

Suspension of the Main Proceedings and Referral for a Preliminary Ruling. Gloss to the Judgment of the CJEU in Case C-176/22, Bk And ZhP, of 17 May 2023

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Abstract: The preliminary reference as an appeal of the Court of Justice of the European Union presents many complexities and complicated interpretations over time, given that we have a national judge in the scene of the appeal process, often creating problems but also solutions for greater effectiveness of the law of the European Union and respect for domestic law. The preliminary ruling aims to resolve disputes between internal jurisdictions and evaluate compatibility with EU law, especially in the national procedural sector. Ensuring a postponement of the EU and, above all, protecting the rights of individuals in a concrete, complete and effective way is still questionable research, not so much on a theoretical level but also on a procedural one.

1. Introduction

Once again, we refer to a ruling in case C-176/22, BK and ZhP of 17 May 2023 of the Court of Justice of the European Union (CJEU), which was concluded without conclusions by the Advocate General regarding the preliminary ruling. In this regard, the CJEU had to take a position on Article 23 of the Statute of the CJEU, which was to be interpreted by obliging the judge who caused the referral “(...) to suspend the main proceedings as a whole or whether it is sufficient to suspend only the part of said proceedings

concerning the question referred for a preliminary ruling (...).¹ The CJEU was asked when the preliminary reference was requested, the judge *a quo* to proceed with the completion of some procedural acts by abstaining from the activity and during the related wait to respond to the requirements requested and then to give a response.

In particular, in the BK and ZhP case, the CJEU took a position declaring that: “(...) does not preclude a national judge who has submitted a request for a preliminary ruling pursuant to Article 267 TFEU² from suspending the main proceedings only in so far as concerns the aspects of the latter which may be affected by the Court’s answer to that question (...).”³ If the referring judge deemed it appropriate, the judge could request an authorization to suspend the main proceedings *in partem*. But for how long? Thus, we must analyze and take a position regarding the nature of the innovation that allows us to judge the present case. The aspects of the ruling are innovative with regard to the elements of current law and previous jurisprudence. The indications we have are useful to the national judge to avoid the possibility of proceeding with a suspension even in part of the main proceedings, thus translating the choice of procedure to an even early stage of the proceedings, risking that the requested requirements are subjected to a later moment and maybe retreated.

¹ CJEU Judgment of 17 May 2023, BK and ZhP, Case C-176/22, ECLI:EU:C:2023:416, not yet published, para. 15.

² CJEU Judgment of 1 June 2016, Niculaie Aurel Bob-Dogi, Case C-241/15, ECLI:EU:C:2016:385, not yet published; CJEU Judgment of 14 November 2013, Marián Baláz, Case C-60/12, ECLI:EU:C:2013:733; CJEU Judgment of 29 January 2013, Ciprian Vasile Radu, Case C-396/11, , ECLI:EU:C:2013:39, above the cases published in the electronic Reports of the cases; CJEU Judgment of 19 September 2018, Criminal proceedings against Emil Milev, Case C-310/18 PPU, ECLI:EU:C:2018:732, published in the electronic Reports of the cases; Hermann-Josef Blanke and Stelio Mangiameli, *Treaty on the Functioning of the European Union. A Commentary* (Berlin: Springer, 2021); Morten Broberg and Niels Fenger, “The European Court of Justice’s Transformation of Its Approach Towards Preliminary References from Member State Administrative Bodies,” *Cambridge Yearbook of European Legal Studies* 24 (2022): 169–200; Morten Broberg and Niels Fenger, *Broberg and Fenger on Preliminary References to the European Court of Justice*, 3rd ed. (Oxford: Oxford University Press, 2021).

³ CJEU Judgment of 17 May 2023, BK and ZhP, Case C-176/22, ECLI:EU:C:2023:416, not yet published, para. 32.

2. A Partial Suspension of the Main Judgment

With the BK and ZhP ruling, we can speak for a partial suspension of the judgment. First, we must say that the case in question is part of the session of a criminal case which was initiated by Bulgarian police investigators who were accused of accepting bribes. The public prosecutor qualified the relevant facts by contesting them as a type of corruption, and the criminal court approved the possibility of continuing the case under a different crime category. But was it the case? The qualification of the facts and the guarantees of the defense derive from the law of the Union, and the national judge did not complete the taking of evidence, thus listening to the witnesses to examine some audio and video material from wiretaps.

