

The role of the national judge in applying the EU anti-discrimination directives

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Application of EU law in proceedings before national courts

"Principle of primacy"

- *Costa, Marleasing, Simmenthal, Melki and Abdeli*

"Principle of direct effect"

- *Van Gend en Loos*

Harmonization of the application of EU law = Legal certainty

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Application of EU law in proceedings before national courts

- Direct **vertical** effect of the directive: *Van Duyn*
- Indirect effect of the directive: *Mono Car Styling*

When a national court applies national law, it is obliged to interpret it to the extent possible, in accordance with the purpose of the directive in order to achieve the results sought to be achieved by the directive.

- Application of the directive:
 - a) Application of the national law by which it was properly implemented
 - b) Direct application of the directive in case of improper implementation

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Application of EU law in proceedings before national courts

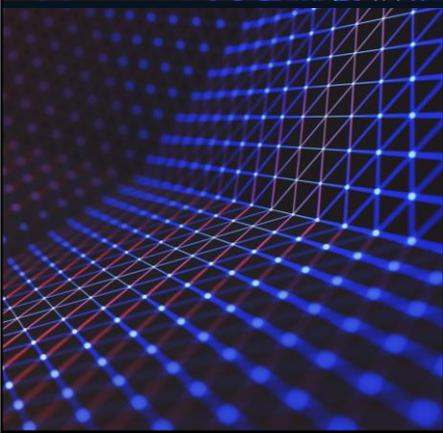
Article 141 c paragraphs 2 and 3 of the Constitution of the Republic of Croatia:

All the legal acts and decisions accepted by the Republic of Croatia in European Union institutions shall be applied in the Republic of Croatia in accordance with the European Union acquis communautaire.

Croatian courts shall protect individual rights based on the European Union acquis communautaire.”

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Application of EU law in proceedings before national courts



Van Gend en Loos The necessity of considering the spirit, mutual relations and text of EU law provisions

Costa A new order of international law, an autonomous source of law

CILFIT Particularity of EU law; multilingualism, own terminology, autonomous terms, dynamic character

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Application of EU law in proceedings before national courts

The conflict between national law and EU law:

1. Interpretation and application of national law in accordance with EU law (in the light of the text and purpose of the directive)
2. If not, then:
 - a) Exclusion of a national provision and application of another provision of national law in accordance with EU law or
 - b) Direct application of EU law (*Dominguez, Küçükdeveci*)
3. Preliminary ruling procedure

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Application of EU law in proceedings before national courts

Liability of the state for the damage

- *Frankovich, Brasserie du Pêcheur, Köbler*

Constitutional complaint

- U-III-1966/2016

Article 6 of the European Convention on Human Rights

- *Dhahbi v. Italy*

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Submitting a request for a preliminary ruling

- Art. 267 of the Treaty on the Functioning of the European Union
- Art. 19 of the Treaty on the European Union
- Statute of the Court of Justice of the European Union
- Art. 93 – 118 of the Rules of Procedure of the Court of Justice of the European Union
- Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings

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Submitting a request for a preliminary ruling

Article 267 of the 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;

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.

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.

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Submitting a request for a preliminary ruling

Article 19 of the TEU:

The Court of Justice of the European Union shall ensure that in the interpretation and application of the Treaties the law is observed.

The Court of Justice of the European Union shall, in accordance with the Treaties:

(b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions.

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Submitting a request for a preliminary ruling

- Uniform interpretation and application of EU law
- Close cooperation between the national courts and the CJEU
- CJEU: interpretation of EU law
 - NOT: national law in conflict with EU law
- BUT usually:
 - "the provision of EU law must be interpreted as precluding the provision of law such as that in the main proceedings"*
- Judgment or reasoned order (*erga omnes, ex tunc*)

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Submitting a request for a preliminary ruling

- "Court" (autonomous concept):
- ✓1. Is it established by law?
 - ✓2. Is it permanent?
 - ✓3. Is its jurisdiction compulsory?
 - ✓4. Is its procedure *inter partes*?
 - ✓5. Does it apply rules of law?
 - ✓6. Is it independent?

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Submitting a request for a preliminary ruling

- Where the national court considers that a decision of the Court on the question is necessary to enable it to give judgment
- Useful when a question of interpretation is raised before the national court that is new and of general interest for the uniform application of EU law, or
- Where the existing case-law does not appear to provide the necessary guidance in a new legal context or set of facts

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Submitting a request for a preliminary ruling

- **OBLIGATION:** national court against whose decisions there is no legal remedy
- **Exception:**
 - *"Acte éclairé"*:
 - i) if the question asked is identical to the question that was the subject of the decision
 - ii) if the same conclusion can be drawn from the well-established judicial practice of the Court
 - *"Acte clair"*: If the correct interpretation of the legal rule in question leaves no room for any reasonable doubt
- *Conorzio Italian Management, Alandžak, Švicarski franak*

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Submitting a request for a preliminary ruling

- Interpretation or validity of EU law
- Only if EU law applies to the case in the main proceedings
- The Court makes every effort to give a reply which will be of assistance in resolving the dispute in the main proceedings, but it is for the referring court to draw case-specific conclusions, if necessary by disapplying the rule of national law that has been held to be incompatible with the EU law

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Submitting a request for a preliminary ruling

