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The Architecture of the Transfer of the Preliminary Reference to the Court as A Stage of Judicial Integration of the European Union

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Abstract

The present paper aims to investigate the negotiations, the practice, and the near future of the preliminary jurisdiction of the Court of Justice of the European Union to the Court by reaching the agreement published in the official journal and became operational from 1st September 2024. The work has been long for the institutions but not with many problems, perhaps because not all the issues in this regard are examined. A reform of the statute of the court is certainly important for the elements of a new discipline, that evaluates the precise impact of a continuous dialogue, that has been going on since the past between national and Kirchenberg judges. The future of the judicial system follows an important stage, therefore, that we are based on primary sources, on the jurisprudential practice as well as on some personal statements and perspectives that have to do with the future of this judicial path, that has not yet found a healthy effective path to solve all the related problems in this regard and especially of the preliminary reference.

Keywords

Judicial reform; European Union law; primary law; European case law; preliminary ruling; dialogue between national and Kirchenberg judges; publication of judicial documents; European institutions and reform; integration of Union law

1. Introduction

On 30 November 2022, the works began on transferring preliminary rulings from the Court of Justice of the European Union (CJEU)[1], through a related agreement proposed[2] and approved by the European Parliament and the Council[3], to the General Court of the Union. This is still a regulation amending the Statute of the CJEU published in the Official Journal and became operational from 1 September 2024.

This is an important innovation that shows the "end" of a past towards a change that immediately marks the

1Council of the European Union, Amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union, 12 December 2022, n. 15936/22: https://data.consilium.europa.eu/doc/document/ST-15936-2022-COR-1/en/pdf

2Press release, Council of the EU. Reform of the Statute of the Court of Justice: Council and Parliament negotiators reach provisional agreement, 7 December 2023: https://www.consilium.europa.eu/en/press/press-releases/2023/12/07/reform-of-the-statute-of-the-court-of-justice-council-and-parliament-negotiators-reach-provisional-agreement/

3European Parliament legislative resolution of 27 February 2024 on the draft regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union (07307/2022 – C9-0405/2022 – 2022/0906(COD)). Amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=EP:P9_TA(2024)0086. The European Parliament, the Council: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Protocol No 3 on the Statute of the Court of Justice of the European Union of 6 March 2024, PE-CONS 85/23. 2022/0906 (COD)

dialogue between national judges and the CJEU. The preliminary reference was always a legal institution that brought to the table a meeting, a clash between the national legal system and that of the Union. This is how the preliminary jurisdictions of the Court were attributed. Attribution in power of an act of preliminary jurisdiction of the Court that originated from the Treaty of Nice according to Art. 256, par. 1, letter TFEU: "(…) in the specific matters provided for by the Statute (…)". This is a transfer that has been awaited for years but without a precise commitment in this regard.

No definitive official text has been defined for the regulation amending the Statute of the CJEU, nor for the amendments to the procedural regulations of the CJEU and of the tribunal[4] through precise, institutional, procedural implications of a new reform, that postpones the distinction between essential traits of appearance, reflecting on what happens, who is involved, the details and the contingent implications.

Of course, each change is a new world of opening, which resolves situations of the past and/or creates new problems. A world that in many respects is analogous to the new discipline, which allows a gradual transition to the prejudicial competences and their role. The importance of the changes is limited to the effects, which emerge in the reform in question and according to its own limits.

2. Negotiations and the Birth of A Reform

From the past the CJEU stated[5] that it was appropriate to transfer preliminary references to the court due to the continuous increase in work. On this general statement, the works began on 30 November 2022, which changed the approach of a proposal for a further amendment of the Statute, which defined the precise matters at the Court, which pronounced and expanded the selection mechanism for appeals as provided for by the previous amendment according to the statute governed by art. 58 bis[6].

The reform has been clearly focused on the overall design, coherent and in the spirit of the specific objectives. What has not convinced from a theoretical point of view[7] was the interinstitutional debate between the European Parliament, the European Commission and the Council. They have not submitted documents relating to the request for modification, extension of the mechanism and selection for appeals as well as their contribution in the matter that opens the doors for further investigations.

The CJEU has encountered concerns expressed about the transfer of preliminary rulings, from an operational point of view, as well as about the recruitment of judges to the court and the need to relieve itself of cases that are less relevant to the constitutional tasks and within the need to engage other cases for judges already engaged. From the birth of the Union the preliminary ruling system was outlined by the Treaties. The transfer of preliminary ruling powers has involved a radical choice for the role of the Court[8]. The CJEU has failed to minimize the related practical commitment in the medium term relating to the proposal, that defines a series of first level matters that do not appear to be the harbinger of delicate litigation (Dashwood & Johnston, 2001)[9]. We are referring to matters such as VAT, customs code, tariffs of goods with combined nomenclature, excise duties, compensation, assistance to passengers in the event of denied boarding, delay, cancellation of transport services, and greenhouse gas emission allowance trading.

