THE LIMITS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION'S JURISDICTION TO ANSWER PRELIMINARY REFERENCES

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Abstract

Starting from a concise analysis of the Court of Justice's jurisdiction in the matter of preliminary references ratione materiae, ratione personae, ratione loci and ratione temporis, the study intends to highlight what preliminary questions this international court can and cannot answer and haw far can its rulings reach into the national law of the member states of the European Union.

Keywords: *article 267 of the Treaty on the Functioning of the European Union, preliminary question/reference, preliminary ruling/judgment, court of a member state, jurisdiction limits.*

1. Introductory notes

The jurisdiction of the Court of Justice of the European Union[1] is established, mainly, by article 19 of the Treaty on the European Union (TEU), by articles 256, 258-277 of the Treaty on the Functioning of the European Union (TFEU) and by its Statute[2]. The European Court can only act within the limits of the competence conferred upon it by the member states in the treaties establishing the European Union.

The Treaties provide two main roles for the Court of Justice of the European Union: an advisory one, to render oppinions and a jurisdictional one, to give preliminary rulings and judgments in direct actions. Whereas the preliminary ruling procedure is a noncontencious one[3], direct actions, such as annulment actions, actions regarding EU's institutions failure to act, EU's non-contractual liability or staff cases[4], undergo a contentious procedure.

These competences are divided between the Court of Justice, the General Court and the Civil Service Tribunal[5].

At present, in spite of the fact that article 256 paragraph 3 of Treaty on the Functioning of the European Union renders jurisdiction to the General Court to hear and determine questions referred for a preliminary ruling, in specific areas laid down by the Statute, only the Court of Justice can answer preliminary questions, since its Statute has not yet been modified in this respect. Article 3 of the Regulation (EU, Euratom) of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of

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[1] The Court of Justice of the European Union is a system composed of three courts: the Court of Justice (the former Court of Justice of the European Communities), the General Court and the Civil Service Tribunal.

[2] Protocol no. 3 to the Treaty on the Functioning of the European Union.

[3] See Șandru, Banu and Călin, *Procedura.*, 19-20.

[4] For more information about direct actions, see Fábián 2010, 358-407.

[5] See Craig and de Búrca, 2011, *EU Law …*, 477-478, Chalmers, Davies and Monti, 2010, 143-149.

Justice of the European Union states that the Court of Justice is to draw up a report acoompanied, where appropriate, by legislative requests, by 26 December 2017, for the European Parliament, the Council and the Commission, on possible changes to the distribution of competence for preliminary rulings.[6]

The study intends to analyse in a concise, structured manner the limits of the jurisdiction of the Court of Justice to render preliminary rulings *ratione materiae*, *ratione personae*, *ratione loci* and *ratione temporis* and the consequences of this limited competence.

Since preliminary rulings interpret EU law or decide on its validity and they are an instrument to ensure uniform interpretation and application of that law within the European Union, it is important for national courts to know what they can ask, when they can ask, how they must ask the preliminary questions and what types of answers they can expect to receive. It is meant to be a useful instrument for other legal practitioners as well, such as researchers or lawyers, especially since lawyers have the ability to ask the national courts to refer preliminary questions in pending disputes on behalf of the parties they assist or represent.

The objectives are to have more judgments of the Court on the grounds of the matter reffered to it and less orders of inadmissibility, to achieve an improved dialog and cooperation between the national courts and the Court of Justice. This should also ensure a diminished workload of the European Court with those references that are obviously outside the Court's jurisdiction and/or inadmissible.

In order to achieve these objectives, the study shall include useful examples, relevant case law and references for further reading from prominent doctrinal works. The subject of the study has been covered in a form or another by authors from the member states, but efforts to aknowledge the existing contributions, to present them in a new light, to disseminate information must be made in a society of knowledge.

2. Jurisdiction of the Court of Justice to answer preliminary references

2.1 Ratione materiae

Article 267 of the Treaty on the functioning of the European Union provides the Court's 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.

