

# The role of national judges in the application of EU anti-discrimination directives

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## Presentation plan

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- I. **Application of EU law in national proceedings**
  1. Anti-discrimination directives.
  2. EU case.
  3. Preliminary rulings in the application of EU law.

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# Presentation plan

## II. **Practical guidance on submitting requests for a preliminary ruling**

1. Schematic overview of proceedings before the CJEU.
2. Request for a preliminary ruling:
  - a. technical and formal elements,
  - b. content.
3. Structure of the question and most common errors.

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# Presentation plan

## III. **Questions** and **discussion**

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## Anti-discrimination directives

→ A directive is binding on each Member State to which it is addressed as regards the result to be achieved, but leaves it to the national authorities to choose the form and means (Article 288(3) TFEU).

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## Anti-discrimination directives

- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services,
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation,

... and many others

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## Anti-discrimination directives

### WHAT IS IMPORTANT:

the general principle of non-discrimination has direct effect in areas covered by EU law (as explicitly emphasised in the provisions of anti-discrimination directives, e.g. Article 3 of Directive 2000/78)

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## Model for reviewing national provisions

- C-144/05 *Mangold* (age discrimination),
- C-555/07 *Kücükdeveci* (age discrimination),
- C-16/19 *Dr Babinski Clinical Hospital* (different treatment within a group of disabled workers),
- C-344/20 *L.F. v. S.C.R.L.* (prohibition of discrimination on grounds of religion or belief).

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## EU case

= a case in which at least one factual or legal element is located in the territory of more than one Member State

≠ national case (application of EU law is excluded)

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## Connectors

- the treaty, regulation or decision applies,
- national provisions transposing the EU directive apply,
- the Member State has not implemented the directive within the deadline,
- the entity exercises common market freedoms (e.g. moves between Member States).

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## Effect of identifying an EU case

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1. determination of the relevant EU law
2. comparison with national provisions
3. interpretation of national and EU law (conflict rules)
4. obligation or right to refer a question for a preliminary ruling

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## Preliminary rulings on the application of EU law

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**purpose: to ensure the uniform application of EU law by all national courts**

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## Legal acts

- TFEU: Article 267, Article 23 of Protocol No 3 (Statute of the CJEU)
- Rules of Procedure of the Court of Justice: Title III
- Recommendations to national courts on the submission of requests for preliminary rulings

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## Subject matter of the question

- interpretation of treaties,
- validity and interpretation of secondary legislation,
- interpretation of provisions of international agreements to which the EU is a party

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## Right to ask questions

→ whenever an interpretation of EU law is necessary in the case before the national court

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## Obligation to refer a question

→ **national court whose decisions are not subject to appeal (concrete vs. abstract theory)**

\* judgments: C-314/85 *Foto-Frost*, C-119/15 *Biuro Podróży Partner*

→ **necessity to examine the validity of an EU legal act**

\* judgment: joined cases C-293/12 and C-594/12 *Digital Rights Ireland*

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# Obligation to ask questions

\* excluded in two cases:

- 1. *acte clair* doctrine (C-283/81 *CILFIT*)**
- 2. *acte éclairé* doctrine (C-28-30/62 *Da Costa*)**

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# Procedure before the CJEU

- 1) application
- 2) translation, delivery
- 3) hearing
- 4) opinion of the Advocate General
- 5) deliberation
- 6) judgment

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## Application – technical and formal elements

1. **time of referral:** immediately after the need to ask a question has been identified,
2. **method of submission:**
  - a. **electronic (recommended)** – e-Curia application: [https://curia.europa.eu/jcms/jcms/P\\_78957/pl/](https://curia.europa.eu/jcms/jcms/P_78957/pl/)
  - b. **by post** – to the following address: Greffe de la Cour de Justice – Secretariat of the Court of Justice, Rue du Fort Niedergrünwald, L-2925 Luxembourg
3. **precise identification of the referring court,**

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## Application – technical and formal elements

4. **marking of pages with regard to personal data protection** (initials, combination of letters),
5. **typescript, signed, dated, numbered pages and paragraphs,**
6. **editing:** clear, simple, precise (suitable for translation),
7. **form:** as required by national law for incidental matters (PL – decision),
8. **question:** separate and clearly marked part of the decision.

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## Conclusion – contents

**Article 94 of the Rules of Procedure:**

- 1. a concise summary of the subject matter of the dispute, the facts,**
- 2. the content of the national provisions that may be applicable to the case, the case law of the national courts,**
- 3. the reasons for the national court's doubts, the relationship between the EU provisions and the main proceedings,**

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## Application – contents

\*attachments (optional – for example, a summary of the parties' positions, your own position on the response, circumstances justifying expedited consideration).

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## Application - content

The absence of any of the elements listed in points 1-3 may result in the Court considering itself unable to answer the question or in the rejection of the request!

(C-72/15 PJSC Rosneft Oil Company)

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SEARCH

List of results by case		List of documents					
Case	Document	Date	Name of the parties	Subject-matter	Curia	EUR-Lex	Autres Liens
C-715/20	Judgment (OJ)	22/03/2024	X (Absence de motifs de résiliation)	Social policy			
C-715/20	Judgment ECLI:EU:C:2024:139	20/02/2024	X (Absence de motifs de résiliation)	Social policy			
C-715/20	Abstract ECLI:EU:C:2024:139	20/02/2024	X (Absence de motifs de résiliation)	Social policy			
C-715/20	Opinion ECLI:EU:C:2023:281	30/03/2023	X (Absence de motifs de résiliation)	Social policy			
C-715/20	Application (OJ)	23/04/2021	X (Absence de motifs de résiliation)	Social policy			
C-715/20	Request for a preliminary ruling	8/12/2020	X (Absence de motifs de résiliation)	Social policy			

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## Question structure – standard

**Should** [the EU provision whose interpretation is sought by the referring court] **be interpreted as precluding national legislation which** [description of the national legislation referred to by the referring court], **meaning that** [interpretation of the national provision at issue]?

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## Question structure – alternative

**Should** [Article 2 of Directive [2000/78]] **be understood as meaning that** one form of breach of the principle of equal treatment is the differentiation between individuals belonging to a group distinguished by a protected characteristic (disability), if the differentiation made by the employer within the group is based on an apparently neutral criterion, and that criterion cannot be objectively justified by a legitimate aim, and the measures taken to achieve that aim are not appropriate and necessary?

(C-16/19 *Dr Babinski Clinical Hospital* – principle of non-discrimination applied directly)

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## Question structure

- The Court often reformulates the question by:
- a. indicating a different standard of review (another provision of EU law),
  - b. combining questions,
  - c. using a conditional structure for questions and answering one of them (the others then become redundant).

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## Examples of errors in questions

- question on a national case (C-50/16 *H. Grodecka*),
- hypothetical question (C-210/06 *Cartesio*) – no connection with the case,
- inaccurate question, without content of provisions or factual context (C-31/12 *Ziemiński and Kozak*),
- question containing the answer (C-62/14 *Gauweiler*).

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# Questions and discussion

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THANK YOU FOR YOUR ATTENTION 😊

