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THE PROTECTION OF HUMAN RIGHTS THROUGH THE REFORM OF THE STATUTE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

LA PROTECCIÓN DE LOS DERECHOS HUMANOS A TRAVÉS DE LA REFORMA DEL ESTATUTO DEL TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA

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Abstract

The aim and object of this paper is to investigate the reform process of the Statute of the CJEU, reaching the conclusion that the entry into force of the relevant Regulation (EU, Euratom) 2024/2019 of the European Parliament of 11 April 2023 has followed a process in content that begins after the proposal of the CJEU of 30 November 2022. The interpretation and application that derives from the framework that concerns the contents of the reform to a system of protection of fundamental rights of the Union deserves greater attention. The need for a framework within the systematicity of relationships between the sources of law of the Union and within the force of references to fundamental rights, is relevant for the exercise and the jurisdictional function that are formulated by the legislator. Our analysis also seeks to investigate the architecture of the preliminary ruling and the procedural and substantive criteria that have to do with the distribution of the competence of ex Art. 267 TFEU between the Tribunal and CJEU. The proposals under consideration and in relation to the definition of interpretative standards are consistent with the need for effective jurisdictional protection for a better administration of justice that bring to light normative data of a relevant jurisprudence with reference to the discipline of the precision and uniqueness model.

Keywords: Reform regulation 2024/2019, preliminary ruling, protection of human rights, precision and uniqueness model mechanism (guichet unique, one stop shop), CJEU, tribunal, impartial judge, division of attribution of competences

Resumen

El objetivo y objeto de este trabajo es investigar el proceso de reforma del Estatuto del TJUE, llegando a la conclusión de que la entrada en vigor del Reglamento (UE, Euratom) 2024/2019 del Parlamento Europeo, de 11 de abril de 2023, ha seguido un proceso en cuanto a su contenido que se inicia con posterioridad a la propuesta del TJUE de 30 de noviembre de 2022. La interpretación y aplicación que del marco que se deriva de la reforma atañe al contenido de la misma a un sistema de protección de los derechos fundamentales de la Unión merece mayor atención. La necesidad de un marco dentro de la sistematicidad de las relaciones entre las fuentes del Derecho de la Unión y dentro de la fuerza de las referencias a los derechos fundamentales, resulta relevante para el ejercicio y la función jurisdiccional que se formulan por el legislador. Nuestro análisis busca también indagar en la arquitectura de la cuestión prejudicial y en los criterios procesales y sustantivos que tienen que ver con el reparto de la competencia del ex Art. 267 TFUE entre el Tribunal y el TJUE. Las propuestas bajo consideración y en relación a la definición de estándares interpretativos son consistentes con la necesidad de una efectiva tutela jurisdiccional para una mejor administración de justicia que sacan a la luz datos normativos de una jurisprudencia relevante con referencia a la disciplina del modelo de precisión y unicidad.

Palabras clave: Reglamento de reforma 2024/2019, cuestión prejudicial, protección de los derechos humanos, modelo, mecanismo de precisión y unicidad (guichet unique, ventanilla única, TJUE, tribunal, juez imparcial, reparto de atribución de competencia

SUMMARY

I. INTRODUCTION

Since the beginning of 30 November 2022 (Quesada López, 2024), the relevant reform of Protocol No. 3 of the Statute of the Court of Justice of the European Union (CJEU) was based on the former Art. 281, letter b) TFEU (Kellerbauer et al., 2024) reaching a conclusion on 19 March 2024 by the Council for General Affairs. The Council has communicated its approval referred to the draft regulation, namely the reform regulation (Riehle, 2024).[1] On 12 August 2024, the coordination with the adoption of necessary amendments is connected with the procedural rules of the CJEU as well as the Tribunal,[2] which published the regulation No. 2024/2019. A regulation which actually modifies Protocol No. 3 of the Statute of the CJEU.[3] The same regulation also publishes the relevant amendments concerning the regulation of the procedure

of the CJEU by means of act no. 2024/2094 and the procedure of the tribunal by means of act no. 2024/2095. Within this regulation, are evident the practical rules for the implementation of the regulation, the procedure of the tribunal and the decision of the tribunal of 10 July 2024 concerning the notification of procedural documents by means of the application of the e-curia.[4]

The content of the approved reform, known as regulation, provided for a double point of intervention of greater scope that is framed within the context of the review of the jurisdictional architecture of the Union, that was decided in 2015, despite its roots arising and being sown from the Treaty of Nice. This is a transfer that is responsible for the preliminary ruling in specific matters from the CJEU and the tribunal (Pertek, 2021, pp. 246ss; Broberg & Fenger, 2021, pp. 293-295; Weber, 2024). The reform also links other changes, amendments, instruments of lesser tenor that are intended to integrate, from an organizational, procedural and institutional point of view, substantial profiles of preliminary ruling competences that are provided for by Art. 256, par. 3, lett. a) TFEU (Chalmers et al., 2024; Anastasopoulos, 2024).