The competence of the Court is restricted to the interpretation of the treaties establishing EU. At present, these are TEU[7] and TFEU[8], but it is agreed that this provision includes the founding treaties, the treaties that modified and amended these treaties, as well as the treaties of accession of the new member states, because they also modify the founding treaties.

[6] http://curia.europa.eu/jcms/jcms/Jo2_7031/, last accesed on 10 March 2016.

[7] The Treaty on the European Union was signed at Maastricht on 7 February 1992 and entered into force on 1 November 1993. For the consolidated version see: http://europa.eu/eu-law/decision-making/treaties/index_en.htm, last accesed on 10 March 2016.

[8] The consolidated version of the Treaty establishing the European Economic Community, signed at Rome on 25 March 1957, in force since 14 January 1958, modified several times, last by the Treaty of Lisbon, signed on 13 December 2007, in force since 1 December 2009. For more information, see Fuerea, 2011, 32-83.

The protocols and declarations annexed to the treaties[9] are a part of their content and have the same binding force. Hence, their provisions can be the object of a preliminary reference for interpretation.[10]

After 1 December 2009, the Treaty of Lisbon extended the Court's jurisdiction to the area of freedom, security and justice, integrated fully in TFEU, after the abolition of the three pillar system introduced by the Maastricht Treaty and to the Charter of Fundamental Rights of the EU, annexed to TFEU. However, "the jurisdiction of the Court is largely excluded in the area of the Common Foreign and Security Policy"[11] and with regard to general provisions[12].

These Treaties are primary sources of EU law, they are concluded by states, are instruments of international law and are subject to the will of their creators. Thus, the Court cannot decide on the validity of a provision from the Treaties.

The Court has jurisdiction to answer questions on the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union, such as regulations, decisions and directives[13], but also acts that are not mentioned in the Treaties[14]. Any EU act may be the object of a reference on validity or interpretation, regardless of its binding or non-binding effects[15], but its nature, its content and its effects may be of interest in determining whether it is relevant in the national dispute.

The jurisdiction of the Court to rule on the validity of such acts is complementary to its jurisdiction to review the legality of EU acts under article 263 of TFEU. As expressed in the doctrine: "Besides ensuring uiform interpretation, the preliminary ruling does also provide private parties with acces to the Court, when they have no *locus standi* to directly ask the Court to control the validity of Union acts."[16] But, if the party to the main dispute had standing to attack the EU act by way of an annulment action and did no do so in the time-limit established by the aforementioned article, the Court ruled it would be contrary to the principle of legal certainty to analyse the legality of that act by answering a preliminary reference.[17]

"References may also be made on whether a provision of Community law produces direct effect, that is, whether it confers rights on individuals which national courts are bound to protect. This is considered a question of interpretation."[18]

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[9] For example: Protocol no. 2 on the application of the principles of subsidiarity and proportionality and the Declaration concerning the Charter of Fundamental Rights of the European Union.

[10] For a concurring opinion see Kaczorowska, 2009, 253. For the opinion that unilateral declarations of the Member States cannot be the object of a preliminary reference, see Smit, Herzog, Campbell and Zagel, 2011, 267-13, Broberg and Fenger, 2010, 103.

[11] Hartley, 2010, 289. See also Jacobs, 2012, 203-204.

[12] See order of 7 April 1995 in case C-167/94 Grau Gomis and others, paragraphs 5 and 6, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[13] For a presentation of the main sources of EU law, see Dumitrașcu, 2012, 107-184.

[14] See Fuerea, 2016, 98.

[15] See judgment of 13 December 1989 in case 322/88 Grimaldi/Fonds des maladies professionnelles, on the interpretation of recommendations, paragraphs 7-19, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 10 March 2016 and judgment of 27 February 2007 in case C354/04 Gestoras Pro Amnistía and others/Council, on the jurisdiction to review common positions in the field of police and judicial cooperation in criminal matters, paragraphs 52-57, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[16] Mathijsen, 2010, 144.