The negotiation, through an important stage of 7 December 2023, paved the way for the institutions of the Union, which reached an agreement between the four main institutions (including the CJEU) and became operational on 1 September 2024. Amendments to the rules of procedure of the CJEU and of the Tribunal are essential given that the text of the Statute is not connected with the detailed discipline, which allows the procedures that are adopted subsequently, with the publication in the Official Journal, to comply with the regulation of amendment of the Statute, that is compatible with the term of application of the same. It is surprising that the negotiations were fast and without problems of disputes recalling a decade ago of a real demonstration to a political design, that was different from that

4Council of the European Union, Draft Amendments to the Rules of Procedure of the Court of Justice, n. 7225/24 (Corte) and 7226/24 (Tribunal).
5Art. 3, parr. 1 and 2 of the Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, OJ L 341, 24.12.2015, p. 14–17.
6Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 17 April 2019 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, PE/1/2019/REV/1. OJ L 111, 25.4.2019, p. 1–3
7Meijers Committee, Comment on the reform of the Statute of the Court of Justice, 2023: https://www.commissie-meijers.nl/comment/comment-on-the-reform-of-the-statute-of-the-court-of-justice/
8Bobek affirms that: "(…) one current problem: finding some additional work for the not so busy GC (…)". And Sarmiento speaks about: "(...) overstaffed General Court (…)".
9Dashwood, Johnson affirmed that: "(…) follows from the foregoing that the position of CFI within the Community court system would undergo radical change (…)":

expressed by the proposal of the CJEU. The European Commission, through its opinion, did not raise further difficulties in this regard[10]. The Council was also of the same line.

As far as the European Parliament was concerned, as a dubious institution, through the AFCO[11] and JURI committees, rapporteurs of a political plan, has limited its negotiating contribution to the extension of an original plan of a proposal to further areas of good communicative impact, which leave the institution the capacity to decide democratically on issues the matter for the development of the judicial system. It was the European Parliament that invoked transparency, necessity and participation for judicial proceedings, according to the amendment of Art. 23 of the Statute, allowing the same institution as well as the Council and the European Central Bank (ECB) a general and substantial right to intervene in preliminary ruling cases: "(...) to have a particular interest in the issues raised by the request for a preliminary ruling (...)"[12]. It is distinguished and spoken of a right/duty, which demonstrates together with the European Commission to have easy access to the briefs, observations, which are filed for preliminary references and will be published by the CJEU after a logical period and after the conclusion of the proceedings unless the author involved himself does not oppose this publication for the public.

3. Moving on to the New Discipline of the Reform

What is most interesting from all the innovations that the new reform has proposed is the so-called guichet unique (one-stop shop) and the procedural methods that the Court will deal with the preliminary causes.

The CJEU has proposed the guichet unique (one-stop shop) as a support also to other institutions for all preliminary rulings, which continue to notify national judges and not only through the Court. This mechanism has the task of evaluating cases, within the margins of discretion, that enter exclusively into sectors that the statute of the CJEU states in the competences of the Court, thus involving questions that are related to other matters referring within the perimeter of matters for the Statute, which states the competence of the Court since it thus controls "(...) independent questions of interpretation of primary law, public international law, general principles of law or the Charter of Fundamental Rights of the European Union (...)".

The case will be asserted to the Court unless the CJEU holds it by itself and the national judge and/or other parties cannot object. The control mechanism is already in addition to the foreseen treaties. Already the basis of Art. 256, par. 3, lett. b) TFEU (Kellerbauer, Klamert, & Tomkin, 2024) provides for the relative possibility for the Court to refer to the CJEU before it decides whether the decision of the principle is necessary, which compromises the coherence, unity of the law of the Union. The third paragraph of the same article also provides for the review by the CJEU and the preliminary decisions that are issued by the court given the serious risks that compromise the coherence, unity of the law of the Union. The treaty system provides for the control mechanisms relating to the activity of the court, one that is ex ante and the other after the adoption of a ruling ex post. The reform introduces yet another one that will be operational before the ex ante one, thus attributing to the Court only the cases, that the CJEU deems to fall within the jurisdiction of the latter. The formation pronounces to the CJEU the function of guichet unique (one-stop shop) as well as the proposal of the modification of the regulation of the procedure of the CJEU, that formulates and emerges the probability as a panel composed of the president, the Vice-President and the Advocate General. They believe that the case will be of the attention of the same CJEU if it has a general nature[13]. Of course at this point the question is who is competent for the referrals the CJEU and/or the court?

