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Guidelines for litigation before **THE COURT OF JUSTICE OF THE EUROPEAN UNION**

The case of **ALBANIA**



GUIDELINES FOR LITIGATION BEFORE THE COURT OF JUSTICE OF THE EUROPEAN UNION FOR THE NEW EU MEMBER STATES

THE CASE OF ALBANIA AS A CANDIDATE COUNTRY

Tirana, May 2025

This guideline has been prepared within the framework of the project “Strengthening regional judicial cooperation in the Western Balkans for effective litigation before the Court of Justice of the European Union and the implementation of the EU Charter of Fundamental Rights”, with the support of the Government of the Kingdom of the Netherlands.

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The guideline was developed in close collaboration with Dr. Aida (Gugu) Bushati and the School of Magistrates of the Republic of Albania. We express our sincere gratitude to the School of Magistrates for the excellent cooperation and valuable support provided throughout the drafting and finalization process of this guideline.

Table of Contents

Abbreviation	3
Summary	3
Methodological Note.....	4
1 A brief overview of the European Union legal order	5
2 The Court of Justice as the highest judicial authority in the EU	8
2.1 <i>Reference for a preliminary ruling as an indirect procedure before the Court of Justice (Article 267 TFEU).....</i>	<i>10</i>
2.1.1 An overview of the procedure in the case law of the Court of Justice	11
2.1.2 An overview of guidelines and procedural elements for the reference for a preliminary ruling.....	15
2.2 <i>Direct actions</i>	<i>19</i>
2.2.1 An overview of direct actions according to the Treaties and the case law of the Court of Justice	20
2.2.2 An overview of procedural rules applicable to direct actions.....	27
2.3 <i>Interim relief.....</i>	<i>28</i>
3 Issues relevant to the Albanian context in indirect and direct actions before the Court of Justice.....	29
3.1 <i>National constitutional principles</i>	<i>29</i>
3.2 <i>Self-perception of national constitutional courts in the context of the preliminary ruling procedure</i>	<i>31</i>
3.3 <i>The notion of ‘final judgment’ in Albanian legislation and case law relevant for the preliminary ruling procedure.....</i>	<i>32</i>
3.4 <i>The notion of a court or tribunal in Albanian law.....</i>	<i>35</i>
3.5 <i>Judicial culture in engaging with the CJEU in the context of the preliminary ruling</i>	<i>36</i>
3.6 <i>Capacity building on EU law and specifically on EU procedural law.....</i>	<i>37</i>
3.7 <i>The need for an efficient and well-functioning judiciary.....</i>	<i>39</i>
3.8 <i>Capacity building on EU law: the case of the School of Magistrates</i>	<i>40</i>
4 Conclusions	43
5 Recommendations	44

Abbreviation

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EFTA	European Free Trade Association
EU	European Union
EU Charter / Charter	Charter of Fundamental Rights of the
European Union	
Euratom Treaty	Treaty establishing the European Atomic
Energy Community	
CJEU/	
Court of Justice of EU	Court of Justice of the European Union
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European
Union	

Summary

This document serves as a comprehensive reference for candidate countries, like Albania, preparing to litigate before the Court of Justice of the European Union (CJEU). It outlines the foundational principles of the EU legal order, including direct effect, primacy, and the doctrine of national procedural autonomy. The document explains both indirect (preliminary ruling) and direct actions (such as infringement proceedings and actions for annulment), procedural safeguards, and the interaction between EU law and national legal systems.

It highlights common potential challenges for candidate countries, including insufficient training on EU procedural law, limitations in legal education, judicial hierarchy constraints, and institutional capacity gaps. Notably, the document underscores the importance of preliminary ruling procedures (Art. 267 TFEU) and the need for national courts—especially

those without further judicial remedies—to refer cases and justify non-referrals properly.

Drawing from comparative practices in EU Member States, the document presents practical recommendations to address identified challenges, including the need for curriculum reform, capacity building in judicial institutions, dedicated training on EU law, procedural alignment, and improved access to resources and expertise. Special emphasis is placed on Albania's context and alignment efforts, highlighting the role of the School of Magistrates and other relevant institutions.

Methodological Note

This policy document was developed through a multi-method approach. A structured desk review was conducted of relevant sources including EU treaties (TEU, TFEU), the Charter of Fundamental Rights, and CJEU case law, national constitutional and procedural laws, academic literature and institutional reports on EU litigation practices, comparative examples from EU member states (e.g., France, Germany, Slovenia, Croatia), and European Commission assessments and judicial training strategies.

The document also analyses the status of national courts in candidate countries as EU law enforcers, procedural requirements and institutional responsibilities in direct and indirect actions before the CJEU, and the interaction between domestic judicial hierarchies and the obligation to refer.

Collaboration was initiated with the School of Magistrates to contextualize findings.

1 A brief overview of the European Union legal order

The EU is a supranational organization founded on values common to its Member States such as respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.¹ Its functioning is based on the Treaty on the European Union (TEU), the Treaty on the Functioning of the EU (TFEU), the Treaty establishing the European Atomic Energy Community (TEAE) and the Charter of Fundamental Rights of the European Union. Article 5 of the Treaty on the European Union (TEU) sets out the *principle of conferral* according to which, “the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States”. Thus, the source of authority and action in the EU are the Member States and Union institutions can only act on the basis of these conferred competences.

The Treaties and legislation adopted by EU institutions are applicable in the internal legal orders of the EU member states following certain principles established by the Court of Justice of the EU (CJEU) in its case law. Firstly, provisions of primary law and of binding secondary law can have direct effect before national courts. This means that individuals may invoke these provisions in proceedings before national courts in order to claim rights deriving from EU law. According to the *Van Gend en Loos* case², EU law provisions may have direct effect if they are sufficiently clear, precise and unconditional. Specific conditions are put in place for provisions of directives, but it suffices here to mention that according to cases such as *Marshall*³, *Faccini Dori*⁴, *Pfeiffer*⁵, *Dominguez*⁶, provisions of Directives may not be invoked directly before national courts in horizontal situations (in cases involving two private parties).

¹ Article 2 TEU.

² Case 26/62, *Van Gend En Loos* (1963)

³ Case 152/84, *Marshall* ECLI:EU:C:1986:84

⁴ Case C-91/92, *Faccini Dori* ECLI:EU:C:1994:292

⁵ Joined Cases C-397/01 to C-403/01, *Pfeiffer* ECLI:EU:C:2004:584

⁶ Case C-282/10, *Dominguez* ECLI:EU:C:2012:33

In addition, according to the CJEU in the case *Costa v ENEL*⁷, provisions of EU law take precedence over any provision of national law. This is known as the principle of supremacy/ primacy of EU law. Binding provisions of EU law take precedence over any provision of national law, including the national constitution.⁸ In subsequent case law, the CJEU has clarified that national courts have the primary obligation to interpret national law in conformity with provisions of EU law in order to afford protection to rights of individuals deriving from EU law.⁹ In case such interpretation is not possible, national courts in EU member states have the obligation based on the *Simmenthal* case to set aside any provision of national law if it collides with a directly effective provision of EU law.¹⁰ This obligation is in place even in case of a subsequently adopted provision of national law¹¹ and national courts have no obligation to request or await the prior setting aside of such provision by legislative or other constitutional means.

According to the CJEU, EU law is autonomous from national (constitutional) law and international law. This means that it does not derive its validity and authority of application from these two sources of law and that its uniform interpretation and effective application cannot be called in question by provisions of national (constitutional) law or international law.¹²

⁷ Case 6/64, *Costa v. ENEL* ECLI:EU:C:1964:66

⁸ Case 11/70, *Internationale Handelsgesellschaft* ECLI:EU:C:1970:114; Case C-399/11, *Melloni*, ECLI:EU:C:2013:107

⁹ See for instance, Case 14/83 *Von Colson*, ECLI:EU:C:1984:153; Case C-106/89 *Marleasing* ECLI:EU:C:1990:395; Case *Dominguez* (supra note n. 6), Case C-573/17 *Poplawski* ECLI:EU:C:2019:530

¹⁰ Case C-106/77, *Simmenthal II* (1978). Reiterated in subsequent case law such as *Winner Wetten*, C-409/06, *Dominguez*, C-282/10, *Bauer and Willmeroth*, C-569/16 and C-570/16, and clarified in Case C-573/17 *Poplawski*

¹¹ Para. 28, case *Simmenthal II*.

¹² See cases *Costa v ENEL* for the claim that EU law ‘stems from an independent source of law’; and as main examples for its autonomy from international law see *Joined Cases C-402/05 P and C-415/05 P, Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission* ECLI:EU:C:2008:461, *Opinion 2/13 re EU Accession to the ECHR* EU:C:2014:2454; Case C-284/16

National courts in the Member States are EU courts. This means that the application and enforcement of EU law takes place in the Member States next to its application and enforcement by EU institutions. Guided by the principle of sincere cooperation enshrined in Article 4(3) of the TEU and in cooperation and assisted by the CJEU¹³, national courts are competent to decide cases brought before them where EU law is applicable and to decide whether a provision of national law is compatible or not with EU law. They are in charge of enforcing individual rights deriving from EU law in case Member State have not acted in compliance with EU law. For instance, in case a natural or legal person has suffered damage from a breach of EU law by a state authority, such individual may bring a case before a national court and ask damages based on the principle of state liability as established by the CJEU in the Francovich case.¹⁴ National courts “are closely involved in the correct application and uniform interpretation of European Union law and also in the protection of individual rights conferred by that legal order.”¹⁵

According to Article 19(1) “Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.”. Thus, it is the obligation of Member States to provide these remedies in their legal frameworks to (natural and legal) persons in the areas covered by EU law. To the extent that there are no common rules at

Slowakische Republik (Slovak Republic) v Achmea BV, see e.g. para 33 “Also according to settled case-law of the Court, the autonomy of EU law with respect both to the law of the Member States and to international law is justified by the essential characteristics of the EU and its law, relating in particular to the constitutional structure of the EU and the very nature of that law. EU law is characterised by the fact that it stems from an independent source of law, the Treaties, by its primacy over the laws of the Member States, and by the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves. Those characteristics have given rise to a structured network of principles, rules and mutually interdependent legal relations binding the EU and its Member States reciprocally and binding its Member States to each other”.

