
 - Protection of personal data and anonymization of the request for a preliminary ruling
 - The essential elements of a request for a preliminary ruling
 - Transmission channels recommended by the Court of Justice and the General Court (e-Curia)

- ▶ “Best practice”: (Austrian) Supreme Administrative Court, 11. Mai 2017, EU 2017/0002, Ro 2017/04/0002, ECLI:AT:VWGH:2017:RO2017040002.J00