The new unique guide (one-stop shop) identifies the CJEU as a judge. The Treaties are entitled to request specific matters from the Statute as a judge. Art. 19, par. 3 TEU as well as Art. 267 TFEU (Kellerbauer, Klamert, & Tomkin, 2024) attribute the competence to decide in preliminary rulings to the CJEU. And in Art. 19, par. 1 TFEU, which is composed of the CJEU and from the Court and for a long time by specialized courts. Art. 256, par. 3, TFEU also specifies that: "(...) the Court shall have jurisdiction to hear preliminary questions (…) in specific matters determined by the Statute (…)" (Kellerbauer, Klamert, Tomkin, 2024). The role that the preliminary ruling competence attributes, transfers to the subsequent paragraphs of the same article the ex ante and ex post control mechanisms.

The Statute of the CJEU sets limits to the jurisdiction of the Court but does not identify the matters, such as the

10COMMISSION OPINION on the draft amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union, presented by the Court of Justice on 30 November 2022. COM/2023/135 final

11REPORT on the draft regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union, 27.9.2023-(07307/2022-C9-0405/2022-2022/0906(COD), p. 21.

12Art. 23 of the statute of the CJEU.

13Art. 93 bis of the regulation of procedure of the CJEU.

introduction of a filter to some matters that identifies those that are actually attributed. Art. 256 TFEU establishes for the Court that is competent for the preliminary ruling matter the precise matters that are provided for by the Statute. Thus, we note the possibility of the states lato sensu derived, which pose the conditions and the competences of the judges of the Union as possibilities that the treaties admit other contexts. Art. 263, lett. 5 TFEU (Kellerbauer, Klamert, & Tomkin, 2024) affirms, in this regard, that the "(...) acts establishing the bodies, offices and agencies of the Union may provide for specific conditions and modalities relating to actions brought by natural or legal persons against acts of those bodies, offices or agencies (...)". And it is Art. 23 of the Statute "(…) cases covered by Art. 267 TFEU, the national judge (…) shall refer the matter to the Court of Justice (…)" and not to the CJEU (…) within the logic of the regulatory framework, which does not concern the institution but the pre-eminent body. The reform has not modified the reference in Art. 23 of the Statute (…) "(…) national judge shall refer the matter to the Court of Justice of the European Union (…)". This lack of modification is evident and marks the main spirit of the reform, which is contrary to what is established by Art. 19, par. 3 TEU.

The Treaties attribute to the CJEU an important role at the judicial-procedural level, such as the appeals, that are provided for by Art. 256, par. 1, letter 2 TFEU, i.e. the review. The regulation of the procedure at the Tribunal takes place by mutual agreement with the CJEU. An agreement through Art. 243, par. 5 TFEU. From the institutional point of view, two distinct bodies are identified. The Tribunal is not a COREPER. The acts of the Tribunal are attributable only to the latter and the COREPER in exceptional cases from the Council[14]. The competences and the Treaties attribute to the Tribunal, which in reality absorbs the CJEU, within the limits of the Treaties themselves. The Treaties place limitations as an ex ante filter on the decisions that go to the Tribunal asking to refer the case to the CJEU, they account for the adoption of a "decision of principle" based on Art. 256, par. 4, letter 2 TFEU (Kellerbauer, Klamert, & Tomkin, 2024).

National judges, through the guichet unique (one-stop shop), start their own questions that are evident. The added value to a forum prevents the activation of the referral of the case to the Court and to the CJEU before it decides for reasons of efficiency to the protection of the principle of reasonableness duration in the process, as well as to the review posing problems to the preliminary dialogue, as well as to the principle of effectiveness of the law of the Union. A mixed guichet unique (one-stop shop) together with the participation of the CJEU and of Court supports and indicates the legal acts to a certain sector, which allows to reach principles, while maintaining an adhesion of contractual relevance. This is an option, which takes into account that the institutions are attentive to the protection of the principle of "juge naturel", such as the European Parliament, without relying on requests for modification, which are normal by the non-specialist public opinion and in electoral times to the protection of their own principle, as well as transparency and access to the observations relating to the filing of preliminary references.