¹³ Through the reference for a preliminary ruling procedure, see Article 267 TFEU.

¹⁴ See Joined Cases C-6/90 and C-9/90 Francovich ECLI:EU:C: 1991:428; and Joined Cases C-46/93 and C-48/93 Brasserie du Pêcheur ECLI:EU:C: 1996:79 for the initial introduction of this remedy.

¹⁵ Opinion 1/09, para. 84.

the EU level on legal protection of individuals before national courts, Member States have to apply and enforce EU law in accordance with principles and procedures determined by national law. This reflects the well-known principle of *national procedural autonomy* set out in the case law of the CJEU. In the case of *Rewe*, the CJEU ruled that “[...]in the absence of Community rules on this subject, *it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which citizens have from the direct effect of Community law*, it being understood that such conditions cannot be less favourable than those relating to similar actions of a domestic nature.”¹⁶ The principle of national procedural autonomy established in *Rewe* is limited by two conditions: the principle of equivalence according to which conditions for claims brought under EU law cannot be less favourable than those for claims brought under national law and the principle of effectiveness according to which the exercise of rights must not be made impossible or excessively difficult.

Following this overview on the EU legal order and its application in the Member States, the next paragraphs will focus on the role, functioning and jurisdiction of the Court of Justice of the EU.

2 The Court of Justice as the highest judicial authority in the EU

According to Article 19 (1) TEU, the Court of Justice of the European Union includes the Court of Justice, the General Court and specialised courts. The main task of the Court is “[to] ensure that in the interpretation and application of the Treaties the law is observed.” According to Article 19(2) the Court of Justice shall consist of one judge from each Member State and it is assisted by Advocates-General. Currently, the Court of Justice is composed of 27 judges and 11 Advocates General¹⁷. As per 1

¹⁶ Case C 33/76, *Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland*, para. 5, emphasis added.

¹⁷ See Council Decision of 25 June 2013 increasing the number of Advocates-General of the Court of Justice of the European Union (2013/336/EC).

September 2019, the General Court consists of two judges per Member State.¹⁸ According to Article 19(3) of the TEU, the Court of Justice of the European Union (thus including both the Court of Justice and the General Court) shall: (i) rule on actions brought by a Member State, an institution or a natural or legal person; (ii) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions; (iii) rule in other cases provided for in the Treaties.

Apart from the Treaties and case law (as it will be discussed below), the organization, functioning and activity of the Court of Justice is governed by the following legal documents¹⁹:

- **The Statute of the Court of Justice**²⁰. This sets out the framework for the organization and functioning of the Court and it regulates in more detail issues such as the status of judges, organization of the Court (renewal of membership, division in chambers etc), procedure before the Court of Justice, organization of the General Court and specialized courts.
- **Rules of Procedure of the Court of Justice** which implement and supplement the Treaties and the Statute of the Court. They deal with issues such as organization of the Court, provisions common to different procedures before the Court, specific provisions applicable to references for a preliminary ruling and to direct actions.

Other relevant documents in this regard are:

- Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings

¹⁸ See Article 48 of the Statute of the Court of Justice.

¹⁹ These documents and other relevant ones can be found here https://curia.europa.eu/jcms/jcms/Jo2_7031/en/, last accessed 24 May 2025.

²⁰ Consolidated version of the Treaty on European Union, Protocol (No 3) on the statute of the Court of Justice of the European Union, *Official Journal* 115, 09/05/2008 P. 0210 – 0229.

- Practice directions to parties concerning cases brought before the Court.²¹

An overview of the main proceedings before the Court of Justice:

General Court	Court of Justice
Art. 263 TFEU <u>Review of legality of EU acts</u>	Art. 256(1) TFEU <u>Appeals on points of law of judgments of General Court</u>
Art. 265 TFEU <u>Failure to act</u>	
Art. 268 TFEU <u>Compensation for damages</u>	Art. 258 TFEU <u>Infringement proceedings</u> (Com vs. MS)
Art. 270 TFEU <u>Staff cases</u>	Art. 259 TFEU <u>Infringement proceedings</u> (MS v. MS)
Art. 272 TFEU <u>Judgment pursuant to an arbitration clause</u>	Art. 260 (2) & 261 TFEU <u>Infringement proceedings/financial sanctions</u> (Com v. MS)
Art. 256(2) <u>Actions against decisions of specialized courts</u>	Art. 267 TFEU <u>Preliminary rulings</u>
Art. 256(3) <u>Preliminary rulings (in cases determined in the Statute)</u>	

2.1 Reference for a preliminary ruling as an indirect procedure before the Court of Justice (Article 267 TFEU)

²¹ See supra note 19.

2.1.1 An overview of the procedure in the case law of the Court of Justice

The reference for a preliminary ruling procedure, enshrined in Article 267 TFEU, is one of the most important procedures in the EU legal order. It has been a cornerstone of the EU legal order since the establishment of the first Communities. It is the foundation of cooperation between the Court of Justice and national courts, and it ensures the uniform interpretation and application of EU law in the Member States whereby the latter may ask questions for a preliminary ruling to the Court of Justice on issues of interpretation of the Treaties; on issues of interpretation and validity of acts of the institutions, bodies, offices or agencies of the Union. It is referred to as an *indirect procedure* because parties do not bring the case themselves before the Court of Justice, but it is the national court before which a dispute is brought that sends a reference for a preliminary ruling to the Court of Justice.

The Court of Justice cooperates with national courts in the application and enforcement of EU law. The main avenue of this cooperation is the reference for a preliminary ruling procedure regulated under Article 267 TFEU. This cooperation is based on a division of tasks between national courts and the Court of Justice. The CJEU interprets the Treaties and EU secondary law and decides on the validity of EU secondary legislation. National courts, based on this interpretation by the Court of Justice, decide on the concrete dispute before them which may be between a state authority and a private person or between two private persons. Overall, in its judicial mandate the Court makes sure that “in the interpretation and application of the Treaties the law is observed”²². Whereas national courts have the power of applying and enforcing EU law on a daily basis, they cannot declare the invalidity of EU law provisions (primary or secondary binding norms). As established in the *Foto Frost* case, this is the exclusive prerogative of the Court of Justice.²³

²² See Article 19 TEU.

²³ Case 314/85, *Foto-Frost v Hauptzollamt Lübeck-Ost*, ECLI:EU:C:1987:452.

A reference for a preliminary ruling is exclusively initiated by a court or tribunal in a Member State. The concept of court or tribunal is an *autonomous* concept in EU law and is interpreted by the Court of Justice. In assessing whether the reference is brought by a court or tribunal in a Member State, and thus whether it is admissible, the Court of Justice takes the following elements into consideration: whether the body making the reference is established by law; whether it is permanent; whether its jurisdiction is compulsory; whether its procedure is inter partes; whether it applies rules of law and whether it is independent.²⁴ The ability to refer a question is exclusively given to the national court or tribunal and “the mere fact that a party contends that the dispute gives rise to a question concerning the interpretation of Community law does not mean that the court or tribunal concerned is compelled to consider that a question has been raised within the meaning of Article 177”²⁵.

According to Article 267 TFEU any court or tribunal in a Member State may refer a question if there is a case pending before it and it is called to give a judgment in proceedings intended to lead to a decision of a judicial nature.²⁶ Article 267 TFEU makes a distinction between (i) any national court or tribunal and (ii) a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law.

Any court or tribunal in a Member State has a broad discretion in deciding whether to refer a question to the Court of Justice or not. On the other hand, the Court of Justice may declare references for a preliminary ruling as inadmissible in the following cases: if there is no genuine dispute between parties before a national court²⁷; if the question is irrelevant to the dispute at hand; in case of a hypothetical question; in case the questions have not

²⁴ See initially Case 61/65 Vaassen, ECLI:EU:C:1966:39; Case 14/86 Pretore di Salò, ECLI:EU:C:1987:275, para. 7; Case C-54/96, Dorsch Consult, ECLI:EU:C:1997:413

²⁵ Case 283/81 Cilfit ECLI:EU:C: 1982:335, para. 9

²⁶ Case C-53/03 Syfait, ECLI:EU:C:2005:333.

²⁷ For instance, that would be the case when the two parties would be in agreement as to the outcome of the case but took actions to pit the national court in a position to refer a question for a preliminary ruling, see Case 104/79 Foglia v Novello

been articulated clearly with all the necessary information on the legal and actual background of the case.