The second point of intervention is adopted immediately and is connected to amendments dating back to 2019. It concerns the extension, within the scope of application, of the admission mechanism by providing for appeals lodged with the CJEU against the judgments and orders of the tribunal having as their object the decision of a board of appeal, which is an independent body from the Union and by virtue of an arbitration clause according to Art. 272 TFEU (Kellerbauer et al., 2024).

We need further investigation and research by offering profiles of novelties that are introduced with the reform of the statute, namely the procedural regulations of the CJEU and the Tribunal. In a restrictive way, the reform is observed as part of a system of protection of human rights of the EU. A protection that involves various interpretations of application to institutional and procedural profiles.

The binding or not nature of such aprocess seeks to frame in a systematic way, according to par. 2, the relationships between the sources of the law of the Union and of primary rank. According to par. 3, the content of the reform seeks to establish a coordination of connection between fundamental rights from the legislator of the Union within the reform regulation and the amendments inserted by the procedural discipline of the Union.

The precise architecture of the preliminary reference measures the procedural mechanisms of the preliminary jurisdiction of the CJEU and the guarantees that are connected to the law, as well as to the effective and

jurisdictional protection. The investigation conducted refers to the distribution of jurisdiction by subject matter ex ante, with reference to criteria that generally distribute the preliminary jurisdiction between CJEU and Tribunal as formulated according to par. 4 of the requirement of the national judge (Housman, 2024).

The analysis of the preliminary requirements deserves attention, as well as the proposition of the judge a quo, who verifies the argument belonging exclusively to the material jurisdiction, that is reserved by the CJEU, according to paragraph 5.

The legislation is consistent with the margins of interpretation that respect the rules of the natural judge, who is pre-established by law. This characteristic is connected with the general need for impartiality, independence of the relevant jurisdictional bodies. The reform of the approach of national judgments within the context of a new discipline based on the proceedings of ex Art. 267 TFEU (Kellerbauer et al., 2024) deserves attention. It involves arguments for the protection of human rights and the choices for the drafting of questions that reflect the relative distribution of preliminary jurisdiction.

According to par. 6 the provisional conclusions and the various precautions, that are included in a partial manner to the competence of ex Art. 267 TFEU in favour of the CJEU, carry out the relative framework within the practice developed by the CJEU itself imagining thus the argumentative roads that follow the objectives of a reform that retains for itself the control and by dividing preliminary questions.

II. PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND REFORM OF THE STATUTE OF THE CJEU

At this point we must see whether the reform of the statute was necessary and especially in the area of human rights. A reform not so much based on the opportunity to follow a similar operation but to respect the possibility of identifying legal reasons based on a framed necessity. The protection of human rights represents in a distinctive way the legal order of the Union and its identity elements based on the CFREU through Art. 6, par. 1 TEU of legal value that binds the primary rank (Peers et al., 2021).

The CFREU is required to comply with the European Union in all its activities, according to Art. 51, par. 1 CFREU. The judges of the Union ensure compliance with fundamental rights, which carry out the institutional task of interpretation and application based on Art. 19, par. 1, letter a), i.e. within the procedural context of the judges of Luxembourg. The CJEU, based on the

legal system of the Union and other institutions, is called upon to carry out jurisdictional activities. For example, the normative competence of ex Art. 281, letter 2 TFEU is used in the mechanism of Art. 256, par. 3, letter 1 TFEU. This is a provision that enables the rules of the statute by amending the resolution of ex Art. 281, letter 2 TFEU, as well as defines the conditions for the CJEU that is competent for preliminary rulings of ex Art. 267 TFEU (Kellerbauer et al., 2024).

