

## **ENSURING OF THE UNIFORM INTERPRETATION OF THE EU LAW IN THE JUDICIAL PRACTICE OF THE MEMBER STATES**

**Ph.D. student Eglė Rinkevičiūtė**

Mykolas Romeris University, Law Faculty, Department of International Law  
Ateities Str. 20, LT-08303 Vilnius  
Tel. 271 46 69  
E-mail: tek@mruni.lt

*Pateikta 2005 m. gegužės 2 d.*

*Parengta spausdinti 2005 m. rugsėjo 15 d.*

**Keywords:** European Court of Justice, supremacy of EU law, preliminary rulings, courts and tribunals, discretion of courts.

### **S u m m a r y**

*Legal disputes are most often focused on the problem how to harmonize the national law based on the pre-emption of the Constitution with the direct application and priority of the European Union law, what way to assure symbiosis and harmonious functioning of these two systems.*

*The essential grounds for recognition and application of the European Community law in the Member States, its transformation into the independent international law system and the indicator of the increasing authority of the European Court of Justice (ECJ) is the practice of presentation of preliminary rulings, predetermining the existence of permanent relations between the EU court institution and the courts of the Member States.*

*The provisions of Article 234 (ex.177) of the EC Treaty have a major effect on the central role of ECJ in the formation of the European Community and the dynamics of the application and acknowledgment of the EC law of Member States. According to this Article of EC Treaty, at the request of the Member State, the ECJ grants the right to adopt a preliminary ruling.*

*Article 234 (ex. 177) provides that a national court may, or in certain circumstances must, refer certain questions to the Court of Justice if it considers that a decision on the question is necessary to enable it to give judgement. The questions that may be referred are those as to the **interpretation** of the EC Treaty or of the secondary legislation and those as to the **validity** of the secondary legislation. In both cases, jurisdiction of the European Court of Justice and national courts is directly interrelated in this process.*

*The right to request a preliminary ruling is given by Article 234 of the EC Treaty to any court or tribunal of a Member State. It is for the ECJ to decide whether a body is a court or tribunal for the purposes of this article and the categorization of that body under national law is not conclusive. It is fundamental to stress that notion “court of law” in the sense of Article 234 need not coincide with the corresponding notion under national law.*

*The Highest court may, on the basis of the *acte clair* and *acte éclairé* doctrines, examine a question of Community law without any preliminary ruling, on the condition that the court has no doubts whatsoever that national courts of other member states as well as the ECJ would share the view of the Highest Court.*

### **Introduction**

*In the European Community’s 50-year existence one cannot help but noticing an astonishing development: the transformation of an international organization (with relatively limited purposes) to a*

quasi (federal) constitutional legal order [34, 38]. As the European Court of Justice (ECJ) itself recognised in its famous *Les Verts* judgement [1]:

“the European Economic Community is a community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with basic constitutional charter, the Treaty”.

The key function of the Court of Justice is defined in EC Article 220 [ex Article 164] of the EC Treaty; according to which it is the task of the Court of Justice to ensure that in the interpretation and application of the Treaties the law is observed [5; 309].

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties (Article 230 (ex. 173)).

The provisions of Article 234 (ex.177) of the EC Treaty have a major effect on the central role of ECJ in the formation of the European Community and the dynamics of the application and acknowledgment of the EC law of Member States. According to this Article, at the request of the Member State, the ECJ grants the right to adopt a preliminary ruling.

It comes as no surprise that the preliminary reference procedure is of crucial importance in relation to enforcement of EU law. Apart from ensuring uniform application of EU law, it was through preliminary references that the Court developed the fundamental doctrines of Community law. Principles such as the doctrine of supremacy, the doctrine of direct effect, the doctrine of implied powers find their origin in preliminary rulings and have provided EU law with the necessary theoretical background that would ensure effective enforcement vis-à-vis Member State law. In the celebrated *Francovich* judgement [8] the European Court of Justice went even as far as to create a quasi sanction mechanism by stating: “The full effectiveness of the Community regulations would be challenged, and the protection of rights that they recognize would be weakened, if individuals did not have the possibility of obtaining restitution when their rights are encroached upon by a violation of Community law on the part of a Member State” [34, 40-41].

