

**SEMINAR ORGANISED BY THE SUPREME ADMINISTRATIVE COURT OF SWEDEN IN
COOPERATION WITH ACA-EUROPE**

Stockholm, 9-10 October 2023

Questionnaire

**"Preliminary rulings of the Court of Justice of the European Union – from CILFIT to
Conorzio"**

ANSWERS BY THE SUPREME COURT OF ESTONIA

II Background and statistics

1. What is the formal title of your court (also provide the title in English)?

Riigikohus (Supreme Court of Estonia, direct translation "State Court")

2. Which principal branches of law are addressed at your court?

The Supreme Court deals with all branches of law. They are divided between three principal chambers: administrative law, civil and criminal law chambers. There is also a constitutional review chamber, which resolves constitutional disputes, not appeals in cassation like other chambers.

In the substantial questions of this questionnaire, I will be giving responses on behalf of strictly the Administrative Law Chamber of the Supreme Court, to make them comparable to other answers which are based on the practice of highest administrative courts.

3. Which court or courts in your legal system falls under the obligation to refer questions to CJEU for a preliminary ruling (article 267.3 TFEU)?

The Supreme Court

4. On average, how many incoming cases are registered at your court per year?

The Supreme Court altogether received 2491 cases in 2022. The number of administrative cases was 622. The numbers have fallen slowly, but rather steadily over the last years.

5. How many preliminary rulings has your court requested from the CJEU during the period 2012 to 2022?



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15 altogether, 9 of which in administrative cases

6. Do any branches of law stand out such that preliminary rulings are requested more frequently in respect of that branch?

- Yes
- No**

If "yes", state the branch or branches of law and whether there is any reason why the number of preliminary rulings within that branch or branches stands out.

N/A

7. Estimate the number of referred cases from your court during the period 2012 to 2022 that have related to the *validity* of an EU act itself.

None.

8. Has your court requested an "expedited preliminary ruling procedure" (art. 105–106 Rules of Procedures of the Court of Justice) in any of the cases referred?

- Yes
- No**

If "yes", did the CJEU grant the request or requests?

N/A

- Yes
- No**

Please provide an example of a case that has been dealt with according to this special procedure or a case where your court's request has been rejected.

9. Has your court requested an "urgent preliminary ruling procedure" (art. 107–114 Rules of Procedures of the Court of Justice) in any of the cases referred?

- Yes
- No**

If "yes", did the CJEU grant the request or requests?

N/A

- Yes



- No

Please provide an example of a case that has been dealt with according to this special procedure or a case where your court's request has been rejected.

III The procedure in national courts concerning requests for a preliminary ruling

10. Does your national legislation contain any provisions concerning the procedure relating to requests for a preliminary ruling from the CJEU?

- **Yes**
- No

If "yes", state the rule and briefly describe the contents.

The main rules are in § 95 (4) of the Code of Administrative Court Procedure (henceforth CACP)¹, according to which, in the case that the court, in relation to an issue that has arisen in the proceedings, has applied for a preliminary ruling to the CJEU, the court orders a stay of proceedings until the decision of the CJEU becomes final; the court may also order a stay of proceedings in the case that a matter in which proceedings are pending before the CJEU involves interpreting a rule of law which is of crucial importance also in the administrative matter that the court is dealing with. In addition, there is a rule in § 103 (2) CACP that procedure expenses include the costs related to preliminary ruling proceedings.

11. Does your court have any routine documents, guidelines, etc., for the procedure concerning requesting a preliminary ruling?

- **Yes**
- No

If "yes", briefly state the contents of these documents (for example, whether they regard the procedural handling and/or the substantive assessment in order to ensure compliance with the case law of the CJEU).

There are no inside documents, but in 2005, justice Julia Laffranque published a handbook "Eelotsuse küsimine Euroopa Kohtult" (asking for a preliminary ruling from the European Court of Justice) which is accessible online to all judges and court personnel. However, as it is quite an old document, it is not relied upon regularly these days.

¹ Available in English: <https://www.riigiteataja.ee/en/eli/519052022001/consolide>.



12. What possibilities are available to a party in the case in your court to claim that the court shall request a preliminary ruling from the CJEU?

The parties have the possibility to ask the court to request a preliminary ruling either in their appeal or, if the Supreme Court gives leave of appeal, during the deadline for the submission of procedural documents given to parties.