The concept of a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, includes not only the highest courts in the national jurisdiction (e.g. supreme court or high court) but also any court or tribunal whose decisions cannot be appealed in the particular case. If decisions of an appellate court can be challenged before a supreme court, the appellate court will not be considered as a court against whose decisions there is no judicial remedy.²⁸ The Court in *Lycksekog* clarified that “The fact that examination of the merits of such appeals is subject to a prior declaration of admissibility by the supreme court does not have the effect of depriving the parties of a judicial remedy.”²⁹ If the appellate court has the power to prevent a further appeal, then it will be considered a court or tribunal of last instance and must refer the question to the Court of Justice.³⁰

As mentioned, these courts or tribunals have the obligation to refer a question for a preliminary ruling. This is explained by the fact that they decide in last instance and that there is no possibility for the parties to make use of any judicial remedy under national law to challenge the outcome of the case and most importantly, any potential interpretation or application of EU law by these courts. However, there are three main exceptions from the obligation of these courts or tribunals to refer: *irrelevant questions* (“if the answer to that question, regardless of what it may be, can in no way affect the outcome of the case”³¹); *the doctrine of acte éclairé* which means that the question referred is materially identical to a question already answered in a preliminary ruling or where “previous decisions of the Court have already dealt with the point of law in question”³²; *the doctrine of acte claire* which means that “the correct application of Community law may

²⁸ Case C-99/00 *Lyckeskog*, para. 16.

²⁹ *Ibid.*

³⁰ Steve Peers and Catherine Barnard, *European Union Law*, Oxford University Press, 2023, f. 323.

³¹ Case 283/81 *CILFIT*, para. 10.

³² Case 283/81 *CILFIT*, para. 14.

be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved. Before it comes to the conclusion that such is the case, the national court or tribunal must be convinced that the matter is equally obvious to the courts of the other Member States and to the Court of Justice. Only if those conditions are satisfied, may the national court or tribunal refrain from submitting the question to the Court of Justice and take upon itself the responsibility for resolving it.”³³

The latter exception may be problematic because a court or tribunal against whose decisions there is no judicial remedy may argue that there is no need to refer a question when such reference in fact might be necessary. That is why, this exception comes with strict requirements for national courts. More concretely when refusing to refer a question based on the *acte claire* doctrine, these courts and tribunals have to compare all language versions of the EU law provisions at stake, take into consideration terminology that is peculiar to EU law, and make sure that provisions of EU law are placed in their specific contexts.³⁴ A difference or uncertainty in interpretation among courts of different instances in a Member States cannot *in itself* be a reason to oblige national courts of last instance to refer a question for a preliminary ruling.³⁵ Thus, national courts or tribunals may need to support this finding with uncertainties in application in courts of other Member States. This places quite a burden on national courts or tribunals to engage in such comparative exercise.

The Court of Justice has read in article 267 TFEU and Article 47 of the Charter (effective judicial protection) an obligation for the courts and tribunals against whose decisions there is no judicial remedy, to provide a statement of reasons for its decision which shows “either that the question of EU law raised is irrelevant for the resolution of the dispute, or that the interpretation of the EU law provision concerned is based on the Court’s case-law or, in the absence of such case-law, that the interpretation of EU

³³ Ibid, para. 16.

³⁴ Ibid. paras. 17-20.

³⁵ Ferreira da Silva e Brito; X and van Dijk.

law was so obvious to the national court or tribunal of last instance as to leave no scope for any reasonable doubt.”³⁶

In addition, although the European Convention of Human Rights (ECHR) does not guarantee under Article 6 the right to an individual to have a case referred by a domestic court to the CJEU, it is not ruled out that under the case law of the European Court of Human Rights (ECtHR) “[...] a court’s refusal to grant a request for such a referral may, in certain circumstances, infringe the fairness of proceedings.”³⁷ In the same line of jurisprudence, according to the ECtHR, a national court or tribunal against whose decisions there is no remedy has the obligation to give reasons for refusing to refer a question for a preliminary ruling in light of CILFIT.³⁸

A preliminary ruling on the interpretation of EU primary law or EU acts is binding on the national court or tribunal that referred the question. Other courts or tribunals should treat this ruling as authoritative.³⁹ The same goes for a preliminary ruling on the validity of EU acts.

2.1.2 An overview of guidelines and procedural elements for the reference for a preliminary ruling

Following an important amendment of the Statute of the Court of Justice of the EU in September 2024, part of jurisdiction of the Court of Justice on preliminary ruling has been transferred to the General Court. More concretely, a court or tribunal in a Member State that has a question on the

³⁶ See Case C-561/19, *Conorzio Italian Management*, ECLI:EU:C:2021:799 and *Kubera*, C-144/23, EU:C:2024:881.

³⁷ See ECHR-KS Key Theme – Article 6 (Civil) The obligation to give reasons for a refusal to make a preliminary reference to the Court of Justice of the European Union, available <https://ks.echr.coe.int/documents/d/echr-ks/refusals-to-request-a-preliminary-reference-to-the-cjeu>, and cases referred there *Ullens de Schooten and Rezabek v. Belgium*, 2011, para. 57; *Baydar v. the Netherlands*, 2018, para. 39; *Sanofi Pasteur v. France*, 2020, para. 69.

³⁸ *Ullens de Schooten and Rezabek v. Belgium*, 2011, para. 62; *Sanofi Pasteur v. France*, 2020, para. 70.

³⁹ See Peers and Barnard, pg. 324, referring to Case 52/67 *Benedettu v Munari* para. 26 and *Joined Cases 28-30/62, Da Costa v. Nederlandse Belastingadministratie* [1963].

interpretation or application of EU law in a case before it, suspends the proceedings and sends a request for a preliminary ruling to the Court of Justice of the EU. This decision will be notified to the Court of Justice by the national court or tribunal.⁴⁰ The request for a preliminary ruling will be transmitted by the Court of Justice Registry to the President, the Vice-President and the First Advocate General. The President, in consultation with the Vice-President and the First Advocate General, will assess and verify whether the request falls exclusively within one or more of the areas of jurisdiction of the General Court, namely (a) the common system of value added tax; (b) excise duties; (c) the Customs Code; (d) the tariff classification of goods under the Combined Nomenclature; (e) compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services; (f) the system for greenhouse gas emission allowance trading.⁴¹ If the request falls exclusively in one of these areas, the President of the Court of Justice will inform the Registry who will then transfer the request to the Registry of the General Court.⁴² However, the Court of Justice will retain jurisdiction to answer to a request of a national court or tribunal if such requests “raise independent questions relating to the interpretation of primary law, public international law, general principles of Union law or the Charter of Fundamental Rights of the European Union.”⁴³

The decision by the national court to suspend the national proceedings will be notified by the Registrar of the Court of Justice to the parties, to the Member States, to the European Parliament, to the Council, to the Commission and to the European Central Bank, as well as to the institution, body, office or agency of the Union which adopted the act the validity or interpretation of which is in dispute.⁴⁴ Within two months of this notification, the parties, the Member States, the Commission and, if they see a particular interest in the issues raised in the request, the European

⁴⁰ Article 23 of the Statute of the Court of Justice of the European Union.

⁴¹ See Article 50b of the Statute of the Court of Justice of the European Union.

⁴² See Article 93a of the Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012.

⁴³ Article 50b of the Statute of the Court of Justice of the European Union.

⁴⁴ Article 23 of the Statute of the Court of Justice of the European Union.

Parliament, the Council and the European Central Bank shall be entitled to submit statements of case or written observations to the Court of Justice. Where appropriate, the institution, body, office or agency which has adopted the act the validity or interpretation of which is in dispute, shall also be entitled to submit statements of case or written observations.⁴⁵ In addition, States, other than Member States which are parties to an EEA Agreement and also the EFTA Surveillance Authority if the request for a preliminary ruling concerns one of the fields of application of that Agreement, may submit statements of case or written observations.⁴⁶ Non-member states may also submit statements of case or written observations in case they are parties to an agreement concluded with the Council on a specific subject matter and where the agreement provides for such possibility, and where the request for a preliminary ruling falls within the scope of the such agreement.⁴⁷ Based on a request by the national court or tribunal or *ex officio*, the Court may decide on an expedited procedure (in case the nature of the case requires that it is dealt with within a short time frame)⁴⁸ and in the case of references for a preliminary procedure in the area of freedom, security and justice, it may proceed with an urgent procedure.⁴⁹

In general, Member States and institutions are represented before the Court of Justice by an agent, whereas the parties are represented by a lawyer who is authorized to practice before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area.⁵⁰

A request for a preliminary ruling will contain the following elements⁵¹:

⁴⁵ Ibid.

⁴⁶ Article 96 Rule of procedure

⁴⁷ Ibid.

⁴⁸ Article 105 of the Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012.

⁴⁹ See Article 23a of the Statute of the Court of Justice of the European Union;

⁵⁰ See article 19 of the Statute of the Court of Justice of the European Union.

⁵¹ Article 94 of the Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012.

The text of questions referred for preliminary ruling to the Court of Justice
A summary of the subject matter of the dispute before the national court and the findings of fact according to the national court or at least an account of the facts on which the request is based
Precise references to national provisions applicable in the case at hand and any applicable national case-law; precise references to EU law provisions whose interpretation and validity is assessed.
A statement of reasons which explain the decision of the national court to send a request for a preliminary ruling on the interpretation or validity of provisions of EU law and the relationship between those EU law provisions and national law applicable in the case before the national court.

The request for a preliminary ruling may be in any form allowed by national law and it should be drafted in a simple and accessible manner. Experience has shown that “about 10 pages are often sufficient to set out adequately the legal and factual context of a request for a preliminary ruling and the grounds for making the reference to the Court of Justice.”⁵² The request for a preliminary ruling must be dated and signed, then sent to the Registry of the Court of Justice electronically or by post⁵³. For reasons of a speedy handling of cases, the Court recommended the use of the e-Curia application.⁵⁴

⁵² Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (C/2024/6008), 9 October 2024.

