COURT OF JUSTICE
OF THE EUROPEAN UNION

EN

Fact sheet

Urgent preliminary ruling procedure and expedited procedure

Foreword

In order to ensure that cases can be dealt with more expeditiously if required, Article 23a of the Statute of the Court of Justice of the European Union [1] provides:

'The Rules of Procedure may provide for an expedited or accelerated procedure and, for references for a preliminary ruling relating to the area of freedom, security and justice, an urgent procedure.

Those procedures may provide, in respect of the submission of statements of case or written observations, for a shorter period than that provided for by Article 23, and, in derogation from the fourth paragraph of Article 20, for the case to be determined without a submission from the Advocate General.

In addition, the urgent procedure may provide for restriction of the parties and other interested persons mentioned in Article 23, authorised to submit statements of case or written observations and, in cases of extreme urgency, for the written stage of the procedure to be omitted.'

An expedited or accelerated procedure has existed since 2000 and is now governed by Article 105 et seq. of the Rules of Procedure of the Court of Justice [2] in the case of references for a preliminary ruling, and by Article 133 et seq. of those Rules in the case of direct actions. [3] The expedited procedure can be applied irrespective of the type of proceedings, if the nature of the case requires that it be dealt with within a short time. [4]

The request that a case be dealt with pursuant to an expedited procedure is made by the referring court or tribunal, in the case of a reference for a preliminary ruling, and by the applicant or the defendant, in the case of a direct action. The decision is taken by the President of the Court, after hearing the Judge-Rapporteur, the Advocate General and, where appropriate, the other party to the proceedings. Exceptionally, the President of the Court may also decide of his or her own motion to apply the expedited procedure. The decision whether to allow or refuse the use of an expedited procedure takes the form of an order of the President of the Court. However, between January 2019 and June 2023, in the absence of a decision by way of an order, the reasons for the decision to

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1 *Consolidated version of Protocol (No 3) on the Statute of the Court of Justice of the European Union,* annexed to the Treaties, as amended.

2 Rules of Procedure of the Court of Justice of 25 September 2012 (OJ 2012 L 265, p. 1), as amended on 18 June 2013 (OJ 2013 L 173, p. 65), 19 July 2016 (OJ 2016 L 217, p. 69), 9 April 2019 (OJ 2019 L 111, p. 73), 26 November 2019 (OJ 2019 L 316, p. 103) and 2 July 2024 (OJ L 2024/2094).

3 It should be noted in that regard that Article 151 of the Rules of Procedure of the General Court of 4 March 2015 (OJ 2015 L 105, p. 1) also provides for the possibility of adjudicating under an expedited procedure, 'having regard to the particular urgency and the circumstances of the case'.

4 In the new Rules of Procedure of the Court of Justice, the expression 'within a short time' has replaced the 'exceptional urgency' referred to in the earlier Rules of Procedure.

allow or refuse the use of an expedited procedure were set out only in the decision closing the proceedings.

The urgent preliminary ruling procedure is more recent, having been established in 2008 in response to the extension of the powers of the European Union and jurisdiction of the Court in the area of freedom, security and justice. Given the particularly sensitive nature of that field, it seemed necessary to introduce a specific exceptional procedure that would enable the interests at stake to be protected if necessary. Thus, unlike the expedited procedure, which can be applied in all areas of EU law and to any type of proceedings, the urgent preliminary ruling procedure, governed by Article 107 et seq. of the Rules of Procedure of the Court, is reserved for references for a preliminary ruling that raise questions in the areas covered by Title V of Part Three of the Treaty on the Functioning of the European Union (FEU Treaty), relating to the area of freedom, security and justice.

The decision as to whether or not to grant a request from a referring court or tribunal that a case be dealt with under the urgent preliminary ruling procedure is taken by a Chamber specially designated by the Court, and no reasons are given. However, if the request for an urgent preliminary ruling procedure is granted, the Court, when issuing its substantive ruling, will often summarise the arguments of the referring court or tribunal justifying the use of that procedure. Moreover, where the referring court or tribunal does not request the urgent preliminary ruling procedure but that procedure does, on the face of it, seem to be required, the President of the Court can ask the competent Chamber to consider the need for the reference to be determined pursuant to the urgent preliminary ruling procedure, which can then be applied of the Court's own motion.

It should further be noted that the provisions governing the expedited procedure and the urgent preliminary ruling procedure do not set out in detail the circumstances in which those procedures are intended to be used. Only the fourth paragraph of Article 267 TFEU expressly mentions a situation requiring the Court to act 'with the minimum of delay', that is where a question referred for a preliminary ruling is raised in a case with regard to a person in custody. In the absence of additional guidance, the purpose of this fact sheet is to present cases that are representative of the procedures applied by the Court and which enable the reasons that may justify the application of the urgent preliminary ruling procedure or of the expedited procedure to be better understood.

As the first fact sheet dates from 2019, the purpose of this update is to supplement the current selection with 15 more recent decisions, 10 of which concern the urgent preliminary ruling procedure and 5 of which concern the expedited procedure, providing further clarification as to the application of those two procedures.

List of acts referred to

CONVENTION

Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 and annexed to the Council Act of 26 July 1995 (OJ 1995 C 316, p. 48).

REGULATIONS

Council **Regulation (EC) No 2201/2003** of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors (OJ 2004 L 47, p. 1), as amended by Regulation (EU) No 1258/2013 of the European Parliament and of the Council of 20 November 2013 (OJ 2013 L 330, p. 21).

Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1).

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (OJ 2013 L 180, p. 31).

DIRECTIVES

Council **Directive 92/43/EEC** of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

Council **Directive 93/13/EEC** of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 (OJ 2004 L 136, p. 34).

Council **Directive 2003/86/EC** of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

Council **Directive 2003/109/EC** of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7).

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ 2011 L 337, p. 9; 'the Qualification Directive').

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ 2013 L 180, p. 60).

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (OJ 2013 L 180, p. 96).

DECISIONS

Council **Framework Decision 2002/584/JHA** of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

Commission **Decision 2006/928/EC** of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

European Council **Decision 2011/199/EU** of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ 2011 L 91, p. 1).

Commission **Implementing Decision (EU) 2015/789** of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.) (OJ 2015 L 125, p. 36).

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I. The urgent preliminary ruling procedure

1. Scope of the urgent preliminary ruling procedure

Order of 22 February 2008, Kozłowski (C-66/08, EU:C:2008:116) [5]

(Accelerated procedure)

In this case, which was brought in February 2008, the Oberlandesgericht Stuttgart (Higher Regional Court, Stuttgart, Germany) asked the Court to determine the reference for a preliminary ruling pursuant to the urgent preliminary ruling procedure (PPU), on the ground that the detention in Germany of the applicant in the main proceedings would shortly be coming to an end and, moreover, there was a possibility of his early release.

The President of the Court noted that the articles of the Rules of Procedure governing the PPU, the advance application of which was sought by the referring court, would not enter into force until 1 March 2008. Thus, since the present case had been brought before that date, it could not be dealt with under the PPU. However, the President of the Court decided that, on account of the spirit of cooperation between the national courts and the Court of Justice, the request for a PPU had to be interpreted as seeking a substantial reduction in the length of time taken to deal with the case and should be treated as a request for what was then the accelerated (now expedited) preliminary ruling procedure. [6]

Order of 6 May 2014, G. (C-181/14, EU:C:2014:740)

(Expedited procedure)

In this case, criminal proceedings had been brought in Germany against a person who sold herb mixes containing synthetic cannabinoids. At the material time (between 2010 and 2011), those substances did not come within the scope of the German law on narcotics, [7] although the Landgericht Itzehoe (Regional Court, Itzehoe, Germany) had applied the legislation relating to trade in medicinal products, [8] which transposes Directive 2001/83. [9] Thus, it had found that the sale of those products constituted the

5 See also judgment of 17 July 2008 (Grand Chamber), *Kozłowski* (C-66/08, EU:C:2008:437).

6 See below, in Part II of this fact sheet, headed 'The expedited procedure', section 1.1. Nature and sensitivity of the area of interpretation covered by the reference for a preliminary ruling.

7 Betäubungsmittelgesetz (Law on narcotics).

8 Gesetz zur Änderung arzneimittelrechtlicher und anderer Vorschriften (Law amending the legislation governing medicinal products and other provisions) of 17 July 2009 (BGBl. 2009 I, p. 1990).

9 Directive 2001/83/EC.

offence of marketing unsafe medicinal products and had, therefore, sentenced the defendant in that case to a term of imprisonment.

The Bundesgerichtshof (Federal Court of Justice, Germany), before which an appeal on a point of law was brought, considered that the resolution of the case in the main proceedings depended on whether the products at issue could indeed be classified as 'medicinal products', within the meaning of Directive 2001/83. It therefore referred a question to the Court of Justice in that respect. It also requested that the PPU be applied, stating that, if the Court were to answer that those products were not medicinal products, no criminal liability could have been found against the defendant in the case, so that he would have been wrongfully detained.

The Court decided that it was not necessary to apply the PPU, on the ground that Directive 2001/83 was adopted on the basis of Article 95 EC, now Article 114 TFEU, which forms part of Title VII of Part Three of the FEU Treaty. The PPU is reserved for those references for a preliminary ruling which raise one or more questions in the fields referred to in Title V of Part Three of the FEU Treaty. Nevertheless, the President of the Court decided, of his own motion, that the case should be dealt with under the expedited procedure. [10]

Order of 1 December 2023, EV (Drug precursors) (C-174/22, EU:C:2023:947)

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure of the Court of Justice – Drug precursors – Framework Decision 2004/757/JHA – Article 2(1)(d) – Person involved in the transport and distribution of precursors used for the illicit production or manufacture of drugs – Regulation (EC) No 273/2004 – Scheduled substances – Article 2 – Concept of 'operator' – Article 8(1) – Circumstances suggesting that scheduled substances might be diverted for the illicit manufacture of narcotic drugs or psychotropic substances – Obligation to notify those circumstances – Concept of 'circumstance' – Scope)

In 2018, during a police stop in Varna (Bulgaria), EV was found to be in possession of, inter alia, toluene, a substance used in the production of methamphetamine. Subsequently, the Okrazhen sad-Varna (Provincial Court, Varna, Bulgaria) found EV guilty of the offence of possessing drug precursors for distribution without appropriate authorisation and sentenced him to two years' imprisonment and a fine of BGN 20 000 (approximately EUR 10 200). EV brought an appeal on a point of law before the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria) claiming, inter alia, that the act of which he was accused could not establish that offence. In particular, he submitted that toluene was a substance falling within Category 3 of Annex I to Regulation No 273/2004, the possession of which was not subject to either a licence or registration. In that context, as it had doubts as to the interpretation of Regulation

[10] See below, in Part II of this fact sheet, headed 'The expedited procedure', section 1.2. Particular severity of the legal uncertainty to which the reference for a preliminary ruling relates.

No 273/2004, the Varhoven kasatsionen sad (Supreme Court of Cassation) decided to refer the matter to the Court of Justice for a preliminary ruling. In addition, it requested that the PPU be applied.

As in *G.* (C-181/14, EU:C:2014:740), cited above, the Court refused that request on the ground that Regulation No 273/2004, the interpretation of which was sought in that case, forms part of Title VII of Part Three of the FEU Treaty, whereas the urgent preliminary ruling procedure is reserved for those references for a preliminary ruling which raise one or more questions in the fields referred to in Title V of Part Three of that Treaty, relating to the area of freedom, security and justice.

2. Reasons for the application of the urgent preliminary ruling procedure

2.1. Risk of deterioration of the parent/child relationship

Judgment of 22 December 2010, Aguirre Zarraga (C-491/10 PPU, EU:C:2010:828)

(Judicial cooperation in civil matters – Regulation (EC) No 2201/2003 – Jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility – Parental responsibility – Rights of custody – Child abduction – Article 42 – Enforcement of a certified judgment ordering the return of a child handed down by a (Spanish) court with jurisdiction – Power of the requested (German) court to refuse enforcement of that judgment in a case of serious infringement of the child's rights)

In this case, a Spanish national and a German national who were the parents of a young daughter had initiated divorce proceedings in Spain, the family's habitual place of residence. In that context, sole rights of custody in respect of their daughter had been provisionally awarded to the father, who appeared best placed to ensure that the child's family environment was maintained, the mother having expressed her wish to settle in Germany with her new partner. However, after having spent the summer at her mother's new residence in Germany, the child did not return to Spain. Several sets of proceedings were then initiated by the parents, in Spain and in Germany, seeking, respectively, the child's return to Spain, the recognition and enforcement of Spanish decisions in Germany and the definitive award of rights of custody.

In that context, the Oberlandesgericht Celle (Higher Regional Court, Celle, Germany) referred a number of questions to the Court of Justice concerning the interpretation of Article 42, headed 'Return of the child', of Regulation No 2201/2003. [11]

[11] Regulation (EC) No 2201/2003.

The Court decided of its own motion that the reference for a preliminary ruling should be dealt with under the PPU. In that regard, it observed that it recognised the urgency of ruling in cases of child removal, in particular where the separation of a child from the parent to whom custody had previously been awarded, even if only provisionally, would be likely to bring about a deterioration of their relationship, or harm that relationship, and to cause psychological damage. Applying that case-law to this particular case, the Court of Justice noted that the child had been separated from her father for more than two years and that, given the distance between the parents and their strained relationship, there was a real and serious risk that the child and her father would have absolutely no contact for the duration of the proceedings before the referring court. According to the Court of Justice, in those circumstances, the use of the ordinary procedure might cause serious, and perhaps irreparable, harm to the relationship between father and daughter and also further jeopardise the daughter's integration into the father's family and social environment in the event of any return to Spain.

Judgment of 22 December 2010, Mercredi (C-497/10 PPU, EU:C:2010:829)

(Judicial cooperation in civil matters – Regulation (EC) No 2201/2003 – Matrimonial matters and parental responsibility – Child whose parents are not married – Concept of 'habitual residence' of an infant – Concept of 'rights of custody')

The dispute in the main proceedings was between a British national and a French national, concerning the custody of their daughter. In this case, when the child was two months old, the mother and child had left the United Kingdom, where the child was habitually resident, for the island of Réunion (France), without the father having been told beforehand. That removal was, however, lawful, since the mother had been the only person with rights of custody at the time. Proceedings had subsequently been brought by the parents in the United Kingdom and in France, in particular, for a parental responsibility order and for the child's habitual residence to be fixed. Although a French court had ruled in favour of the mother on those points, the Court of Appeal (England & Wales) (Civil Division) (United Kingdom) considered that it was necessary to identify the court with jurisdiction under EU law, which entailed clarification, by the Court of Justice, of the test under Articles 8 and 10 of Regulation No 2201/2003 that enables the child's habitual residence to be determined.