[17] Judgment of 9 March 1994 in case C-188/92 TWD/Bundesrepublik Deutschland, paragraphs 10-26, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[18] Arnull, 2006, 104.

It seems the Court took the view that its own judgments may be interpreted by way of a preliminary reference[19], but their validity cannot be questioned[20].

General principles of law cannot, in itself, form the object of a preliminary reference, but they can be interpreted and applied in order to determine the correct interpretation or validity of an EU act. However, the Court did answer questions on the infringement of fundamental rights when there was no explicit reference to these in the Treaties.[21]

International law provisions[22] and national acts of the member states cannot be interpreted by the Court, nor be declared invalid[23]. The Court can only interpret the EU act transposed in the national law or on which the national act is based.[24]

The Court cannot apply EU law or national law, nor can it decide if a provision of the national law is contrary to EU law. The Court stated: "When it gives an interpretation of the Treaty in a specific action pending before a national court, the Court limits itself to deducing the meaning of the Community rules from the wording and spirit of the Treaty, it being left to the national court to apply in the particular case the rules which are thus interpreted."[25]

In its case law, many times the Court left little doubt about the compatibility between national law and EU law.[26] "On occasion, the question has been reformulated so as to present the issue in non-fact-specific terms – although the essence of the question answered and its consequential effect as a compatibility decision remain unchanged."[27]

We agree that this may be caused, as some authors observed[28], by the fact that many questions are very detailed and require a specific answer. "The line between matters of Community law and matters of national law, between interpretation and application are more easily drawn in theory than in practice."[29]

In what agreements with non-member states are concerned, these may be regarded as acts of the EU institutions, since they are generally concluded by a decision of the

[19] For example, judgment of 16 March 1978 in case 135/77 Bosch/Hauptzollamt Hildesheim, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 22 March 2016. See also Andreşan-Grigoriu, 2010, 226-227.

[20] Order of 5 March 1986 in case 69/85 Wünsche/Germany, paragraphs 10-16, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 22 March 2016.

[21] Judgment of 17 December 1970 in case 11/70 Internationale Handelsgesellschaft, paragraphs 3 and 4, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 22 March 2016.

[22] See Brînzoiu, 2007, 85.

[23] Horspool and Humphreys, 2008, 114.

[24] For further reading, see Broberg, 2010, 362-389.

[25] Judgment of 27 March 1963 in joint cases 28 to 30/62 Da Costa en Schaake NV and others/Administratie der Belastingen, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 22 March 2016. See also Schütze, 2012, 289-290.

[26] For example, see the judgments in cases C-402/09 Tatu and C-263/10 Nisipeanu, in which the Court stated that article 110 of TFEU must be interpreted as precluding a member state from introducing a pollution tax levied on motor vehicles on their first registration in that member state if that tax is arranged in such a way that it discourages the placing in circulation in that member state of second-hand vehicles purchased in other member states without discouraging the purchase of second-hand vehicles of the same age and condition on the domestic market. http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[27] Craig and de Búrca, 2011, *The Evolution . . .*, 368. For example, see judgment of 29 May 1997 in case C-329/95 VAG Sverige, paragraphs 17-24, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 10 March 2016.

[28] See Craig and de Búrca, 2009, 618.

[29] Steiner and Woode, 2009, 231.

Council. This seems to be the view adopted by the Court and the binding effects of its judgment concern only the agreement as part of EU law, not the non-member state.[30]

However, it has been emphasized that the party to the agreement is the EU itself, not the Council, so the act is not a unilateral act of an institution, but a bilateral or multilateral act of the Union. The Court does not interpret the Council's decision, but the bilateral act of the Union.[31]

If both the Union and the member states are parties to the agreement with the non-member state/states (mixed agreements), the jurisdiction of the Court extends only to those provisions falling within EU competence, not to the provisions falling within the member states'exclusive competence.[32]