13. Estimate how common it is that your court make a request for a preliminary ruling after the question has been raised by a party relative to when the question is raised *ex officio* by the court.

- Most commonly, the question is raised by a claim brought by a party
- Most commonly, the question is raised *ex officio* by the court**
- Both are equally common

14. Briefly describe what the procedure looks like when your court consider requesting a preliminary ruling from the CJEU.

For example, if there are any time frames for handling a claim from the parties regarding a preliminary ruling, if and how the parties in the case are involved, if a rejection of a request for a preliminary ruling is examined in a separate decision or in conjunction with the final ruling in the case, the number of judges involved in the decision, etc.

If the Court considers requesting a preliminary ruling, the panel (normally consisting of 3 justices, sometimes 5) asks the parties for their opinion on both whether to ask and what to ask. This is usually done in written proceedings, but has also been discussed in an oral hearing in a more complex case (oral hearings are very rare on the cassation level). Sometimes, the Court has presented the parties with draft questions, but sometimes simply free text on the issues concerning which the Court is discussing the necessity of a preliminary ruling. Since the case has already been discussed briefly once during the leave of appeal procedure (leave is also decided by 3 justices, but not always the same ones as will deal with the substantial proceedings), if the possible need for preliminary ruling is expressed there, this hearing of parties is often done in the same letter that gives a deadline to the parties for the submission of other procedural documents.

*If a party has asked for a request for a preliminary ruling (or requesting a preliminary ruling has been discussed by the panel *ex officio*), the rejection of that request is dealt with in the final judgment or ruling in the case (by the same panel that is competent for the case).*

There are no special time limits for such a procedure.



15. Briefly describe which considerations (in substance) that are made when your court examines the question whether to request a preliminary ruling or not from the CJEU?

For example, how the court proceeds to determine whether the provision in question has already been interpreted by the CJEU or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (*acte éclairé/acte clair*), if it is common for your court to specifically investigate how other countries have interpreted the provision, how such an investigation then is carried out, if other language versions are consulted, etc.

In order to determine whether there is a need to make a request for a preliminary ruling, the court conducts an analysis of the relevant provision (always including other language versions, as we have had several experiences of the Estonian version substantially differing from French, English and/or German ones) and an examination of the manner in which it, or neighbouring questions, have been interpreted by the CJEU (here, also, it has been useful to look at other language versions) as well as whether there are any pending preliminary ruling cases from other countries. Academic sources are often consulted as well, if such exist on the issue. Sometimes, we have also asked in the ACA forum how other countries have dealt with the same questions.

16. Is the government or other branches of the executive power ever involved *before* your court requests a preliminary ruling?

- Yes**
- No**

If "yes", describe which contacts that may occur.

As executive institutions are usually respondents, so one of the parties in administrative cases, they, like other parties to the proceedings, have a right to express their opinion or even ask the Court to request a preliminary ruling.

Administrative courts in Estonia (including the Administrative Law Chamber of the Supreme Court) also have the option of joining to the proceedings an administrative authority whose opinion it seeks on the following bases: 1) if the authority performs supervision of the respondent, 2) if the subject matter of the dispute concerns the tasks of the authority, 3) if the authority has issued or should have issued an opinion or has issued or should have issued an endorsement in the administrative proceedings which gave rise to the dispute, 4) if there are other reasons which suggest that the authority's opinion or the information that the authority holds is likely to facilitate resolving the matter (§ 24 (1) CACP). Our Court has found it quite useful, especially in more complex cases, to ask for information and/or



opinion from authorities that might not be parties to the proceedings, but have expert knowledge on the matter. In addition, the Court has involved the European Commission in a similar way a couple of times.

17. Are there ever any contacts between your court and the government or other branches of the executive power to inform about a preliminary ruling *after* it has been requested by your court?

- Yes
- No**

If "yes", describe which contacts that may occur.

No, except for after the preliminary ruling procedure has concluded and national proceedings continue – in the latter case, the same options as described in answer to question 16 are available (and used).

18. How does your court state the reasons for rejecting a claim for a preliminary ruling (cf. question 29 below regarding cases where leave to appeal or other "filters" are prescribed)?

For example, is the reasoning, as a rule, based on the criteria established in the case law of the CJEU, (inter alia *CILFIT*) or does your court refer to additional criteria which do not follow directly from the Court's case law.