The Bulgarian criminal court followed and considered Article 267 TFEU, following in the CJEU two avenues for preliminary rulings with two important questions.⁴ The first concerned a referral relating to Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012⁵ relating to the right to information in proceedings and the elements included in Article 47 CFREU.⁶ The referring judge asked for a new qualification of the relevant facts and for the accused to have the right to receive the information and to prepare the relevant defenses from the point of view of the requalification. The CJEU has not expressed its opinion, but we only have the conclusions of Advocate General Ćapeta in case C-175/22, BK of 25 May 2023.⁷

The Bulgarian criminal court asked for a second preliminary question and requested the interpretation of Article 23 of the Statute of the CJEU. Completing the preliminary investigation was not easy, nor was referring to the CJEU according to Article 267 TFEU. The court asked for a preliminary ruling and the judge *a quo* to carry out the relevant

⁴ Jacques Pertek, *Le renvoi préjudiciel. Droit, liberté ou obligation de coopération des juridictions nationales avec la CJUE* (Bruxelles: Bruylant, 2021), 246ss.

⁵ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (O.J.E.C. L142, 1 June 2012), 1–10, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0013>.

⁶ Steve Peers et al., eds., *The EU Charter of Fundamental Rights, A Commentary* (Oxford & Oregon, Portland: Hart Publishing, Nomos, C.H. Beck, 2021).

⁷ CJEU Judgment of 09 November 2023, BK (Requalification de l'infraction), Case C-175/22, case in progress.

procedural steps without connection to the problems created. The referring judge suspended the entire trial pending a response from the CJEU. The CJEU has decided that Article 23 of the Statute of the CJEU enables to only partially suspend the main proceedings given that the suspension had to be “(...) limited to those ‘aspects’ of the proceedings which may be affected by the court’s response (...)”⁸

By carefully reading the sentence, we understand that it is based on three important and innovative steps. The first refers to the procedural autonomy of the Member States, which is limited by the principles of equivalence and effectiveness.⁹ The CJEU took a position reporting that:

(...) the preservation of the useful effect of the preliminary ruling procedure is not made impossible in practice or excessively difficult by a national rule which allows, between the date on which a request for a ruling is made preliminary ruling to the Court and that of the order or sentence with which the latter responds to that request, to continue the main proceedings to carry out procedural steps, which the referring judge deems necessary and which concern aspects unrelated to the questions raised for a preliminary ruling, namely say procedural acts which are not such as to prevent the referring judge from complying, in the context of the main proceedings, with that order or sentence (...).¹⁰

3. Completion of Procedural Acts When a Preliminary Ruling Is Pending. What Are the Requirements?

The completion of procedural acts for a pending case has not been a continuous reality since the founding of the CJEU. However, the requirement that the documents must be necessary for the referring judge resorts to the reason to be decided by the CJEU. Assessing the necessity of the act does not have to do with the national judge. According to the CJEU, the actions to be carried out concern “(...) aspects unrelated to the preliminary questions

⁸ CJEU Judgment of 17 May 2023, BK and ZhP, Case C-176/22, ECLI:EU:C:2023:416, not yet published, para. 32.

⁹ *Ibid.*, paras. 24–28.

¹⁰ *Ibid.*, para. 28.

raised (...).¹¹ According to the CJEU, it is specified that the act in question does not prevent the judge requesting the postponement from the relevant confirmation of a final decision and the indications that are provided to the CJEU.

The CJEU continued and noted that it is up to the judge *a quo* to choose the point at which a reference for a preliminary ruling is made. According to the relative exercise of this power, also of a discretionary nature, it allows that “(...) a request for a preliminary ruling can be presented to the court even at an early stage of the main proceedings (...) it must be able to continue such proceedings for procedural documents that it considers necessary and which are not connected to the preliminary questions raised (...).”¹²

As can be understood, the CJEU tried to justify its position by underlining that the reference for a preliminary ruling was made in the main stages of the trial and not afterwards. Thus, it is necessary for the judge to carry out certain actions after the CJEU has been asked to respond. The BK and ZhP ruling clarifies the extent to which preliminary questions are necessary and not connected, i.e. actions carried out by the referring judge without contradicting what was established by Article 23 of the Statute of the CJEU.