- As soon as the national court finds that a ruling on the interpretation or validity of EU law is necessary to enable it to give judgment
- The stage of the proceedings at which the referring court is able to define, in sufficient detail, the legal and factual context of the case in the main proceedings, and the legal issues which it raises (after both sides have been heard)

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Submitting a request for a preliminary ruling

- Any form
- Translation into official EU languages
- Simple, clear, precise language, without superfluous detail
- About 10 pages for the legal and factual context and grounds for making the reference

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Submitting a request for a preliminary ruling

1. The identity of the court
 2. The identity of the parties and anyone representing them
 3. The subject matter of the dispute and the relevant facts
 4. The relevant provisions of national law and EU law
 5. The reasons that prompted the referring court to inquire about the interpretation or validity of the EU law
 6. The questions referred for a preliminary ruling
 7. Typewritten, dated and signed
- In the absence of one or more of the above:
The Court will **DECLINE JURISDICTION OR DISMISS THE REQUEST AS INADMISSIBLE**

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Submitting a request for a preliminary ruling

- Only the request will be translated, not any annexes
- May be added:
 - The main arguments of the parties
 - View on the answers to be given
- Questions referred:
 - In a separate and clearly identified section
 - Possible to understand them on their own terms, without it being necessary to refer to the statement of the grounds for the request
- The pages and paragraphs should be numbered
- Personal data and identity protection: anonymized version

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Submitting a request for a preliminary ruling

- Lodging of the request:
 - Court of Justice of the European Union,
Rue du Fort Niedergrünwald,
L-2925 Luxembourg
 - e-Curia
(curia.europa.eu)
- Editable version and case file

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Submitting a request for a preliminary ruling

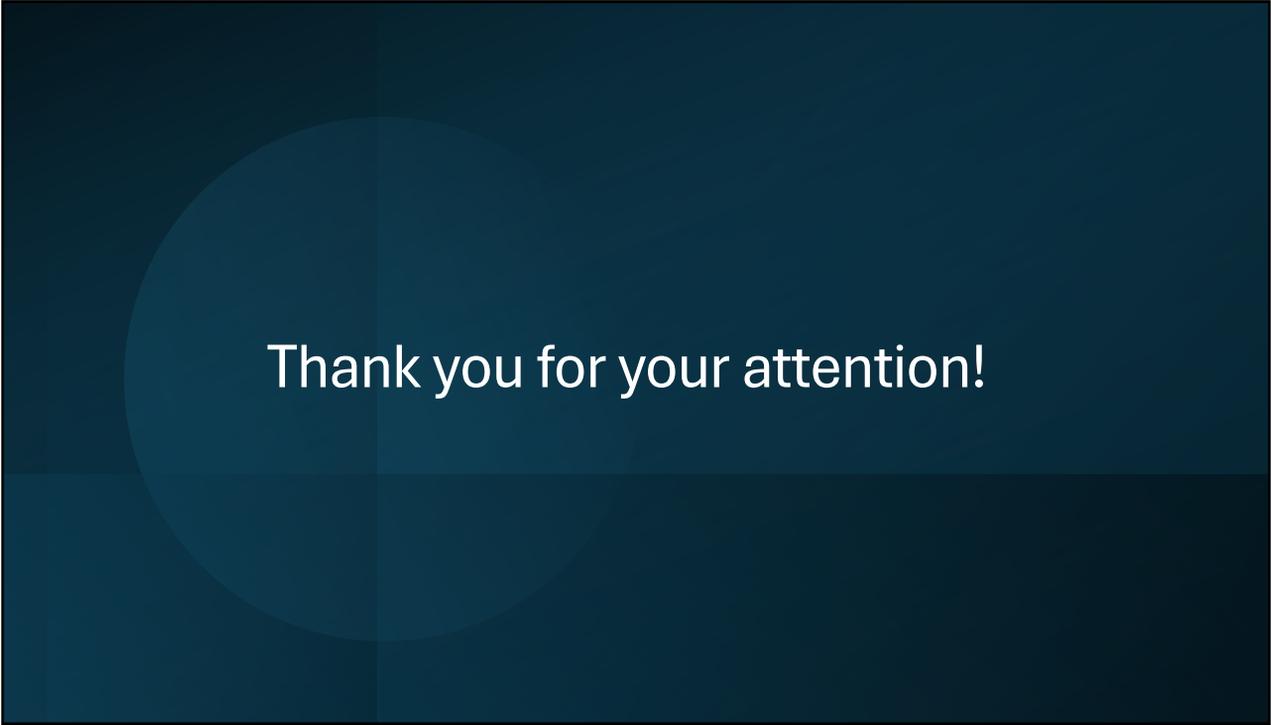
- Staying of the proceedings before the national court until the decision of the Court
- Notification to the Court of any procedural step that may affect the referral
- The preliminary ruling proceedings are free of charge and the Court does not rule on the costs of the parties

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Submitting a request for a preliminary ruling

- Judgment
- Reasoned order:
 - i. When the question referred is identical to a question on which the Court has already ruled,
 - ii. Where the answer to such a question may be clearly deduced from existing case-law, or
 - iii. Admits of no reasonable doubt
- The final decision of the referring court must be sent to the Court: Follow-up-DDP@curia.europa.eu

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Thank you for your attention!