The binding effect of the judgments of the Court of Justice and the obligation of the national courts of last instance to make a preliminary reference to the Court of Justice creates, in practice, a subordinate relation between these courts. It is necessary to realize the courts or tribunals to which Article 234 applies a question arising in this context from the practical point of view is, whether the Constitutional Court of the Republic of Lithuania is a court as follows from Article 234 of the EC Treaty, meaning a court that refers preliminary questions to the European Court of Justice concerning controvertible aspects of interpretation or validity of a provision of Community law.

This article consists of four parts. The first part provides an overview of the “principle of supremacy of the EU law” and the process of drafting of the constitutional amendments related to Lithuanian membership in the EU. The second part of the article presents a review on preliminary ruling procedure. The courts or tribunals to which Article 234 applies are analyzed in the third part of the article. In the fourth part of the article, the discretion of highest courts is analyzed. Finally, concluding remarks.

## 1. The Supremacy of EU law

The relationship between Community and Member State law has in the past been characterised by two principles developed by the ECJ in its early case law, to some extent challenged by certain Member State courts. These principles are:

- Supremacy of Community law over member State law;
- Uniformity of application of Community law in all Member States, to be achieved by the ECJ's interpretative authority [4, 35].

Legal disputes are most often focused on the problem: how to harmonize the national law based on the pre-emption of the constitution with the direct application and priority of the European Union law, what way to assure symbiosis and harmonious functioning of these two systems [26].

In *Costa v. ENEL* [3] the Court stated: “By creating Community of unlimited duration, having own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.” With this decision, the court declared that by delegating powers to the Union the states had willingly ceded some legal sovereignty to the ECJ.

The supremacy doctrine, formulated by ECJ, does not depend on the hierarchy of a norm in Member State's legal order. Otherwise it would be possible for any Member State to avoid the effects of Community law on states' and citizens' rights and duties, by placing their own law on a higher level of validity. This would infringe uniformity in applying the law throughout the Community, and be at odds with the non-discrimination principle [4, 35]. In the case *Internationale Handelsgesellschaft GmbH* [35] the ECJ stated: "...the law stemming from the Treaty, an independent source of law, cannot because of its very nature be overridden by rules of national law, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question. Therefore the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by constitution of that State or the principles of a national constitutional structure." It should be noted that this jurisprudence is very early. At the moment, it is not that indisputable.

With the integration into the European Union, the awareness of constitutionality gets changed, i.e. it must respond what is the legal force of international treaties and other EU legal acts in the national legislation and in what place the Constitution finds itself [26, 178].

The process of drafting of the constitutional amendments related to Lithuanian membership in the EU started long ago: in 1998, a working group was established under instruction of the Board of the Seimas, which had to draft legal acts necessary for accession of Lithuania to the EU. By its 1 March 2001 Resolution, the Seimas formed a commission for drafting amendments to the Constitution. Several draft amendments were prepared proposing changes to Art. 136 (participation of Lithuania in international organizations) and Art. 138 (ratification (denouncing) of international treaties and their legal status). According to their legal nature, the treaties establishing the EU are international treaties [25, 193-194]. Still, after discussions that lasted for several years one reached a somewhat different way of solution of this issue: it was decided to adopt the Constitutional Act "On the Membership of the Republic of Lithuania in the European Union."<sup>1</sup>

The Constitutional Act "On the Membership of the Republic of Lithuania in the European Union" says [2]: 1. The Republic of Lithuania as a Member State of the European Union shall share with or delegate to the European Union competencies of its State institutions in the spheres provided for in the founding Treaties of the European Union and to the extent that, together with the other Member States of the European Union, it could jointly meet its commitments in those spheres and could also enjoy the rights accorded by membership.

The above-mentioned Constitutional Act also established the relationship between national and EU law. This act provides [2]: "2. The norms of *acquis* of the European Union shall be an integral part of the legal order of the Republic of Lithuania. Where these arise from the founding Treaties of the European Union, the norms of *acquis* shall apply directly, while in the event of a collision between legal norms, the norms of *acquis* shall prevail over the laws and other legal acts of the Republic of Lithuania. "

It must be emphasized that the notion "the norms of *acquis* shall prevail over the laws and other legal acts of the Republic of Lithuania" does not include the Constitution itself. It must be noted that Art. 7 of the Constitution provide: "Any law or other act, which is inconsistent with the Constitution, shall be invalid." This article may be amended only by referendum [27, 57].