⁵³ To the following address: Registry of the Court of Justice, Rue du Fort Niedergrünwald, L-2925, Luxembourg

⁵⁴ Point 23 of the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (C/2024/6008), 9 October 2024. For more information on the e-Curia application see Decision 2024/2490 of the Court of Justice of 4 September 2024 on the lodging and service of procedural documents by means of e-Curia.

Like any procedure before the Court, also the reference for a preliminary ruling consists of two parts: a written and an oral one.⁵⁵ However, based on a proposal from the Judge-Rapporteur and after hearing the Advocate General, the Court may decide not to hold a hearing if it considers, on reading the written pleadings or observations lodged during the written part of the procedure, that it has sufficient information to give a ruling.⁵⁶

During the written procedure, the registrar will communicate to the parties and the institutions concerned the statements, defenses, observations, replies (if any), as well as any supporting documentation.⁵⁷ During the oral procedure, the Court will hear the lawyers, agents, submissions of the Advocate General and, if applicable, of any witnesses and experts. If there is no new point of law, the Court may decide, after hearing the Advocate General, to proceed without a submission by the latter.⁵⁸

2.2 Direct actions

The main difference between direct actions and the reference for a preliminary ruling is in the fact that the former are disputes between parties that are brought directly before the Court of Justice and adjudicated by it. References for a preliminary ruling are indirect procedures that see the involvement of the Court of Justice concerning the interpretation and validity of EU law, but it is not the Court that decides on the dispute between the parties. It is the referring national court or tribunal that, based on the ruling delivered by the Court of Justice, decides on the disputes between the parties before it. There are several types of direct actions, and the paragraphs below will provide a short overview of their characteristics.

⁵⁵ Article 20 of the Statute of the Court of Justice of the European Union.

⁵⁶ Article 76 of the Consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012.

⁵⁷ Article 20 of the Statute of the Court of Justice of the European Union.

⁵⁸ Ibid.

2.2.1 An overview of direct actions according to the Treaties and the case law of the Court of Justice

2.2.1.1 Infringement proceedings

These are regulated in Article 258, 259, 260 TFEU. Infringement proceedings can be initiated by the Commission or another Member State against another Member State before the Court of Justice. These procedures cannot be initiated by private individuals against Member States. They are initiated by the Commission and Member States are defendants in these proceedings. These procedures should be seen as part of public enforcement of EU law in case when a Member State has breached EU law provisions of primary or secondary nature, e.g. by enacting legislation that is against Treaty provisions or by failing to implement a directive within the determined implementation time. It is referred to as *public enforcement* because it does not serve any private interests, but it serves the general interest of making sure that EU law is implemented correctly by the Member States and they by doing so, fulfil their obligations deriving from membership to the EU.

Article 258 TFEU reads as follows:

“If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.”

Article 259 TFEU provides for the possibility of a Member State to bring a case against another Member State for non-compliance of the latter with EU law. According to this provision:

“A Member State which considers that another Member State has failed to fulfil an obligation under the Treaties may bring the matter before the Court of Justice of the European Union. Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Treaties, it shall bring the matter before the Commission. The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing. If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court.”

The Court of Justice has interpreted the concept of “Member State” broadly by including “whatever the agency of the State whose action or inaction is the cause of the failure to fulfil its obligations, even in the case of a constitutionally independent institution.”⁵⁹ These proceedings have been brought against Member States for breaches of EU law by local and central institutions, the legislative branch⁶⁰, the executive⁶¹ and even for breaches by the judiciary or constitutional courts⁶². Thus, any act or omission⁶³ that can be attributed to the State and that is allegedly breaching EU law, can be the basis for infringement proceedings initiated by the Commission.

⁵⁹ Case 77/69 Commission v Belgium, para. 15.

⁶⁰ See e.g. Case 178/84 Commission v Germany 1987. This case followed the famous Cassis de Dijon case where the Court ruled on the interpretation of free movement of goods and the concept of measures having an equivalent effect to quantitative restrictions originally defined in the *Dassonville* case.

⁶¹ See e.g. Case

⁶² See e.g. more recently Case C-448/23, Commission v Poland concerning the Polish Constitutional Tribunal decision on the ultra vires review performed by the Court of Justice. Advocate General Spielmann delivered his Opinion on 11 March 2025; the Court has still to issue its judgment.

⁶³ Failure by Member States authorities to take measures to bring an end to breaches of EU law by private parties, will be seen as an omission on the part of the Member State. See e.g. the well-known ‘angry farmers case’ or the ‘Strawberries’ Case C-265/95 Commission v. France.

The Commission enjoys an almost absolute discretion in deciding whether to start or not infringement proceedings against a Member State based on Article 258 TFEU.⁶⁴ The procedure has two stages: an administrative and a judicial one. In case the Commission decides to start infringement proceedings against a state, it will take the first formal step in the administrative stage, namely the *letter of formal notice* to the Member State. This letter determines the subject matter of the dispute and a timeline for the Member State to *provide observations*. The letter of formal notice defines the main contours of Commission's complaint and provides a reasonable time to respond to the breaches formulated by the Commission. The second step in the procedure is the *reasoned opinion* which defines the grounds for infringement of EU law and gives to the Member State a reasonable period to – usually two months – to comply with the opinion. The reasonable period awarded to the Member State following the letter of notice and the reasonable period awarded to comply with the reasoned opinion, are important concepts related to procedural guarantees for Member States recognized by the Court of Justice in its case law.⁶⁵ These periods should be either excessively long or short and the administrative stage in general should not have excessive delays by the Commission.⁶⁶ In addition, the scope of Commission's claims in the reasoned opinion should be kept the same or it can be reduced in case the Commission decides to bring a case before the Court.⁶⁷

If the Member State fails to comply with the reasoned opinion, the Commission by taking several considerations into account, may decide to initiate the *judicial phase* of the infringement proceedings. Member States

⁶⁴ See for a detailed discussion of this Armin Cuyvers, Darinka Piqani, Frederik Behre, Corlijn Reijgwart, The boundaries of the Commission's discretionary powers when handling petitions and potential infringements of EU law, Study requested by the Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, European Union, 2022.

⁶⁵ See e.g. Case C-562/07 Commission v Spain [2009] ECLI:EU:C: 2009:614, para. 21; CJEU Case C-33/04 Commission v Luxembourg [2005] ECLI:EU:C: 2005:750, para. 76; CJEU Case C-287/03 Commission v Belgium [2005] ECLI:EU:C: 2005:282, para. 14.

⁶⁶ See report, pg. 33.

⁶⁷ CJEU Case C-559/19 Commission v Spain [2021] ECLI:EU:C: 2021:512, para. 160; CJEU Case C-371/19 Commission v Germany [2020] ECLI:EU:C: 2020:936, para. 48; CJEU Case C-488/15 Commission v Bulgaria [2017] ECLI:EU:C: 2017:267, para. 37.

may try to bring different explanations concerning their failure to comply with EU law, but the case law of the Court shows that it focuses on the objective dimension of the proceedings (i.e. breach of EU law provisions).⁶⁸ Thus, arguments by governments such as internal difficulties (e.g. instability of the legislative branch), or that other Member States or EU institutions act in the same manner, or that national law which allegedly breached EU law was not in fact applied⁶⁹, have not been taken into account by the Court as defences.⁷⁰ At the end of the proceedings, the Court of Justice will issue a declaratory judgment stating the existence or not of the breach of EU law by the Member State. Following this judgment in which a breach of EU law is found, the Member State shall have the obligation to take measures to comply with the judgment of the Court. In order to make sure that Member States comply with these declaratory judgments by the Court of Justice, Article 260 TFEU provides for the possibility of the Commission to bring a new case before the Court of Justice. Article 260(2) TFEU reads:

If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 259.

The most salient element of this provision is the possibility of the Court of Justice to impose a lump sum or penalty payment on the Member State for non-compliance with a previous judgment of the Court in an Article 258 or Article 259 TFEU case. One famous example of this is the fine of €1 million a day imposed on Poland for its failure to take measures and

⁶⁸ See Peers and Barnard, pg. 292.

⁶⁹ See Case 167/73 Commission V France 1974 (merchant navy case).

⁷⁰ Ibid.

comply with judgments of the Court of Justice concerning the independence of the judiciary in Poland.⁷¹

2.2.1.2 Review of legality of Union acts (Article 263 TFEU) and Action for failure to act (Article 265 & 266 TFEU)

These two procedures are considered as two sides of the same coin in the category of direct actions brought against EU institutions before the Court of Justice of the EU. The purpose of these two direct actions is to, respectively, challenge the legality of Union acts or to challenge the failure to act by an EU institution when it had an obligation to act under EU law. The latter can cover the situation when, for instance, the Commission does not respond at all concerning an alleged violation of EU competition law by another undertaking⁷². Parallel to the annulment procedure, parties may also bring a plea of illegality under Article 277 TFEU. This is a direct action but not an independent remedy in the sense that it is always attached to a ‘main’ direct action such as e.g. the annulment procedure. This allows the applicant who has brought a direct action (e.g. annulment procedure) to plead the illegality of a general EU act that constitutes the basis of the act the annulment of which is sought through the main action.