The status within the system of sources of the Union law and according to Art. 281, letter 1 TFEU and Art. 51 TEU (Kellerbauer et al., 2024) highlights the competence, which integrates the delegated revision procedure. It ends the introduction according to the amendment of norms that are intended to assume the primary nature, as well as the modification of the treaties, the annexed protocols and the decisions of the institutions involving the so-called "quadrilogue".

The conditions of legitimacy of this exercise of competence, which come from the complex of primary norms of the Union, include the CFREU and leave out the procedural limits, that are applicable to the legal bases and the constraints of substantive legality according to the norms adopted from ex Art. 281, par. 2 TFEU (Kellerbauer et al., 2024). According to this profile, in the case of amendments to the statute of the CJEU and as happens with the institutional procedures for the revision of primary norms, it is logical that the positive discipline includes constraints of a legal nature, which have to do with the normative action of the legislator of the Union, submitted to the judgment of the CJEU.[5] Art. 281, par. 2 TFEU (Kellerbauer et al., 2024) also includes the European Parliament, the Council decides according to the ordinary legislative procedure, after request of the CJEU and after prior consultation and proposal of the European Commission and after consultation of the CJEU, which can amend the provisions of the Statute with the exception of Title I of Art. 64.

From a formal point of view, the action of the Union legislator, within the context of the procedures for the revision of the Treaties, respects the conditions that establish the primary rules, leaving open a hierarchical constraint applicable to the second reference profile, that is to say the substantive legality of primary provisions, which are introduced under non-configurable constraints but which respect the provisions of primary rank, according to the conventional will of the Member States.

The legal system of the Union has not provided for an internal hierarchical articulation, according to the primary rules. The TEU and TFEU, the CFREU, ex Art. 6, par., 1 TEU, as well as the general principles of law on fundamental

rights have the same value according to Art., 1, lett. 3TEU and Art. 1, par. 2 TFEU (Kellerbauer et al., 2024). The CFREU and the general principles on fundamental rights go beyond the parameter of direct legitimacy and the interpretative one that is binding for the secondary law of the Union, especially in cases that have to do with the protection of fundamental rights. According to primary law, the absence of hierarchical relationships between the said rules calls into question a similar obligation of interpretation, which is in accordance with the CFREU and the constraints of legitimacy that come from it.

The first task is to resolve situations relating to the incompatibility of primary rules that leave to the interpreter and through the use of substantial balancing the different needs resulting in the prevalence of fundamental rights in the area of the internal market. The reference to the area of freedom, security and justice as well as to the protection of social rights and mainly economic freedoms are still points to be resolved. The CJEU is not unrelated to the protection of rights that are part of the CFREU. From an exemplary point of view, the reference to fundamental freedoms are established by the treaties,[6] by the obligations that are part of the states and by provisions that are contained (Liakopoulos, 2019),[7] as well as the relative discipline of the exercise of the jurisdictional function of the same CJEU.[8]

The rules which are intended to protect the fundamental rights of the Union are susceptible to the orientation of the provisions of the Treaties and to the limits of application and evaluation of the relations between normative sources in formal legal terms according to the balance of interests, which are expressed by various and different rules of legal value, and are directed and carried out by the interpreter.

The position of the primary rules that are part of the enabling and analogous provisions of Art. 281 TFEU do not overlap with those arising from the conventional will of the Member States. From a general point of view, conditional and legitimized foundations are placed within the legal system of the Union. The same legal bases, according to Art. 51, par. 1 CFREU, give rise to acts adopted within the procedural and formal limits and within the constraint of substantial legitimacy that represents the need to protect human rights of the CFREU. It also observes the principles that constitute limits of legitimacy for the institutional provisions of a secondary level. Within this spirit, the normative action is carried out through the interpretation that determines the provisions and that establishes rights, obligations foreseen in a constrained manner interpreting thus the parameters of legitimacy. The reform regulation observes the provisions, that through the will of co-legislators of the Union, are linked to a core of fundamental rights, that they call their

own recitals.[9] The procedural discipline introduces the reform regulation explicitly and adopts the application of fundamental rights that are linked to the jurisdictional exercise of the CJEU.

Such circumstance derives from the consequences linked to the will of the legislator of the Union. These consequences are expressed within the act of amendment of the statute. The application of a substantial and general dependence to the CFREU and the delegated review procedures, constitute an autonomous determination of the legislator of the Union, who seeks to frame, limit the normative action within the perimeter of fundamental rights in an explicit manner recalled by the regulation.[10] The rights raise an important role to the substantial reference indices, which assess the legitimacy of the act through the possibility of applying a similar final judgment oriented to the application of the force of an obligation of compliant interpretation.