The CJEU highlighted this type of position, which was followed implicitly and certainly even earlier in another case, the Euro Box Promotion of 2021 case,¹³ where it was stated that:

(...) the referring judge’s decision to suspend the proceedings had been annulled following an internal appeal and that, for this reason, the main proceedings had resumed on issues other than those which were the subject of the request for a preliminary ruling (...) this request was ‘admissible’, without having deemed it necessary to examine a possible violation of Article 23 of the Statute (...).¹⁴

¹¹ Ibid., para. 29.

¹² Ibid., para. 30.

¹³ CJEU Judgment of 21 December 2021, Euro Box Promotion and Others, Joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, ECLI:EU:C:2021:1034, not yet published.

¹⁴ CJEU Judgment of 17 May 2023, BK and ZhP, Case C-176/22, ECLI:EU:C:2023:416, not yet published, para. 32; CJEU Judgment of 21 December 2021, Euro Box Promotion and Others,

In the Euro Box Promotion case, the CJEU knew a priori that the preliminary ruling was annulled after an appeal of an internal nature and in the main proceedings, which were resumed, the issues were different from those in the referral. The CJEU has not excluded its jurisdiction to respond and is ruling on related issues that are raised. Thus, it was accepted that the main proceedings continued some aspects that were off track, i.e. outside and unrelated to the reference, even though the preliminary ruling case was still pending.

4. Towards the Solution That Followed the Previous Jurisprudence

The CJEU followed an innovative ruling and some profiles that continue from previous jurisprudence. The EU does not clearly follow the main judgment even though the CJEU was seized according to Article 267 TFEU. In reality, such a position is also taken into consideration in point 23 of the Statute according to this provision.¹⁵

A provision stating that the request for a preliminary ruling should be notified to the CJEU by the domestic judge and then to the Registrar of the CJEU and to a number of interested persons according to the second paragraph and who may submit relevant written observations in the preliminary ruling case. The act of notification first to the interested parties and then to the CJEU is defined by the first paragraph of Article 23, where it is specified that: “(...) the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court of Justice (...)” This sentence does not clarify whether the referring judge must suspend the main proceedings in their entirety and/or in part.

Referring to the procedure considered, a solution follows, which refers to the suspension obligation as a whole, i.e. the main proceeding. Thus, the relative interpretation of the phrasing of Article 23 of the Statute follows in the opposite direction than that of the BK and ZhP case. This is a literal interpretation, which leads to a different interpretative solution. It refers to suspending the procedure where the provision does not specify whether

Joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, ECLI:EU:C:2021:1034, not yet published, paras. 80 and 141.

¹⁵ Bertrand Wägenbaur, “Art. 23 of the Statute of the Court of Justice of the European Union,” in Bertrand Wägenbaur, *Court of Justice of the EU. Commentary on Statute and Rules of Procedure* (München, Oxford, Oregon, Baden: C.H. Beck, Nomos, Hart Publishing, 2013), 66ss.

it must be total, limiting the aspects concerning the preliminary ruling. The doubts created cannot be resolved by referring exclusively to the letter of Article 23 of the Statute of the CJEU.

5. A Teleological Interpretation

Suspending the preliminary reference of a main nature follows the aim of avoiding the completion of the relevant procedural acts which prevent the judge *a quo* from complying with the relevant indications provided by the CJEU in its response. And how the prohibition on deciding the main case without waiting for the relevant ruling of the CJEU was included in the purpose. Article 23 of the Statute precluded that procedural documents in this way can have a negative impact because the very logic of the preliminary ruling is thus altered. This does not prohibit the adoption of measures that do not have the objective of preventing the referring judge from being confirmed in the final decision, i.e. the preliminary ruling rendered by the CJEU itself. The BK and ZhP case actually followed this type of interpretation. This type of approach is confirmed by Article 23 of the Statute and Article 267 TFEU. This interpretation provision was introduced by a form of collaboration between judges based on the division of competences between judicial bodies of Member States and of the CJEU according to the old ruling in the Foglia v. Novello case.¹⁶

These powers do not fall to the judge *a quo* who is, in reality, the only one who can have direct knowledge of the facts in a case and in the main proceedings. Apart from exceptional cases, it is up to the referring judge to assess the necessity and relevance of the question referred for a preliminary ruling. An evaluation which was referred to the evaluation and control of the CJEU. It is up to the judge *a quo* to identify when to turn to the CJEU using the relevant referral order according to the facts and law during the main proceedings. The withdrawal of the request for a preliminary ruling as a choice is also up to the judge *a quo*. All these positions/choices consider that the judge *a quo* is in a position to make the fundamental choices for the relative functioning of the entire preliminary ruling mechanism.