In Lithuania the Constitutional Act related to the accession to the EU has been adopted after the accession to the EU. Therefore, for almost three and a half months after the accession of Lithuania to the EU the legal norms of the European Union were not a constituent part of the legal system of Lithuania [25, 194]. Therefore, if a question of constitutionality of such norms arises, we will have to decide whether their application was not in violation of the Constitution.

It is interesting to note that the Treaty establishing a Constitution for Europe states (Article I-6): "The Constitution and law adopted by the institutions of the Union in exercising competences conferred on it shall have primacy over the law of the Member States." [28].

The Community has, therefore, a fundamental interest in ensuring that its law has the same meaning and effect in all the Member States. The only effective way of doing this is to provide that ultimate authority for deciding the meaning of Community law should reside in one court. That court is, of course, the Court of Justice; this is necessary for the proper functioning of the entire Community. However, it does not mean that the European Court of Justice has supremacy over the national courts, which also by implementing the national law assures the implementation of the Community law. Therefore, it was necessary to establish the procedure that would allow one to avoid conflicts between the national courts and the European Court of Justice and would promote their cooperation [27, 86].

---

<sup>1</sup> On July 13, 2004, the LAW on the Supplement of the Constitution with the Constitutional Act "On the Membership of the Republic of Lithuania in the European Union" and the supplement of Article 150 of the Constitution was submitted by the Seimas of the Republic of Lithuania.

## 2. Article 234 of the Treaty – preliminary rulings

The provisions of Article 234 (ex.177) of the EC Treaty have a major effect on the central role of ECJ in the formation of the European Community and the dynamics of the application and acknowledgment of the EC law of Member States. According to this Article, at the request of the Member State, the ECJ grants the right to adopt a preliminary ruling.

According to Article 234: “The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

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 of Justice 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 of Justice.”

This Article is crucial for the relationship between the Community legal order and the national legal orders of the Member States and in ensuring the uniformity of Community law. Article 234 is arguably one of the most important provisions of the whole Treaty, if not the most important one, in so far as it plays a key role both in concerning the uniform application of Community law throughout the Community and gives private parties indirect access to the Court [5, 221].

The possibility to make references for preliminary rulings to the Court of Justice serves at least three purposes:

First, it contributes to a uniform interpretation of Community law.

The most important function is to ensure uniformity in the interpretation of Community law. Because of the different legal traditions of the Members, or due to differences between the Community languages, variations in interpretation could arise not only between different individual courts, but also in the interpretations given to Community law in different Member States. The Community, and in particular the Common Market would suffer if particular rules were to develop along different lines in each of the Member States [6, 498-500].

Secondly, it serves as a means for an indirect control of the fulfilment by the Member States of their obligations under Community law.

Thirdly, it is a means of assistance to national courts when they deal with Community law issues.

The system of preliminary rulings facilitates the application of Community law by assisting the national courts in overcoming the difficulties they encounter when applying Community law. If national courts had to apply Community law completely by themselves they might be inclined to shy away from doing so in order to avoid the difficult problems of applying a legal order unfamiliar to them.

The ECJ does not claim superiority in its relationship with national courts. It has repeatedly stressed that both national and Community courts play their own roles in the application of Community law. In order to give assistance to the national courts, the Court of Justice has always viewed the preliminary ruling procedure as a procedure of cooperation, not as one of hierarchy [7, 20].

Of course, the fact that the preliminary ruling procedure is based on a relationship of cooperation and not hierarchy should not be misunderstood. Preliminary rulings of the Court are of a binding character and not mere “opinions”. Hence the national judge may not ignore them, nor may a court refuse to ask a question in those cases where there is an obligation for him to do so [5, 229].

The process of preliminary rulings is possible due to two things – concerning the interpretation of the legal norm and the validity of the legal norm. In both cases, jurisdiction of the European Court of Justice and national courts is directly interrelated in this process.

National courts have no jurisdiction to declare acts of a Community institution invalid. In its Foto-Frost [20] judgment the ECJ stated that it has exclusive authority to rule on the validity of the acts of Community institutions even if their validity was challenged before a national court. The Court further claimed that this was the only conceivable answer to this question since the Treaty established a complete system of judicial review destined to vest the Court with the power to control the legality of acts of Community institutions. Moreover, the Court stated that Community institutions are not guaranteed the right to intervene before national court procedures and that a different solution would endanger the coherence of the system of judicial review as provided for in the EC Treaty.