4. Procedural Modalities for the Retention of Preliminary Cases from the Court of the Union

The procedural modalities, that the court deals with preliminary cases, were established in its jurisdiction and governed by the regulation of reform of the Statute, referring to rules that are introduced, modified in the procedural regulations of the CJEU and of the Court. It is distinguished with a discretionary manner and leaves to the guichet unique (one-stop shop) the procedures, the structures, that constitute and manage the flow of other new cases. It will be the number of cases for the CJEU that in itself because of its increase does not walk in parallel way with the procedural resources, that the court dedicates to the new jurisdiction. It is not excluded that the procedural regulation of the Court also introduces in practice the consolidated transfer with various contours, that will be analyzed in practice in the near future.

Based on documents that are available and highlighted, preliminary references are dedicated to the Court to two ad hoc sections, two judges who exercise the functions of Advocate General in these cases. The role of the Advocate General belongs to the section that pronounces its case, i.e. the quadrilogue (including the CJEU) thus opening a crossover between the Advocates General since each of them pronounces in the decided cases and to the section that best protects the third party and impartiality of their role.

The specialized sections for preliminary references do not dedicate themselves in a unique way to the exercise of this competence since the expected workload is not sufficient. Thus, they continue their activity in direct appeals, when a focus on intellectual property and/or public function are matters related to the division by subject matter to

14CJEU, 20 November 2018, C-626/15 and C-659/16, Commission v. Council (Antartict MPAs), ECLI:EU:C:2018:925, published in the electronic Reports of the cases, par. 59-67.

the sections of the court and/or the preliminary jurisdiction, which is added as a third element of specialization, as a result of specialized sections in preliminary matters, which do not deal with direct appeals in these matters. The amendment of the regulation of procedure of the court provides as another solution to wait for the end of the relevant negotiations, as well as the subsequent amendment of the decision of the court, which establishes the criteria for assigning cases to various sections.

The result for the specialized sections in matters of preliminary references is called to have a double function. A nomophylactic of their own judge, who continues to dialogue with the national judge as well as ascertaining the facts and qualifying the law as a judge of first instance and direct appeals (Alberti, 2024). It is also the CJEU, that assumes the preliminary jurisdiction and the resolution to direct appeals. The latter filter the previous ascertainment carried out by the Court referring to types of appeal of a constitutional nature with a homogeneous result and a role exercised by the same.

From a procedural point of view, it is highlighted that at this stage, according to Art. 50 of the Statute, the Court does not decide in a Grand Chamber but to a new formation of a quantitative nature, which includes the Chamber of five judges, as well as the Grand Chamber. This is a position that is based by the CJEU itself also in the modification without being further discussed by the institutions. This is a position that requires the important judging panel for the case that retains the competence of the CJEU. Art. 50 ter, par. 3 of the Statute provides that: "(…) requests for preliminary rulings transmitted to the Court are attributed (…) to sections designated for this purpose (…)" considering that the involvement of the Grand Chamber by nature knows the cases that are attributed to the jurisdiction of the Court also of a preliminary nature thus decreasing the guarantee provided by the provision. This choice does not provide for the Grand Section, which depends on the importance of the cases and the model of the unique guichet mechanism (one-stop shop), which leaves to the Court the number of judges, who will make up the new intermediate section, that is the modification of the regulation of procedure of the Court which provides for nine members, that is a number lower than the fifteen foreseen for the Grand Section[15].

The choice of exclusion from the Grand Section highlights a perplexity given that the intermediate section is composed in a unique way by judges from the two sections specialized in preliminary rulings, thus adding the Grand Section. The argument of the CJEU weakens the principle of an ad hoc specialization, i.e. preliminary ruling of the sections, as well as the sections of competence in other matters. Because the Grand Section of the Tribunal pronounces on a reduced number of cases, that objectively it is difficult to think of its involvement that can "(...) weaken the guarantee provided for by Art. 50 ter, par. 3, first sentence of the Statute (...)". The reform has the clear objective of reducing, from a quantitative point of view, the work from the CJEU without affecting the qualitative aspect as a non-institutional choice. The competent committees of the European Parliament, through the position of President Lenaerts, asked the legislator of the Union to adopt faster times: "(...) weeks to come, not in the two years to come (…) spezialisiertes Gericht der Union, im Dialog mit den Vorlagegerichten der Mitgliedstaaten (…)", which can be noted in German comes into contact with the parliamentary components, who have doubts about the respect of the principle of the natural judge pre-established by law.

The aim is to place the Court as "(...) a specialized judge of the Union, in dialogue with similar models at national level (...)" without knowing that the Court does not express itself in a large section and/or the judging panel with the exception of the plenary composition. It has as its object the difficult management of the doubling of judges with capacity that can act as a harmonization chamber to a dynamic and exercising role of the Court within the scope of direct appeals with that of preliminary rulings.