*The court states reasons for rejecting a claim for a preliminary ruling usually in the course of the reasoning of the judgment/ruling. Sometimes, the chain of reasoning for the decision renders the requested preliminary ruling irrelevant to the case – then, there is not much need for reasoning for rejecting the claim, except to state that. But when the issue that could be the topic of a reference for a preliminary ruling is relevant to the case, the claim is rejected using the criteria following from the ECJ's case law (including *CILFIT*). If the basis for rejection is *acte éclairé*, obviously the reasoning will include references to the relevant CJEU case law. When arguing for *acte clair*, more often than not different language versions are referred to.*

19. Following the ruling of the CJEU in *Conorzio* and of the European Court of Human Rights in *Sanofi Pasteur v. France* and *Rutar and Rutar Marketing d.o.o. v. Slovenia*, does your court give more extensive reasons for rejecting a party's claim to request a preliminary ruling?





- Yes
- No**

20. Is it possible to appeal a decision of your court to make a request for/not make a request for a preliminary ruling?

- Yes
- No**

If "yes", to what extent can such an appeal be granted? N/A

21. Can a lower court's decision to make a request/not make a request for a preliminary ruling be appealed to a higher court?

- Yes
- No**

If "yes", can such an appeal be granted? *The answer is no. The Supreme Court has once made a substantial ruling in a case where the request for a preliminary ruling by a circuit court was appealed to the Supreme Court. In that case, the Court found that due to the ECJ judgment in case C-210/06: CARTESIO (p 98), such an appeal is inadmissible, and thus, the fact that proceedings were stayed also cannot be appealed, as the staying of proceedings was the automatic result of the request.²*

22. Are there any differences in the procedure in your court for requesting a preliminary ruling when the question is raised in a case where the expedited or urgent procedure is applied (cf. question 8 and 9 above)?

- Yes
- No
- The procedure has not been applied**

If "yes", please describe in what way the procedure differs. N/A

Formulation of the questions submitted to the CJEU

² Ruling of the Administrative Law Chamber of the Supreme Court of Estonia, 21.03.2013, in case no 3-3-1-2-13, available in Estonian: <https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-2-13>.



23. Briefly describe how questions to the CJEU in general are formulated when your court requests a preliminary ruling.

For example, are the questions formulated in a narrow way in order to provide the most concrete guidance possible in the case or in a more open way in order to give the CJEU more freedom to formulate its answer?

The manner in which the questions in a request for a preliminary ruling is formulated depends on the individual case. We try to give as much context as possible for the questions, and more often than not state how we would respond to them ourselves. Usually, we formulate the questions in a way that is the most useful for our case. However, when we are aware of a larger issue that needs resolving, it cannot be excluded that this might impact the way we word our questions.

24. Are the parties usually given the opportunity to comment on the request for a preliminary ruling before the request is submitted to the CJEU (cf. the CJEU's recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, 2019/C 380/01, para. 13)?

- Yes**
- No

If "yes", briefly describe the material in the case on which the parties are given the opportunity to comment.

See response to question 14. The way the parties are heard differs from case to case. Usually, the parties are not given a draft of the request for a preliminary ruling, but rather an open explanation of why the court is considering the request. A couple of times, the parties have also been presented with draft questions and asked to make suggestions to the text.

25. In a request for a preliminary ruling, does your court usually state its own view on the answer to be given to the question referred (cf. the CJEU's recommendations, para. 18)?

- Yes**
- No

Briefly describe the reasons why your court does or does not usually state its view on the answer to be given to the question referred.

If our court has a certain view as to how the questions should be answered, we find it useful to present that to the ECJ with our reasoning, to have an open dialogue with the ECJ.





There has even been one case where our court directly asked the ECJ whether it wanted to change its earlier position in a similar case (alas, they did not).

Leave to appeal and other "filters"

26. Does your national legal system prescribe any requirement of leave to appeal or other forms of "filters" in order for a case to be admitted for adjudication in your court?

- Yes
- No

If "yes", briefly describe the regime and state whether it applies generally or only to certain types of cases. If "no", please go to question 30.

All appeals submitted to the Supreme Court are subject to a leave of appeal procedure. The appeal is submitted to the court, which then examines the case in a panel of three and decides whether to grant the leave. The bases for granting leave of appeal are the following:

- 1) the positions stated in the appeal warrant the conclusion that the circuit court has incorrectly applied a rule of substantive law, or has significantly infringed the rules of court procedure, which has resulted or could have resulted in an incorrect judgment being entered;*
- 2) regardless of the above, decision on the appeal is of considerable import from the point of view of ensuring legal certainty or uniformity of approach in the case-law of the courts (§ 219 (3) CACP).*

27. Is the preliminary ruling procedure different when the question is raised in a case requiring leave to appeal or another "filter" (cf. question 14 above)?