¹⁶ CJEU Judgment of 16 December 1981, Pasquale Foglia v. Mariella Novello, Case 244/80, ECLI:EU:C:1981:302, I-03045, para. 14.

Control also enters within this context, an evaluation of the need to only partially suspend the main judgment. This choice presupposes direct knowledge of the facts of the case, which is not required according to Article 267 TFEU of the referring court. In this case, the CJEU responds:

(...) while awaiting the court's response the latter must be able to continue the main proceedings for procedural acts which it considers necessary and which are not connected to the preliminary questions raised (...). Among the discretionary powers that Art. 267 TFEU recognizes that the referring judge must therefore also include the assessment of the need to carry out certain acts, after the court has been seised, and the consequent choice of total or partial suspension of the main proceedings (...).¹⁷ The precise regulation of the acts that said judge can carry out pending the preliminary ruling case is left to the Member States, who enjoy procedural autonomy, of course, within the known limits deriving from the principles of equivalence and effectiveness (...).¹⁸

As a point of reference, the Recommendations of 2019¹⁹ refer to the attention of national judges related to the presentation of requests for preliminary rulings. Part of the recommendations states that:

(...) interaction between the reference for a preliminary ruling and the national proceedings (...) although the national judge remains competent to adopt precautionary measures, in particular in the context of a reference for examination of validity, the filing of a request for a preliminary ruling entails the suspension of the national proceedings until the court's ruling (...).²⁰

The need to suspend the national proceeding without further clarification contains indications confirmed by the solution accepted in the BK

¹⁷ CJEU Judgment of 17 May 2023, BK and ZhP, Case C-176/22, ECLI:EU:C:2023:416, not yet published, paras. 29–30.

¹⁸ Broberg and Fenger, "The European Court of Justice's Transformation," 14ss.

¹⁹ Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), accessed March, 20 2024, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_2019_380_R_0001.

²⁰ Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), para. 25.

and ZhP²¹ ruling. The suspension of the main proceedings cannot be total as the judge *a quo* disposes of the internal documents as a precaution, such as implementing acts of sources of the Union on the validity of the CJEU, which had to rule on the matter. More generally, we note the provisional measures that are necessary to avoid the position of one of the parties being irreparably prejudiced in the time required when the CJEU responded to the domestic judge to decide the main case. It is not excluded that the adoption of the measures be requested after the relevant request for a preliminary ruling. If the conditions are met, the judge *a quo* orders precautionary measures even after it has been addressed to the CJEU.

6. Recommendations, Case Law and the BK and ZhP Case

Generally, we can say that the act category is carried out by the judge *a quo*, and the preliminary ruling case is pending at the CJEU. These acts are deemed necessary and concern aspects unrelated to the questions of a preliminary nature raised. When there are cases requiring precautionary protection, the adoption of an act and its implementation do not preclude the obligation to comply with the response of the CJEU and the referring judge also partially suspends the main proceedings.

Thus, it is clear that the solution proposed in the BK and ZhP case is consistent with the jurisprudential trend. According to what we have noted in the previous paragraphs, we recall the *Cartesio* case of 2008,²² where the CJEU ruled regarding: “(...) a state system that allows the appeal of the referral order, the appeal judge can annul this act and order the lower judge to withdraw the request for a preliminary ruling, as well as to resume

²¹ CJEU Judgment of 19 June 1990, *The Queen v. Secretary of State for Transport, ex parte: Factortame Ltd and others*, Case C-213/89, ECLI:EU:C:1990:257, I-02433; CJEU Judgment of 21 February 1991, *Zuckerfabrik Süderdithmarschen AG v. Hauptzollamt Itzehoe and Zuckerfabrik Soest GmbH v. Hauptzollamt Paderborn*, Joined Cases C-143/88 and C-92/89, ECLI:EU:C:1991:65, I-00415, paras. 17, 19; CJEU Judgment of 9 November 1995, *Atlanta Fruchthandelsgesellschaft mbH and others v. Bundesamt für Ernährung und Forstwirtschaft*, Case C-465/93, ECLI:EU:C:1995:369, I-07361, para. 21; CJEU Order of 24 October 2001, *Alexander Dory v. Bundesrepublik Deutschland*, Case C-186/01 R, ECLI:EU:C:2001:563, I-07823.