### 3. The courts or tribunals to which Article 234 applies

The right to request a preliminary ruling is given by Article 234 of the EC Treaty to any court or tribunal of a Member State. The European Court of Justice understands a court according to Article 234 of the EC Treaty on the one hand as a body defined as a court by national law, and upon the other hand as a body that is not defined as a court by national law, but meets some characteristic factors laid down by the European Court of Justice. The Court itself accepted in the *Widow Vaassen Case* [10] that an organ not regarded as a court under Dutch law, was a court within the meaning of EC Article 234, since it was acting within the framework of the law, it was supported by the public authorities of the State concerned, it was a permanent body under Dutch law, it was independent and it was taking decisions according to law. Its decisions moreover had the force of *res judicata* and were enforceable. The Court took also into account the fact that the procedure was contradictory and that the parties were under a formal obligation to refer their disputes to this organ.

However, it is necessary that all these conditions be met for an organ to be regarded as a court within the meaning of EC Article 234.

There is no doubt that apart from the normal courts of a Member State, special courts also qualify as “courts” under EC Article 234, irrespective of the kind of jurisdiction conferred upon them (civil, criminal or otherwise). In Netherlands, for example, customs tariff cases are not decided by normal courts but by a special “tariff-commission”, the *Tariefcommissie*, composed of lawyers who are experts in the field. This tariff-commission obtained one of the most famous preliminary rulings from the Court of Justice in the *Van Gend en Loose Case* [5, 255]. The ECJ first articulated its doctrine of direct effect in 1963 in what is probably the most famous of all of its rulings. It is possible to make a presumption that in case the Tax Dispute Commission applies to the European Court of Justice, it is probable it could be awarded the “status of court” under Article 234 EC Treaty. The Tax Dispute Commission complies with all most important “court qualifications” debated in ECJ practice: being established under the law or other legal act, it is guided in its activities by legal acts and laws, dispute proceedings (handling tax disputes) and adopts acts of compulsory type.

Some organs may be exercising judicial functions only occasionally. If this is the case, the question will normally only be admissible if the question is referred to the Court of Justice within the exercise of a true judicial activity. Thus, in the *Borker Case*, the Bar Council of the Court of Appeal in Paris sought a preliminary ruling. The Court of Justice held that it had no jurisdiction to give a ruling. It did not; however base its refusal on the ground that the Bar Council was not a court or tribunal under Article 234, but on the ground that the Bar Council did not have before it a case which it was under legal duty to try [11].

In other words, for a question referred to the Court of Justice to be admissible, it is necessary that an organ acting as a jurisdiction in the case in which it seeks a ruling refer it to it.

It follows from a definition of a “court” given by the Court of Justice in the *Widow Vaassen* that arbitral tribunals established pursuant to a contract between private individuals are normally they are not entitled to request preliminary rulings but the decision depends on the nature of the arbitration in question. They can only refer to the ECJ if they fulfil several conditions, for example if they decide according to law and they must be supported in some way by the public authorities of the state [12, 438]. There are several reasons for the ECJ to deny arbitral tribunals the competence to ask preliminary ruling. The public authorities and courts are not involved in the decision and arbitral tribunals do not necessarily apply the law. Its decisions are not final and in practice, the great number of those tribunals and their questions would overburden the Court of Justice. Article 234 draws a distinction between courts and tribunals with discretion to refer to the ECJ (Article 234 (2)), and courts or tribunals which are under an obligation to refer (Article 234 (3)). The latter are courts or tribunals against whose decision there is no judicial remedy under national law. It is only exceptionally that arbitral tribunals can be regarded as true “courts” within the meaning of EC Article 234 [5, 262].

In Part 1 of Article 75 of the Labour Code of the Republic of Lithuania it is indicated that Labour Arbitration handling collective labour disputes shall be formed under district court within the jurisdiction whereof the registered office of the enterprise or the entity which has received the demands made in the collective dispute is located. The composition of the Labour Arbitration, the dispute resolution procedure and the procedure of execution of the adopted decision shall be specified by the Regulations of Labour Arbitration approved by the Government [33]. Item 8 of the Labour Arbitration specifies that the decision of the Labour Arbitration shall not be subject to appeal and shall be binding upon the parties to the dispute. A precondition may be made that in the case of the application of the Labour Arbitration to the ECJ concerning the preliminary resolution, under the criteria of assessment established according to ECJ practice, it should be recognized as the “court” in the meaning established by Article 234 EC Treaty.