It would seem that the Court only has jurisdiction to interpret an international agreement if it is formally a party to that agreement by means of an act of one of its institutions. Agreements between member states are excluded from the Court's jurisdiction[33], even if they are just subsidiary conventions, adopted to attain objectives set out in the Treaties.[34]

That is why the Court's decision to declare it has jurisdiction to interpret the General Agreement on Tariffs and Trade (GATT)[35], to which it did not fomally adhere, was subject to criticism in doctrine and considered to be a policy-based judgment, given only on the ground that it was desirable for the GATT to be covered by article 267 of TFEU (the former article 177 of TEEC)[36]. We agree that there was no legal basis for the Court to accept jurisdiction in the case of GATT, since it was not an act of an EU institution. The Court's arguments that the member states were all parties to this international agreement and that there was a need to prevent potential distortions in the unity of the commom commercial policy and in trade do not constitute formal grounds for jurisdiction.

2.2 Ratione personae and ratione loci

The Court can only answer preliminary references made by "courts or tribunals of a member state".[37]

As the Court stated in numerous occasions, the terms "court" and "tribunal" have an autonomous meaning in EU law, describing any national judicial body, established by national law, independent, permanent, that has the power to apply national law and render a definitive decision on legal rights and obligations, binding, after

[30] Judgment of 30 April 1974 in case 181/83 Haegemann/Belgian State, paragraphs 2-5, in which the Court ruled that it had jurisdiction to answer preliminary questions about the Agreement of association between the European Economic Community and Greece.

[31] Hartley, 2010, 291.

[32] Judgement of 16 June 1998 in case C-53/96 Hermès International/FHT Marketing Choice, paragraphs 22-29. The Court stated it had jurisdiction to interpret provisions from the Agreement on Trade-Related Aspects of Intellectual Property Rights since the Community was a part to this agreement and it applied to the Community trade mark, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 10 March 2016.

[33] See Popescu, 2011, 251.

[34] See judgment of 15 January 1986 in case 44/84 Hurd/Jones, paragraph 20, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 10 March 2016.

[35] Judgment of 16 March 1983 in joint cases 267, 268 and 269/81 Amministrazione delle finanze dello Stato/SPI and SAMI, paragraphs 14-19, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 10 March 2016.

[36] Hartley, 2010, 291-292.

[37] For legal standing to refer preliminary questions, see Andreşan-Girgoriu, 2010, 72-145, Kaczorowska, 2009, 255-260 and Petrescu, 2011, 148-149.

following an adversarial procedure[38] and applying rules of law.[39]

Only the Court can establish if a judicial body meets these criteria. The Court consistently refused to accept references form arbitration tribunals[40] and administrative authorities with no judicial functions.[41]

If the body does not have legal standing to ask a preliminary question or if the judicial body is acting outside its judicial function[42], the Court shall give an order of inadmissibility.[43] If the body receives such an order, it may not ask a new question.

It is for each member state to define its territory geographically[44], but EU law must be applicable in those territories as well[45].

Judicial bodies from non-members states are clearly excluded from the Court's jurisdiction, even if these non-members states are parties to an association agreement with the EU, with the exception of the situation when the right is enshrined in an international agreement concluded between EU and third countries, as it is in the Agreement on the European Economic Area, which authorises courts and tribunals of the European Free Trade Association member states to refer questions to the Court of Justice on the interpretation of an agreement rule[46].

International courts are also excluded, although this rule may be subject to exceptions, as the Court stated that the Benelux Court, a common court to Belgium, the Netherlands and Luxembourg, composed of judges from the supreme courts of these member states, did have standing to refer preliminary questions[47].