²² CJEU Judgment of 16 December 2008, *CARTESIO Oktató és Szolgáltató bt.*, Case C-210/06, ECLI:EU:C:2008:723, I-09641.

the main proceedings (...).²³ In the *Cartesio* case, the CJEU reported that it:

(...) does not exclude that preliminary rulings to the court are subject to the normal means of appeal provided for by domestic law. In the exercise of their procedural autonomy, Member States may allow the party interested in challenging the act with which the national judge suspends the main proceedings and turns to the Court of Justice (...).²⁴

7. Procedural Autonomy, Connection Constraints and Respect for the National Judge According to Article 267 TFEU

As we have seen and understood from the previous paragraphs, the *BK* and *ZhP* ruling remains consistent with what was previously declared by the *Cartesio* case as was recalled by the *Euro Box Promotion* case. In practice, the CJEU stated that:

(...) the outcome of such an appeal cannot limit the competence, which belongs only to the referring judge, to evaluate the necessity and relevance of the questions referred for a preliminary ruling and to submit these questions to the court (...). This ‘autonomous’ competence would be called into question if, by reforming the decision ordering the preliminary ruling, making it ineffective and ordering the judge who issued this decision to resume dealing with the suspended proceedings, the appeal judge could prevent the referring judge from exercising the right to refer the matter to the court (...). It is therefore up to the latter to draw the consequences of a sentence pronounced at second instance against the decision ordering the reference for a preliminary ruling and, in particular, conclude that it is necessary to keep unchanged, modify or revoke his request for a preliminary ruling (...) even in the event of annulment, the ‘preliminary reference order’ therefore continues to produce ‘its effects’ until it has been revoked or modified by the judge who issued it, because only the latter can decide on such a revocation or modification (...).²⁵

The use of domestic law, contrary to the request for a preliminary ruling, occurs in a particular circumstance. The appeal judge annuls the referral

²³ Ibid.

²⁴ Ibid.

²⁵ CJEU Judgment of 17 May 2023, *BK* and *ZhP*, Case C-176/22, ECLI:EU:C:2023:416, not yet published, paras. 93, 95, 96.

order, but the lower-level judge decides not to withdraw it, thus deeming that the response of the CJEU is necessary to issue the sentence. The main judgment takes up national law and parallels the referral case, which continues before the CJEU. The proceeding will not be suspended since it is main or may only be suspended in part, but the cause of prejudice will continue. This type of approach confirms the partial suspension of the main judgment, which is compatible, and in such situations, this pending case is part of the preliminary ruling case.

It is clear that the BK and ZhP case has innovative elements in two respects. Partial suspension is recognized by the judges of all Member States, while the precedent deals specifically with the Member States that allow the challenge of the request for a preliminary ruling. The ruling in question clarified that the postponement is linked to a partial suspension and cannot be accomplished by any procedural act. The judge *a quo* carries out acts and considers them to be necessary and which: “(...) concern aspects unrelated to the preliminary questions raised, i.e. procedural acts which are not such as to prevent the referring judge from complying, in the context of the main proceedings (...)”²⁶

The main proceedings were only partially suspended in all the cases reported above, including the Cartesio case. The acts that can be carried out by the national judge have some limits as was decided in the BK and ZhP ruling.

8. Precautionary Measures and Partial Suspension by the National Judge

It is considered that national proceedings that intend to refer a preliminary ruling to the CJEU must only partially suspend the main proceedings. The possibility of even partial suspension does not lead to hasty choices.

A national judge thinks it is better to raise a preliminary question at an early stage in the proceedings and in the belief that the judgment does not continue the limits of the CJEU. This type of option is considered convenient for the overall duration of the process. The attempt to “get ahead with the work” until the response from the CJEU does not exclude the related reasons that the referring national judge must consider. Thus,

²⁶ Ibid., para. 28.

the judge *a quo* must consider the position of even a partial suspension and the objective of containing the duration of the main proceedings within a reasonable time for the duration of a trial. The reasonable trial duration represents a fundamental right as recognized by the second paragraph of Article 47 CFREU.