This evolutionary reading of Union law refers to the clarification of national relationships and first-degree sources, i.e. the dynamics that are framed between fundamental rights and the provisions of amendment and integration of primary law adopted with the delegated review procedure that does not generally allow from the CFREU the respect of primary level sources. The qualified nature of the principles that are applied to the jurisdictional function, according to Art. 19 TEU and within a core of a system of sources of Union law, determine the co-legislators of the Union based on the former Art. 281 TFEU (Kellerbauer et al., 2024) by inserting within the institutional practice and through the CFREU the recognition of these fundamental rights, in a special way, and in connection with the protection of the rule of law, as a founding value of the Union, according to ex Art. 2 TEU. As a precise force at a substantive level is capable of orienting itself towards the action of the legislator of the Union and the procedures for reviewing the Treaties, the interpretation and application of primary level sources.

The reform within the framework of the law and the effective judicial protection of the good administration of justice at the content level, declares the orientation and the pursuit of the right of judicial protection,[11] the good administration of justice,[12] the requirements of legal certainty,[13] and the transparency of judicial proceedings.[14] These are principles that constitute with a hermeneutic way the use of a framework among the changes that are introduced to evaluate the levels of its application.

The CJEU clearly states the work of the reform by allowing the CJEU to continue to pursue the tasks, that ensure within reasonable time and according to Art. 19, par. 1, letter a) TEU the related "(…) respect for the law in

the interpretation and application of the Treaties (...)".[15] The exercise of jurisdiction, within reasonable time, evokes the related fundamental right of effective judicial protection, that is enshrined according to Art. 47 CFREU (Peers et al., 2021) and to the right that is connected with the good and speedy administration of justice, according to Art. 41 CFREU.

The will expressed, through the premises of the reform regulation, is effective and articulated by the legislator within the amendments to the statute and according to the discipline that is consistent with the development of the fundamental rights of the Union, which implement the jurisprudence of the CJEU. The spirit and notion of Art. 47 CFREU find expressive basis in an impartial judgment, pre-established by law. To the judge, who represents the principle of the rule of law, that is based on a system of remedies of a jurisdictional nature of the Union. A system that constitutes a typical canon that evaluates the criteria of active legitimacy for the appellants before the judge of the Union.

This parameter is defined as the front of the reform intervention that concerns the extension of the preventive admission of appeal of the decisions of the CJEU. This is a mechanism that implies the aim of hardening the conditions of access to a remedy of a jurisdictional nature. The impossibility of accessing the appeal of the provision to the first level judge, according to Art. 58 bis of the statute, does not in itself determine the violation of the right, that is established by the CFREU. A right that is affirmed by the jurisprudence of the CJEU, namely according to "(…) Art. 47 CFREU, the principle of effective judicial protection establishes not the right to access a double level of jurisdiction, but only that of access to a judge (...)".[16] The reform provides a framework within the right of fair trial, according to Art. 47, lett. 2 CFREU (Peers et al., 2021). This is a concept that falls within the dimensions of the principle of equality of arms, adversarial proceedings, the right to a national judge as well as the right to be advised and defended and represented in CJEU.

The adversarial principle integrates the rights of defense, that lead back to the changes introduced in Art. 23 of the Statute. They are extended to the subjects entitled to participate in preliminary proceedings to exercise the right to submit written briefs.[17] The modification of the list with the participants of the preliminary proceedings referred to the European Parliament, Council and European Central Bank is the result of a formula of Art. 23 of the same Statute, which observes questions that have to do with the request for a preliminary ruling and the interpretation of the validity of an act. This objective is enriched with the information wealth of the judge, as well as impartial and known his decision. In this way the level of trust is guaranteed. The subjects of the

system put the functioning of justice through the strengthening of prerogatives to procedural participation.[18] The reform process under investigation as well as the right for the causes under control have as their basis the reasonable term. Such requirement must be specified through the general ratio of the reform regulation. The law respects and evaluates the circumstances of each case according to the relevance and the dispute for the data subject as well as the complexity of the cause of the data subject's behavior and the authorities that are competent. Authorities that configure in cases of violation and show the responsibility of the Union based on Art. 268 and 340, lett. 2 TFEU (Kellerbauer et al., 2024).[19]