A specialized judge needs the judging composition to adopt decisions with a strong component technique, which evaluates the assessment practice through new technologies and take a position by the different scientific-technical theories, in the reference sectors, allowing thus to harmonize the functions exercised in the appeals directed to the preliminary reference. This is an old experience based on Vorlagegerichten der Mitgliedstaaten, that is, on the national jurisdictions that are taken as a model. We recall the German model of Bundesfinanzhof, the appeal body to the decisions that are adopted by the Finanzgerichten, as noted by the president himself through his hearing at the European Parliament and according to Art. 11 of the founding decision, which decides the composition of a Große Senat, without the case being referred to the constitutional court and/or the court of cassation to one of the Member States of the Union before deciding[16].

It does not grant a procedural instrument for the Court. The guichet unique (one-stop shop) does not allow to leave

15Art. 15 bis of the regulation of procedure of the tribunal.
16Finanzgerichtsordnung of 28 March 2001, which is modified with art. 27 of the law of 22 December 2023, in Bundesgesetzblatt 2023, I, nr. 411.

to the Court important cases for the large section, which serve with evident way among the real reason of its choice. So it is considered that the specialization is objective to a reform that will follow in the near future.

5. The reform between dialogue with national judges and the CJEU

The innovative capacity of a legislative change is assessed precisely. It is observed that the debate related to the reform develops effectively for matters concerning the transfer, that implies a minimum impact from a qualitative point of view. Even matters related to VAT can be part of the guichet unique (one-stop shop). Reading from the site of the CJEU the statistical data offered specify that the quantitative, general impact in these work matters is only 40%, which means that the data provided refer to scenarios that are objectively perplexed. The reform still pending in many aspects is certainly operational from the Treaty of Lisbon and requires methodological caveats, that refer to a broad dialogue between national judges and the CJEU. It is a reform that can have an impact from a quantitative point of view at a second level also on a reform of a qualitative nature as well as influencing reforms at a national level.

Preliminary references assert the jurisdiction of the Court as well as the work in large section of the CJEU, as we have seen in the Taricco[17] and Scialdone case (Liakopoulos, 2019)[18], together with cases in matters that are withdrawn. The dialogue with the Court is huge and the CJEU has not provided similar data on various scales for institutions, that involve the legislative procedure and have not requested deliberations on the matter through the constitutional court and/or the court of cassation. The microcosm of every judicial nation state even before the entry into force of the Treaty of Lisbon has made preliminary references, which has included the Court in the relevant dialogue on the matter.

In this regard, the limited number of cases that are transferred to the Court is highlighted, recalling the order in the CILFIT case and the poor clarification of the question based on the former Art. 53, par. 2 and Art. 94 of the rules of procedure of the Court of Justice. Also in this case, the CJEU has not offered a similar data on a general scale and it is worth highlighting the number of circumstances to a limited dialogue of doubtful interpretation that does not refer to a broad discussion. The transfer of the preliminary reference to the Court is clearly connected with the management of important cases of a perspective, that goes beyond the national judicial microcosm of each Member State and thus the opportunity is lost for the CJEU to work that involves constitutional aspects for the adoption of orders of inadmissibility and/or inadmissibility of the reference.

The CJEU has not offered elements of data similar to those on a European scale regarding the government intervention of cases that has proposed to transfer to the Court, with a paradoxical way, the negotiations to public debate of an important reform, conducted with full knowledge of this type of elements. The numbers allow us to arrive at the position, that the Court finds itself in the management of a dispute with implications and attentions of a political nature. It is evident, that the general structure of the reform accompanies and supports this type of role. The reflections of this general nature are a topic of discussion, also for the reform under investigation.

6. The Impact of the Preliminary Ruling Reform and the Relationships between National Legal Systems

Speaking of dialogue between super partes jurisdictions and national judges, it is clear that the presence of the CJEU allows a transition, which limits the risks for the Court of being able to merge consolidated case law. In matters such as VAT, it is taught that a specialized judge can pronounce and review from the CJEU the degree of a general holding of a system that has its own advantage. If the Taricco case was adopted by the Court, the CJEU could resolve the issue in a review session, thus avoiding the emergence of the known contrast. The relative compromise in the quadrilogue session is evident, which in cases such as that of Taricco could be obtained from the guichet unique (one-stop shop) and within the CJEU to avoid and attribute such work to the Court. This reform shows a certain selfish centrism of the Court and an obsession that the Court can express itself even by making mistakes on causes of a certain importance. It seems legitimate to ask for a risk for the relationships between legal systems.