The Lithuanian legislator has already made a number of necessary amendments in the national laws to ensure the right, and, in other cases, the obligation of the courts of last instance, to refer to the ECJ for a preliminary ruling.

On April 8, 2003, the Law on the Supplement and Amendment of the Law on Courts, the Law on Administrative Proceedings, Civil and Criminal Procedure codes were submitted [29].

The Law on Courts was supplemented with Article 40<sup>1</sup>. Referral to Judicial Institutions of the European Union that states:

1. A court which, in the application of the norms of European Union law faces an issue involving the interpretation or validity of legal acts of the European Union that has to be examined before passing a judgement in the case, shall have the right to refer to a competent judicial institution of the European Union with a request to provide a preliminary ruling on the issue.
2. The Supreme Court and the Supreme Administrative Court as well as the court which is last instance in the adjudicated case (where a judgement may no longer be appealed against), must, in the case specified in paragraph 1 of this Article, refer to a competent judicial institution of the European Union for a preliminary ruling on the issue of the interpretation or application of the legal acts of the European Union.

What will be the relation between the Constitutional Court of the Republic of Lithuania and the ECJ? In the opinion of the Court of Justice of the European Communities, in case of doubt whether EU institutions did not exceed their competencies, it is only the ECJ that is competent to decide this issue, while national constitutional courts cannot decide the compliance of EU law with national constitutions before they apply to the ECJ [32, 68]. A question arising in this context from the practical point of view at the first place is, whether the Constitutional Court of the Republic of Lithuania is a court as follows from Article 234 of the EC Treaty, meaning a court that refers preliminary questions to the European Court of Justice concerning controvertible aspects of interpretation or validity of a provision of Community law. Under the Constitution, decisions of the Constitutional Court of the Republic of Lithuania are final and not subject to appeal, it, doubtless to say, is the court of last instance, however, so far there is no final answer to the question whether, in pursuance with EU law, it (as well as other national Constitutional Courts) is to be regarded as a court of last instance of such kind, which must apply to the ECJ for a preliminary ruling.

Still the position expressed by the former President of the ECJ, which originated on the basis of Articles 10 and 220<sup>1</sup> as well as aforementioned Article 234 of the EC Treaty in respect of this issue, is clear and non-equivocal: Under certain circumstances, the interpretation of Community law or the question of validity of a Community legal act might be decisive for the solution of a dispute before a constitutional court. In such case, the Constitutional Court would be under an obligation to refer such a question to the Court of Justice for a preliminary ruling. In other words: specific functions of Constitutional Courts cannot exempt them from the obligation established by Article 234 of the EC Treaty” [32, 57].

#### **4. The discretion of highest courts**

Article 234, third indent, of the EC Treaty requires the courts against whose decisions there is no judicial remedy under national law, to ask for a preliminary ruling.

In the first years of the Community, there were two different views as to how this third indent should be read. According to some, the plural form of the word “decision” suggested that only those courts were meant which normally render final decisions, in other words, the highest courts of the national judiciary. For the sake of the uniformity of Community law, the decisions of the highest courts are the most important ones. The tenant of the “abstract theory” took the view that only the highest courts in each Member State were obliged to request preliminary rulings [13, 219].

However, others took a wider view. Not all cases can indeed be brought before the highest courts. In many legal systems, lower courts decide cases on minor matters in final instance. The adherents of the “concrete theory” submitted that each court judging in final instance was a highest court in the sense of Article 234 and was therefore obliged to refer questions on Community law to the Community Court [5, 268].

---

<sup>1</sup>Pursuant to Article 10 of the EC Treaty Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievements of the Community’s tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty. Pursuant to Article 220 of the EC Treaty the Court of Justice must ensure that in the interpretation and application of this Treaty the law is observed.

The obligation for the highest court to request a preliminary ruling in questions concerning the interpretation and application of Community law is, however, not absolute. In the *CILFIT & Lannificio di Gavardo Spa v. Ministry of Health (CILFIT)* Case [14], the Court of Justice accepted that even the highest courts in the Member States may not always be obliged to refer a question of Community law to the Court of Justice when it is raised before them. The court accepted three exceptions to the obligation to refer contained in the third indent of Article 234:

#### 4.1. Acte éclairé

The doctrine of **Acte éclairé**<sup>1</sup> allows a court falling Article 234(3) to be exempt from the obligation to refer where previous decisions of the Court of Justice have already dealt with the point of law in question. This doctrine applies irrespective of the nature of the proceedings, which led to those decisions, even though the questions at issue are not strictly identical [16].

