



PRESS RELEASE No 46/26

Luxembourg, 24 March 2026

Judgment of the Court in Case C-767/23 | [Remling] ¹

A national court or tribunal of last instance must always give reasons for its refusal to refer questions to the Court of Justice for a preliminary ruling

Even if such a court or tribunal is allowed to dismiss actions by means of a summary statement of reasons, it must, in all cases, set out specifically and concretely the reasons why one of the exceptions to the obligation to make a reference for a preliminary ruling applies

In this case, the Court had to rule on the compatibility with EU law of the possibility, afforded by Netherlands law to a supreme court, of dismissing an appeal solely on the basis of summary reasoning. Such legislation was intended, in the interests of the sound administration of justice, to reduce the length of court proceedings and to allow that court to devote more time to important cases. After having emphasised the fundamental role of the preliminary ruling procedure in general and the obligation to make references for a preliminary ruling in particular for the EU judicial system, the Court recalls that a supreme court or tribunal is subject to an obligation to make a reference for a preliminary ruling, of which it may be relieved only in three situations: where the question of EU law raised was irrelevant, where the EU law provision in question had already been interpreted by the Court or, last, where that interpretation of EU law was so obvious as to leave no scope for any reasonable doubt. Where a supreme court or tribunal considers itself to be in one of those three situations, it must state the reasons for its refusal to refer the matter to the Court, setting out, in all cases, specifically and concretely, the reasons why, in its view, there is no need to refer the matter to the Court. Such a court or tribunal may, in that regard, appropriate the grounds relied on by the lower court in the dispute concerned, provided that that lower court explained why the case fell within one of the three abovementioned situations.

A Moroccan national, whose wife and children reside in the Netherlands and hold Netherlands nationality, lodged in the Netherlands an application for a residence permit valid throughout the territory of the European Union. That application having been rejected on the ground that he already held a residence permit in Spain, he brought an action before the District Court, The Hague, sitting in Utrecht (Netherlands). That action having also been dismissed, he lodged an appeal with the Netherlands Council of State. The latter considers that the answer to the question of interpretation of EU law raised by the Moroccan citizen is clear from the Court's case-law. In its view, therefore, it is not required to make a reference for a preliminary ruling and may rule on the dispute by reasoning its decision in a summary manner.

That power to resort to summary reasoning is provided for by the national Law on foreign nationals. It reflects the balance intended by the Netherlands legislature between the desire to generalise the possibility of bringing an appeal in any case involving immigration law and the need to allow the Council of State to focus its examination on questions which require an answer in the interests of uniformity and development of the law or judicial protection in a general sense.

In that context, the Council of State, which is uncertain whether it must give detailed reasons as to why it does not consider itself bound to make a reference for a preliminary ruling, has decided to refer the matter to the Court of Justice.

In its judgment, the Court recalls, first of all, that national courts or tribunals of last instance are under an obligation to make a reference for a preliminary ruling, subject, however, to three exceptions (lack of relevance of the question of EU law

raised; existence of a decision of the Court which has already interpreted the rule of EU law at issue, or presence of an *acte clair*).²

Thus, given the **fundamental role of the preliminary ruling procedure in the EU legal order**, if such a court or tribunal decides not to refer the matter to the Court under one of those exceptions, **its decision must, in all cases, be reasoned and therefore set out, specifically and concretely, in the light of the factual and legal circumstances of the case, the reasons why one of those three exceptions applies.**

The fact that a Member State authorises a court or tribunal to resort to summary reasoning, with the aim of ensuring the sound administration of justice by reducing the length of court proceedings, in no way alters that. Even in such a situation, a supreme court or tribunal remains required to **set out, specifically and concretely, the reasons why it considers that the lack of reference to the Court for a preliminary ruling is justified.**

In that regard, a supreme court or tribunal may appropriate the grounds relied on by the lower court in the dispute concerned, provided that that lower court set out the reasons why it considered either that the question of EU law raised was irrelevant, that the EU law provision in question had already been interpreted by the Court, or that that interpretation was so obvious as to leave no scope for any reasonable doubt.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² Judgments of 6 October 1982, *Cilfit*, [C-283/81](#), and of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, [C-561/19](#) (see also Press release [No 175/21](#)).