The reform regulation is based on the proceduralization and affirmation of the prejudicial jurisdiction to the CJEU, through the imposition of procedural deadlines[20] and the mechanism of a single precise and unique game according to Art. 50ter, letter 3 of the Statute.[21] The mechanism of guichet unique-one-stop shop highlights the discipline based on the Statute and the proposals for amendments to the procedural regulations, that prefer to be flexible in time to avoid rigid deadlines in the delicate procedural stages.[22] In this spirit, the legislator of the Union has tried to exploit the space of discretion allowing the fundamental principle of the reasonable term that privileges the needs of a reform, such as the criterion of good administration that respects the certainty of the law and the need to provide for precise procedural deadlines.[23] It is found that this choice reflects the assessment of the profiles relating to the extra-contractual liability of the Union, as well as violations of the guarantee of a reasonable term, within the scope of the proceedings under investigation.[24]

The fair trial highlights the law and the case that is examined according to an independent, impartial and pre-established by law judge. A criterion that finds application in national jurisdictional systems and within the measure, architecture and distribution of competence between the different instances that have to do with the objectives of application of the law of the Union and within the context of direct appeals that decide on violations and subjective positions.[25] Positions that are part of the definitive function of the notion of a jurisdictional body for application objectives according to Art. 267 TFEU.[26] The principle of independence, impartiality of the judge is also based in a non-univocal manner at the CJEU.

For example, the position of the Polish judicial system has prompted the judges of Kirchenberg to emphasize the links that are inseparable and exist according to Art. 47, letter b) CFREU and the ex Art. 6, par. 1 ECHR, i.e. according to the fundamental right to a fair trial between the guarantees of

independence, impartiality for judges and access to a judge pre-established by law. Requirements that are based on trust and judicial power that inspires in each individual the independence of a power in relation to others to be followed through specific guarantees, that are connected with the nominative procedure of judges.[27] The requirement of independence pertains to the essential content of the fundamental right, that is guaranteed by Art. 47, letter b) CFREU as a requirement of a judicial function that also implies some important aspects.

A first position of an external nature presupposes that the interested body exercises functions of full autonomy without being subject to a hierarchical constraint and submission towards someone without receiving instructions, orders from a source. As a consequence, it is protected by (external) interventions and pressures that are capable of compromising the independence of judgment and of its members, thus influencing its decisions. Another second position of an internal nature is connected with the notion of impartiality and the equidistance of the parties in a dispute that respects the interests of an object. A requirement that requires respect for objectivity and the absence of an interest in solving a dispute outside the application of a legal rule.

The reform, referring to these principles, does not raise difficulties relating to the procedure for appointing judges and the protection of the judicial institution as a whole from external interventions. The particular procedural constraints are linked to the jurisdiction that favors the court representing "(…) a rather heavy price tag in the form of a straightjacket which removes any residual independence from the GC as a body that would be allowed to structure matters their own way (…)".[28] It does not imply that the structure of reform and the sorting system with the preliminary ruling represents a vulnerability relating to the need for impartiality and independence of the judge. It is limited within the spirit of protection of fundamental rights and within a framework that observes the parameter oriented to the interpretation of the criteria for attributing competences and distributing causes, thus pursuing a fixed attribution that determines general norms guaranteed by the right to a gesetzlicher Richter.[29]

The reference to the division of jurisdiction between the jurisdictional instances of the Union and the direct actions has as its object the violation of subjective positions for the officials of the Union.[30] Within this scope, the principle based on the provisions that apply in the constitution of the jurisdiction of judges is affirmed as a decision that is not competent to the cause as an object because the judge is not constituted by law. The integration of the law establishes from the CFREU a precise pre-constitution by law of

the judge, as a reduction of the need for a pre-definition and within the terms of a certainty that is intended to regulate the division of jurisdiction. The treaties identify in a distinct manner and within the CJEU the acts of the Court that remain attributable. This is a distinction that implements the objectives pursued according to the reform and destined to be further strengthened. In such a way, the outcome is effective as is the prejudicial jurisdiction in favor of the CJEU.

The autonomous modus that detects the profiles of distribution of jurisdictional competence allows the CJEU to use the law of the Union as a natural judge of screening and evaluate the criteria for attributing the cases according to the sections of the Tribunal. Within this spirit, the case is affirmed by the president of the Tribunal ensuring the distribution in a balanced way of the relative workload and also justifying the measures pursuing objectives treated within a reasonable time and in accordance with Art. 47, letter b) CFREU. These are determined and jurisdictional positions that constitute and specify a power regulated by law given that the decision is so discretionary and is inserted into a space of control and by virtue of indices deducible from the rights that are detected in a jurisdictional field and sanctioned by the same CFREU.