This doctrine, clarified by the Court in *Da Costa* [17], alleviated the obligation to refer under the condition that it already interpreted the same provision of Community law. In the opinion of the Court, such a preliminary ruling “may deprive the obligation of its purpose and thus empty it of its substance. The obligation of the courts of last resort is liberalized if they are trying to interpret the same Community laws provision under “similar” circumstances. This identification of a “similar” question is deceptive, offering national courts a loophole, or leading to a wrong conclusion. In the past some courts have taken the requirements of this rule too liberally [18, 287].

As a result, they did not make a reference to the Court of Justice in instance where they interpreted a provision of similar content of another Community rule. This practice becomes a threat to uniformity of Community law if the highest national courts interpret a provision by analogy with a preliminary interpreting another provision, or by disregarding the preliminary ruling and interpreting the provision in their own way. It is doubtful that *Da Costa* intended to provide such a wide margin of discretion to national courts.

#### 4.2. Acte Clair

According to the so called **Acte clair**<sup>2</sup> doctrine, which has its roots in French legal tradition the highest court is not obliged to refer if the question has not yet been answered in the case law of the Court of Justice, but the answer to that question is beyond all doubt. In *CILFIT* [14] the Court of Justice spelled out those conditions that must be satisfied before a national court of last instance can invoke acte clair. The national courts must bear in mind the risk of its decision diverging with prior judicial decisions in the Community. Furthermore, before it comes to the conclusion that such is the case, the national court or tribunal must be convinced that the matter is equally obvious both to the courts of the other member states and to the Court of Justice. National court should bear in mind that [19, 458-487]:

- the interpretation of a provision of Community law involves a comparison of the different language versions of the provision concerned;
- terms and concepts in Community law do not necessarily have the same meaning as the laws of the various member states;
- every provision of Community law should be interpreted in the light of Community law as a whole, taking into consideration its objectives and its state of development at the moment of application of the provision in question.

It is generally felt that national courts often consider their authority to be wider than a strict application of the acte clair and acte eclaire doctrines would allow.

#### 4.3 The question is irrelevant

In the *CILFIT* Case [14] the Court of Justice itself accepted that the highest courts are not always obliged to request preliminary ruling.

According to the Court of Justice, national courts are not obliged to refer a question concerning the interpretation of Community law raised before them “if that question is not relevant, that is to say, if the answer to that question, regardless of what it may be, can in one way affect the outcome of the case. If however, highest courts consider that recourse to Community law is necessary to enable them to decide a case, EC Article 234 imposes an obligation on them to refer if necessary on their own motion [5, 278-279].

---

<sup>1</sup> French “clarified act”.

<sup>2</sup> French “clear act”.

## Conclusions

1. Supremacy is not an objective in itself, but a means of attaining uniformity in application and interpretation.

2. Article 234 is one of the most successful articles of the EC Treaty. In building the bridge between the national judiciary and the Court of Justice it has initiated a fruitful cooperation between the national courts and the Community Court. It is difficult to see how the Community legal order and a whole series of fundamental legal concepts would have been developed without the continuous support of the national judiciaries. For that cooperation Article 234 is the cornerstone. Through this procedure, the uniformity of the interpretation and application of EC law in all the Member States can be ensured.

3. In preliminary rulings the Court of Justice does not express itself on the compatibility of national measures with Community law. It only rules on the interpretation and validity of Community acts. It is for the national courts to draw the conclusions from such an interpretation.

4. For the appropriate functioning of Community law it is equally important that all the national courts are involved in the administration of justice under Community law and that they all function as Community courts. If there would be no possibility for courts other than those of last instance to make reference for preliminary rulings the cost and time involved in bringing the case before a court of last instance would presumably amount to a negation of rights of individuals and economic operators under Community law. These are among the reasons for which the Court of Justice recently has reiterated the importance of retaining the right of courts other than courts of last instance to make references for preliminary rulings.

5. Despite its obvious advantages, the preliminary reference procedure is not flawless. First of all, not every violation of Community law comes before a national court and even when it does, there is no guarantee that lower national courts will make use of the procedure every time. In addition, there is no guarantee that the national judge will fully adhere to the Court's ruling and apply Community law as prescribed by the latter.