In our opinion, the Court's view on jurisdiction might be similar in the case of the European Court of Human Rights, a court that is common to all member states of the EU, parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted within the framework of another international organisation, the Council of Europe.[48] This

[38] See judgment of 16 December 2008 in case C-210/06 Cartesio, paragraphs 54-63, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[39] See judgment of 6 October 1981 in case 246/80 Broekmeulen/Huisarts Registratie Commissie, paragraphs 8-17, available at http://curia.europa.eu/en/content/juris/c1_juris.htm and judgment of 17 September 1997 in case C-54/96 Dorsch Consult, paragraphs 22-38, available at http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[40] For example, judgment of 23 March 1982 in case 102/81 Nordsee/Reederei Mond, paragraphs 7-16 and judgment of 27 January 2005 in case C-125/04 Denuit and Cordenier, paragraphs 11-17. The main argument to reject jurisdiction was that the parties are under no obligation, in law or in fact, to refer their disputes to arbitration. On the other hand, the national court that decides on the annulment of an arbitration award can refer preliminary questions, as it results from judgment of 1 June 1999 in case C-126/97 Eco Swiss.

[41] See judgment of 25 June 2009 in case C-14/08 Roda Golf & Beach Resort, paragraphs 31-42, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[42] See judgment of 15 January 2002 in case C-182/00 Lutz and others, paragraphs 11-17, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016. The Austrian regional court was exercising a non-judicial function, in connection with the maintenance of the register of companies.

[43] For procedural aspects, see Petrescu, 2011 and Fábián, 2014.

[44] Judgment of 10 October 1978 in case 148/77 Hansen/Hauptzollamt Flensburg, with regard to the French overseas departments, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 22 March 2016.

[45] Judgment of 3 July 1991 in case C-355/89 Department of Health and Social Security/Barr and Montrose Holdings, paragraphs 6-10, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 22 March 2016.

[46] Article 107 of the Agreement on the European Economic Area and Protocol 34 annexed to it, available at http://www.efta.int/legal-texts/eea, last accesed on 22 March 2016.

[47] Judgment of 4 November 1997 in case C-337/95 Parfums Christian Dior/Evora, paragraphs 15-31, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 10 March 2016.

[48] For a contrary opinion see Andreşan-Grigoriu, 2010, 88, Lenaerts, Arts and Maselis, 2006, 44.

court is competent to solve disputes between private persons and member states and, though it is not formally a part of the court system of the member states, its decisions are final and must be applied, producing binding effects in their legal system. It applies the Convention, but it is not impossible to imagine a situation in which it might need the interpretation of EU law, applicable in all member states of the EU and also parties to the Convention, especially since this has happened before in ECHR's case law[49]. It remains to be seen how this issue will be addressed in the context of EU's process of accession to this Convention.[50]

2.3 Ratione temporis

The Court does not have jurisdiction to give preliminary rulings if the facts of the national dispute occurred prior to the member state's accession to the EU.[51] In case C-283/10 the Court stated that it has jurisdiction to interpret the provisions of EU law only as regards their application in a new member state with effect from the date of that state's accession to the European Union. The dispute in the main proceedings concerned events which took place between May 2004 and September 2007, whereas Romania did not accede to the European Union until 1 January 2007. As the events occurred in part after the date of Romania's accession to the European Union, the Court decided it had jurisdiction to reply to the questions referred.[52]

Thus, it would seem the Court only denies competence for those past situations or events which have completely exhausted their legal effects prior to the date of accession of the new member state.[53]

The national courts may also ask preliminary questions on the application of EU law in intertemporal situations, since the application of EU law *ratione temporis* is a matter of interpretation.

"It is assumed that the ECJ grants immediate effect to procedural norms, whereas norms of substantive character are not immediately applicabile in every case."[54]

It is also necessary that the national dispute is in course[55] and it is a real one[56]. It does not matter in what stage of the

[49] See cases Cantoni against France, judgment of 11 November 1996, available at http://hudoc.echr.coe.int/eng#{"itemid":["001-58068"]} and Matthews against the United Kigdom, judgment of 18 February 1999, available at http://hudoc.echr.coe.int/eng#{"itemid":["001-58910"]}, last accesed on 22 March 2016.

[50] For details about EU's accession to the Convention for the Protection of Human Rights and Fundamental Freedoms, see Gâlea, 2012 and Jacobs, 2012, 204-206.