In our view, Article 47 CFREU is considered because its objective is effective judicial protection, where the court of each Member State does not have jurisdiction to annul a sentence that violates EU law after an application, especially by a Member State judge. The CJEU often refers to Article 47 CFREU as a parameter that adds to the compliance of the relevant means of appeal and, according to EU law, is applied to the relevant case. The Member State implements the law of the Union in various matters.²⁷ Thus, the reference to the CFREU lies in the path of “compliance with an obligation”, which is imposed by the European legislation on the matter and which also provides for the relevant remedies for the individual interested parties as well as compliance with the conditions provided for by the EU law and by the internal law applying the EU law. Thus, we can say that the CFREU has the form of a right to a remedy which identifies and concretizes the instrument of protection adequate for a procedural configuration and the effectiveness of the substantial situation, which has as its intention the protection of individuals and the EU law alike.

The jurisprudence of the CJEU was rich until the referral to the CJEU by the national judge.²⁸ Naturally, nothing excludes what was underlined by the BK and ZhP ruling, where the national judge decided to do so in the main stage of the proceedings. The CJEU addressed national judgments through firm and consolidated jurisprudence, thus underlining the need

²⁷ For further details see also: Michal Bobek and Jeremias Adams-Prassl, *The EU Charter of Fundamental Rights in the Member States* (Oxford & Oregon, Portland: Hart Publishing, 2020); Hans P. Jarass, *Charta der Grundrecht der Europäischen Union: GRCh* (München: C.H. Beck, 2020); Romain Tinière and Claire Vial, *Les dix ans de la Charte des droits fondamentaux e l'Union européenne* (Bruxelles: Larcier, 2020).

²⁸ CJEU Judgment of 27 June 1991, *Mecanarte – Metalúrgica da Lagoa Lda v. Chefe do Serviço da Conferência Final da Alfândega do Porto*, Case C-348/89, ECLI:EU:C:1991:278, I-03277, para. 48; CJEU Judgment of 24 October 2018, *XC and Others*, Case C-234/17, ECLI:EU:C:2018:853, published in the electronic Reports of the cases, para. 42.

and opportunity to continue with the referral and the national judge to have established the facts by resolving domestic law issues.²⁹

The complete ascertainment of the facts in a case and the solution relating to the preliminary questions are associated with the internal regulations that allow the prevention of the risk of preliminary rulings that prove useless at a later time. Of course, the autonomy of the national judge's jurisdiction remains a choice at the time of referral, and the suggestions remain valid in our case under investigation. The national judge is the only one with the relevant knowledge of the facts of a case and the appropriate person to carry out the relevant assessment for the case in question.

9. Concluding Remarks

The referring national judge takes a position from Article 267 TFEU and the related prerogatives confirmed by the consolidated jurisprudence of the CJEU. According to the BK and ZhP ruling, we can add the complete or partial suspension of a main proceeding as a new reference point. In this case, the procedural activity continues within the relevant limits indicated by the CJEU. Only the acts necessary by the referring judge must be carried out because they are acts where their completion does not prevent the national judge from complying with the indications provided by the CJEU in their final decision.

The BK and ZhP case showed us a solution that has also been followed in the jurisprudence of the CJEU and the recommendations for national judges related to the submission of requests for a preliminary ruling recognizing that the pendency of the reference where the national judge must adopt the conditions for the relevant precautionary measures. This solution is consistent with the jurisprudence that prohibits the relevant Member States from following the prevention of the possibility of challenging

²⁹ CJEU Judgment of 10 March 1981, *Irish Creamery Milk Suppliers Association and others v. Government of Ireland and others*; *Martin Doyle and others v. An Taoiseach and others*, Joined cases 36/80 and 71/80, ECLI:EU:C:1981:62, I-00735, para. 6; CJEU Judgment of 16 July 1992, *Wienand Meilicke v. ADV/ORG A. Meyer AG*, Case C-83/91, ECLI:EU:C:1992:332, I-04871, para. 26; CJEU Judgment of 30 March 2000, *Jämställdhetsombudsmannen v. Örebro läns landsting*, Case C-236/98, ECLI:EU:C:2000:173, I-02189, para. 31; Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), para. 13.

the referral order, which excludes the annulment of the order necessarily where the national judge withdraws the preliminary questions. In the case of annulment, the preliminary question submitted under Article 267 TFEU partially restarts the main proceedings. This solution is certainly innovative for the jurisprudential history of the CJEU and the preliminary ruling.