The Court of Appeal (England & Wales) (Civil Division) therefore submitted a request for a preliminary ruling to the Court of Justice and requested that the PPU be applied. In support of the latter, it stated that, since the court with jurisdiction had not been identified, the applications made by the father for an order enabling him to maintain his relationship with his child could not be dealt with. The Court of Justice decided to apply the PPU, pointing out that the case concerned a child who was 16 months old and who had been separated from her father for more than a year. For the Court of Justice, given that the child was at a developmentally sensitive age, the continuation of that situation,

an additional feature of which was the considerable distance between the places where the father and the child were living, might seriously harm their future relationship.

Judgment of 26 April 2012, Health Service Executive (C-92/12 PPU, EU:C:2012:255)

(Jurisdiction, recognition and enforcement of judgments in matrimonial matters and in the matters of parental responsibility – Regulation (EC) No 2201/2003 – Child habitually resident in Ireland, where the child has been placed in care on many occasions – Child's behaviour aggressive and placing herself at risk – Judgment ordering placement of the child in a secure care institution in England – Material scope of the regulation – Article 56 – Procedures for consultation and consent – Obligation to recognise or declare enforceable the decision to place the child in a secure care institution – Provisional measures – Urgent preliminary ruling procedure)

In this case, the High Court (Ireland), before which proceedings had been brought by the authority with responsibility for children taken into public care in Ireland, had ordered the placement of a child of Irish nationality in a secure care institution in the United Kingdom, the country of the mother's residence. Clinical professionals had concluded that there was no institution in Ireland that could meet the child's specific protection needs.

Having been called upon to rule on the continuation of the child's placement in the institution concerned, the High Court asked the Court of Justice whether the decision it had adopted came within the scope of Regulation No 2201/2003 and whether that decision had to be recognised and declared enforceable in the requested Member State before it could be enforced in that Member State.

The High Court also asked that the PPU be applied, a request that was granted by the Court of Justice. In that regard, the High Court stated, first, that the child was detained for her own protection, against her will, in a secure care institution. Second, it pointed out that its jurisdiction depended on whether Regulation No 2201/2003 was applicable to the main proceedings and, consequently, on the answers to the questions referred for a preliminary ruling. In addition, following a request by the Court of Justice for clarification, [12] the High Court stated that the child's situation also called for urgent measures. She was approaching the age of majority, after which she would no longer be subject to the jurisdiction of that court. Furthermore, her condition required that she be placed in secure institutional care, for a short period, and that a programme involving structured and increasing liberty be introduced to enable her to be placed with her family in England.

[12] Request made on the basis of Article 104(5) of the Rules of Procedure of the Court (now, after 25 September 2012, Article 101(1) of those Rules).

Order of 10 April 2018, CV (C-85/18 PPU, EU:C:2018:220)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Article 99 of the Rules of Procedure of the Court – Judicial cooperation in civil matters – Jurisdiction in matters of parental responsibility – Child custody – Regulation (EC) No 2201/2003 – Articles 8, 10 and 13 – Concept of 'habitual residence' of a child – Judgment delivered by a court of another Member State concerning the place of residence of a child – Wrongful removal or retention – Jurisdiction in cases of child abduction)

The dispute in the main proceedings was between two Romanian nationals living in Portugal, and concerned the determination of their child's place of residence and of a maintenance allowance. After the couple had separated and the mother had left the common domicile, the child remained with his father. However, following the mother's application for custody of the child, the father had left for Romania, taking the child with him. Romanian courts, to which the mother had in the meantime applied for provisional custody, had then ordered that the child be returned to Portugal, because of the wrongful nature of the child's removal. Irrespective of that, the father had also made an application to the Judecătoria Oradea (Court of First Instance, Oradea, Romania) for the child's residence to be fixed at his domicile in Romania and for the mother to be ordered to pay a maintenance allowance.

The Judecătoria Oradea (Court of First Instance, Oradea) noted that it was required, first of all, to rule on the plea of lack of jurisdiction raised by the mother in those proceedings and that, in that context, it was necessary to obtain further information from the Court of Justice concerning the concept of 'habitual residence', in Article 8(1) of Regulation No 2201/2003.

The Court of Justice decided of its own motion that the reference for a preliminary ruling should be dealt with under the PPU. In that regard, it observed that it recognised the urgency of ruling in cases of child removal, in particular where the separation of a child from the parent would be likely to bring about a deterioration of their present or future relationship and to cause irreparable damage. Applying that case-law to this case, the Court of Justice noted that the child, who was 7 years old, had lived for almost 2 years with his father in Romania and was separated from his mother who resided in Portugal and with whom he had only monthly telephone contact. According to the Court of Justice, in those circumstances and in the light of the fact that the child was at a developmentally sensitive age, the continuation of the situation could cause serious, and perhaps irreparable, harm to the relationship between the child and his mother. Moreover, since social and family integration was already fairly advanced in the Member State of the child's current residence, the continuation of that situation would be likely to further jeopardise his integration in the event of any return to Portugal.

Judgment of 24 March 2021, MCP (C-603/20 PPU, EU:C:2021:231)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Area of freedom, security and justice – Judicial cooperation in civil matters – Regulation (EC) No 2201/2003 – Article 10 – Jurisdiction in matters of parental responsibility – Abduction of a child – Jurisdiction of the courts of a Member State – Territorial scope – Removal of a child to a third State – Habitual residence acquired in that third State)

The dispute in the main proceedings, in the United Kingdom, was between the father of a young child and her mother, the latter having moved the child to India where the child lives with her maternal grandmother, and concerned the return of the child to the United Kingdom and the father's rights of access.

Before the High Court of Justice (England & Wales), Family Division (United Kingdom), the mother challenged the jurisdiction of the courts of England and Wales, which had been called upon to rule on the father's claim, on the ground that the child was no longer habitually resident in the United Kingdom. That court considered that it was necessary to determine whether it had jurisdiction on the basis of Article 10 of Regulation No 2201/2003. [13] It therefore asked the Court of Justice whether that article must be interpreted as meaning that, where a child has acquired his or her habitual residence in a third State following the child's abduction to that State, the courts of the Member State where the child was habitually resident immediately before his or her abduction retain their jurisdiction indefinitely.

The referring court also requested that the PPU be applied, a request which the Court of Justice granted. In that regard, the Court noted that, as regards the criterion of urgency, since the young child had lived permanently in India since October 2018, except for a short stay in the United Kingdom, there was a risk that the prolongation of that situation might cause serious, possibly irremediable, damage to the relationship between the child and her father, or even between the child and both parents. That situation was likely to bring about irreparable harm to her emotional and psychological development in general, having regard, in particular, to the fact that the child was at a developmentally sensitive age. Further, since the social and family integration of the child was already well advanced in the third country where she was then habitually resident, according to the findings of the referring court, the prolongation of that situation could have further jeopardised the integration of the child in her family and social environment in the event of any return to the United Kingdom.

Judgment of 18 April 2023, Afrin (C-1/23 PPU, EU:C:2023:296)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Border controls, asylum and immigration – Immigration policy – Directive 2003/86/EC – Right to family

[13] Regulation (EC) No 2201/2003.

reunification – Article 5(1) – Submission of an application for entry and residence for the purposes of exercising the right to family reunification – Legislation of a Member State requiring the sponsor's family members to submit the application in person to the competent diplomatic post of that Member State – Impossibility or excessive difficulty to reach that post – Charter of Fundamental Rights of the European Union – Articles 7 and 24)

The dispute in the main proceedings was between Syrian nationals and their minor children and the Belgian State concerning the latter's refusal to register the application for entry and residence for the purposes of family reunification submitted by the mother and by the children.

The tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium) therefore sought to determine whether that refusal undermines the practical effect of Directive 2003/86 on family reunification [14] or whether it infringes the fundamental rights [15] which that directive is intended to protect.

The referring court also requested that the PPU be applied. In support of its request, it relied on reasons relating to the security situation in Syria and to the fact that a late decision on the registration of the application for entry and residence for the purposes of family reunification might make that reunification more difficult, as Belgian law imposes stricter requirements when the application for family reunification is submitted more than one year after recognition of the sponsor's refugee status.

Applying by analogy its case-law on child abduction, the Court of Justice noted that, as regards the condition relating to urgency, it was apparent from the order for reference that the minor children A and B had been separated from their father for more than three years and that the continuation of that situation, which would be the consequence of the failure to register the application of September 2022, could seriously harm those children's future relationship with their father. In those circumstances, the Court acceded to the PPU request.

2.2. Deprivation of liberty

Judgment of 30 November 2009 (Grand Chamber), Kadzoev (C-357/09 PPU, EU:C:2009:741)

(Visas, asylum, immigration and other policies related to free movement of persons – Directive 2008/115/EC – Return of illegally staying third-country nationals – Article 15(4) to (6) – Period of detention – Taking into account the period during which the execution of a removal decision was suspended – Concept of 'reasonable prospect of removal')

[14] Directive 2003/86/EC.

[15] This includes the right to respect for private and family life, guaranteed in Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), the right to have regard to the best interests of the child and the right of the child to maintain on a regular basis a personal relationship with both parents, enshrined in Article 24 of the Charter.

A person who had no identity documents and stated that he had been born in Chechnya was arrested by the Bulgarian authorities and detained, in a special detention facility for foreign nationals, pending execution of the deportation measure to which he was subject. However, for the purposes of executing that measure, documents enabling him to travel abroad had to be obtained. Three years later, those documents had still not been obtained. Furthermore, the person concerned had made applications for asylum and applications for his detention to be replaced by a less severe measure, which had all been rejected.

Against that background, the director of the administration responsible for that detention facility had commenced proceedings in the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria) for a ruling of the court's own motion on the action to be taken with respect to that detention. The national court noted that, before the Bulgarian Law on foreign nationals was amended [16] for the purpose of transposing Directive 2008/115, [17] the duration of detention in a detention facility was not limited to any period. Moreover, it found that there was no transitional provision governing situations in which detention decisions had been taken before that amendment. Consequently, it decided to ask the Court of Justice about the interpretation of Article 15(4) to (6) of Directive 2008/115.

The referring court also requested that the PPU be applied, stating that the case raised the question whether the person concerned should be kept in detention or released. In that regard, if there was no 'reasonable prospect of removal' in his case, within the meaning of Article 15(4) of Directive 2008/115, it might be necessary to order his immediate release, in accordance with that provision. In view of the above, the Court of Justice decided to grant the PPU request.

Judgment of 17 March 2016, Mirza (C-695/15 PPU, EU:C:2016:188)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Regulation (EU) No 604/2013 – Criteria and mechanisms for determining the Member State responsible for examining an application for international protection – Article 3(3) – Right of Member States to send an applicant to a safe third country – Article 18 – Obligations of the Member State responsible for examining the application in the event that the applicant is taken back – Directive 2013/32/EU – Common procedures for granting and withdrawing international protection – Examination of an application for international protection)

A Pakistani national, from Serbia, had entered Hungary and lodged a first application for international protection there. However, since he had left the place of residence assigned to him by the Hungarian authorities, examination of his application had been

[16] Zakon za chuzhdentsite v Republika Balgaria (Law on foreign nationals in the Republic of Bulgaria) (DV No 153 of 1998), as amended on 15 May 2009 (DV No 36 of 2009).

[17] Directive 2008/115/EC.

discontinued on the ground that he had implicitly withdrawn it. He was subsequently taken in for questioning in the Czech Republic and, at the request of the Czech authorities, was taken back by Hungary, pursuant to the procedure provided for by Regulation No 604/2013 [18] ('the Dublin III Regulation'). The individual concerned then submitted a second application for international protection in Hungary and was held in detention while that application was examined. The application was rejected as inadmissible on the ground that Serbia had to be classified as a safe third country in this case. An order was made for the return and removal of the individual concerned.

In that context, the Debreceni közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Debrecen, Hungary), before which an action against the decision rejecting the second application for international protection had been brought, decided to refer certain questions to the Court of Justice concerning the circumstances in which a Member State may envisage sending an applicant to a safe third country, in accordance with Article 3(3) of the Dublin III Regulation, without analysing the substance of that person's application.

The referring court also requested that the PPU be applied, pointing out that the individual concerned was, until 1 January 2016, the subject of a detention order. In addition, in response to a request from the Court of Justice, the referring court stated that that order had been extended until the date of a final decision on his application for international protection or, in the absence of any such decision by 1 March 2016, until the latter date. However, again according to the referring court, after 1 March 2016, the detention order could be extended again for a period of 60 days, up to a total detention period of 6 months.

The Court of Justice recalled its case-law according to which it is appropriate to take into account the fact that the person concerned is deprived of his liberty and that the question whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings. Moreover, it pointed out that that person's situation must be assessed as it stood at the time when consideration was given to whether the reference should be dealt with under the PPU. Applying that case-law here, the Court of Justice noted that, in this case, the criteria were fulfilled. The individual's continued detention depended on the outcome of the case in the main proceedings, which concerned the lawfulness of the rejection of his application for international protection. Consequently, the Court of Justice acceded to the PPU request.

Judgment of 1 June 2016, Bob-Dogi (C-241/15, EU:C:2016:385)

(Reference for a preliminary ruling – Police and judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant – Article 8(1)(c) – Obligation to include in the European arrest warrant information concerning the existence of an 'arrest

[18] Regulation (EU) No 604/2013.

warrant' – No national arrest warrant issued prior to and separately from the European arrest warrant – Effect)

A Hungarian court had issued a European arrest warrant against a Romanian national, in order to commence criminal proceedings. The individual concerned had then been arrested in Romania and had appeared before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), which was responsible for deciding whether he was to be remanded in custody and surrendered to the Hungarian judicial authorities. In that context, the Curtea de Apel Cluj (Court of Appeal, Cluj) had ordered his immediate release, but also that he be subject to supervision measures.

The Curtea de Apel Cluj (Court of Appeal, Cluj), querying the interpretation of Article 8(1)(c) of Framework Decision 2002/584, [19] and, more specifically, the consequences of the fact that no national arrest warrant had been issued prior to and separately from the European arrest warrant, decided to submit a request for a preliminary ruling to the Court of Justice.

It also requested that the PPU be applied, pointing out that although the individual concerned was not then in custody, he was nevertheless subject to supervision measures, which restricted his personal freedom. The Court of Justice decided that, in those circumstances, there was no need to grant that request. However, the President of the Court gave the case priority over others, pursuant to Article 53(3) of the Rules of Procedure.