6. The Highest court may, on the basis of the *acte clair* and *acte éclairé* doctrines, examine a question of Community law without any preliminary ruling, on the condition that the court has no doubts whatsoever that national courts of other member states as well as the ECJ would share the view of the Highest Court. The principles of the *acte clair* and *acte éclairé* doctrines, which were established in the so called *CILFIT* judgement (283/81), leave a very restricted room for the Highest Court to interpret Community law without involving the ECJ.



## BIBLIOGRAPHY

1. **First Les Vertes Case** (294/83), [1986] ECR 1365.
2. **The Law** on the Supplement of the Constitution with the Constitutional Act "On the Membership of the Republic of Lithuania in the European Union" and the supplement of Article 150 of the Constitution, Official Gazette "Valstybės žinios", 2004, Nr. 111-4123.
3. **Costa ENEL Case** (6/64), [1964] ECR 593, 594
4. **Reich N.** Christopher Goddard and Ksenija Vasiljeva. Understanding EU law. Antwerp-Oxford-New York. 2003 Intersentia.
5. **Henry G.** Schermers, Denis F. Waelbroeck. Judicial protection in the European Union. Kluwer Law International, Hague, 2001.
6. **Wohlfarth-Everling-Glaesner-Sprung**, Die Europäische Wirtschaftsgemeinschaft, Franz Vahlen Verlag 1960.
7. **Suggestions** on European Union. Bulletin of the European Communities, Supplement 9/75.
8. **Francovich Case** (C-6 and 9/90), [1991] ECR I-5357.
9. **Widow Vaassen Case** (61/65), opinion of advocate-general Gand, [1966] ECR 280, 281.
10. **Widow Vaassen Case** (61/65), [1966] ECR 272, 273; see also *Job Center Case* (C-111/94), para 9, [1995] ECR I-336; *Garofalo Case* (C-69/96 to C-76/96, paras 17-27, [1997] ECR I-5603.
11. **Borker Case** (138/80), para 4, [1980] ECR 1977.
12. **Craig P.** Grainne de Burca "EU Law. Text, cases and materials", Oxford, 2003.
13. **Dumon. F.** Le renvoi préjudicial, in *Droit communautaire et droit national*, Semaine de Bruges 1965.
14. **CILFIT Case** (283/81), [1982] ECR 3430.
15. **Vadapalas V.** Marija Anciuviene, Irmantas Jarukaitis....Europos Sąjungos teisė ir Lietuva. Europos teisės departamentas prie LR V. Vilnius: Justitia, 2002.
16. **Mads Andenas.** Article 177 references to the European Court – policy and practice (1994).
17. **Joined Cases** 28-30/62, *Da Costa v. Nederlandse Belastingadministratie*, 1963 ECR 31.
18. **Van Boven v. Etat belge.** 27 Recueil de jurisprudence du droit administrative et du Conseil d'Etat, 1972.
19. **Alter, Karen J.** "The European Court's Political Power." *West European Politics*, 1996.