We need, according to the author's opinion, a level that modernizes the judging of the reform, thus stating in a shareable way, that the judge holds all the causes equal, as indicative of a justice done within the walls of the judges. If the object of the rules are super technical, the question of national law is recalled, which is submitted to the supreme judge, at national level, to know and to have from a specialized judge from Luxembourg a corpus iuris, which supports

17CJEU, 8 September 2015, C-105/14, Taricco and others, ECLI:EU:C:2015:555, published in the electronic Reports of the cases.
18CJEU, 2 May 2018, C-574/15, Scialdone, ECLI:EU:C:2018:295, published in the electronic Reports of the cases.

the interpretation of the relative legislation. In this reform the national judge is not in dialogue with the specialized judge. The specialized judge does not have in his hands the procedural tools, such as for example the appeal to the grand section, with the necessary way to respond to the relative question, which arises from the national judge.

The national judge notifies the guichet unique (one-stop shop) at the CJEU, of the relevant question that moves a normative technique, which in an abstract manner states to the Court capable of embracing other matters, questions of wide scope especially in matters of fundamental rights, general principles of the legal system that keep the case within the jurisdiction of an opinion of the national judge, that is, a question that remains within the technical perimeter even for the parties, who can rely on a different opinion. The same applies to the other side of the coin. If the national judge overturns a consolidated case law, the preliminary ruling has served precisely this objective, that is, to be able to file with the guichet unique (one-stop shop), a question that has the objective of uniting the technical aspects to a sector with questions of a general nature and in the opinion of the CJEU, which is not independent but goes beyond the affirmative sector of the jurisdiction of the Court. The case is thus assigned under the jurisdiction of the latter and the judge and the parties can also rely on opinions of a different nature.

In a legal context, levels of double prejudicial issues proliferate. Especially, it is noted protocol no. 16 of the internal constitutional court of a Member State of the Union and the European Court of Human Rights (ECtHR) (Gragl, 2013, p. 229). From the Court of Cassation we have questions relating to turning to the judges of the Union without being able to seek support elsewhere in this regard. The judge of the last instance will continue to raise referrals even in affirmative sectors to the Court with an implicit manner from a consolidated, intrinsic and classifiable jurisprudence, as we have seen in the case of the CILFIT ruling[19]. With a partial manner we refer to the Consorzio Italian Management case[20]. In it, the judge is not a specialized dominus to a corpus iuris like the one that manages the causes that are less relevant. We need a certain distinction and clarity regarding the flexible divisions of competence, which can be bent to the logic of judicial policy, which the referring judge does not govern and which risks objectively undermining the channel of communication, that has allowed in partem the construction of the legal system of the Union.

7. Review and Impact on National Judgments and Procedural Parties

In the review sector it is also true that it takes up the striking example that we already know from the Taricco case. After the Weiss case and within certain limits it tries to offer the opportunity to touch decisions without arriving at a clash between national supreme courts and the CJEU, to a huge majority in the cases, that the review weighs down the dialogue between national judges and judges of the Union. The preliminary rulings, which are issued from Court undergo an uncertain period given that Art. 62 of the Statute within the month of its publication that the Advocate General proposes to the Court the relative review "(...) requires a decision of principle that may affect the unity or coherence of Union law (...) where there is a serious risk of affecting the unity or coherence of Union law (...)".

On the positive side, the CJEU still has another month to express this proposal. The national judge and the parties cannot rely on the validity of their ruling at the Court. In the case the Advocate General proposes the relevant review even if it rejects the CJEU rules on the legitimacy of a preliminary ruling of the court. The losing party seeks its own advantage to minimize the impact of the same in the national process and by reason of existence to a preliminary reference for interpretation ensuring thus a uniform application of the law of the Union. It can be asked whether the case to be reviewed has to do with the mechanisms of operation of the review appeal as happens in direct appeals (Orzan, 2020, p. 428; Gentile, 2020, p. 4).

It is recalled, that the basis of Art. 256 TFEU, is always important and unique for the CJEU as it has the power to review the preliminary rulings, which are adopted by the Court when there are "(…) risks that the unity or coherence of Union law are compromised (…)" and according to the conditions and within the limits of the Statute. The conditions and methods provided for according to the Statute and within Art. 62 are inserted in Title IV thus modifying from the European Parliament and from the Council a legislative procedure of ordinary nature. The review times and the related governance attributed to the first Advocate General can modify the reform achieved and the process of publication.