The previous architecture of the judicial system of the Union was a point of reference, important for the CJEU which stated in this regard the "(…) precise delimitation of the respective competences of the three judicial bodies of the Court of Justice, namely the Court of Justice, the General Court and the Civil Service Tribunal, so that the competence of one of those three bodies to rule on an action necessarily excludes the competence of the other two (…) rules of jurisdiction of the Union courts as provided for by the TFEU as well as by the Statute of the Court of Justice and its annex form part of primary law and occupy a central position in the legal order of the Union (...)".[31] The reform regulation has framed this fundamental right to the relevant criteria for the distribution of preliminary rulings between the CJEU and the Tribunal through the internal competence of the CJEU, which was previously non-existent.[32]

The consequences of this framework reveal the application of the discipline. Application findings confirm the expansive and precise scope of the reform regulation from the point of view of the right to a judge that is pre-established by law as well as the consequences of the same nature of the preliminary reference. It cannot be overlooked that the value of requirement and certainty, that is connected with the pre-establishment by law of the judge, can unbalance the function envisaged, according to the mechanism of ex Art. 267 TFEU (Kellerbauer et al., 2024), towards a protection of positions subject to and

placed by the order of the Union and through the law that places the guarantees recognized ex ante to the subjects as parties to the process before the national judge, who participates in a preliminary procedure according to Art. 23 of the Statute.

The exploitation of margins of discretion, that are uniquely guaranteed through a possible degree in the name of loyal cooperation between the CJEU and the national judges, shifts the centre of the mechanism towards a dialogue with the judicial authorities, thus ensuring the effective and uniform application of Union law to a monopoly on preliminary rulings that is in the hands of the national judges.

The principle of effective judicial protection, the right to a fair trial, the treatment of preliminary questions before the CJEU and the Tribunal require the adoption of procedural rules, that are equivalent to those of the judicial authorities and by means of amendments to the Rules of Procedure.

Art. 50 ter, letter 4 of the Statute states that: "(…) sections designated for this purpose in accordance with the procedures laid down in its Rules of Procedure (…)", indicating the attribution of preliminary questions relating to the jurisdiction of the Tribunal, which designate the Advocate General at the Tribunal. It is called upon to intervene in proceedings pursuant to ex Art. 267 TFEU (Kellerbauer et al., 2024) attributing according to Art. 49 bis of the Statute the jurisdiction under the conditions that are provided for similar proceedings at the CJEU, as well as the provision to create an intermediate section of the CJEU between the sections of five judges and the Grand Chamber according to the rule of the Rules of Procedure of the Court based on Art. 50, letters 2-4 of the Statute.[33] In reality, the argument was the independence of the figure envisaged for the Advocate General at the Court during his office. He will not participate in cases that are part of Art. 267 TFEU and to the performance of the function pertaining to the relevant assigned request.

The reform in this respect raises doubts regarding the equation between the identity of applicable procedures and the identity of results that follow, thus observing the specialized sections in the sections competent in preliminary matters. In this way, a procedural guarantee of fairness is constituted as a factor of divergence between the procedures applied by the Tribunal and CJEU. The parliamentary intervention during the course of a legislative process, as well as the inclusion of these types of profiles, increases transparency within its own reform. A principle that cannot be doubted and that connects according to Art. 41, par. 2, lett. c) CFREU "(...) the obligation for the administration to

motivate its decisions (...)". Rule also included in Art. 296 TFEU (Kellerbauer et al., 2024) as a precise orientation of a right of good administration. As a duty/right of the institutions of the Union that satisfies the fundamental needs of the defense of individuals as well as sufficient indications for the decision that is eventually full of defects and without validity. The motivation is thus adequate according to the nature of the act and appears in a precise form with an ambiguous manner to a logical process that follows the institution from which the act originates.

This requirement is connected with the request of recital no. 15 of the regulation and the CJEU and/or the Tribunal to give reasons in a brief manner within the provisions, according to the logics, that are competent to know a preliminary question. In the same place we note the obligation that motivates and brings back the interest related to the certainty of the law to greater transparency as well as the jurisdictional proceedings that highlight this principle as external profiles that respect the internal ones of the individual jurisdictional proceedings.