[51] Judgment of 10 January 2006 in case C-302/04 Ynos, paragraphs 34-38, judgment of 14 June 2007 in case C-64/06 Telefónica O2 Czech Republic, paragraphs 17-24 and judgment of 15 April 2010 in case C-96/08 CIBA, paragraphs 13-15, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 10 March 2016.

[52] Judgment of 24 November 2011 in case C-283/10 Circul Globus București, paragraphs 27-29, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[53] See judgment of 2 October 1997 in case C-122/96 Saldanha and MTS Securities Corporation/Hiross, paragraph 14, judgment of 29 January 2002 in case C-162/00 Pokrzeptowicz-Meyer, paragraphs 46-57 and order of 6 March 2007 in case C-18/06 Ceramika Paradyż, paragraphs 20-25, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016. See also Broberg and Fenger, 2010, 146-147.

[54] Póltorak, 2008, 1362.

[55] Lenaerts, Arts and Maselis, 2006, 45.

[56] Judgment of 11 March 1980 in case 104/79 Foglia/Novello, paragraphs 10-13, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 22 March 2016. The Court considered that the parties to the main proceedings did not dispute with regard to the EU issue refered, but had the same opinion. They created an artificial dispute and inserted certain provisions in their contract in order to get an Italian court to decide on the compatibility of a French consumption tax with EU law, so the European Court denied jurisdiction to answer the preliminary questions refered by the Italian court.

proceedings[57], but it was recommended that the optimum time would be when the facts of the case have been established and questions of purely national law have been settled[58], in order to receive a helpful answer and not have the question rejected as being purely hypothetical[59] or for the lack of sufficient description of the facts[60].

3. Conclusions

Legal protection in the EU is ensured, largely, by national courts, acting as EU courts competent to apply and interpret EU law.[61] The preliminary reference procedure is an instrument of cooperation between the national courts of the member states and the Court of Justice of the European Union, in a common effort to interpret and apply EU law coherently and uniformly. There is no hierarchy between the first courts and the latter[62], but rather a clear separation of competence, which does not contradict their complementary roles.

The Court of Justice is the only one competent to decide if it has jurisdiction to answer a preliminary reference or not.[63] Some authors observed that, over the years, due to its increasing case load, the Court's generous approach in accepting to answer preliminary questions has shifted to some extent by developing jurisprudence aimed at a better control of the types of cases it will hear.[64]

In this context, it is important to understand how far reaching is the jurisdiction of the European Court, under all its aspects: material, personal, territorial and temporal. These specific issues have been approaches in a synthetical manner, for a better understanding of what preliminary questions can find an answer on the grounds of the legal issue reffered. This can lead to a lighter work load for the European Court, to more confidence for national courts in starting an efficient dialogue and to the development of EU law.

The study did not cover all the reasons for declaring a reference as inadmissible, so further details may be presented on hypothetical problems, on the *acte claire* doctrine, on the precedent issue, on the lack of relevance of the question for the resolution of the national dispute or on the formal aspects of the references, like providing sufficient information about the facts of the case.

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[58] Judgment of 10 March 1981 in joint cases 36 and 71/80 Irish Creamery Milk Suppliers Association, paragraphs 5-9, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 22 March 2016.

[59] Judgment of 5 February 2004 in case C-380/01 Schneider, paragraphs 20-32, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[60] Order of 7 December 2010 in case C-441/10 Anghel, http://curia.europa.eu/en/content/juris/c2_juris.htm, last accesed on 22 March 2016.

[61] Rusu and Gornig, 2009, 149-150. For Romanian case law on reasons not to refer preliminary questions, see Şandru, Banu and Călin, *Refuzul* . . ., 2013.

[62] Arnull et. al., 2006, 510.

[63] See judgment of 16 December 1981 in case 244/80 Foglia/Novello, paragraphs 18-21, http://curia.europa.eu/en/content/juris/c1_juris.htm, last accesed on 22 March 2016.

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