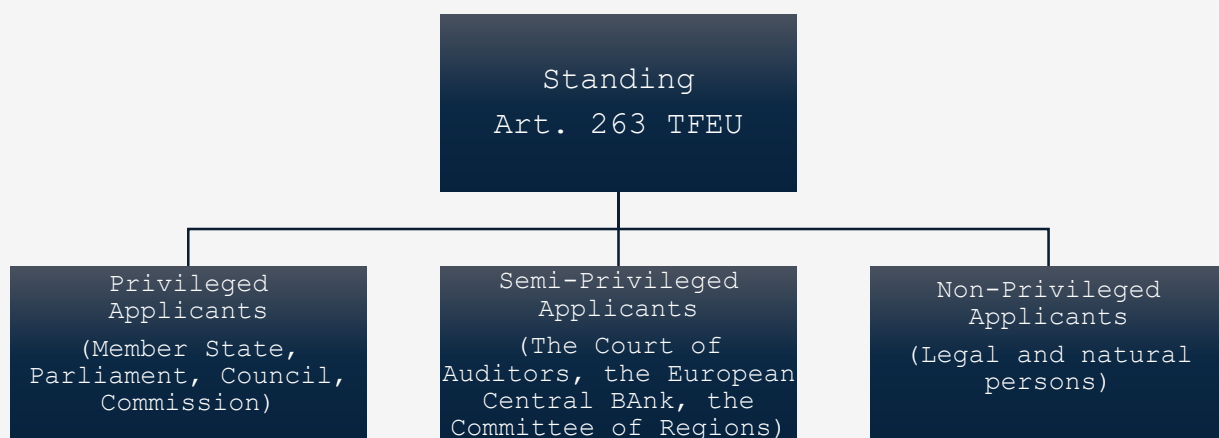
Article 263 TFEU provides both the admissibility and the substantive elements of the review of legality procedure. These proceedings should be brought within 2 months from the date of the publication of the EU act or of its notification to the applicant, or alternatively from the date the act comes to the knowledge of the applicant.

The following can act as *applicants* in these proceedings: a Member State, the European Parliament, the Council or the Commission. These are considered as *privileged applicants* which means that they have an automatic right to start proceedings; they do not need to make a case concerning their *locus standi* under EU law. The Court of Auditors, the European Central Bank and by the Committee of the Regions are

⁷¹ See e.g. in the Polish context, Case C-204/21 R, ECLI:EU:C:2021:878.

⁷² Peers and Barnard, pg. 293.

considered as *semi-privileged applicants* and this means that they can challenge the validity of an EU act for the purpose of protecting their prerogatives, for instance, alleging that they have not been consulted during a specific procedure despite an obligation in the law to do so.⁷³ A legal or natural person may also challenge the validity of EU acts, but the requirements for standing in this case are very strict. Persons are considered as *non-privileged applicants*, and this means that they may start these proceedings if they are the addressee of an EU act; if they are not the addressee but they are directly and individually⁷⁴ concerned; if they are not the addressee and want to challenge the validity of a regulatory act and can show that they are directly concerned (the Lisbon test).⁷⁵



The following may act as *defendants* in these proceedings: the European Parliament and the Council as co-legislators; the Council; the Commission; the European Central Bank; the European Parliament; the European Council; bodies, offices or agencies of the Union. The *object* of the

⁷³ Ibid, pg. 296.

⁷⁴ See for this Case 25/62 Plaumann v Commission, which still constitutes the main case law for the determination of individual concern as part of the standing test under Article 263 TFEU. See for more case law Peers and Barnard, pg. 299.

⁷⁵ See for the interpretation of a 'regulatory act' Case T-262/10 Microban, ECLI:EU:T:2011:623.

annulment procedure are binding acts of these institutions, thus acts that are intended to produce legal effects vis-à-vis third parties.

Once the admissibility of the case has been determined/confirmed, applicants will present their substantive arguments or in other words they will list the possible grounds for the annulment of the EU act. According to Article 263(2) TFEU the following can be grounds for annulment of EU acts: lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

As mentioned earlier, the *action for failure to act* is the counterpart of the annulment procedure. According to Article 265 TFEU, this action may be brought by a category of privileged applicants (Member States and EU institutions) and non-privileged applicants (any natural or legal person) against the failure to act by the European Parliament, the European Council, the Council, the Commission or the European Central Bank. This action will be admissible by the Court only if the EU institution, body, office or agency has been called upon to act. If within two months of being called to act, the institution has not defined its position, then an action may be brought within a period of further two months. Thus, we can discern a pre-litigation period of two months in which the institution is called to act, and after which and within another two months an action can be brought. Concerning natural and legal persons as non-privileged applicants, the same standing requirements apply as those for article 263 TFEU.⁷⁶

2.2.1.3 The action for damages (Articles 268 TFEU and 340(2) TFEU)

This is an independent action that can be initiated before the Court of Justice by an applicant who has suffered a damage or loss as a result of illegal action by a Union institution or its civil servants. Through this action, any party (e.g. Member State but in practice these actions have been brought by natural or legal persons) may ask for damages as a compensation for illegal action of EU institutions. There are standing

⁷⁶ See Peers and Barnard, pg. 312-313, and case law referred their Case C-68/95 T. Port v Commission [1996] ECR I-6065, para. 59.

requirements, but there is a time limit of five years from the occurrence of the illegal event causing the damage.⁷⁷ According to the Court in Lutticke, “the liability of the Community presupposes the existence of a set of circumstances comprising actual damage, a causal link between the damage claimed and the conduct alleged against the institution, and the illegality of such conduct.”⁷⁸ The hearing in Court is public (unless the Court on its own motion or on a request of the parties decides otherwise) while the deliberations of the Court are secret.⁷⁹

2.2.2 An overview of procedural rules applicable to direct actions

Member States, EU institutions, other states (which are parties to the EEA and the EFTA Surveillance Authority referred to in EEA), are represented before the Court by an *agent* appointed for each case who may be assisted by an adviser or lawyer.⁸⁰ Other parties must be represented by a *lawyer* authorised to practice before a court of a Member State (or of another State which is a party to the Agreement on the European Economic Area).

As a rule, the procedure before the Court of Justice has a written and an oral part. A case is brought to the Court of Justice through the lodging of a *written application* addressed to the Registrar.⁸¹ This application shall contain the applicant’s name and permanent address and the description of the signatory, the name of the party or names of the parties against whom the application is made, the subject matter, the form of order sought by the Court, a statement of the pleas on law on which the application is based, and where appropriate, any evidence produced or offered.⁸² Within two months after having received the application, the defendant shall lodge a defence which contains the name and address of the defendant, the pleas

⁷⁷ See Article 46 of the Statute of the Court of Justice of the European Union.

⁷⁸ See Case 4/69 Lutticke v Commission, ECR 325, para. 10.

⁷⁹ See Article 31 and 35 of the Statute of the Court.

⁸⁰ See Article 19 of the Statute of the Court of Justice of the European Union.

⁸¹ Article 21 of the Statute of the Court of Justice of the European Union.

⁸² Ibid, and Article 120 of the Rules of Procedure of the Court of Justice of the European Union.

in law and arguments, and the form of order sought and where appropriate any evidence produced or offered.⁸³ The application and defence may be complemented by a reply (from the applicant) and rejoinder (from the defendant) submitted within the time limits prescribed by the President of the Court.⁸⁴

2.3 Interim relief

During direct actions before the Court of Justice or in a procedure of a reference for a preliminary ruling, it may be necessary to ask for *the suspension* of the effect of the challenged/concerned legal act or for *the adoption* of specific interim measures in order to protect the interests of the parties while the procedures before courts are ongoing. This is done through *interim measures*.

In direct actions, Article 278 TFEU and 279 TFEU give the possibility to the Court of Justice to award *negative* or *positive* interim measures. More specifically, Article 278 TFEU provides that “[...] The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.” Article 279 clearly provides for the possibility of positive interim measures as it empowers the Court of Justice “[...] in any cases before it [to] prescribe any necessary interim measures.” According to Article 160 of the Rules of Procedure of the Court, an application for interim measures “shall state the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measure applied for.” The application will be submitted as a separate document and it must be transmitted to the other party in the case, who may submit written observations within the time limit awarded by the President of the Court.

⁸³ See Article 124 of the Rules of Procedure of the Court of Justice of the European Union.

⁸⁴ See Article 126 of the Rules of Procedure of the Court of Justice of the European Union.

In cases of a preliminary reference on the interpretation of EU law and while the case is pending before the Court of Justice for the issuing of a ruling, the national court may be the one granting interim measures, for instance, relating to the suspension of the application of national law.

3 Issues relevant to the Albanian context in indirect and direct actions before the Court of Justice

The following paragraphs will discuss potential issues that may be relevant to the Albanian context in relation to litigation of different actors before the Court of Justice of the EU. Some of the issues identified here originate from national constitutional/legal orders in the EU Member States, but they are relevant to candidate countries given the similarities in legal systems in the continent. Other issues are identified through a close assessment of the Albanian legal context.

