

Conclusions of the summary report
on the experiences gained on references for preliminary ruling

The jurisprudence-analysing working group set up in 2013 January focused on two main groups of issues. First, it surveyed the number and types of cases in which Hungarian courts had made a referral for a preliminary ruling since Hungary's accession to the European Union, reviewed the domestic court decisions given in light of the preliminary ruling decisions of the Court of Justice of the European Union, and examined the effect of the decisions of the Court of Justice and of the requesting courts' on-merits decisions on Hungarian legislation and court practice. Second, it examined the cases in which the Hungarian courts refused to make a referral for preliminary ruling despite a party's request to that effect. In this context the working group surveyed whether the Hungarian courts rejected such motions correctly, under proper grounds.

As to the first group of issues, the survey established that the number of references made by Hungarian courts for a preliminary ruling was quite high; it exceeded the number of references made by the courts of other Member States which joined the European Union at the same time. The references made by Hungarian courts were dismissed by the Court of Justice only in a small percentage, which attests to the fact that the references were well-founded.

The geographical distribution of the Hungarian references was not even: 80% of them were made by courts located in Budapest and Baranya county. From several counties no reference had been made in the 10 years that had elapsed since Hungary's accession to the EU. A comparison with such Member States which joined the EU together with Hungary revealed that Hungarian first instance courts made such references in a far greater percentage, which attests to Hungarian lower instance courts' determinedness.

The Hungarian references for preliminary rulings were primarily related to tax law (mainly VAT), consumer protection (mainly its private law rules) and common agricultural policy.

In examining the second group of issues the working group started from the assumption that by requesting to make a reference for preliminary ruling the requesting party had disputed the content of the applicable EU law or the compliance of the relevant EU law and Hungarian law. Such issues had typically arose in the context of directives and the interpretation of the principles contained in the so-called primary law (EU treaties). The working group pointed out: the fact that the harmonization clause of the Hungarian law applicable to the given dispute referred to the directive invoked by the party did not mean as such that the Hungarian law was in compliance with the purposes and provisions of the given directive. Therefore a request for referral for preliminary ruling should not be rejected on the ground that on account of its harmonization clause the Hungarian law complied with EU law.

The working group was of the opinion that a request for reference for preliminary ruling should be rejected in a separate court order. Failure to pass such an order should constitute a serious procedural irregularity potentially giving rise to the quashing of the decision on the merits and to the remittal of the proceedings.