Judgment of 25 July 2018 (Grand Chamber), Minister for Justice and Equality (Deficiencies in the justice system) (C-216/18 PPU, EU:C:2018:586)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Surrender procedures between Member States – Conditions for execution – Charter of Fundamental Rights of the European Union – Article 47 – Right of access to an independent and impartial tribunal)

After Polish courts had issued a number of European arrest warrants, the person to whom those warrants related was arrested in Ireland and placed in custody, pending a decision on his surrender to the Polish judicial authorities. The person concerned was brought before the High Court (Ireland) and informed it that he did not consent to his being surrendered, on the ground that this would expose him to a real risk of a denial of justice, in view of the recent legislative reforms of the Polish system of justice.

In that context, the High Court considered the consequences of those legislative reforms, which led the Commission to adopt, on 20 December 2017, a reasoned

[19] Framework Decision 2002/584/JHA – Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190, p. 1), as amended by Framework Decision 2009/299/JHA.

proposal inviting the Council to determine, on the basis of Article 7(1) TEU, that there was a clear risk of a serious breach by the Republic of Poland of the rule of law. [20] It then asked the Court of Justice a number of questions on the approach to be taken by an executing authority, under Article 1(3) of Framework Decision 2002/584, where there is a real risk of breach of the right of access to an independent tribunal as a result of general or systemic deficiencies so far as concerns the independence of the issuing Member State's judiciary.

The High Court also requested that the reference for a preliminary ruling be determined pursuant to the PPU, a request that was granted by the Court of Justice. As regards the criterion relating to urgency, the Court of Justice recalled its settled case-law on the point and then applied it to the case. In that regard, it stated that the person concerned was in custody and that his continued detention depended on the outcome of the main proceedings, the deprivation of liberty having been ordered in the context of the execution of the European arrest warrants.

Judgment of 12 February 2019, TC (C-492/18 PPU, EU:C:2019:108)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant – Article 12 – Keeping a person in detention – Article 17 – Time limits for adoption of the decision to execute the European arrest warrant – National legislation providing for automatic suspension of detention 90 days after arrest – Interpretation in conformity with EU law – Suspension of time limits – Charter of Fundamental Rights of the European Union – Article 6 – Right to liberty and security – Differing interpretations of national legislation – Clarity and predictability)

Pursuant to a European arrest warrant issued by the competent authorities of the United Kingdom, a British national was arrested in the Netherlands and placed in custody. The 60-day period, under Article 17(3) of Framework Decision 2002/584, within which the decision to execute the European arrest warrant must be taken, started to run from that point. Shortly before the 60-day period expired, the rechtbank Amsterdam (District Court, Amsterdam, Netherlands) ordered that that time limit be extended by 30 days, in accordance with Article 17(4) of Framework Decision 2002/584, and that the British national concerned be kept in detention. However, the rechtbank Amsterdam (District Court, Amsterdam) subsequently stayed the proceedings indefinitely, pending the reply by the Court of Justice to the request for a preliminary ruling submitted in *RO* (C-327/18 PPU). [21] In parallel, since 90 days had elapsed since his arrest, the British national applied for his detention to be suspended.

[20] Commission's reasoned proposal of 20 December 2017 submitted in accordance with Article 7(1) of the Treaty on European Union regarding the rule of law in Poland (COM(2017) 835 final).

[21] This case gave rise to the judgment of 19 September 2018, *RO* (C-327/18 PPU, EU:C:2018:733).

In that context, the rechtbank Amsterdam (District Court, Amsterdam) considered the continued detention of the person concerned in the light of Framework Decision 2002/584 and Article 6 of the Charter of Fundamental Rights of the European Union ('the Charter'), which provides for the right to liberty and security. Under the national legislation at issue, [22] such a person must be released once 90 days have elapsed since his arrest. However, the legislation has been interpreted as allowing detention to continue when the executing judicial authority decides to refer a question to the Court of Justice for a preliminary ruling or to await the reply to a request for a preliminary ruling submitted by another executing judicial authority. In both situations, the 90-day period must then be deemed to be suspended.

The rechtbank Amsterdam (District Court, Amsterdam) requested that the reference for a preliminary ruling be dealt with under the PPU, arguing that the person concerned was being held in custody in the Netherlands solely on the basis of the European arrest warrant, and that it could not determine the application for suspension of his detention until the Court of Justice had ruled on that reference. The Court of Justice recalled its settled case-law, according to which it is necessary to take into account the fact that the person concerned is being deprived of his liberty and that the question whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings, since his situation must be assessed as it stands at the time when consideration is given to the request that the reference be dealt with under the PPU. In this case, the Court of Justice considered that the criteria were fulfilled and therefore decided to apply the PPU.

Subsequently, however, the rechtbank Amsterdam (District Court, Amsterdam) informed the Court of Justice that it had ordered the suspension, subject to conditions, of detention until delivery of the decision on the British national's surrender to the United Kingdom. The referring court had calculated that the 90-day period had expired, even taking into account the period during which that 90-day period had been suspended. In those circumstances, the Court of Justice considered that the urgency had ceased to apply and that, accordingly, it was no longer necessary that the case be dealt with in accordance with the PPU.

Judgment of 24 September 2020, Generalbundesanwalt beim Bundesgerichtshof (Specialty rule) (C-195/20 PPU, EU:C:2020:749)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Effects of the surrender – Article 27 – Potential prosecutions for other offences – Specialty rule)

[22] Overleveringswet (Law on the surrender of sentenced persons) (Stb. 2004, No 195).

The individual concerned was prosecuted in Germany in three separate sets of criminal proceedings. First of all, in 2011, he was convicted of trafficking in narcotic drugs by the Amtsgericht Niebüll (Local Court, Niebüll, Germany) and given a combined custodial sentence of one year and nine months. That sentence was suspended on probation. Next, in 2016, criminal proceedings were instituted in Germany against the individual concerned for the offence of sexual abuse of a minor committed in Portugal and, in view of the fact that the individual concerned was in Portugal, the Staatsanwaltschaft Hannover (Public Prosecutor's Office, Hanover, Germany) issued a European arrest warrant for the purposes of conducting a criminal prosecution in respect of that offence. On the basis of that first European arrest warrant, the individual concerned was surrendered by the Portuguese authorities to Germany where he served the sentence handed down for sexual abuse of a minor. On leaving prison, he was placed under social and judicial supervision, but was not prohibited from leaving German territory. He subsequently travelled first to the Netherlands and then to Italy.

On the basis of a second European arrest warrant in 2018, issued by the German authorities, he was again surrendered to them by the Italian authorities for the purpose of serving the sentence previously imposed on him for drug trafficking. Those authorities also subsequently agreed to renounce the specialty rule laid down in Article 27(2) of Framework Decision 2002/584, thus allowing the individual concerned to be prosecuted in Germany also for the offence of aggravated rape in conjunction with extortion committed in Portugal before his first surrender. For that offence, the individual concerned was the subject of a detention order in connection with the judgment passing sentence which he was contesting before the referring court.

The referring court sought to ascertain, in essence, what legal consequences attach, first, to the voluntary departure from the territory of the issuing Member State of a person who was surrendered to that State on the basis of an initial European arrest warrant and, second, to the forced return of that person on the basis of a second European arrest warrant.

In that context, the referring court requested that the PPU be applied, a request which the Court of Justice granted. The Court noted that although it was common ground that, at the time when consideration was given to the request that the reference be dealt with under the PPU, the individual concerned was deprived of his liberty on the basis of the judgment of the Amtsgericht Niebüll (Local Court, Niebüll) delivered in 2011, the fact remained that the second arrest warrant issued by the German authorities in 2018 was also capable of justifying his detention. Moreover, if that warrant were maintained, it could result in a less lenient execution of the sentence imposed on him, it could affect the decision on the conditional suspension of that sentence and, should such a suspension be granted, it could become the sole legal basis for continuing to hold the individual concerned in custody.

Judgment of 13 January 2021, MM (C-414/20 PPU, EU:C:2021:4)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Surrender procedures between Member States – Article 6(1) and Article 8(1)(c) – European arrest warrant issued on the basis of a national measure putting a person under investigation – Concept of an 'arrest warrant or any other enforceable judicial decision having the same effect' – No national arrest warrant – Consequences – Effective judicial protection – Article 47 of the Charter of Fundamental Rights of the European Union)

In Bulgaria, 41 persons were prosecuted for drug trafficking, 16 of whom absconded, including the individual concerned. A wanted-persons notice was issued against him, then he was placed under investigation and a European arrest warrant was issued by the competent Bulgarian authorities. On the basis of that European arrest warrant, the individual concerned was arrested in Spain and placed in pre-trial detention. He repeatedly challenged the lawfulness of the decision ordering that he be placed in pre-trial detention.

In that context, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), hearing an application for review of the pre-trial detention measure relating to the individual concerned, decided to ask the Court of Justice about the validity of the European arrest warrant issued against him. In addition, the pre-trial detention of the individual concerned was changed to house arrest.

The referring court requested that the reference for a preliminary ruling be dealt with under the PPU, a request that was granted by the Court of Justice. As regards the criterion relating to urgency, the Court referred to its settled case-law on the subject and noted that it is necessary to take into account the fact that the person concerned in the main proceedings is, on the date the request for a preliminary ruling is lodged, deprived of his or her liberty and that his or her continuing detention depends on the outcome of the dispute in the main proceedings. In that regard, it stated that the question of keeping the individual concerned in pre-trial detention depended, when the request for a preliminary ruling was lodged, on the decision of the Court of Justice, as its answer to the questions put by the referring court could have an immediate impact on how the decision ordering that he be placed in pre-trial detention would be dealt with. Moreover, the Court specified that the conversion of the coercive measure to one of house arrest did not affect that conclusion, as that measure was also capable of restricting the liberty of the person concerned to a considerable degree.

Judgment of 30 June 2022, Valstybės sienos apsaugos tarnyba and Others (C-72/22 PPU, EU:C:2022:505)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Asylum and immigration policy – Directive 2011/95/EU – Article 4 – Common procedures for granting and

withdrawing international protection – Directive 2013/32/EU – Articles 6 and 7 – Standards for the reception of applicants for international protection – Article 18 of the Charter of Fundamental Rights of the European Union – Directive 2013/33/EU – Article 8 – Detention of the applicant – Grounds for detention – Protection of national security or public order – Detention of the asylum seeker on grounds of his illegal entry into the territory of the European Union)

A national emergency, followed by a partial state of emergency, was declared in Lithuania due to a mass influx of migrants, arriving mainly from Belarus. Subsequently, a third-country national who had entered Lithuania illegally from Belarus was arrested in Poland because he did not have any travel documents or visa, and was handed over to the Lithuanian authorities, who placed him in detention pending the adoption of a decision on his legal status. The person concerned made an application for international protection, which he made again in writing but which was deemed inadmissible on the ground that it had not been submitted in accordance with the requirements of the Lithuanian legislation on the submission of applications for international protection in an emergency caused by the mass influx of foreigners. Pursuant to that legislation, a foreigner who has entered Lithuania unlawfully is unable to make an application for international protection in that Member State. That same legislation also provides that, in such an emergency, a foreigner may be detained solely on account of having entered Lithuanian territory unlawfully.

In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), hearing an appeal brought by the person concerned against the decision ordering his detention, sought to ascertain whether the Procedures [23] and Reception [24] Directives preclude such legislation.

The national court also requested that the reference for a preliminary ruling be determined pursuant to the PPU, a request that was granted by the Court of Justice. In that context, the Court observed that the person concerned was subject to an accommodation measure placing him in a centre of the Valstybės sienos apsaugos tarnyba (State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania) with his movements being restricted, which deprived him of his freedom of movement since he could not leave that centre without authorisation or unaccompanied. The Court also noted that, as regards the connection between continued detention and the resolution of the dispute in the main proceedings, it was clear from the order for reference that the first question referred by the national court concerned the ability of the applicant in the main proceedings to make an application for international protection and thus to acquire the status of asylum seeker. That status of asylum seeker is necessary in order for a measure to be applied that does not entail the restriction of movement which characterises the concept of detention.

[23] Directive 2013/32/EU.
[24] Directive 2013/33/EU.

Judgment of 24 July 2023 (Grand Chamber), Lin (C-107/23 PPU, EU:C:2023:606)

(Reference for a preliminary ruling – Protection of the financial interests of the European Union – Article 325(1) TFEU – PFI Convention – Article 2(1) – Obligation to counter fraud affecting the financial interests of the European Union by taking effective deterrent measures – Obligation to provide for criminal penalties – Value added tax (VAT) – Directive 2006/112/EC – Serious VAT fraud – Limitation period for criminal liability – Judgment of a constitutional court invalidating a national provision governing the grounds for interrupting that period – Systemic risk of impunity – Protection of fundamental rights – Article 49(1) of the Charter of Fundamental Rights of the European Union – Principle that offences and penalties must be defined by law – Requirements of foreseeability and precision of criminal law – Principle of the retroactive application of the more lenient criminal law (lex mitior) – Principle of legal certainty – National standard of protection of fundamental rights – Duty on the courts of a Member State to disapply judgments of the constitutional court and/or the supreme court of that Member State in the event that they are incompatible with EU law – Disciplinary liability of judges in the event of non-compliance with those judgments – Principle of the primacy of EU law)

In 2010, the persons concerned omitted to indicate in their accounting documents the commercial transactions and income relating to the sale, to national recipients, of diesel fuel acquired under the excise duty suspension regime, thereby causing a loss to the State budget, in particular as regards value added tax and excise duty on diesel fuel.

In 2018, the Curtea Constituțională (Constitutional Court, Romania) declared a national provision governing the interruption of the limitation period for criminal liability unconstitutional on the ground that it infringed the principle that offences and penalties must be defined by law. In 2022, it clarified that Romanian positive law did not provide for any ground for interrupting that limitation period between the date of publication of the latter judgment and the date of entry into force, on 30 May 2022, of the provision replacing the invalidated provision.

The Curtea de Apel Brașov (Court of Appeal, Brașov, Romania) convicted the persons concerned of tax evasion in 2020. However, they challenged their conviction, relying on the expiry of the limitation period and the principle *lex mitior*. They relied on a 2022 judgment of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), which allows extraordinary appeals based on decisions of the constitutional court. The Curtea de Apel Brașov (Court of Appeal, Brașov) acknowledged that, if that interpretation were accepted, the limitation period in the present case would have expired before the decision convicting the interested parties became final, which would entail the discontinuation of the criminal proceedings and would render impossible their conviction.