Previous case law³⁰ has allowed the partial continuation of a main proceeding when the need for precautionary measures and the need to safeguard the powers of the national judge in the event of annulment of the request for a preliminary ruling is defined. The BK and ZhP case indicated partial suspension as an option the referring judge may consider. Generally, the limits referred to in the previous paragraphs have to do with a procedural act carried out after the case has been brought before the CJEU.

The suspension of even only part of the main judgment is an option. Before making a reference for a preliminary ruling, the national judge should first ascertain the facts of the case and resolve preliminary questions of domestic law. This reduces the risk of preliminary questions later proving useless and having to be withdrawn.

The preliminary ruling at the level of interpretation is, above all, a uniform mechanism, ensuring a correct application of the law of the Union, which represents a tool that settles the related disputes between internal jurisdictions and, on the other hand, evaluates the compatibility with EU law, especially of national procedural rules. The objectives of the referral do not significantly impact the protection of individuals from the perspective of Union law. The following judicial path is always open towards a subjective legal position, which can be damaging due to the incorrect application of the EU law. The preliminary ruling provides solutions, protects and reinvigorates the functioning of the European judicial space as a procedural plan of introducing a new means that challenges and simultaneously expands the grounds and foundations of existing jurisdictional appeals. As a compensation obligation, in reality, there is no such thing as a compliant

³⁰ Jaime Rodriguez Medal, “Concept of a Court or Tribunal under the Reference for a Preliminary Ruling: Who Can Refer Questions to the Court of Justice of the EU?” in *European Journal of Legal Studies* 8, no. 1 (2015): 104ss; Dimitris Liakopoulos, “Transnationality and Application of EU Law in National Legislation. Analysis, Critics and Comparison in CJEU Jurisprudence,” in *Revista General de Derecho Constitucional*, no. 30 (2019).

application of EU law in practice, especially when conflicting interests and disputes arise at the decision-making table of the judges in Luxemburg. Time will show that there will be reforms at the national level as well, laying the foundations of a path of the principle of equivalence, of the evaluation of the effects of the rulings of the European courts for the protection of the rights of individuals and of the basic and institutive principles of the EU law. This is the past and future history of the preliminary ruling, and it is still a challenge for the coming years.

References

- Blanke, Hermann-Josef, and Stelio Mangiameli. *Treaty on the Functioning of the European Union. A Commentary*. Berlin: Springer, 2021.
- Bobek, Michal, and Jeremias Adams-Prassl. *The EU Charter of Fundamental Rights in the Member States*. Oxford & Oregon, Portland: Hart Publishing, 2020.
- Broberg Morten, and Niels Fenger. *Broberg and Fenger on Preliminary References to the European Court of Justice*, 3rd ed. Oxford: Oxford University Press, 2021.
- Broberg, Morten, and Niels Fenger. “The European Court of Justice’s Transformation of Its Approach Towards Preliminary References from Member State Administrative Bodies.” *Cambridge Yearbook of European Legal Studies* 24 (2022): 169–200.
- Jarass, Hans P. *Charta der Grundrecht der Europäischen Union: GRCh*. München: C.H. Beck, 2020.
- Liakopoulos, Dimitris. “Transnationality and Application of EU Law in National Legislation. Analysis, Critics and Comparison in CJEU Jurisprudence.” In *Revista General de Derecho Constitucional*, no. 30 (2019): 2–80.
- Peers, Steve, et al., eds. *The EU Charter of Fundamental Rights, A Commentary*. Oxford & Oregon, Portland: Hart Publishing, Nomos, C.H. Beck, 2021.
- Pertek, Jacques. *Le renvoi préjudiciel. Droit, liberté ou obligation de coopération des juridictions nationales avec la CJUE*. Bruxelles: Bruylant, 2021.
- Rodriguez Medal, Jaime. “Concept of a Court or Tribunal under the Reference for a Preliminary Ruling: Who Can Refer Questions to the Court of Justice of the EU?” In *European Journal of Legal Studies* 8, no. 1 (2015): 104–46.
- Tinière, Romain, and Claire Vial. *Les dix ans de la Charte des droits fondamentaux e l’Union européenne*. Bruxelles: Larcier, 2020.
- Wägenbaur, Bertrand. “Art. 23 of the Statute of the Court of Justice of the European Union.” In Bertrand Wägenbaur, *Court of Justice of the EU. Commentary on Statute and Rules of Procedure* (München, Oxford, Oregon, Baden: C.H. Beck, Nomos, Hart Publishing, 2013).