3.1 National constitutional principles

National constitutional principles, including the principle of judicial hierarchy, must guarantee and not act as an obstacle to the ability of national courts to refer a question for a preliminary ruling to the CJEU. Judicial hierarchy may constitute an obstacle for the exercise of national courts' discretion in referring questions for a preliminary ruling. According to the principle of judicial hierarchy, lower courts are obliged to follow judgments issued by higher instance courts. But how should lower courts behave in cases when they have doubts about the compatibility of a provision of national law with EU law, especially in cases where previous case law of higher courts may have ruled out such incompatibility? In the case *Rheinmühlen* (1974), the Court of Justice ruled that *“a rule of national law ‘whereby a court is bound on points of law by the rulings of a superior court cannot deprive the inferior courts of their power to refer to the court questions of interpretation of community*

law involving such rulings”⁸⁵. In *Križan*⁸⁶, the CJEU ruled that national rules of judicial hierarchy may not prevent a national court—in that case the Slovak Supreme Court—from referring a question for a preliminary ruling to the CJEU at any point in the proceedings and from setting aside, if necessary, a judgment of the Slovak Constitutional Court which may be contrary to EU law.

Another interesting issue and potentially relevant for candidate countries is the situation when a provision of national law is, simultaneously, incompatible with a provision in the national constitution and with a provision of EU law. Do national courts need to wait for the national provision to be declared unconstitutional or can they in case of doubts of interpretation ask a question for a preliminary ruling to the Court of Justice? According to the Court of Justice, the discretion of national courts to refer a question for a preliminary ruling to the CJEU remains intact even in situations where incompatibility with EU law could be remedied by declaring the impugned law as unconstitutional.⁸⁷ In that case originating from Portugal, Article 280(3) of the Constitution provided for the mandatory nature of a domestic interlocutory procedure according to which an appeal to the Constitutional Court was mandatory if lower courts had refused to apply a legislative act or regulatory decree on grounds of (un)constitutionality. The Court of Justice ruled that this constitutional procedural rule should not obstruct the right of national courts to refer questions to the CJEU.⁸⁸

In order to protect the prerogatives of bodies exercising centralized constitutional review in these cases of ‘simultaneous incompatibility’, the legislature in France and Belgium adopted laws providing for the ‘priority

⁸⁵ *Rheinmühlen Düsseldorf v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* Case C-166/73 (CJEU) ECLI:EU:C: 1974:3, para. 4(2). Confirmed later in *Cartesio (2008)* and *Elchinov (2010)*.

⁸⁶ *Križan and Others* Case C-416/10 (CJEU) ECLI:EU:C: 2013:8, para. 71.

⁸⁷ *Mecanarte - Metalurgicada Lagoa v Alfandega do Porto* Case C-348/89 ECLI:EU:C: 1991:278 para. 49

⁸⁸ *Mecanarte - Metalurgicada Lagoa v Alfandega do Porto* Case C-348/89 ECLI:EU:C: 1991:278.

of the constitutional question'. For instance, according to French legislation, in the case of simultaneous incompatibility of a legislative provision with the French Constitution and France's international requirements, the ordinary judge has the obligation to decide whether to submit the preliminary reference on matters of constitutionality before deciding on compliance with EU law or international treaties. But is this mechanism of 'priority question on constitutionality' compatible with EU law and with the power of national courts to refer questions for a preliminary ruling? In the case *Melki and Abdeli*, the Court ruled that a system such as the French one would not be incompatible with EU law *as long as* national courts and tribunals remain free to refer to the CJEU any question they considered relevant at whatever stage of the proceedings; that national courts are free to adopt any interim measure for the protection of rights conferred under EU law; and, lastly, that national courts remain free to disapply, at the end of the interlocutory procedure, the provision of national law that they consider to be contrary to EU law⁸⁹

3.2 Self-perception of national constitutional courts in the context of the preliminary ruling procedure

Until recently some constitutional courts in EU Member States, had not made use of the reference for a preliminary ruling procedure. Some did not perceive themselves as courts or tribunals in the meaning of Article 267 TFEU, while others might have to fall within the authority of the Court of Justice of the EU. For instance, the Italian Constitutional Court for a long time did not see itself as a court or tribunal in the sense of Article 267 TFEU.⁹⁰ However, this approach changed in a case in which the Italian Constitutional Court accepted to make a reference under Article 267 TFEU because the interpretation of EU law by the CJEU was necessary in solving the case before it and it considered itself a 'court or tribunal' in the sense

⁸⁹ Joined Cases C-188/10 and C-189/10, *Melki dhe Abdeli*, ECLI:EU:C:2010:363, para. 57. This judgment was confirmed later in Case C-112/13 *A v B and Others* ECLI:EU:C:2014:2195 and Case C-5/14 *Kernkraftwerke Lippe-Ems*, ECLI:EU:C:2015:354.

⁹⁰ Oreste Pollicino, "From Partial to Full Dialogue with Luxembourg: The Last Cooperative Step of the Italian Constitutional Court" (2014)10 *EuConst* 143. See Decision 13/1960; Order 536/1995 and Order 319/1996.

of Article 267 TFEU.⁹¹ Also, for the first time in its history, and only in January 2014, the German Federal Constitutional Court referred a question for a preliminary ruling to the CJEU concerning the (in)compatibility of the European Central Bank's Outright Monetary Transactions ('OMT') Programme with Articles 119, 127(1) and (2), and 123 TFEU on prohibition of monetary financing.⁹² This was a long-awaited referral from the German Federal Constitutional Court, especially in view of its troubled relationship with the CJEU. The issue of self-perception of constitutional courts could be problematic also in candidate countries and specifically in the case of Albania, as it may turn into an obstacle in the dialogue between the constitutional court and the Court of Justice of the EU on issues of interpretation and validity of EU law provisions.

3.3 The notion of 'final judgment' in Albanian legislation and case law relevant for the preliminary ruling procedure

The Albanian procedural laws, namely the Code of Civil Procedure and the Code of Criminal Procedure, use the term "final judgment" ("vendim i formës së prerë") to denote both decisions of the Court of Appeals and those of the Supreme Court that resolve the case on its merits. According to the Constitutional Court of Albania, in its procedural meaning, a final judgment denotes a judgment that may not be subjected to any ordinary forms of appeal,⁹³ whereas in its substantive meaning, it implies the binding force/enforceability of a judgment.⁹⁴ This meaning may coincide with that of *res judicata*.⁹⁵

Due to the diverging interpretations of this term by the lower courts, the Joint Sections of the Supreme Court decided to subject its meaning to a unifying interpretation, which would be subsequently binding on all lower courts. Therefore, the Joint Sections⁹⁶, while noting that the term "final judgment" is used interchangeably as to refer both to enforceable and *res*

⁹¹ Italian Constitutional Court, Order 207/2013.

⁹² German Constitutional Court, OMT Case 2 BvR 2728/13 (2014).

⁹³ Judgment no. 24 of 12 November 2008 of the Constitutional Court of Albania.

⁹⁴ Judgment no. 29 of 21 December 2006 of the Constitutional Court of Albania.

⁹⁵ Judgment no. 2 of 16 January 2013 of the Constitutional Court of Albania.

⁹⁶ Unifying judgment no.2 of 3 November 2014 of the United Chambers of the Supreme Court of Albania.

judicata judgment (which do not always coincide), issued a binding interpretation that a judgment shall be considered final in the sense that it is not subject to further review on its merits when:

- The Supreme Court issues a judgment declaring the appeal against the decision of the court of appeals inadmissible, or a judgment which resolves the case in its merits, i.e. any judgment which does not send the case for retrial to any of the lower courts, or
- The parties do not lodge an appeal against the decision of the court of first instance or a recourse against the decision of the court of appeals within the applicable terms set forth in the procedural laws.

In any other case save for the ones mentioned above, the term “final judgment” shall be construed as meaning an “enforceable judgment”, which may yet be challenged by virtue of ordinary means of appeal. However, as per article 131 (f) of the Constitution of Albania, final *res judicata* judgments may also be reversible in limited cases when the Constitutional Court, motioned by a constitutional appeal of one of the parties to the case, finds violations of the constitutional or fundamental rights of the parties. In this situation, the Constitutional Court send the case of retrial by the Supreme Court.

With the Constitutional amendment of 2016 and the subsequent amendment that the procedural laws underwent in 2017, the jurisdiction of the Supreme Court has been narrowed down to examine only appeals on points of law and procedural violations. In this context, the conclusions set forth in the unifying judgment no.2 of 3 November 2014 need to be readdressed. Considering that the Court of Appeals is the highest court which may determine the facts of the case, we may conclude that a judgment becomes final as to the determination of *matters of fact* when:

- The judgment of the Court of First Instance has not been appealed by either of the parties within the applicable term; or
- When the Court of Appeals has issued any judgment on the merits of the case, other than sending the case back for retrial to the court of first instance.

Meanwhile, a judgment becomes final as to the determination of *matters of law* when:

- The judgment of the Court of First Instance or the judgment of the Court of Appeals have not been appealed by either party within the applicable term;
- When Supreme Court issues a judgment declaring the appeal against the decision of the court of appeals inadmissible, or a judgment which resolves the case in its merits, i.e. any judgment which does not send the case for retrial to any of the lower courts.

Finally, a judgment is considered final in terms of its compliance with the Constitution and the human rights of the parties when:

- The final judgment of the Supreme Court has not been subjected to a constitutional appeal by either party within the term set forth in the applicable law;
- The Constitutional Court issues a judgment declaring the constitutional appeal inadmissible or refusing it.