In that context, the referring court questioned the compatibility of that interpretation with EU law, since it would have the effect of exempting the interested parties from their criminal liability for serious fraud offences liable to affect the European Union's financial interests. Moreover, it emphasised that it might be required – if it transpired that an

interpretation consistent with EU law is not possible – to disapply the judgments of the Constitutional Court and/or the High Court of Cassation and Justice. The new disciplinary regime allows for the imposition of penalties on judges who, knowingly or through gross negligence, disregard the judgments of those courts.

As regards the criterion of urgency, the Court of Justice referred to its settled case-law on the subject, to the effect that that criterion is satisfied when the person concerned in the case in the main proceedings is, as at the date when the request for a preliminary ruling is made, deprived of his or her liberty and the question as to whether he or she may continue to be held in custody depends on the outcome of the dispute in the main proceedings, and noted that the persons concerned had been sentenced to terms of imprisonment (two of them were in the process of serving their respective terms of imprisonment). Furthermore, according to the reply of the referring court to a request for clarification, those two persons were incarcerated and their detention would be terminated if it were to decide to uphold the extraordinary appeals brought before it against their convictions. In addition, the outcome of those extraordinary appeals brought by the persons concerned depended on the Court's answers to the questions referred. The Court therefore, of its own motion, dealt with the reference for a preliminary ruling under the urgent preliminary ruling procedure.

Order of 27 September 2023, Abboudnam (C-58/23, EU:C:2023:748)

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure of the Court of Justice – Area of freedom, security and justice – Asylum policy – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Articles 22 and 23 – Right to legal assistance and representation – Article 46(4) – Reasonable period of time for lodging an appeal – Article 47 of the Charter of Fundamental Rights of the European Union – Right to an effective remedy before a tribunal – Rejection of an application for international protection as manifestly unfounded by accelerated procedure)

A Moroccan national had submitted an application for international protection which was rejected by a decision of the Ministry of the Interior of the Republic of Slovenia, under an accelerated procedure, on the ground that it was manifestly unfounded.

The individual concerned had lodged an appeal against that decision, arguing that the inappropriate notification of that decision infringed his right to an effective remedy because, in reality, he had only had one day to prepare his appeal. In addition, as he spoke only Arabic and did not have an interpreter, he had had to communicate with his lawyer using electronically translated text messages (SMS).

In accordance with the national legislation at issue, the period for lodging an appeal against such a decision is reduced from 15 days to 3 days from the notification of that decision.

In that context, the Upravno sodišče (Administrative Court, Slovenia), hearing an appeal against that rejection, asked the Court of Justice whether national legislation that lays down a period of three days, including public holidays and non-working days, for lodging an appeal against a decision rejecting as manifestly unfounded an application for international protection adopted by accelerated procedure was compatible with Article 46(4) of Directive 2013/32, read in the light of the first paragraph of Article 47 of the Charter.

The referring court also requested that the reference for a preliminary ruling be dealt with under the PPU, on the ground that, first, the interpretation of Article 46(4) of Directive 2013/32 sought had an effect on how it would examine similar appeals lodged before it and, second, that since the matter of law raised in the present case related to the right to an effective remedy, it justified, on account of its very nature, a response in the shortest time possible.

After refusing that request on the ground that, in the case at issue, the condition relating to urgency had not been satisfied, the Court of Justice specified a number of aspects as having no bearing on the triggering of the PPU. Thus, the large number of persons or legal situations that were potentially concerned by the decision that a referring court must issue after having made a reference to the Court of Justice for a preliminary ruling cannot, as such, constitute an exceptional circumstance capable of justifying the application of the PPU. As regards the ground that any request for a preliminary ruling concerning the interpretation of a provision relating to the right to an effective remedy requires a response to be provided rapidly by the Court, it found that such a ground is not sufficient, in itself, to justify dealing with a case under the PPU, since that procedure is a procedural instrument intended to respond to a situation of extraordinary urgency. Moreover, the Court recalled that since, under national law, the applicant in the main proceedings could not be deported until the decision on the application for a residence permit had become final, the risk that he would be removed to another country where he could be at risk of death, torture or other penalties or treatment that were inhuman or degrading could be ruled out.

The referring court also requested that the reference for a preliminary ruling be dealt with under the expedited procedure on grounds identical to those put forward in support of the request that the reference be dealt with under the PPU. However, the President of the Court refused the request for use of the expedited procedure on the same grounds as those set out in relation to the PPU request.

2.3. Risk of interference with fundamental rights

Judgment of 16 February 2017, C. K. and Others (C-578/16 PPU, EU:C:2017:127)

(Reference for a preliminary ruling – Area of freedom, security and justice – Borders, asylum and immigration – Dublin system – Regulation (EU) No 604/2013 – Article 4 of the Charter of Fundamental Rights of the European Union – Inhuman or degrading treatment – Transfer of a seriously ill asylum seeker to the State responsible for examining his application – No substantial grounds for believing that there are proven systemic flaws in that Member State – Obligations imposed on the Member State having to carry out the transfer)

In this case, a Syrian national and an Egyptian national had entered the territory of the European Union by means of a visa issued by the Republic of Croatia, before submitting applications for asylum to the Republic of Slovenia. The Slovenian authorities had then sent a request to the Croatian authorities to take charge of them, the Republic of Croatia being the Member State responsible for examining their applications, in accordance with the Dublin III Regulation. The Republic of Croatia acceded to that request. However, since the Syrian national was pregnant, the transfer to Croatia had to be postponed until the birth of the child. Subsequently, the individuals concerned objected to that transfer, claiming that it would have negative consequences for the state of health of the Syrian national, which were also likely to affect the wellbeing of her new-born child, and, moreover, that they had been victims of racially motivated remarks and abuse in Croatia. The transfer decision was initially annulled at first instance, before being confirmed on appeal by the Vrhovno sodišče (Supreme Court, Slovenia). However, the Ustavno sodišče (Constitutional Court, Slovenia), to which the individuals concerned appealed, set aside the judgment of the Vrhovno sodišče (Supreme Court) and referred the case back to it.

Against that background, the Vrhovno sodišče (Supreme Court) asked the Court of Justice to clarify the discretionary clause provided for in Article 17 of the Dublin III Regulation, which, by way of derogation, allows a Member State to examine an application for international protection lodged with it, even if such examination is not its responsibility under the criteria laid down by that regulation.

The referring court also requested that the PPU be applied, stating that, taking into account the state of health of the Syrian national, the question of her status should be resolved as rapidly as possible. In that regard, the Court of Justice found that the possibility that the appellants might be transferred to Croatia before the end of an ordinary preliminary ruling procedure could not be ruled out. In response to a request to the referring court for clarification, [25] the latter indicated that even though the first-instance court had ordered the suspension of enforcement of the decision to transfer

[25] Request made on the basis of Article 101(1) of the Rules of Procedure of the Court of Justice.

the persons concerned, there was no judicial measure suspending the enforcement of that decision at the then current stage of the national proceedings. Consequently, the Court of Justice granted the request for the PPU.

Judgment of 7 March 2017 (Grand Chamber), X and X (C-638/16 PPU, EU:C:2017:173)

(Reference for a preliminary ruling – Regulation (EC) No 810/2009 – Article 25(1)(a) – Visa with limited territorial validity – Issuing of a visa on humanitarian grounds or because of international obligations – Concept of 'international obligations' – Charter of Fundamental Rights of the European Union – European Convention for the Protection of Human Rights and Fundamental Freedoms – Geneva Convention – Issuing of a visa where a risk of infringement of Article 4 and/or Article 18 of the Charter of Fundamental Rights is established – No obligation)

A couple of Syrian nationals and their three children living in Syria had submitted applications for humanitarian visas, based on Article 25(1)(a) of Regulation No 810/2009 [26] ('Visa Code'), at the Belgian Embassy in Lebanon before returning to Syria. The purpose of the applications was to obtain visas with limited territorial validity, to enable the family to leave Syria and ultimately to apply for asylum in Belgium. The applicants stated that one of them had been abducted by a terrorist group and tortured, and finally released following the payment of a ransom. They emphasised the deterioration of the security situation in Syria generally, and that they were at risk of persecution because they belonged to the Orthodox Christian community. Their applications were refused on the ground, inter alia, that they intended to stay more than 90 days in Belgium and that Belgian diplomatic posts are not among the authorities to which a foreign national can submit an application for asylum.

The Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium), before which an action was brought against that refusal, then questioned the extent of Member States' discretion in that respect, notably having regard to the obligations arising from the Charter and, in particular, from Article 4 (prohibition of torture and inhuman or degrading treatment or punishment) and Article 18 (right to asylum). It thus referred a number of questions to the Court of Justice for a preliminary ruling.

The Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) also requested that the case be dealt with under the PPU. To that end, it referred to the serious armed conflict in Syria, the young age of the applicants' children, their particular vulnerability associated with their belonging to the Orthodox Christian community, and the fact that the matter had been brought before it in the course of an 'emergency' suspension procedure. In that regard, it stated that the present reference for a preliminary ruling had had the effect of staying the main proceedings.

[26] Regulation (EC) No 810/2009.

The Court of Justice granted the request for the PPU. In so doing, it pointed out that it was not disputed that, at least at the time when the PPU request was examined, the applicants were facing a real risk of being subjected to inhuman and degrading treatment. According to the Court of Justice, that had to be regarded as an element of urgency justifying the application of the PPU.

Order of 27 September 2018, FR (C-422/18 PPU, EU:C:2018:784)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Article 99 of the Rules of Procedure of the Court – Area of freedom, security and justice – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Article 46 – Charter of Fundamental Rights of the European Union – Article 18, Article 19(2) and Article 47 – Right to an effective remedy – Decision rejecting an application for international protection – National legislation providing for a second level of jurisdiction – Automatic suspensory effect limited to the action at first instance)

A Nigerian national had made an application for asylum in Italy. In support of that application, he claimed to have been forced to leave his country of origin because the national authorities had discovered that he was in a homosexual relationship and that, for that reason, he was at risk of being arrested and detained. Following the refusal of his application for asylum by the competent authority and confirmation of that refusal by the Tribunale di Milano (District Court, Milan, Italy), the Nigerian national, on the one hand, brought an appeal in cassation and, on the other, filed an application for interim measures with the Tribunale di Milano (District Court, Milan) for suspension of enforcement of its decision. Under the national legislation, [27] the Tribunale di Milano (District Court, Milan) is required to determine such an application for suspension by assessing whether or not the grounds of appeal raised in the appeal against its decision are well founded, and not by assessing whether or not there is a risk that serious and irreparable harm might be caused to the applicant by the enforcement of that decision.

The Tribunale di Milano (District Court, Milan) asked the Court of Justice about the compatibility of that national legislation with the provisions of Directive 2013/32, [28] read in the light of Article 47 of the Charter, which guarantees a right to an effective remedy.

The Tribunale di Milano (District Court, Milan) also sought the application of the PPU. In that regard, it stated that the applicant was required to leave Italy immediately and that he could be removed to Nigeria at any moment, where he would be exposed to a

[27] Decreto legislativo n. 25 – Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato (Legislative Decree No 25 implementing Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status) of 25 January 2008 (GURI No 40, of 16 February 2008), as amended by decreto-legge n. 13 – Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonche' per il contrasto dell'immigrazione illegale (Decree-Law No 13 Urgent measures concerning the acceleration of international protection procedures and for combating illegal immigration) of 17 February 2017 (GURI No 40, of 17 February 2017), converted into law, with amendments, by Law No 46, of 13 April 2017.

[28] Directive 2013/32/EU.

serious risk of being subjected to the death penalty, torture or other inhuman or degrading punishments or treatment. In addition, the referring court emphasised that the Court's answer to the question raised was likely to have a decisive influence on whether the applicant could stay in Italy pending the outcome of his appeal in cassation. In that context, the Court of Justice noted that the possibility of the applicant being removed to Nigeria before the end of an ordinary preliminary ruling procedure could not be ruled out, and therefore decided to grant the request for a PPU.

Judgment of 17 October 2018, UD (C-393/18 PPU, EU:C:2018:835)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in civil matters – Regulation (EC) No 2201/2003 – Article 8(1) – Jurisdiction in matters of parental responsibility – Concept of 'habitual residence of the child' – Requirement of physical presence – Detention of the mother and child in a third country against the will of the mother – Infringement of the fundamental rights of the mother and child)

Following her marriage to a British national, a Bangladeshi national had been granted a visa enabling her to live in the United Kingdom. The couple had subsequently travelled to Bangladesh during the Bangladeshi national's pregnancy. Their daughter was born in Bangladesh and had never been to the United Kingdom, the father having returned there alone. According to the mother's claims, which were disputed by the father, the father had tricked her into giving birth in a third country and coerced her into remaining in that country with the child, without access to gas, electricity or clean water, without income and in a community that stigmatised her. Accordingly, the mother commenced proceedings in the High Court of Justice (England & Wales), Family Division (United Kingdom) for an order that the child be made a ward of that court and that she and the child return to the United Kingdom.

First of all, the High Court of Justice (England & Wales), Family Division, considered it necessary to resolve the issue of its jurisdiction to make a decision concerning the child, which involved determining whether the child's habitual residence, for the purposes of Article 8(1) of Regulation No 2201/2003, could be considered to be in the United Kingdom, even though she had never been to that Member State. Further, the High Court of Justice (England & Wales), Family Division, queried whether the circumstances of the case, notably the father's behaviour and the breach of the fundamental rights of the mother or of the child, had an effect on that concept of 'habitual residence'.

The referring court also requested that the reference for a preliminary ruling be dealt with under the PPU, a request that was granted by the Court of Justice. In that regard, the Court stated at the outset that, in the event that the father's coercion of the mother was established, the child's current welfare would be seriously compromised. Any delay in taking judicial decisions relating to the child would prolong the situation and would thereby risk causing serious, possibly irreparable, harm to that child's development. Next, the Court noted that, in the event of a possible return to the United Kingdom, such

a delay would also risk being detrimental to the child's integration in her new family and social environment. Last, the Court pointed out that the very young age of the child (1 year and 2 months at the date of the order for reference) made her stimulation and development particularly delicate.