In this regard, the CJEU has not proposed anything but enforces a logic of change towards small steps without objecting other institutions that involve and demonstrate with a certain incapacity a rich political plan proposed by

19CJEU, 6 October 1982, 283/81, CILFIT. ECLI:EU:C:1981:335, I-03415

20CJEU, 6 October 2021, C-561/19, Consorzio Italian Management, ECLI:EU:C:2021:799, published in the electronic Reports of the cases

the CJEU. It is legitimate to ask whether in the future at the time of an expansion of preliminary jurisdiction from the Court the implications of a historic change to the judicial system of the Union are fully assessed as well as whether it is not the case to address the issue.

The replacement, as a complete power of the first Advocate General, to initiate the review of the matter and to provide for the possibility for the parties to bring to the attention of the CJEU a decision of the Court through a different instance in time and length of the document, is foreseen and is part for the direct and current appeals of Art. 170 bis of the CJEU Rules of Procedure. The nature of the preliminary ruling, as a tool for dialogue between judges and as a procedural mechanism in the hands of the parties to the proceedings obtains protection for their rights. The evolution takes into account the law, that regulates and constitutes a continuous "business" with the Court (Broberg, 2017, p. 99). The dialogue of the workload with the first Advocate General has the support for the parties to control in a unitary and precise way the jurisprudence of the judges of the Union as well as to decrease the pressure of the preliminary rulings of the Court. In the national process, a preliminary ruling that a month after its publication can call into question an institutional figure of a high rank from the first Advocate General. The CJEU decides but does not follow the request of the first Advocate General in order to prejudice the application by the national judge to follow his own case. The role of control is thus left to the procedural parties, who clarify and systematically provoke the reverse of the Court's ruling within a typical procedural dialectic, which is incapable of having a real impact on the legitimacy of the act.

The relative transition to complementary, exclusive and private enforcement forms of review evaluate and do not arise the need at least for a short period since the choices for the transfer and the composition of the unique guichet (one stop-shop) makes the cases of review to be extremely scarce and rare. This reform is the harbinger of a large transfer, that will come in the next few years taking seriously the same reform that evaluates the subject unlike what happened during the concluded negotiations. The continuous work for the Advocate General and the review inevitably takes away in time and human resources towards the main function of drafting the conclusions for important causes. This is also a further demonstration of excessive lightness on the sustainability of a legal institution, that is currently configured.

8. Towards the Future of the New Judicial Architecture of the European Union

When we talk about the judicial architecture of the Union, we highlight some aspects of perspective. The current jurisdictional system of the Union, as an idea of the past, remains unfinished towards a precise and clear direction. A path that the CJEU develops, that is, a dimension of a constitutional nature, where the court is represented as a supreme administrative court. The CJEU seems full of work within a boat with important cases. It is noted in fact (Bobek: 2023, p. 1516; Sarmiento, 2023, p. 7)[21] that the reform for the Court puts it to play the role of shield, of armor in front of the CJEU within a work that detects and acquires a distinct status. At a first step the Court acquires its own status for the near future. The unique guide (one-stop shop) thus composes some subjects that are chosen for the transfer that does not constitute a theatrical training stage with actors the judges towards a direction that with a lawful way ask to touch keys of a system of jurisdictional protection of the Union to achieve essential objectives, quantitative, real and with qualitative consequences at European and national level.

The possibility of transferring the jurisdiction to the Court that effectively hears appeals for non-compliance requires a rethinking of the infringement appeal at the primary law level. The impossibility of establishing a Court of appeal alongside the Court to lighten the work of the CJEU is felt, especially of the pourvois, which are less relevant. In this spirit, the reform includes the idea of making the court like a Union's Council of State (Van Der Woude, 2021, p. 20).

This meaning as a key principle of the reform is analyzed in distinct terms by the states that provide interpretative questions because of the validity, that concerns in a decisive way matters, that are deposited at the Registry of the Court leaving only the choice to refer in a preventive way to the CJEU. Thus, the choice of matters of affirmations to the competence of the Court are based on sectors that have a consolidated delicate and less burdensome expertise within the terms of work, which for the CJEU are capable of laying the foundations to create a supreme Administrative Court of the Union on matters that concern competition, intellectual property, state aid, disputes on super

21Bobek affirms that: "(…) is being supplanted with the logic of a pool (there will be again only one Court which will be flexibly reallocating the human resources within what starts looking much more like a unitary structure again (…)". Sarmiento affirms also: "(…) the Court of Justice becomes a constitutional adjudicator (…) TEU and the TFEU will notice the pre-eminence of the Court of Justice and the modesty of the General Court's presence (…)".

technical acts, which are adopted by the agencies of the EU as well as the Court, which thus becomes a substantial judge of last instance, i.e. a filter mechanism for appeals that the reform itself confirms and expands. The risk for the Court to propose conflicting and different jurisprudence with those of the CJEU itself can be healthy through the review, the experience of national legal systems, which teach the mature judicial system a classic and pyramidal hierarchy. It embraces every functional type in relation to the conflicts between jurisprudence addressed and resolved according to the logic of spheres of competence with the classic mechanisms of dialogue at a distance and between supreme jurisdictions known at national level.