According to the Constitutional Court,⁹⁷ the notion of “final judgment” applies to judgments issued by the end of both adversarial (*gjykim kontencioz*) and non-contentious proceedings (*gjykim gracioz*). According to the Supreme Court⁹⁸, contentious/adversarial proceedings are designed to adjudicate civil disputes between two or more parties and are invariably directed against an adverse party, upon whom the claim is made – whether to provide a performance, to undertake or refrain from undertaking an act, or to recognize a legal right. Such proceedings are initiated exclusively through the procedural instrument of a statement of claim (act of lawsuit), which may seek the restoration of a violated right or legitimate interest the determination of the existence or non-existence of a legal relationship or right; or the verification of the authenticity or falsity of a document.⁹⁹

Conversely, non-contentious proceedings are instituted solely by means of a petition of one single party, serving as a procedural mechanism not directed against any respondent, but rather seeking to obtain a specific recognition of fact through the court’s intervention. These proceedings do

⁹⁷ Judgment no. 22 of 6 June 2011 of the Constitutional Court of Albania.

⁹⁸ Unifying judgment no. 00-2024-3759 (90) of 29 February 2024 of the Civil Chamber of the Supreme Court of Albania.

⁹⁹ Article 32 of the Albanian Code of Civil Procedure.

not, and by their nature cannot, involve an adverse party.¹⁰⁰ The judgment rendered at the conclusion of such non-contentious proceedings carries exclusively a declaratory and certifying function, and does not generate binding legal consequences (constitutive, modifying, or extinguishing) with respect to any other party or third person other than the claimant.

3.4 The notion of a court or tribunal in Albanian law

Both the Supreme Court and the Constitutional Court in Albania have been confronted with the issue of addressing whether tribunals other than courts may fulfill the necessary conditions to be considered as quasi-courts in terms of the finality of the decisions issued by them. In one such case, the Constitutional Court held that the former Commission for the Restitution and Compensation of Property fulfilled the criteria to be deemed a quasi-court and its decisions, when not appealed, or when found lawful by the courts, become final for the parties to the proceedings and the property or pecuniary rights reinstated therein.¹⁰¹ By applying the criteria set forth in this judgment to other public institutions exercising quasi-judicial functions, we may also conclude that the Commission for Public Procurements may also be included in this category. This institution has jurisdiction to **reviews complaints** filed by economic operators (private bidders) against contracting authorities in public procurement procedures. It conducts the examination of the case based on the Code of Administrative Procedures and the Law no. 162/2020 “On Public Procurement” and its related bylaws. When not appealed by the private parties to the proceedings, its decisions are **binding** for the administrative authorities involved in the procurement procedure. Its decisions are subject to appeal before the Administrative Court of Appeals, which further confirms their quasi-judicial nature. However, as its members are appointed by the executive, they do not offer sufficient guarantees for their independence, which in a former case has been deemed sufficient by the

¹⁰⁰ See also: judgment of the Civil Chamber of the Supreme Court no. 00-2022-4573 (406) of 1 November 2022.

¹⁰¹ Judgment no. 27 of 26 May 2010 of the Constitutional Court of Albania.

High Court to exclude the categorization of an ad hoc administrative body as a quasi-judicial tribunal.¹⁰²

3.5 Judicial culture in engaging with the CJEU in the context of the preliminary ruling

Judicial culture may act as potential obstacle for the Albanian judge in engaging with the Court of Justice in the context of the preliminary ruling. As it emerges clearly from the earlier discussion on the reference for a preliminary ruling and the role of national judges in that procedure, national judges have to be well-versed in the EU legal framework and procedural rules in order to make good use of this indirect procedure. They have to take initiative, stay the proceedings, clearly formulate questions to the Court of Justice, identify relevant EU law provisions, give reasons for the reference, provide a clear factual and legal framework. As discussed earlier, courts or tribunals against whose decisions there is no remedy may decide not to refer a question to the Court of Justice, but in doing so they must provide reasons and should be able to substantiate their decision based on the *acte claire* or *acte éclairée* doctrines. Especially in the case of *acte claire*, they must show initiative and engage in interpretations of EU law provisions in different official languages and look for different versions of interpretation of the provisions in courts of other Member States.¹⁰³

Judges in Albania have had to adapt their role to external developments, especially during the period of transition since the fall of communism. Post-communist judges “had little experience with review of legislative acts, discretion to use different tools of interpretation, or even a narrow frame of independence. The justice bodies were perceived as forums for solving “small” problems between private parties. Without any potential to influence the countries’ development policies. Therefore, courts were “passive bystanders” and seen more as an instrument for enforcing

¹⁰² See unifying judgment of the Administrative Chamber of the Supreme Court no. 00-2021-1317 (113) of 22 July 2021.

¹⁰³ See earlier the discussion on CILFIT.

decisions of the executive rather than an independent power. Judges were looked upon as legal experts, rather than participants in the process of government [...]"¹⁰⁴

Therefore, several challenges lie ahead for the judiciaries in candidate countries in general, and specifically in Albania. Judges should perceive themselves as direct interlocutors of the Court of Justice, familiarize themselves with EU substantive and procedural law, and stay informed about the day-to-day development of the case law of the Court of Justice. This is not to say that these challenges are unique to the Albanian landscape. A study on the Croatian, Slovenian and Swedish judiciary found out a passive stance taken by national courts of these countries in the context of the reference for a preliminary ruling compared to other courts in EU Member States.¹⁰⁵ The study identified several common reasons for this passive approach: referrals are not required by formal rules (lower courts have discretion and higher courts invoke the CILFIT exceptions); referrals may cause delays for parties in proceedings; making the wrong referral may impact the reputation of judges; negative sentiments towards EU integration and the Court of Justice.¹⁰⁶ Some other reasons included the fear of overwhelming the preliminary ruling procedure at the EU level, fear of sanctions among lower courts for not complying with numerical or time targets of case processing, lack of experience and knowledge of EU law.¹⁰⁷

3.6 Capacity building on EU law and specifically on EU procedural law

The above discussion on legal culture brings us to the issue of capacity building in candidate countries. According to the study mentioned earlier on referrals by national courts in Sweden, Slovenia and Croatia, one reason

¹⁰⁴ Caka, Merkuri, "Judicial culture and the role of judges in developing the law in Albania", Institute for Democracy "Societas Civilis" – Sk, 2021, pg. 12, available at https://idsos.org.mk/wp-content/uploads/2021/10/ALBANIA_B5.pdf

¹⁰⁵ Leijon, K., & Glavina, M. (2022). Why passive? Exploring national judges' motives for not requesting preliminary rulings. *Maastricht Journal of European and Comparative Law*, 29(2), 263-285. <https://doi.org/10.1177/1023263X221091768>.

¹⁰⁶ Ibid, pg. 272-275.

¹⁰⁷ Ibid, pg. 276-280.

for which judges avoid references is lack of knowledge of EU law. These judges admit that “[...] their knowledge of EU law is simply too inadequate for them to engage with such a complex task as formulating a request for a preliminary ruling. The judges admit that ‘one big obstacle [to the functioning of the preliminary ruling procedure] is limited knowledge of EU law’ (SI 12, second instance) and that only ‘10% of judges in the entire system know...how this procedure works’ (CRO 17, first instance).”¹⁰⁸ Findings relating to lack of resources especially among lower court judges are eye-opening. Respondents from Croatia and Slovenia emphasized limited resources to devote to each case and limited access to literature and databases on EU law.¹⁰⁹ Literature is either scarce or written in languages not accessible for all judges. Another problem with resources identified in the study concerns personnel. According to the study “Other resources that are lacking include help from other court personnel: ‘If you have a law clerk who could prepare things for you, this would be crucial’ (SI 3). However, a judge notes that ‘judges in Croatia are left on their own. You do not even know who to contact if a problem emerges’ (CRO 2), which stands in contrast to the higher court judges, who receive help from law clerks and specialized EU law departments and can often rely on their connections at one of the law faculties.”¹¹⁰

The above highlights the importance of capacity building, in several ways including trainings, access to materials and databases, trained support personnel in courts or other state institutions.

Albania should work towards that reality by enhancing capacity building for all those actors that will be involved in litigation before the Court of Justice, either through indirect actions (national courts as initiators of the reference for a preliminary ruling, lawyers on behalf of parties, and state agents as interveners in the procedure) or direct actions. EU law courses, including those with emphasis on EU procedural law¹¹¹, should take a

¹⁰⁸ Leijon, K., & Glavina M, *supra* note 94, pg. 279.

¹⁰⁹ *Ibid*, pg. 279.

¹¹⁰ *Ibid*, pg. 280.

¹¹¹ Including the Treaty framework concerning litigation before the Court, the case law of the Court as a valuable source of precedent, the Statute of the Court of Justice of the EU, Rules of Procedures of the Court of Justice and other documents offering practice

central role in post graduate curricula, curricula of the School of Magistrates, as well as in the curricula of the Albanian School Public Administration. From a review of the training curricula of the Albanian School of Public Administration, it results that there are no trainings at the moment on litigation procedures before the Court of Justice of the EU.¹¹²

Relevant institutions, such as responsible ministries, in coordination with the State Advocate Office, should begin capacity-building for future active, coordinated and effective litigation before the CJEU. This poses the need for a central coordination mechanism to be established to monitor potential breaches of EU law, manage pre-litigation communication with the European Commission, and coordinate national positions and institutional responses. According to the law *On the State Advocates*” (as amended),¹¹³ the Albanian State Advocate’s Office is the central institution of public administration mandated to provide legal representation before foreign and international courts and bodies. This might also need a potential revision of the national legislation. Institutions like the State Advocate Office, in collaboration with academic institutions, must develop standard litigation templates, training on evidence preparation, and access to multilingual legal resources such as EUR-Lex, Curia.