Judgment of 14 May 2020 (Grand Chamber), Országos Idegenrendészeti Főigazgatóság Délalföldi Regionális Igazgatóság (C-924/19 PPU and C-925/19 PPU, EU:C:2020:367)

(Reference for a preliminary ruling – Asylum and immigration policy – Directive 2013/32/EU – Application for international protection – Article 33(2) – Grounds of inadmissibility – Article 40 – Subsequent applications – Article 43 – Border procedures – Directive 2013/33/EU – Article 2(h) and Articles 8 and 9 – Detention – Whether lawful – Directive 2008/115/EU – Article 13 – Effective remedies – Article 15 – Detention – Whether lawful – Right to an effective remedy – Article 47 of the Charter of Fundamental Rights of the European Union – Principle of primacy of EU law)

In this case, Afghan nationals and Iranian nationals, who arrived in Hungary via Serbia, applied for asylum in Hungary from the Röszke transit zone, on the Serbian-Hungarian border. Their applications were rejected as inadmissible under Hungarian law and decisions requiring their return to Serbia were adopted. However, the Serbian authorities refused to readmit the persons concerned to Serbian territory on the ground that the conditions set out in the Agreement on readmission concluded with the European Union were not met. Following that decision, the Hungarian authorities did not examine the substance of the applications referred to above, but amended the country of destination mentioned in the initial return decisions, replacing it with the respective country of origin of the persons concerned. The applicants challenged those amending decisions, but their objections were rejected. Despite the fact that no provision is made for such a remedy under Hungarian law, they brought an action before a court for annulment of the decisions and to have the asylum authority ordered to conduct a new asylum procedure. They also brought actions for failure to act relating to their detention and continuing presence in the Röszke transit zone. They were initially obliged to stay in the sector of that transit zone reserved for applicants for asylum before being required, several months later, to stay in the sector of that zone reserved for third-country nationals whose asylum applications have been rejected, the sector which they were in when the request for a preliminary ruling was made.

The Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary), hearing an action against that rejection, then asked the Court of Justice about the interpretation of Directive 2013/32/EU [29] and Directive 2013/33/EU, [30] in particular as regards the consequences of a third country refusing to readmit migrants whose application for international protection has been found to be

[29] Directive 2013/32/EU.
[30] Directive 2013/33/EU.

inadmissible; how the accommodation provided to those applicants in the transit zone is classified under the provisions of EU law governing detention; and the right of those applicants to effective judicial protection, in particular by the adoption of interim measures by the national courts.

The referring court also requested that the PPU be applied on the ground that the applicants in the main proceedings were deprived of their liberty. It also invoked the fact that the conditions of detention were difficult, in particular because of the advanced age and health problems of some of the applicants and the deteriorating mental health of an infant child staying with his father in the sector of the Röszke transit zone reserved for third-country nationals whose asylum applications have been rejected. In addition, the referring court stated that the Court's answers to the questions referred to it would have a direct and decisive impact on the outcome of the cases in the main proceedings, and in particular on the continuing detention of the applicants in the main proceedings.

The Court of Justice granted the request for the PPU, relying inter alia on the risk of infringement of fundamental rights in respect of asylum (Articles 18 and 19 of the Charter) and the mental health of one of the nationals concerned, who was an infant child. The Court noted that the applicants in the main proceedings were the subject of decisions ordering them to return to their countries of origin and were therefore liable to be sent there at short notice even though, according to the referring court, the substance of the reasons on which their applications for asylum were based had never been examined by a court. Thus, it could not be precluded that, in application of those decisions, which were confirmed by orders the annulment of which was being sought before the referring court, the applicants in the main proceedings would be removed to their countries of origin before the outcome of a preliminary ruling procedure that was not dealt with under the PPU, and that their removal might expose them to treatment contrary to Article 18 and Article 19(2) of the Charter. Furthermore, having regard to the fact that one of the applicants in the main proceedings in that case was an infant child, whose mental health was deteriorating because he was staying in the Röszke transit zone, a delay in taking a judicial decision would prolong the situation and would thereby risk causing serious, possibly irreparable, harm to that child's development.

Judgment of 20 January 2022, Landeshauptmann von Wien (Loss of long-term resident status) (C-432/20,* EU:C:2022:39*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Immigration policy – Directive 2003/109/EC – Article 9(1)(c) – Loss of the status of long-term resident third-country national – Absence from the territory of the European Union for a period of 12 consecutive months – Interruption of that period of absence – Irregular and short-term stays in the territory of the European Union)

The dispute in the main proceedings was between a Kazakh national and the Landeshauptmann von Wien (Head of Government of the Province of Vienna, Austria)

concerning the latter's refusal to renew the former's long-term resident's residence permit.

The referring court, the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria), found that, although the applicant in the main proceedings had never left the European Union for 12 consecutive months between 2013 and 2018, he was present in the territory of the European Union for only a few days per year. That limited presence was therefore the reason for the refusal to renew his residence permit. In that regard, the applicant submitted a legal analysis carried out by a group of experts of the European Commission in respect of legal migration, stating that only physical absence from the territory of the European Union for a period of 12 consecutive months entails the loss of long-term resident status, under Article 9(1)(c) of Directive 2003/109, [31] irrespective of whether the applicant concerned is physically established or habitually resident in the territory of the European Union. The referring court considered that that analysis supported the arguments of the applicant in the main proceedings, according to which even short stays, as in the present case, would be sufficient for him to retain his long-term resident status within the meaning of Directive 2003/109.

In that context, the Verwaltungsgericht Wien (Administrative Court, Vienna) asked the Court about the conditions laid down in Article 9(1)(c) of Directive 2003/109 for the withdrawal by national authorities of the status of long-term resident third-country national.

In addition, the referring court requested that the reference for a preliminary ruling be dealt with under the PPU, stating, inter alia, that the applicant in the main proceedings, his wife and their four minor children were most recently established in the United Kingdom on the basis of residence permits which were issued by that State and valid for a period of several years. However, the applicant in the main proceedings wished to resettle in Austria and be joined by the members of his family for the purposes of family reunification; such a step presupposes, according to the national legislation in force, that it must first be established that the applicant in the main proceedings still has a right to long-term resident status. In refusing the PPU request, the Court of Justice noted that the referring court had not provided an adequate explanation of the circumstances that would establish that there was an urgent need to rule on the case. Thus, the referring court had not set out, inter alia, a risk that the applicant in the main proceedings and the members of his family would be subject to removal measures in the United Kingdom or Austria or a situation in which respect for their fundamental rights, such as the right to family life, would be jeopardised.

[31] Directive 2003/109/EC.

II. The expedited procedure

1. Reasons for the application of the expedited procedure

1.1. Nature and sensitivity of the area of interpretation covered by the reference for a preliminary ruling

Order of 22 February 2008, Kozłowski (C-66/08, EU:C:2008:116) [32]

(Accelerated procedure)

The case in the main proceedings concerned a Polish national who had been residing for a number of years, albeit not continuously and probably illegally, in Germany, where he was then serving a prison sentence. This Polish national was the subject of a European arrest warrant that had been issued by a Polish court for the purposes of execution of a sentence of imprisonment previously imposed on him. In that context, the Oberlandesgericht Stuttgart (Higher Regional Court, Stuttgart, Germany), which was required to rule on the surrender of the person concerned to the Polish judicial authorities, considered the interpretation of the residence or domicile condition in Article 4(6) of Framework Decision 2002/584. That provision lays down a ground for optional non-execution of a European arrest warrant if the requested person 'is staying in, or is a national or a resident of the executing Member State' and that State undertakes to execute the foreign sentence.

The Oberlandesgericht Stuttgart (Higher Regional Court, Stuttgart) also requested that the reference for a preliminary ruling be dealt with under the PPU, on the ground that the Polish national's detention in Germany would shortly be coming to an end and, moreover, there was a possibility of his early release.

Having indicated that the request for the PPU, which was inapplicable in this case, should be treated as a request for the accelerated (now expedited) procedure to be applied, [33] the President of the Court noted that the case raised issues of interpretation pertaining to a sensitive area of activity of the European legislature and to key aspects of the functioning of the European arrest warrant, on which the Court of Justice was being called upon to rule for the first time. The interpretation sought could have general consequences, both for the authorities called upon to cooperate in the context of the European arrest warrant and for the rights of requested persons, who were in a situation of uncertainty. Accordingly, the President of the Court considered that a prompt response would enable the executing judicial authority to rule in the best possible circumstances on the request for surrender submitted to it, thus giving it the

[32] See also judgment of 17 July 2008 (Grand Chamber), *Kozłowski* (C-66/08, EU:C:2008:437).

[33] See above, in Part I of this fact sheet, headed 'The urgent preliminary ruling procedure', section 1. Scope of the urgent preliminary ruling procedure.

opportunity to comply, with the minimum of delay, with its obligations under Framework Decision 2002/584. He therefore ordered that the case be dealt with under the accelerated procedure.

1.2. Particular severity of the legal uncertainty to which the reference for a preliminary ruling relates

Order of 4 October 2012, Pringle (C-370/12, EU:C:2012:620) [34]

(Accelerated procedure)

This case arose in the context of the creation of the European Stability Mechanism (EMS), following the financial crisis which affected the euro area in 2010. The purpose of this international financial institution is to mobilise funding and provide stability support to the benefit of the Member States of the euro area which are experiencing, or are threatened by, severe financing problems. In this case, a member of the Irish Parliament brought proceedings against the Government of Ireland. He pleaded the invalidity of Decision 2011/199 [35] and claimed, moreover, that, by ratifying, approving or accepting the Treaty establishing the European Stability Mechanism, concluded on 2 February 2012, [36] Ireland would undertake obligations incompatible with the Treaties on which the European Union was founded.

In that context, the Supreme Court (Ireland) referred the matter to the Court of Justice and requested that the accelerated procedure be applied, stating that the timely ratification of the EMS Treaty by Ireland was of the utmost importance for other members of the European Stability Mechanism and, in particular, for those in need of financial assistance. Although in the interim Ireland, like all other Member States who were signatories of the EMS Treaty, had ratified that treaty, the President of the Court of Justice indicated that it was apparent from the questions referred for a preliminary ruling in the case that there was uncertainty as to the validity of that treaty. Emphasising the exceptional circumstances of the financial crisis surrounding the conclusion of that treaty, the President of the Court of Justice ruled that the use of the accelerated procedure was necessary in order to remove as soon as possible that uncertainty, which adversely affected the objective of the EMS Treaty, namely to maintain the financial stability of the euro area.

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34 See also judgment of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756).

35 Decision 2011/199/EU.

36 The Treaty establishing the European Stability Mechanism was concluded in Brussels (Belgium) on 2 February 2012 between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland. It entered into force on 27 September 2012.

Orders of 15 February 2017, Mengesteab (C-670/16, EU:C:2017:120), [37] and Jafari (C-646/16, EU:C:2017:138) [38]

(Expedited procedure)

In *Mengesteab* (C-670/16), an Eritrean national had applied to the German authorities for asylum and was then issued with a certificate of registration, since German law [39] distinguishes, in that regard, between the initial asylum request, giving rise to the issuing of such a certificate, and the lodging of a formal application for asylum. When the Eritrean national was finally able to lodge a formal application for asylum, 9 months later, the German authorities had asked the Italian authorities to take charge of him, the Italian Republic being the Member State responsible for examining his application, pursuant to the Dublin III Regulation. Consequently, his asylum application was rejected as inadmissible and it was ordered that he be transferred to Italy. Proceedings were brought against that transfer decision in the Verwaltungsgericht Minden (Administrative Court, Minden, Germany) which queried, first, whether an asylum applicant can rely on the expiry of the period for making the take charge request, and, second, the detailed rules for calculating that period. In accordance with Article 21(1) of the Dublin III Regulation, in the event of non-compliance with the deadlines prescribed, responsibility for examining the application is transferred to the Member State in which it was lodged. However, the Verwaltungsgericht Minden (Administrative Court, Minden) noted that such delays were extremely common in Germany, due to the unusual increase in the number of asylum seekers from 2015.

In *Jafari* (C-646/16), the members of an Afghan family had crossed the border between Serbia and Croatia. The Croatian authorities had then organised transport for them to the Slovenian border, with the aim of helping them to travel to other Member States in order to make an application for international protection there, which the family did in Austria. However, in so far as the Dublin III Regulation provides that the responsibility is to be assumed by the Member State whose external border has been crossed irregularly, the Austrian authorities had requested the Croatian authorities to take charge of the individuals concerned. The family's applications had therefore been rejected and it was ordered that they be transferred to Croatia. The Verwaltungsgerichtshof (Supreme Administrative Court, Austria) before which those decisions were challenged, asked the Court of Justice how the criteria relating to the issuing of residence documents or visas and to entry or stay, provided for in Articles 12 and 13 of the Dublin III Regulation, were to be applied.

Both referring courts requested that the expedited procedure be applied, and their requests were granted by the President of the Court.

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37 See also judgment of 26 July 2017 (Grand Chamber), *Mengesteab* (C-670/16, EU:C:2017:587).

38 See also judgment of 26 July 2017 (Grand Chamber), *Jafari* (C-646/16, EU:C:2017:586).

39 Asylgesetz (Law on asylum), in the version published on 2 September 2008 (BGBl. 2008 I, p. 1798).

In both cases, the President of the Court began by recalling that, in the normal course of events, the large number of persons or legal situations potentially concerned by the decision to be made by a national court after it has made a reference for a preliminary ruling to the Court of Justice does not, in itself, constitute an exceptional circumstance that would justify the use of an expedited procedure (orders of 15 February 2017, *Mengesteab*, C-670/16, EU:C:2017:120, paragraph 10, and *Jafari*, C-646/16, EU:C:2017:138, paragraph 10).

Nevertheless, he added that that consideration could not, in these cases, be decisive, since the number of cases concerned by the questions referred for a preliminary ruling was such that the uncertainty as to their outcome risked impairing the functioning of the system established by the Dublin III Regulation and, in consequence, weakening the Common European Asylum System introduced by the EU legislature under Article 78 TFEU. These cases had arisen in an unprecedented situation in which an exceptionally high number of asylum applications had been registered in Germany, in Austria and, more generally, in the European Union, in circumstances similar to those at issue. Moreover, these cases raised issues of interpretation that were directly linked to that situation and which related to key aspects of the system established by the Dublin III Regulation, on which the Court was called upon to rule for the first time. The Court's answer was therefore likely to have widespread repercussions for the national authorities required to cooperate in order to apply that regulation (orders of 15 February 2017, *Mengesteab*, C-670/16, EU:C:2017:120, paragraphs 11 to 13, and *Jafari*, C-646/16, EU:C:2017:138, paragraphs 11 to 13).

For the President of the Court, it followed that the uncertainty as to the determination of the Member State responsible for examining asylum applications such as those at issue in the main proceedings meant that the competent national authorities were unable to adopt the administrative and budgetary measures necessary to ensure, in accordance with the requirements of EU law and the international commitments of the Member States concerned, that those applications were examined and the asylum applicants for which they might be responsible were received. In that exceptional crisis situation, the use of the expedited procedure was necessary in order to remove as soon as possible the uncertainty that was detrimental to the proper functioning of the Common European Asylum System, which contributes to compliance with Article 18 of the Charter (orders of 15 February 2017, *Mengesteab*, C-670/16, EU:C:2017:120, paragraphs 15 and 16, and *Jafari*, C-646/16, EU:C:2017:138, paragraphs 14 and 15).