20. **Foto-Frost Case** (314/85), [1987] ECR 4232.
21. **A guide** to European Union Law. London: Sweet&Maxwell, 1999.
22. **Tillotson J.** European Community Law: Text, Cases and Materials. – London, 1996
23. **Jarašiūnas E.** Lietuvos Respublikos Konstitucija ir Europos integracija// Konstitucija, nacionalinė teisė ir Europos teisė. Vilnius, 2004.
24. Lietuvos integracija į Europos Sąjungą. Europos integracijos studijų centras: 1997, Vilnius.
25. **Kūris E.** The Constitutional Court of Lithuania and Lithuania's membership in the European//International conference "The position of Constitutional courts following integration into the European Union". Bled, Slovenia, 30 September-2 October 2004.
26. **Lapinskas K.** Europos Tarptautinių Teismų ir nacionalinių teismų jurisdikcijos ir jurisprudencijos sąlyčio problemos// Konstitucija, nacionalinė teisė ir Europos teisė. Vilnius, 2004.
27. **Normantas A.** Europos Teisingumo Teismo ir konstitucinių teismų kompetencijos santykis// Konstitucinių teismų vaidmuo Europos Sąjungos narystės kontekste. Vilnius, 2004.
28. [http://europa.eu.int/eurlex/lex/LexUriServ/site/en/oj/2004/c\\_310/c\\_31020041216en00110040.pdf](http://europa.eu.int/eurlex/lex/LexUriServ/site/en/oj/2004/c_310/c_31020041216en00110040.pdf)
29. **The LAW** on the supplement and amendment of the Law on Courts, the Law on Administrative Proceedings, Civil and Criminal Procedure codes, Official Gazette „Valstybės žinios“, 2003. Nr. 39–1765.
30. **Treaty** of Nice. Amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts. C 80/1 Official Journal of the European Communities, 2001 03 10
31. **Protocol** on the Statute of the Court of Justice. C 325/ 167 Official Journal of the European Communities, 2002 12 24.
32. **Iglesias R.C.G.** "National Constitutional Courts and European Community Law" in Constitutional Justice and the Rule of Law, Vilnius, 2003.
33. **Resolution** of the Government of the Republic of Lithuania upon the approval of the Statute of the Labour Arbitration and the Third Party Court, Official Gazette, 2003, No. 93-4206.
34. **Vassilios Skouris.** The position of the European Court of Justice in the EU legal order and its relationship with national constitutional courts//International conference "The position of Constitutional courts following integration into the European Union". Bled, Slovenia, 30 September-2 October 2004.
35. **Internationale Handelsgesellschaft GmbH** (11/70) v Einfuhr- und Vorratsstelle für Getreide und Futtermittel [1970] ECR 1125.



### *Europos Sąjungos teisės vienodo interpretavimo valstybių narių teismų praktikoje garantijos*

*Doktorantė Eglė Rinkevičiūtė  
Mykolo Romerio universitetas*

*Pagrindinės sąvokos: Europos Teisingumo Teismas, ES teisės viršenybė, preliminarūs nutarimai, teismai ir tribunolai, teismų nuožiūra.*

### **SANTRAUKA**

*Teisiniai ginčai dažniausiai kyla dėl vienos problemos: kaip suderinti Konstitucijos viršenybę grindžiamą nacionalinę teisę su Europos Sąjungos teisės tiesioginiu taikymu ir prioritetu, kaip užtikrinti šių dviejų sistemų simbiozę ir darnų funkcionavimą.*

*Esminis Europos Bendrijos teisės pripažinimo ir taikymo valstybėse narėse, jos transformavimosi į savarakišką tarptautinės teisės sistemą pagrindas bei paties ETT autoriteto augimo rodiklis yra preliminarinių nutarimų teikimo praktika, lemianti nuolatinių santykių tarp ES teisminės institucijos ir valstybių narių teismų egzistavimą.*

*ETT pagrindiniam vaidmeniui formuojant Europos Bendriją bei EB teisės taikymo ir pripažinimo valstybėse narėse dinamikai didžiausią įtaką turi EB sutarties 234 (ex. 177) str. nuostatos. Pagal šį straipsnį, valstybės narės prašymu ETT suteikta teisė priimti preliminarų nutarimą.*

*Preliminarinių nutarimų procesas galimas dėl dviejų dalykų – dėl teisės normos išaiškinimo ir dėl teisės normos galiojimo. Abiem atvejais šiame procese tiesiogiai siejasi Europos Teisingumo Teismo ir nacionalinių teismų jurisdikcija.*

*Teisė prašyti preliminarų nutarimą pagal Sutarties 234 str. suteikiama Valstybės Narės teismui arba tribunolui. Visuotinai pripažįstama, kad Europos Teisingumo Teismas šį terminą aiškina plačiai. Tik jis sprendžia, ar institucija yra teismas, ar tribunolas pagal 234 str. Reiktų pabrėžti, kad straipsnyje vartojama sąvoka „teismas“ ne visada sutampa su nacionalinėje teisėje vartojamu atitikmeniu.*

*Paskutinės instancijos teismai privalo kreiptis į Europos Teisingumo Teismą, išskyrus atvejus, kai yra nustatyta, kad kilęs klausimas yra nereikšmingas, arba kai atitinkama Bendrijos norma jau buvo Teismo aiškinta, arba kai Bendrijos teisės taikymo atvejis yra toks aiškus, jog negali būti jokių abejonių. Tačiau tokia galimybė nesikreipti turi būti įvertinta atsižvelgiant į Bendrijos teisės specifiskumą, konkrečius jos aiškinimo sunkumus ir į valstybių narių teisminės praktikos skirtumus.*