3.7 The need for an efficient and well-functioning judiciary

Cooperation between national courts and the Court of Justice necessitates an efficient and well-functioning judiciary. According to the European Commission, the quality of justice in Albania needs to be improved. Challenges remain in relation to “(i) the quality of initial and continuous training; (ii) the consistency of case law; (iii) the high number of judicial

directions to institutions and concerned parties. Different procedures come with different standing requirements and time limits for the filing of direct actions.

¹¹² <https://aspa.gov.al/integrimi-evropian-3/>

¹¹³ Law No. 10018, dated November 13, 2008 “On the State Advocate’s Office” as amended by the Law No. 86/2018, dated November 11, 2019, No. 91/2023, dated November 2, 2023, available here <https://qbz.gov.al/eli/ligj/2008/11/13/10018/707d1c04-9b69-4d78-8738-f161f5524138>

vacancies and insufficient amount of court staff; (iv) the lack of a modern integrated electronic case management system in courts and prosecution offices; (v) the quality of indictments and decisions; (vi) the quality of court infrastructure, including the security of court buildings; and (vii) the poor consistency and reliability of statistical data.”¹¹⁴ The Commission adds that “Further improvements to the judicial training system are still necessary. There was no specific progress in the performance of the School of Magistrates’ comprehensive revision of the annual entry exam, the review of initial and continuous training curricula, and the quality and integrity of its staff.[...] The initial and continuous training of judges does not ensure their further specialisation.”¹¹⁵ These findings reflect current challenges of the judicial system in Albania which may have an impact on the well-functioning of the reference for a preliminary ruling once Albania accedes to the EU.

3.8 Capacity building on EU law: the case of the School of Magistrates

As Albania progresses toward full integration into the European Union, strengthening the understanding and practical application of EU law among legal professionals remains an urgent priority. Despite positive developments, several structural and operational challenges continue to hinder the full assimilation of EU legal standards into national practice.

The School of Magistrates provides both initial and continuous training for judges and prosecutors. The initial training spans three years. During the first year, participants receive a solid foundation in core areas of law, including criminal and civil law, as well as specialized fields such as intellectual property, environmental law, private international law, and international criminal law, and so forth. EU law is introduced as a dedicated module in the first year, comprising 36 training hours. This module includes focused training on the EU Charter of Fundamental Rights and litigation before the CJEU, along with relevant case law. Importantly, the analysis of EU law and CJEU jurisprudence is not

¹¹⁴ See Commission Staff Working Document Albania 2024, Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of Regions 2024 Communication on EU enlargement policy, pg. 30.

¹¹⁵ Ibid.

confined to the EU law module. Other modules—such as private international law, intellectual property, environmental law, and administrative law—also integrate EU law, reflecting its approximation in Albanian legislation and highlighting relevant case law.

The School is currently undertaking a reform of the initial training modules. The EU law module will be revised to include an increased number of training hours as well as expanded content. The updated module will cover key areas of EU law that are closely linked to core subjects such as civil, criminal, administrative law and constitutional law. These modules will be designed to complement one another, enabling magistrate candidates to develop a deeper understanding of EU law and its integration into Albanian legislation across all legal fields. Additionally, the revised module will place greater emphasis on the jurisprudence of the CJEU and will offer enhanced training on the preliminary ruling procedure, preparing candidates to engage more effectively with EU legal mechanisms.

At present, the School operates with training materials prepared by lecturers, primarily in the form of PowerPoint presentations and case law summaries in the Albanian language. However, in many instances, CJEU case law and other relevant training materials are provided in English.

The continuous training program is planned over a three-year cycle and is revised annually. It is organized into modules that cover the core areas of law. In many of these training sessions, references to EU law—and particularly to CJEU case law—are an integral and unavoidable component.

The School of Magistrates received its observer status at the EJTN (European Judicial Network) in June 2016. Since then, the School is regularly participating through judges, prosecutors, school judicial trainers and magistrate candidates in activities organized by EJTN as part of programs and activities its different training.

The School of Magistrates actively participates in the following training or exchange programs:

- **Short-term exchanges** - for judges and prosecutors, who visit EU courts in order to share their work with their counterparts and get acquainted with different EU judicial systems. This experience aims to enrich the professional practices of participating judges and prosecutors.

- **Trainer Exchanges** - where different school trainers and experts go to different EU training institutions to get acquainted with and exchange views on training methodologies, pedagogical tools and training programs, thus adopting best practices in contemporary judicial training.
- **AIAKOS Program** - this is an opportunity where candidates for magistrates or newly appointed magistrates spend 1 week in other European judicial training schools in order to increase their awareness of the European dimension of their future work and to promote mutual understanding of cultures and systems and various European judiciaries.
- **Projects in the different fields of law:** School of Magistrates proposes magistrates who participate in different project activities.
- **THEMIS Competition:** A regular participant, the Albanian Team in this competition. Teams of judicial trainees (3 candidates + 1 lecturer) participate in the competitions.
- **Continuing Education Program** - This is one of the main routes of cooperation between the School and EJTN. Judges and prosecutors are nominated by the School in various training activities organized by EJTN in cooperation with judicial training institutions in EU countries.

Despite these opportunities, they remain limited in scope. A key shortcoming is the absence of systematic assessment and participant feedback mechanisms or even knowledge sharing. Moreover, significant barriers persist in understanding the practical functioning of EU law. Foundational documents and case law are often inaccessible in the Albanian language, hindering effective engagement with EU legal materials. Legal practitioners are often unfamiliar with the jurisprudence of the Court of Justice of the European Union due to language limitations and the scarcity of translated resources.

Currently, there is no centralized national platform in Albania that consolidates updated EU legislation, case law, bulletins, scholarly commentaries, or official guidance. Although platforms such as EUR-Lex, Curia, and the European e-Justice Portal provide extensive legal databases, necessary skills to navigate these systems efficiently are lacking. The preparation of materials in the Albanian language also demands a high level of proficiency in legal English, particularly in EU-specific

terminology. This further complicates access to relevant and up-to-date EU legal sources.

In addition, there is a notable lack of national research focused on the practical implications of EU law and ECJ caselaw for Albanian institutions. This gap hampers both policy development and academic discourse on the integration and application of EU law within the domestic legal framework.

4 Conclusions

- *Legal and Institutional Framework for Preliminary Rulings*
 - Current procedural codes do not expressly accommodate preliminary references to the CJEU.
 - Judicial hierarchy and precedence may discourage lower courts from initiating such references.
 - Numerical/time-based performance targets may deter courts from initiating referrals.
- *Judicial Training and Professional Development*
 - Insufficient knowledge of EU substantive and procedural law among judges and support staff.
 - Gaps in language skills and understanding of EU terminology hinder effective engagement.
 - No systematic exposure to EU court procedures and practices.
- *Public Administration and Government Litigation Readiness*
 - Civil servants lack practical training on CJEU litigation, especially direct actions.
 - Coordination among government institutions is weak for potential EU litigation scenarios.
- *Legal Profession and Civil Society Readiness*
 - Private lawyers and bar associations lack training on representing clients before the CJEU.
 - There is limited knowledge of CJEU case law and procedural rights in direct and indirect actions.

- *Research, Knowledge Dissemination, and Legal Resources*
 - Lack of Albanian-language resources on EU law and CJEU case law.
 - Limited access to EU legal databases and insufficient guidance on how to use them.
 - Weak academic output and knowledge exchange related to EU law.
- *Monitoring and Feedback Mechanisms for Training and Policy Development*
 - Training modules on EU law may not reflect the evolving needs of Albanian legal professionals.
 - There is no regular evaluation or feedback process to ensure relevance and effectiveness.

5 Recommendations

- *Legal and Institutional Framework for Preliminary Rulings*
 - Amend procedural codes (civil, administrative, criminal) to explicitly allow and regulate preliminary ruling references post-accession.
 - Guarantee lower courts' discretion to refer without interference from superior courts, in line with *Rheinmühlen* and *Križan* jurisprudence.
 - Encourage the Constitutional Court to maintain openness to dialogue with the CJEU in the future.
 - Ensure case management targets do not obstruct preliminary ruling requests.
- *Judicial Training and Professional Development*
 - Review and update the School of Magistrates' curricula with continuous EU law training focused on preliminary rulings.
 - Provide legal English training specifically covering EU legal terminology.

- Train court support personnel to assist in CJEU-related procedures.
- Invite guest lecturers from the CJEU or EU member state academic institutions
- *Public Administration and Government Litigation Readiness*
 - Complement the School of Magistrates or other training centers such as the Albanian School of Public Administration curricula with training on litigation before the CJEU.
 - Strengthen institutional mandates and coordination mechanisms for post-accession litigation, including monitoring infringement risks and preparing unified litigation strategies.
- *Legal Profession and Civil Society Readiness*
 - Include the legal profession in structured EU law training initiatives.
 - Promote awareness campaigns and continuing legal education tailored to private practitioners.
 - Encourage training on direct actions (annulment, failure to act, damages) despite strict standing rules
- *Research, Knowledge Dissemination, and Legal Resources*
 - Translate landmark CJEU rulings into Albanian to ensure accessibility.
 - Develop a digital repository with updated EU case law, legislation, commentary, and guidance notes.
 - Provide access and training on EUR-Lex, Curia, and the European e-Justice Portal.
 - Support short research projects and stimulate EU law scholarship through funding and publication incentives
- *Monitoring and Feedback Mechanisms for Training and Policy Development*
 - Implement periodic evaluations of EU law modules in judicial and civil service training institutions.
 - Collect structured feedback from trainees to adapt course content and address emerging legal needs.