Order of 28 February 2017, M.A.S. and M.B. (C-42/17, EU:C:2017:168) [40]

(Expedited procedure)

A question of constitutionality was brought before the Corte costituzionale (Constitutional Court, Italy) by two Italian courts which were considering a possible breach of the principle of legality in the event that the rule in *Taricco and Others* [41] was applied in criminal proceedings pending before them. It will be recalled that, in that judgment, the Court of Justice found that, in two situations which it identified, the Italian limitation rules applicable to tax infringements relating to value added tax (VAT) were liable to have an adverse effect on the fulfilment of the Member States' obligations under Article 325(1) and (2) TFEU. Consequently, the Court of Justice held that, in those situations, the national court had to give full effect to Article 325(1) and (2) TFEU, if need be by disapplying the relevant provisions of national law.

In accordance with the rule stated in that judgment, in this case, the Italian courts considered that they should not take into account the limitation period laid down in the Codice penale (Italian Criminal Code) and should, therefore, give judgment on the substance of the cases. However, the Corte costituzionale (Constitutional Court) expressed doubts as to whether that approach was compatible with the principle that offences and penalties must be defined by law, as enshrined in the Italian Constitution and interpreted by that court, since that principle requires that rules of criminal law are precisely determined and that they cannot be retroactive.

The Corte costituzionale (Constitutional Court) requested that its reference for a preliminary ruling be dealt with under the expedited procedure, claiming that a situation of profound uncertainty had arisen as to how EU law should be interpreted, that that uncertainty was weighing on the pending criminal proceedings and that it was urgent that it be removed. In that regard, the President of the Court of Justice stated that a response within a short time would remove that uncertainty and that, in so far as that uncertainty affected fundamental issues of national constitutional law and EU law, the application of the expedited procedure was warranted.

Orders of 26 September 2018, Zakład Ubezpieczeń Społecznych (C-522/18, EU:C:2018:786), and of 15 November 2018, Commission v Poland (C-619/18, EU:C:2018:910)

(Expedited procedure)

These two cases related to the compatibility of a new Polish law [42] with EU law. The Polish law, which entered into force on 3 April 2018, lowered the retirement age of

[40] See also judgment of 5 December 2017 (Grand Chamber), *M.A.S. and M.B.* (C-42/17, EU:C:2017:936).
[41] Judgment of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555).
[42] Ustawa o Sądzie Najwyższym (Law on the Sąd Najwyższy (Supreme Court)) of 8 December 2017 (Dz. U. of 2018, heading 5).

members of the Sąd Najwyższy (Supreme Court, Poland) from 70 to 65 years, and set the conditions under which those members may, in some circumstances, be authorised to continue to carry out their duties. In that regard, the law provides, first, that it is to apply to judges in post who were appointed to the Sąd Najwyższy (Supreme Court) before the date of its entry into force and, second, that the President of the Republic of Poland is to have the discretion to extend the period of judicial activity of those judges beyond the age of 65.

In *Zakład Ubezpieczeń Społecznych* (C-522/18), the Sąd Najwyższy (Supreme Court), sitting in ordinary composition, had, prior to giving judgment, referred certain questions to the extended composition of that court. At the preliminary stage of examining those questions, the Sąd Najwyższy (Supreme Court) noted that the terms of office of two of the members of that court sitting in extended composition were potentially affected by that law. Nevertheless, the Sąd Najwyższy (Supreme Court), sitting in extended composition, expressed doubts as to the compatibility of that law with EU law, notably as regards possible breaches of the principles of the rule of law, the irremovability and independence of judges, and the principle of non-discrimination on grounds of age. It further considered that clarification by the Court of Justice was necessary and sent it a request for a preliminary ruling. It also requested that the expedited procedure be applied, submitting that the interpretation of EU law sought was essential in order for it to be able to exercise its jurisdiction legally and in accordance with the principle of legal certainty (order of 26 September 2018, *Zakład Ubezpieczeń Społecznych*, C-522/18, EU:C:2018:786, paragraph 12).

In parallel, in *Commission* v *Poland* (C-619/18), the Commission brought an action under Article 258 TFEU for failure to fulfil obligations against the Republic of Poland, claiming that, by adopting that law, the Republic of Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. The Commission also requested that the case be determined pursuant to an expedited procedure, expressing doubts as to the ability of the Sąd Najwyższy (Supreme Court) to continue to rule in compliance with the fundamental right of any individual to have access to an independent court (order of 15 November 2018, *Commission* v *Poland*, C-619/18, EU:C:2018:910, paragraph 20).

The President of the Court of Justice granted both requests, emphasising the seriousness of the uncertainties of the referring court and of the Commission and indicating that a response within a short time would remove those uncertainties.

As regards the seriousness of the uncertainties, the President of the Court noted that these were affecting important issues of EU law related, in particular, to judicial independence, and concerned the possible consequences of the interpretation of that law for the composition and the very functioning of the Polish supreme court. In that regard, first, the President of the Court recalled that the requirement of judicial independence forms part of the essence of the fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive

from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded. Second, the President of the Court pointed out that the uncertainties in the present cases were also liable to have an effect on the working of the system of judicial cooperation embodied by the preliminary ruling mechanism provided for in Article 267 TFEU, the keystone of the EU judicial system. The independence of the national courts, particularly those ruling, like the Sąd Najwyższy (Supreme Court), at last instance, is essential (orders of 26 September 2018, *Zakład Ubezpieczeń Społecznych*, C-522/18, EU:C:2018:786, paragraph 15, and of 15 November 2018, *Commission* v *Poland*, C-619/18, EU:C:2018:910, paragraphs 21, 22 and 25).

It should, moreover, be noted that, in his order in *Commission* v *Poland*, [43] the President of the Court also responded to the allegations of the Republic of Poland that the application of an expedited procedure would affect its rights of defence. The Republic of Poland was critical of the fact that the defendant State is required to present all its arguments in a single pleading and that the procedure does not call for a reply and a rejoinder. It also argued that the Commission had delayed in bringing the action before the Court and that that delay could not be remedied by such a restriction of its procedural rights. The President of the Court observed that, under the expedited procedure, the application initiating proceedings and the defence may indeed be supplemented by a reply and a rejoinder only if the President of the Court, after hearing the Judge-Rapporteur and the Advocate General, considers this to be necessary. However, should the lodging of a reply not be authorised, it is not apparent, in the absence of such a reply and therefore of arguments supplementing and developing those appearing in the application to which the defendant had all the opportunities to reply in its defence, how the defendant could claim that its rights of defence are affected by the fact that it was not in a position to lodge a rejoinder. Furthermore, the President of the Court recalled that proceedings for a declaration of failure to fulfil obligations before the Court are preceded by a pre-litigation procedure during which the parties have the opportunity to set out and develop the line of argument which they may subsequently be called upon to expound before the Court.

Order of 19 October 2018, Wightman and Others (C-621/18, EU:C:2018:851) [44]

(Expedited procedure)

This case was brought following the notification, on 29 March 2017, by the Prime Minister (United Kingdom), of the intention of the United Kingdom of Great Britain and Northern Ireland to withdraw from the European Union, pursuant to Article 50 TEU. In that context, the petitioners in the main proceedings – including one member of the

[43] Order of 15 November 2018, *Commission* v *Poland* (C-619/18 EU:C:2018:910).

[44] See also judgment of 10 December 2018 (Full Court), *Wightman and Others* (C-621/18, EU:C:2018:999).

Parliament of the United Kingdom of Great Britain and Northern Ireland, two members of the Scottish Parliament (United Kingdom) and three members of the European Parliament – lodged a petition for judicial review seeking a declaratory judgment specifying whether, when and how that notification could unilaterally be revoked.

The Court of Session, Inner House, First Division (Scotland) (United Kingdom), before which an appeal against the refusal of that petition was brought, acceded to the request of the petitioners in the main proceedings that a request for a preliminary ruling be made. Unlike the court at first instance, it considered that it was neither academic nor premature to ask the Court of Justice whether it is possible for a Member State unilaterally to revoke the notification given under Article 50(2) TEU in advance of the expiry of the two-year period referred to in that article, and to remain in the European Union. It considered, on the contrary, that an answer from the Court of Justice would clarify the options open to the members of parliament when casting their vote in these matters.

The Court of Session, Inner House, First Division (Scotland) requested that the expedited procedure be applied. It emphasised the urgency of its request in the light of, first, the two-year timetable running from 29 March 2017 which was imposed on that withdrawal procedure and, second, the fact that the parliamentary consideration and voting on that subject within the Parliament of the United Kingdom had of necessity to take place well in advance of 29 March 2019.

The President of the Court considered that the referring court had set out grounds that undeniably indicated that there was a need to make a ruling urgently. In that respect, the President of the Court recalled that, where a case raises serious uncertainties which affect fundamental issues of national constitutional law and EU law, it may be necessary, having regard to the particular circumstances of the case, to deal with it within a short time. Thus, given that the implementation of Article 50 TEU was of fundamental importance for the United Kingdom and for the constitutional order of the European Union, the particular circumstances in this case were, according to the President of the Court, such as to justify the case being dealt with within a short time.

Judgment of 22 February 2022 (Grand Chamber), RS (Effect of the decisions of a constitutional court) (C-430/21, EU:C:2022:99)

(Reference for a preliminary ruling – Rule of law – Independence of the judiciary – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Primacy of EU law – Lack of jurisdiction of a national court to examine the conformity with EU law of national legislation found to be constitutional by the constitutional court of the Member State concerned – Disciplinary proceedings)

In this case, the person concerned was convicted following criminal proceedings in Romania. His wife then lodged a complaint concerning, inter alia, several judges in respect of offences allegedly committed during those criminal proceedings.

Subsequently, the person concerned brought an action before the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania) seeking to challenge the excessive duration of the criminal proceedings instituted in response to that complaint.

In order to rule on that action, the Curtea de Apel Craiova (Court of Appeal, Craiova) had to assess the compatibility with EU law of the national legislation establishing a specialised section of the Public Prosecutor's Office responsible for investigations of offences committed within the Romanian judicial system. However, that court had no jurisdiction to examine the conformity of that national legislation with EU law in the light of the judgment of the Curtea Constituțională (Constitutional Court, Romania), delivered after the judgment of the Court of Justice in *Asociația 'Forumul Judecătorilor din România' and Others*. [45]

In that context, the Curtea de Apel Craiova (Court of Appeal, Craiova) decided to refer the matter to the Court of Justice in order to clarify, in essence, whether EU law precludes a national judge of the ordinary courts from having no jurisdiction to examine whether such national legislation is consistent with EU law and disciplinary penalties from being imposed on that judge on the ground that he or she has decided to carry out such an examination.

In addition, the referring court requested that the reference for a preliminary ruling be dealt with pursuant to the PPU or, in the alternative, pursuant to the expedited procedure, on the ground that the case giving rise to the reference for a preliminary ruling concerned a serious undermining of the independence of the Romanian courts and that the uncertainties associated with the national legislation at issue in the main proceedings were likely to have an impact on the functioning of the system of judicial cooperation constituted by the preliminary-ruling mechanism provided for in Article 267 TFEU.

Since the PPU request was rejected, the President of the Court decided to grant the request for the reference for a preliminary ruling to be dealt with under the expedited procedure on the ground that a response within a short time would be likely to remove the serious uncertainties facing the referring court regarding important issues of EU law and constitutional law relating in particular to judicial independence, since those uncertainties were likely to have wider consequences for the entire judicial system concerned.

[45] Judgment of 18 May 2021 (Grand Chamber), *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393), in which the Court held, inter alia, that the legislation at issue is contrary to EU law where the creation of such a specialised section is not justified by objective and verifiable requirements relating to the sound administration of justice and is not accompanied by specific guarantees identified by the Court (see point 5 of the operative part of that judgment).

1.3. Deprivation of the applicant's liberty

Judgment of 19 December 2019, Junqueras Vies (C-502/19, EU:C:2019:1115)

(Reference for a preliminary ruling – Expedited procedure – Institutional law – Citizen of the European Union elected to the European Parliament while being held in provisional detention in the context of criminal proceedings – Article 14 TEU – Concept of 'Member of the European Parliament' – Article 343 TFEU – Immunities necessary for the performance of the tasks of the European Union – Protocol (No 7) on the privileges and immunities of the European Union – Article 9 – Immunities enjoyed by Members of the European Parliament – Immunity as regards travel – Immunities as regards sessions – Personal, temporal and material scope of the various immunities – Waiver of immunity by the European Parliament – Request to waive immunity from a national court – Act concerning the election of Members of the European Parliament by direct universal suffrage – Article 5 – Term of office – Article 8 – Electoral procedure – Article 12 – Verification of the credentials of Members of the European Parliament following the official declaration of the election results – Charter of Fundamental Rights of the European Union – Article 39(2) – Election of Members of the European Parliament by direct universal suffrage in a free and secret ballot – Right to stand as a candidate at elections)

In this case, a politician elected to the European Parliament in the elections of 26 May 2019 had brought an action against an order of the Tribunal Supremo (Supreme Court, Spain) refusing to grant him special authorisation to leave prison. The person concerned had been placed in provisional detention prior to those elections in criminal proceedings brought against him for his participation in the organisation of the referendum on self-determination held on 1 October 2017 in the autonomous community of Catalonia. He had requested that authorisation in order to discharge a formality required by Spanish law following the declaration of results, namely swearing or pledging to abide by the Spanish Constitution before a central electoral board, and subsequently to travel to the European Parliament in order to take part in the inaugural session of the new parliament.

The Tribunal Supremo (Supreme Court) referred to the Court of Justice a number of questions on the interpretation of Article 9 of Protocol (No 7) on the privileges and immunities of the European Union (OJ 2012 C 326, p. 266) which arose not in the context of the preparation of its ruling on the merits in the criminal proceedings brought against the person concerned, but rather in the context of the latter's action against the order in question. Following the reference to the Court of Justice, the referring court, on 14 October 2019, sentenced the person concerned to a 13-year term of imprisonment and, for that same period, disqualification from holding any public office or exercising any public function.

In that context, the referring court requested that the expedited procedure be applied. In support of its request, that court submitted, in essence, that the questions referred concerned the status of Member of the European Parliament and the composition of

that institution, that the Court's replies to those questions could lead, indirectly, to the suspension of the deprivation of the particular person's liberty, and that that deprivation of liberty corresponded to the situation referred to in the fourth paragraph of Article 267 TFEU.