The relative transfer of preliminary rulings becomes operational in practice. It leads towards a direction, that is difficult to materialize the scenario in the near future. On the contrary, the transfer of preliminary rulings, adopts and makes the judicial system of the Union a vertical, hierarchical system in relation between CJEU and Tribunal within the system of the CJEU together with the president and vice president, that the guichet unique (one-stop shop) thus establishes a first instance to a restricted number of members of the entire large and general assembly, assuming the tasks for the cases to the reporting judges[22]. The first is to control the filter mechanism for the appeals that are provided for by Art. 58 bis of the Statute[23] and the second in the direction of a preliminary ruling. The direction of the construction, that piece by piece in the context of European criticisms for a review of judicial acts (Heffernan, 2003, p. 908; Diniz Araùjo, 2020, p. 189), allows the CJEU to select important cases and thus maintaining the competence of changing and remaining everything as it is until now. So it is normal that we have a strong CJEU with all the essential competences of the system leaving secondarily to the Court together with the independent appeal commissions that are evoked by Art. 58 bis of the Statute. They are not, therefore, independent the manifestations of the same functions, that are able to impact definitively on the system.

The challenges are still open especially at an institutional level, as well as the attention to the European Union in the face of continuous enlargement. The investigation it is appropriate from the perspective of a progressive increase in workload through the CJEU and the Court. The lack of prospects with a highlighted way, for the reform under investigation, constitutes a perhaps lost opportunity for the affirmation of a judicial system of the Union towards a mature and structured dimension. The principle in coherence, with an inevitable way, looks at the past history of the integration process, as a fundamental role for the CJEU, which models and shapes the system of the Union. In this spirit, the CJEU needs structural changes to continue to exercise this type of role with an inevitable way, recognizing the necessary changes. The time is certainly ripe for the structure of the judicial system of the Union and the terms are complex arriving at a reform that seeks to resolve situations of the past that lead to the doubling of the judges of the Court. Such a reform can provide a judicial system for the Union that will be able to manage a large number of cases that do not degrade the identity of the Union. The stages are still open and the changes in the judicial system will follow in the coming years a constant work especially in the sector of dialogue and contrast between national judges and super parties.

9. Concluding Remarks

As we have understood from the previous paragraphs, the judicial reform seems to be useful to unload an excessive workload from the CJEU. It has become an imposing institution over time through the continuous increase in work. The application of the new system was for the CJEU an important job without excluding that the Court finds itself excessively within wide margins of productivity. The measures that are taken do not run risks in the unity and coherence of the law of the Union. And it is also easy to assume that there is still time for preliminary rulings of the Court, which seek to overcome objections, problems from the past and at the same time solicit the transfer. Breaking the unity in the jurisdiction of the matter, as well as the level and quality of the protection offered to the Court is certainly not new to those, who know well the work done by the CJEU and its functioning without hiding in a worrying way the prospects of transfer. Possibilities that animate a part of the same members of the large section and the long duration of maturation of a proposal.

Reality and decisions of the Court in preliminary rulings bring consequences, following the growth of litigation before the CJEU, without providing for the transfer of specific matters within unpredictable limits. The doubts are many and expressed at this step. The traditional characteristics of a jurisdictional system of the Union are altered and in particular in the CJEU itself, which has been configured within a path taken for seventy years now. The aim of the

22Art. 15 of the regulation of procedure of the CJEU.
23Art. 170 ter of the regulation of procedure of the CJEU.

monopoly of the jurisdictional system of the Union and the CJEU as a keystone to an internal system does not constitute an occasional expedient but perhaps risks creating a wound of the very nature of the system. The issue is that the problem of the workload of the CJEU has existed for some time and there were many ideas to resolve and start a new effective path through the doubling of the members of the Court. The preliminary rulings remained the last piece to work. Their transfer to the Court function as a filter of admissibility, possibility and global review of a jurisdictional system of the Union. There are no easy ideas and made on foot to solve the problem of continuous work in growth with reforms that first of all must not alter fundamental characteristics of the existing jurisdictional system. To avoid continuing the pressure of urgency it is necessary to provide in time to discuss and organize consultations for dialogue with national judiciaries on how to review the system and to ensure the possible reforms that realize in a broad and certainly shared way a new path of stability, healthy and effective to the principles, values and spirit of the Union.

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