As said, leave of appeal is required in all cases. The claim for a preliminary ruling (or the possibility of the court asking for a preliminary ruling ex officio) is discussed along with the issue of leave of appeal. Obviously, when the court finds that a request for a preliminary ruling would be relevant to the solution of the case and is necessary according to the CILFIT criteria, the leave must be granted.

28. Please estimate in how many cases, out of the total amount of cases in which your court has made a request for a preliminary ruling from the CJEU during the period 2012 to 2022, leave to appeal or other "filters" have been required in order for the case to be admitted for adjudication?

In all of them.



29. Is the reasoning different as regards rejections of a claim to make a request for a preliminary ruling in cases in which leave to appeal or other "filters" are prescribed?

When the court decides not to grant leave of appeal, such a decision is usually made with a ruling that has almost no reasoning (except for a reference to the legal basis). After the ECtHR case law on the subject, our court has discussed the need to give more reasoning when a party has asked the court to request a preliminary ruling. At the moment, our practice is that as long as the request for a preliminary ruling is not raised for the first time in the appeal in cassation, but has already been discussed in courts of lower instance, the Supreme Court does not have need to repeat the reasons the preliminary ruling was considered unnecessary in earlier instances. However, when the issue has not been analysed by courts of lower instance, we have considered that the ruling might indeed need to include (brief) reasons as to rejecting the claim for a preliminary ruling, according to CILFIT criteria. In practice, this has not yet happened in a case that would fall under Article 6 ECHR, so no certain conclusions on our practice may yet be deduced.

IV The process after having received the judgment of the CJEU

30. Briefly describe the handling after your court has received the judgment from the CJEU regarding a preliminary ruling.

When the CJEU has issued its judgment, the participants to the national case are given the opportunity to comment on the ruling. When giving that opportunity, the court often explains its own initial conclusions from the preliminary ruling, and directs the participants' attention to the most relevant issues left to discuss. Apart from that, the procedure after the preliminary ruling does not differ much from other procedures.

The Supreme Court's final judgment or ruling is sent by e-mail to the CJEU and uploaded to JuriFast.

31. Has it occurred that your court has had difficulties understanding the specific consequences of the ruling from the CJEU on legal questions in the national case i.e. to use the CJEU's answer as a basis for the decision in the case? (cf. the CJEU's recommendations, para. 11)?

- Yes**
- No**

If "yes", describe how common it is and please provide an example of a case where such difficulties have occurred.



It is not common, but has occurred occasionally. An example is the case C-580/17 Järvelaev, where the ECJ's response was much less concrete than we had hoped and, instead of basing the recovery of structural aid on the existence of specific circumstances, tied it to the objective of the measure under which that operation was financed, which was rather hard to assess.

32. Briefly describe the factors, if any, which your court considers have had an impact on the clarity of the judgment of the CJEU.

For example, is it relevant that the CJEU has reformulated the referred questions, whether the Advocate General has commented, whether your court has itself given an account of its own position as to the manner in which the referred questions are to be answered, etc.

The more specific the questions, the more hope it is that the response will be concrete as well. I also think it helps to describe the background of the dispute as clearly as possible.

33. During the period 2012 to 2022, has it occurred that your court has considered it necessary to make a renewed request for a preliminary ruling concerning the same questions?

- Yes
- No**

If "yes", briefly describe what gave rise to the renewed request. N/A

V Miscellaneous

34. Has it occurred that an infringement procedure has been commenced against your Member State as a consequence of the fact that a preliminary ruling was not requested by a court in your State?

- Yes
- No**

If "yes", briefly describe the matter and whether the proceedings gave rise to amended legislation or altered routines for addressing questions regarding preliminary rulings.

N/A





35. Has your Member State been ordered to pay damages in a matter as a consequence of the fact that a court has failed to make a request for a preliminary ruling or that a court did not rule in accordance with an issued preliminary ruling?

- Yes
- No**

If "yes", briefly describe the matter and whether the proceedings led to legislative amendments or changes in routines for addressing questions regarding preliminary rulings by your court. *N/A*