The President of the Court granted the request for the expedited procedure to be applied. In that regard, he noted that, first, the person concerned was being held in provisional detention when the request for a preliminary ruling was lodged, with the result that the questions referred by the Tribunal Supremo (Supreme Court) had to be regarded as being raised in the context of a case having regard to a person in custody, within the meaning of the fourth paragraph of Article 267 TFEU and, second, those questions sought the interpretation of a provision of EU law liable, by its very nature, to have an effect on the continued detention of the person concerned, in the event that that provision were applicable to him.

1.4. Impact on family

Judgment of 14 December 2021 (Grand Chamber), Stolichna obshtina, rayon 'Pancharevo' (C-490/20, EU:C:2021:1008)

(Reference for a preliminary ruling – Citizenship of the Union – Articles 20 and 21 TFEU – Right to move and reside freely within the territory of the Member States – Child born in the host Member State of her parents – Birth certificate issued by that Member State mentioning two mothers in respect of that child – Refusal by the Member State of origin of one of those two mothers to issue a birth certificate for the child in the absence of information as to the identity of the child's biological mother – Possession of such a certificate being a prerequisite for the issue of an identity card or a passport – Persons of the same sex not recognised as parents under the national legislation of that Member State of origin)

The dispute in the main proceedings was between a Bulgarian national and Stolichna obshtina, rayon 'Pancharevo' (Sofia municipality, Pancharevo district, Bulgaria) ('the Sofia municipality'), concerning the latter's refusal to issue a birth certificate in respect of the daughter of that Bulgarian national and her wife, a United Kingdom national. The birth certificate for that child, born in 2019, drawn up by the Spanish authorities, refers to both mothers as being the parents of the child. They live with their daughter in Spain.

The person concerned submitted an application to the Sofia municipality by providing a legalised and certified translation into Bulgarian of the extract from the Spanish register of civil status relating to the child's birth certificate. The Sofia municipality required evidence of the parentage of the child concerned, specifically the identity of her biological mother, since the Bulgarian birth form has only one box for the 'mother' and another for the 'father'. The person concerned refused to provide that information, which resulted in the Sofia municipality refusing to issue the requested birth certificate,

relying on the fact that a reference to two female parents was contrary to Bulgarian public policy, which does not permit marriage between two persons of the same sex.

Hearing an action against that rejection decision, the Administrativen sad Sofia-grad (Administrative Court, Sofia City, Bulgaria) queried, inter alia, whether the refusal by the Bulgarian authorities to register the birth of a child born in another Member State, with a birth certificate referring to two mothers, infringed the rights of the child under Article 4(2) TEU, Articles 20 and 21 TFEU and Articles 7, 9, 24 and 45 of the Charter.

The referring court also requested that the expedited procedure be applied, stating that the Bulgarian authorities' refusal to issue a birth certificate to the child concerned, a Bulgarian national, would make it very difficult for that child to obtain a Bulgarian identity document and, therefore, to exercise her right to move and reside freely within the territory of the Member States, which is guaranteed in Article 21 TFEU.

The President of the Court of Justice decided to grant the request for the expedited procedure to be applied, basing his decision on the fact that the child concerned, a young child, was at that time without a passport but residing in a Member State of which she was not a national. The President of the Court also stated that, in so far as the questions referred were intended to determine whether the Bulgarian authorities were required to issue a birth certificate for that child and it was apparent from the request for a preliminary ruling that such a document was necessary, according to national law, in order to obtain a Bulgarian passport, an answer from the Court within a short period of time could help to ensure that that child would be able to obtain a passport more quickly.

1.5. Risk of interference with fundamental rights

Order of 15 July 2010, Purrucker (C-296/10, EU:C:2010:446)

(Accelerated procedure)

The dispute in the main proceedings was between a German national and a Spanish national concerning rights of custody of their twin children. Less than a year after the children were born, the parents had separated and had signed an agreement before a notary confirming the mother's wish to return to her country of origin with the children. However, ultimately she had taken only one of the children to Germany, as the other child had had to remain in Spain temporarily with the father for medical reasons. The family's situation had not changed since then.

Several sets of proceedings were commenced by each of the parents. Thus, in Spain, the father applied for, and obtained, provisional measures, although it is conceivable that those proceedings may be regarded as substantive proceedings concerned with the award of rights of custody of the children. He then sought, in Germany, enforcement of

the Spanish decision granting those measures, those proceedings having given rise to the judgment in *Purrucker*. [46] At the same time, the mother brought a substantive action in Germany, relating to rights of custody of both children, which was assigned to the Amtsgericht Stuttgart (Local Court, Stuttgart, Germany).

That court then referred to the Court of Justice the issue whether, in the context of the application of Article 19(2) of Regulation No 2201/2003, which organises cases of *lis pendens* in matters of parental responsibility, the court seised of an application for provisional measures (in this case, the Spanish court) must be regarded as the 'court first seised' vis-à-vis a court of another Member State before which a substantive action has been brought with the same object (in this case, the Amtsgericht Stuttgart (Local Court, Stuttgart)).

The Amtsgericht Stuttgart (Local Court, Stuttgart) also requested that what was then the accelerated (now expedited) procedure be applied, stating that the disputed issue of the jurisdiction of the two courts seised of the same case, in different Member States, had resulted, notwithstanding the duration of the proceedings, in it not being possible thus far to examine the substantive issue itself. Those circumstances, according to the referring court, were influencing the conduct of the parties in a way that was detrimental to the family relationship of the children. The children had not had any personal contact between themselves or with the other parent for 3 years. In addition, the referring court indicated that the German national's care of the child, notably medical care and school registration, depended on the child's legal situation. That care was, however, being adversely affected by the doubt as to the validity and recognition in Germany of the provisional measure adopted with regard to custody by the Spanish court. Given those circumstances, and in view of the time that had already elapsed because of the various proceedings under way, the President of the Court held that it was appropriate for the referring court to obtain the answers to the questions referred with the minimum of delay, which therefore justified initiation of the accelerated procedure.

Order of 9 September 2011, Dereci and Others (C-256/11, EU:C:2011:571) [47]

(Accelerated procedure)

In this case, five third-country nationals wished to live in Austria with family members (spouse, children or parents), who were Union citizens residing in Austria with Austrian citizenship. However, those Union citizens had never exercised their right of free movement. In addition, and unlike some of the third-country nationals concerned, they were not maintained by those third-country nationals. The applications for residence authorisations submitted by the five third-country nationals were rejected and, in four of

[46] Judgment of 15 July 2010, *Purrucker* (C-256/09, EU:C:2010:437).

[47] See also judgment of 15 November 2011 (Grand Chamber) *Dereci and Others* (C-256/11, EU:C:2011:734).

the five cases, those rejections were coupled with an expulsion order and individual removal orders.

The Verwaltungsgerichtshof (Supreme Administrative Court, Austria), before which the case had come in that context, thus queried whether the indications given by the Court of Justice in its judgment in *Ruiz Zambrano* [48] could be applied to one or more of the applicants in the main proceedings.

The Verwaltungsgerichtshof (Supreme Administrative Court) requested that what was then the accelerated (now expedited) procedure be applied to its reference for a preliminary ruling. In support of that request, it invoked the existence of orders for the removal from Austria of most of the applicants in the main proceedings, which, were they to be enforced, would adversely affect those applicants personally, as well as the members of their family. In that regard, it stated that at least one of the applicants had been denied the suspensory effect of the appeal brought against his expulsion order and that the individual removal order could therefore be implemented at any time. In general terms, it emphasised that the threat of imminent removal faced by the applicants deprived them of the opportunity to lead a normal family life, since it put them in a situation of uncertainty. Moreover, the Verwaltungsgerichtshof (Supreme Administrative Court) indicated that both it and the Austrian administrative authorities were dealing with a large number of similar cases and that an increase in that type of case was to be expected in the near future as a result of the judgment in *Ruiz Zambrano*. [49]

The President of the Court of Justice decided to grant the request for the accelerated procedure to be applied. In so doing, he recalled, first of all, that the right to respect for family life is among the fundamental rights protected in the Community legal order and has been reaffirmed in Article 7 of the Charter. He went on to point out that the Court's answer to the questions referred was such as to remove the uncertainty affecting the applicants in the main proceedings and that, consequently, a reply within a very short period would help to bring a swifter end to that uncertainty which was preventing them from leading a normal family life.

Order of 6 May 2014, G. (C-181/14, EU:C:2014:740)

(Expedited procedure)

In this case, presented above, [50] the Court of Justice refused the request of the referring court that the PPU be applied. Nevertheless, the President of the Court decided of his own motion that the case should be dealt with under the expedited procedure. He

[48] Judgment of 8 March 2011 (Grand Chamber), *Ruiz Zambrano* (C-34/09, EU:C:2011:124).

[49] Judgment of 8 March 2011 (Grand Chamber), *Ruiz Zambrano* (C-34/09, EU:C:2011:124, paragraphs 12, 13 and 15).

[50] See above, in Part I of this fact sheet, headed 'The urgent preliminary ruling procedure', section 1. Scope of the urgent preliminary ruling procedure.

considered that this was necessary if a person's continued detention depended solely on the answer to be given to the question referred by the referring court. In that regard, he recalled, in particular, that the fourth paragraph of Article 267 TFEU provides that, if the case pending before the national court concerns a person in custody, the Court is to act with the minimum of delay.

Order of 5 June 2014, Sánchez Morcillo and Abril García (C-169/14, EU:C:2014:1388)

(Expedited procedure)

In this case, certain individuals had obtained a loan from a bank, the loan being secured by a mortgage in respect of their principal dwelling. Owing to their failure to fulfil their obligation to pay the monthly loan repayments, mortgage enforcement proceedings were initiated, in order to achieve a forced sale of the property concerned. The individuals concerned had then raised an objection to those enforcement proceedings and, following their dismissal, had appealed to the Audiencia Provincial de Castellón (Provincial Court, Castellón, Spain).

The Audiencia Provincial de Castellón (Provincial Court, Castellón) stated that although Spanish civil procedure [51] allows appeals to be made against the decision which, while upholding the objection raised by a debtor, brings the mortgage enforcement proceedings to an end, it does not allow the debtor whose objection was dismissed to appeal against the decision at first instance ordering the continuation of the enforcement procedure. However, that court expressed doubts as to the compatibility of that national legislation with the objective of consumer protection pursued by Directive 93/13, [52] and with the right to an effective remedy as enshrined in Article 47 of the Charter. In that regard, it noted that allowing the debtors to appeal could prove even more critical given that some of the terms of the loan contract at issue could be considered to be 'unfair' within the meaning of Directive 93/13.

In that context, the Audiencia Provincial de Castellón (Provincial Court, Castellón) requested that the expedited procedure be applied, stating that the answer to be provided by the Court could have significant consequences for litigation in Spain. In the context of the economic crisis, a large number of natural persons were subject to mortgage enforcement measures in respect of their dwellings. Furthermore, as regards the applicants in the main action specifically, since the objection they raised did not have

[51] Ley 1/2013, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social (Law 1/2013 laying down measures to strengthen the protection of mortgage debtors, debt restructuring and social rents) of 14 May 2013 (BOE No 116, of 15 May 2013, p. 36373), amending the Ley de enjuiciamiento civil (Code of Civil Procedure) of 7 January 2000 (BOE No 7, of 8 January 2000, p. 575), which was itself amended by decreto-ley 7/2013 de medidas urgentes de naturaleza tributaria, presupuestarias y de fomento de la investigación, el desarrollo y la innovación (Decree Law 7/2013 introducing urgent fiscal and budgetary measures and promoting research, development and innovation) of 28 June 2013 (BOE No 155, of 29 June 2013, p. 48767).

[52] Directive 93/13/EEC.

suspensive effect, their dwellings were liable to be sold at auction before the Court had even handed down its ruling.

The President of the Court indicated that it was true, according to settled case-law, that the large number of persons or legal situations potentially affected by the decision that a referring court had to deliver after bringing a matter before the Court for a preliminary ruling did not, in itself, constitute an exceptional circumstance that would justify the use of the expedited procedure. However, in the present case, beyond the number of affected debtors, the risk for the owner of losing his main dwelling put him and his family in a particularly precarious situation. That circumstance was exacerbated by the fact that, if it were found that the enforcement proceedings were based on a loan contract containing unfair terms that was deemed null and void by the national court, the annulment of the enforcement proceedings related to that loan would provide the debtor with protection of a purely compensatory nature and would not enable the earlier situation, in which he was the owner of his dwelling, to be restored. In the light of those circumstances and in view of the fact that an answer from the Court within the shortest possible time might significantly limit the risk of the dwelling of the persons concerned being lost, the President of the Court granted the request for the expedited procedure to be applied.

Order of 1 February 2016, Davis and Others (C-698/15, EU:C:2016:70) [53]

(Expedited procedure)

In this case, a number of individuals disputed the lawfulness of United Kingdom legislation [54] empowering the Secretary of State for the Home Department (United Kingdom) to require public telecommunications operators to retain all electronic communications data for a maximum period of 12 months, retention of the content of the communications being excluded, however. The individuals concerned maintained that that national legislation was incompatible with Articles 7 and 8 of the Charter and that it did not comply with the requirements laid down by the judgment in *Digital Rights Ireland and Others*, [55] in which the Court declared Directive 2006/24 [56] invalid. Their applications having been granted at first instance, the Secretary of State for the Home Department brought an appeal before the Court of Appeal (England and Wales) (Civil Division) (United Kingdom), which then referred a number of questions to the Court of Justice, concerning the scope of the judgment in *Digital Rights Ireland and Others*. [57]

In that context, the referring court also requested that the expedited procedure be applied. In support of that request, it indicated that it would be desirable to join the

[53] See also judgment of 21 December 2016 (Grand Chamber) *Tele2 Sverige* and *Watson and Others* (C-203/15 and C-698/15, EU:C:2016:970).
[54] Data Retention and Investigatory Powers Act 2014.
[55] Judgment of 8 April 2014 (Grand Chamber), *Digital Rights Ireland* (C-293/12 and C-594/12, EU:C:2014:238).
[56] Directive 2006/24/EC.
[57] Judgment of 8 April 2014 (Grand Chamber), *Digital Rights Ireland* (C-293/12 and C-594/12, EU:C:2014:238).

request for a preliminary ruling to, or direct that it be heard with, the reference for a preliminary ruling in *Tele2 Sverige* (C-203/15), then pending before the Court. Moreover, it explained that the United Kingdom legislation in question was to expire on 31 December 2016 and that there was uncertainty as to the scope of the judgment in *Digital Rights Ireland and Others* [58] with regard to any legislation that might be adopted by the Member States in the field of the retention of electronic communications data.

After finding that the legislation at issue was liable to cause serious interference with the fundamental rights laid down in Articles 7 and 8 of the Charter, the President of the Court observed that an answer within a short time might indeed be able to dispel the uncertainty experienced by the referring court as regards the possibility of such interference and any possible justification for it. In addition, for the President of the Court, the fact that there was a time limit on the relevant legislation being in force also justified, in the light of the spirit of cooperation that characterises the relationship between the courts of the Member States and the Court, an urgent reply. For those reasons, the President of the Court decided that the case should be determined pursuant to the expedited procedure.

1.6. Material destitution

Judgment of 15 July 2021 (Grand Chamber), The Department for Communities in Northern Ireland (C-709/20, EU:C:2021:602)

(Reference for a preliminary ruling – Citizenship of the Union – National of a Member State without an activity residing in the territory of another Member State on the basis of national law – First paragraph of Article 18 TFEU – Non-discrimination based on nationality – Directive 2004/38/EC – Article 7 – Conditions for obtaining a right of residence for more than three months – Article 24 – Social assistance – Concept – Equal treatment – Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland – Transition period – National provision excluding Union citizens with a right of residence for a fixed period under national law from social assistance – Charter of Fundamental Rights of the European Union – Articles 1, 7 and 24)

In this case, the person concerned, who had dual Croatian and Netherlands nationality, had lived in the United Kingdom since 2018 without carrying out any economic activity there. She lived there with her partner, a Netherlands national, and their two children until she moved to a women's refuge. She had no resources at all.

On 4 June 2020, the Home Office (United Kingdom) granted her a temporary right of residence in the United Kingdom, on the basis of a new British scheme applicable to

[58] Judgment of 8 April 2014 (Grand Chamber), *Digital Rights Ireland* (C-293/12 and C-594/12, EU:C:2014:238).

Union citizens residing in that country, established in the context of the withdrawal of the United Kingdom from the European Union. On 8 June 2020, she applied for the social assistance benefit known as Universal Credit in Northern Ireland. However, her application was refused since the national legislation excluded Union citizens with a right of residence granted on the basis of the new scheme from the category of potential beneficiaries of Universal Credit.

The Appeal Tribunal (Northern Ireland, United Kingdom), hearing an appeal against that refusal, questioned the potential incompatibility of the United Kingdom Universal Credit Regulations with the prohibition of discrimination on grounds of nationality, laid down in the first paragraph of Article 18 TFEU.

In that context, that court requested that the expedited procedure be applied, citing the manifest urgency of the case and the difficult financial situation of the person concerned.

The President of the Court granted the request for the expedited procedure to be applied, on the basis of the destitution of the person concerned and her children and the impossibility, under national law, of her receiving social assistance.

1.7. Risk of serious environmental damage

Order of 13 April 2016, Pesce and Others (C-78/16 and C-79/16, EU:C:2016:251) [59]

(Expedited procedure)

In order to prevent the spread of the bacterium *Xylella fastidiosa*, the Servizio Agricoltura della Regione Puglia (Puglia Region Department for Agriculture, Italy) had ordered several owners of agricultural holdings to cut down the olive trees planted on their land, which were deemed to be infected by that bacterium, and all the host plants within a radius of 100 metres of those olive trees. The owners had brought an action for annulment of those uprooting decisions, on the ground that Implementing Decision 2015/789, [60] on which those decisions were based, was inconsistent with the principle of proportionality and the precautionary principle and was vitiated by a failure to state reasons.

In those circumstances, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Tribunal, Lazio, Italy), before which those actions were brought, decided temporarily to suspend the implementation of the national measures at issue and to ask

[59] See also judgment of 9 June 2016, *Pesce and Others* (C-78/16 and C-79/16, EU:C:2016:428).

[60] Commission Implementing Decision (EU) 2015/789 of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.) (OJ 2015 L 125, p. 36).

the Court of Justice about the conformity of Implementing Decision 2015/789 with EU law.

The national court also requested that its reference for a preliminary ruling be dealt with under the expedited procedure. In support of that request, it emphasised the gravity of the repercussions of implementing the plant uprooting decisions, to the detriment not only of the applicants in the main proceedings but also of the countryside as a whole, of economic activity, groundwater quality, the agrifood chain and of public health. Similarly, those decisions could not be described as provisional, given that they would have a definitive and irreversible impact on the ecosystem of the plants concerned.

The President of the Court granted the request for the expedited procedure to be applied. He found, first, that extending the suspension of implementation of the uprooting decisions at issue could contribute to the spread of the *Xylella* bacterium in the European Union and, second, that the implementation of those decisions was liable to have irremediable consequences for the ecosystem and to cause irreversible damage to the applicants.

Order of 11 October 2017, Commission v Poland (C-441/17, EU:C:2017:794)

(Expedited procedure)

The Commission requested the Court to declare that the Republic of Poland had failed to fulfil some of its obligations under Directives 92/43 [61] ('the Habitats Directive') and 2009/147 [62] ('the Birds Directive'), as a result of forest management operations envisaged in the Białowieża Forest ('Puszcza Białowieska'), one of the best preserved natural forests in Europe, which is included on the World Heritage List of the United Nations Educational, Scientific and Cultural Organisation (Unesco). Specifically, referring to the spread of a harmful insect (the spruce bark beetle), the Minister Środowiska (Minister for the Environment, Poland) had approved an amendment of the forest management plan, allowing an increase in the harvesting of timber, and operations in the areas in which any intervention had until then been excluded. Against that background, the removal of numerous trees had begun.

In this case, in the first place, the President of the Court had already accepted the Commission's request that the case be given priority treatment. In the second place, pursuant to Article 160(7) of the Rules of Procedure of the Court of Justice, the Vice-President ordered the Republic of Poland to suspend implementation of the forest management operations concerned pending adoption of an order terminating the proceedings for interim measures brought by the Commission. [63] In spite of this, the

[61] Directive 92/43/EEC.

[62] Directive 2009/147/EC.

[63] See below, still in Part II of this fact sheet, headed 'The expedited procedure', the section headed '2. Relationship between the expedited procedure in infringement proceedings and interim measures'.

President of the Court also decided of his own motion to apply the expedited procedure. In that regard, he found that the dispute between the Commission and the Republic of Poland brought to light imminent and potentially serious risks to the environment. On the one hand, according to the Republic of Poland, extending the suspension of those forest management operations could contribute to the spread of the harmful insect, leading to significant upheaval in the ecosystem of the Białowieża forest and, accordingly, engendering environmental damage liable to represent a direct threat to human life and health. On the other hand, according to the Commission, the implementation of those operations was liable to result in irreversible effects on the natural habitats and animal species covered by the Habitats and Birds directives, for the conservation of which the Puszcza Białowieska Natura 2000 site had been designated. In those circumstances, the President of the Court considered that a reply within a short time as to the conformity of those forest management operations with EU law was likely to mitigate the risks that could result either from the extension of their suspension or from their implementation.

1.8. Risk of impunity in a large number of cases

Judgment of 21 December 2021 (Grand Chamber), Euro Box Promotion and Others (C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034)

(Reference for a preliminary ruling – Decision 2006/928/EC – Mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption – Legal nature and effects – Binding on Romania – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Fight against corruption – Protection of the European Union's financial interests – Article 325(1) TFEU – 'PFI' Convention – Criminal proceedings – Decisions of the Curtea Constituțională (Constitutional Court, Romania) concerning the legality of the taking of certain evidence and the composition of judicial panels in cases of serious corruption – Duty on national courts to give full effect to the decisions of the Curtea Constituțională (Constitutional Court) – Disciplinary liability of judges in case of non-compliance with such decisions – Power to disapply decisions of the Curtea Constituțională (Constitutional Court) that conflict with EU law – Principle of primacy of EU law)

In Cases C-357/19, C-547/19, C-811/19 and C-840/19, the Înalta Curte de Casaţie şi Justiţie (High Court of Cassation and Justice, Romania; 'the HCCJ') had convicted several persons, including former Members of Parliament and Ministers, of offences of VAT fraud, corruption and influence peddling, inter alia in connection with the management of European funds. The Curtea Constituțională a României (Constitutional Court, Romania) set aside those decisions on the grounds of the unlawful composition of the panel of judges, stating, first, that the cases on which the HCCJ had ruled at first instance should have been heard by a panel specialised in corruption and, second, that in the cases on which the HCCJ had ruled on appeal, all the judges of the panel of judges should have been selected by drawing lots.

In Case C-379/19, criminal proceedings had been brought before the Tribunalul Bihor (Regional Court, Bihor, Romania) against several persons accused of corruption offences and influence peddling. In the context of a request for the exclusion of evidence, that court was faced with the application of case-law of the Curtea Constituțională a României (Constitutional Court) which declared the gathering of evidence in criminal proceedings with the participation of the Romanian intelligence service to be unconstitutional, resulting in the retroactive exclusion of the evidence concerned from the criminal proceedings.

The disputes in the main proceedings in those cases followed on from the reform of the judicial system with regard to combating corruption in Romania, which was the subject of a previous judgment of the Court. [64] The referring courts were uncertain whether the application of the case-law arising from various decisions of the Curtea Constituțională a României (Constitutional Court) on the rules of criminal procedure applicable to fraud and corruption proceedings was liable to infringe EU law, in particular the provisions of EU law intended to protect the financial interests of the European Union, the guarantee of judicial independence and the value of the rule of law, as well as the principle of the primacy of EU law.

The referring courts in Cases C-357/19, C-379/19, C-811/19 and C-840/19 requested that the expedited procedure be applied, submitting that the situation of the defendants in the main proceedings necessitated a response within a short time. With regard more specifically to Cases C-357/19, C-811/19 and C-840/19, they also argued that the passage of time risked undermining the possible execution of the penalty.

With regard to Cases C-357/19 and C-379/19, the Court decided that there was no need to grant that request. However, the President of the Court gave those cases priority over others, pursuant to Article 53(3) of the Rules of Procedure.

By contrast, with regard to Cases C-811/19 and C-840/19, the President of the Court noted that those cases, taken together with Cases C-357/19 and C-379/19, made it clear that there was some uncertainty within the Romanian courts as to the interpretation and application of EU law in a large number of cases in the field of criminal law in which the expiry of the limitation period and, therefore, a risk of impunity are at issue. In those circumstances, and in the light of the progress of Cases C-357/19, C-379/19 and C-547/19, which raised similar questions of interpretation of EU law, the President of the Court decided to determine Cases C-811/19 and C-840/19 pursuant to an expedited procedure.

[64] Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393).

2. Relationship between the expedited procedure in infringement proceedings and interim measures

Order of 11 October 2017, Commission v Poland (C-441/17, EU:C:2017:794)

(Expedited procedure)

As set out above, [65] the Commission brought infringement proceedings against the Republic of Poland, seeking a declaration that the Republic of Poland had failed to fulfil its obligations under the Habitats and Birds directives. In that context, the Commission made an application pursuant to Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court for the adoption of interim measures pending the judgment of the Court ruling on the substance.

The Commission also requested, under Article 160(7) of the Rules of Procedure of the Court, that those interim measures be granted even before the observations of the Republic of Poland had been submitted, owing to the risk of serious and irreparable harm to the habitats and the integrity of the Puszcza Białowieska Natura 2000 site. The Vice-President of the Court granted that request and ordered the Republic of Poland to suspend, save in the event of a threat to public safety, implementation of the forest management operations concerned pending adoption of an order terminating the proceedings for interim measures (order of 27 July 2017, *Commission* v *Poland*, C-441/17 R, EU:C:2017:622).

As regards the relationship between the application for interim measures and the expedited procedure applied of his own motion, the President of the Court stated that, while it was true that the Court was still seised of the application for interim measures, the fact remained that the subject matter and the conditions triggering that application and those triggering the expedited procedure were not identical. In this instance, it appeared, without prejudice to the order terminating the proceedings for interim relief, that the nature of the present case justified the application of the expedited procedure (for the reasons given, see section 1.7. Risk of serious environmental damage above).

Order of 15 November 2018, Commission v Poland (C-619/18, EU:C:2018:910)

(Expedited procedure)

As set out above, [66] the Commission brought infringement proceedings against the Republic of Poland seeking a declaration that, by adopting the recent law on the Sąd

[65] See above, still in Part II of this fact sheet, headed 'The expedited procedure', the section headed '1.7. Risk of serious environmental damage'.

[66] See above, still in Part II of this fact sheet, headed 'The expedited procedure', the section headed '1.2. Particular severity of the legal uncertainty to which the reference for a preliminary ruling relates'.

Najwyższy (Supreme Court, Poland), the Republic of Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. In that context, the Commission made an application pursuant to Article 279 TFEU and Article 160(2) of the Rules of Procedure of the Court for the adoption of interim measures pending the judgment of the Court ruling on the substance.

In addition, the Commission requested, pursuant to Article 160(7) of the Rules of Procedure of the Court, that those interim measures be adopted even before the observations of the Republic of Poland had been submitted, owing to the immediate risk of serious and irreparable harm with regard to the principle of effective judicial protection in the context of the application of EU law. The Vice-President of the Court granted that request. Thus, she ordered the Republic of Poland, immediately and until delivery of the order terminating the proceedings for interim measures, first, to suspend the application of certain provisions of the Law on the Sąd Najwyższy (Supreme Court); second, to take all necessary measures to ensure that the judges of the Sąd Najwyższy (Supreme Court) concerned by that law could perform their duties in the positions held, while continuing to enjoy the same status and the same rights and working conditions as they did on the date on which that law entered into force; third, to refrain from adopting any measure concerning the appointment of judges to the Sąd Najwyższy (Supreme Court), and from any measure concerning the appointment of a new First President of that court or indicating the person tasked with leading that court in its First President's stead; fourth, to inform the Commission every month of all the measures adopted in order to comply with that order (order of 19 October 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:852).

As regards the relationship between the application for interim measures and the expedited procedure, applied of his own motion, the President of the Court found that while it was true that the Court was still seised of an application for interim relief, the Vice-President of the Court had adopted the provisional measures sought by the Commission, which would be effective until delivery of the order closing the interlocutory proceedings. Consequently, the President of the Court stated that if the Court were to maintain, in the order to be made, the provisional measures adopted pending its delivery, the Republic of Poland would itself have every interest in the procedure on the substance in the present case being closed within a short time, in order that those measures could be ended and the questions raised by the case become the subject of a final decision. The President of the Court also made clear that, in any event, the subject matter and the conditions triggering an application for interim relief and those triggering the expedited procedure were not identical. In the present case it appeared, without prejudice to the decisions to be taken in the order terminating the proceedings for interim relief, that the nature of the present case justified the application of the expedited procedure (for the reasons set out above in section 1.2. Particular severity of the legal uncertainty to which the reference for a preliminary ruling relates).

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