The principle of transparency and certainty represent the general principles of the Union legal system that are connected with the fundamental right of access to documents as provided by Art. 42 CFREU (Peers et al., 2021). The extensive interpretation of these principles provides for written briefs as well as observations that are presented within the context of a preliminary procedure. They are published on the website of the CJEU within a reasonable time after the closure of the case. Of course, the interested party must not oppose the publication of his/her own briefs and observations in writing. There is also the obligation for the CJEU to update, publish the list of examples that illustrate the application of Art. 50ter of the Statute, which becomes Art. 3 of the regulation with the reform.

The publication of observations and briefs are recorded in the position of some Member States at the Council that determines the scope of the right to access documents, that is within a rigorous, precise framework of the principle of transparency in the field of judicial documents. In this context, we also note positions expressed by Austria, France, Cyprus, Italy, Greece and Malta that stated "(...) free access on the internet to the documents of the parties to a judicial proceeding has no basis in the treaties and differs significantly from the legal traditions of several member states (...) legal regime of judicial proceedings (...) over the centuries becoming a procedural rite that must be characterized by the confidentiality of the documents of the parties (...) takes place in public session (...)".[34]

In a distinct manner the level of transparency has been introduced through the reform and the preliminary rulings. In this regard, "(…) the publication on the internet of judicial documents of the parties is not in itself required by the principles of good administration of justice or the rule of law, it cannot be considered a level of EU transparency that must be applied internally by the EU Member States (…) Art. 96 of the Rules of Procedure of the Court, the opposition to the publication (…) will therefore not have to be reasoned and will not be subject to challenge before the Court or the General Court (…)", as well as a consolidated practice[35] also confirming the relevance of needs, transparency of participation in regulatory processes according to the jurisdictional architecture of the Union based on Art. 3, par. 2, lett. 1 and 2 of the reform regulation. The CJEU presents to the Council, the European Commission and the European Parliament within four years of the reform the report on the transfer of the court's preliminary ruling jurisdiction on specific matters and on the extension of the admission procedure, which also includes appeals. It is, thus, assessed that the CJEU is able to consider the opportunity of a "(...) legislative act to amend the Statute, in particular in order to amend the list of specific matters referred to in Article 50-ter, first paragraph (...)". It is the new Art. 62-quinquies of the Statute that places the CJEU and/or the European Commission to initiate the procedure based on Art. 281 TFEU before the adoption of a request and proposal for amendment that conducts public consultations in a transparent, open manner thus ensuring participation in a varied, broad, precise manner as possible.

III. REFORMED PRELIMINARY RULING PROCEDURE AND FUNDAMENTAL RIGHTS. CRITERIA FOR INTERPRETATION AND ALLOCATION OF JURISDICTION

The substantive and procedural conditions governing the preliminary ruling jurisdiction of the CJEU and of Tribunal investigate the framework of the reform within canons that are interpretative as well as rules on fundamental rights. Art. 256, par. 3, lett. 1) TFEU states that: "(…) has jurisdiction to hear questions referred for a preliminary ruling pursuant to Art. 267 in specific matters determined by the Statute (…)" (Kellerbauer et al., 2024). This ensures compliance with the substantial requirement precise ex ante for the matters under investigation. The CJEU in its proposal uses some parameters, main orientation directives, such as: 1) the identification and necessity for the matters that are drawn from the Tribunal through the request for a preliminary ruling and distinct from other matters of the law of the Union; 2) the matters subject to assignment that arise questions of principle; 3) these are matters that

the CJEU has a certain jurisprudence that is guided by the court within the exercise of a competence that avoids the risk of divergences, inconsistencies of a jurisprudential nature; 4) the matters are identified towards a sufficient number of preliminary references arriving at the transfer of requests for preliminary ruling to the court that produces a precise effect on its work.[36] These parameters are identified to material areas according to Art. 50ter of the Statute that the system of common value added tax according to letter a); excise duties according to letter b); the customs code according to letter c); the tariff classification of goods combined according to letter d); the pecuniary compensation, as well as the assistance of passengers in the event of denied boarding and the cancellation of transport services according to letter e); the system of trading of quotas for greenhouse gas emissions according to letter f).[37]

The questions concern matters for the CJEU which are necessary, precise in accordance with Art. 50 ter, letter 2) of the Statute, as well as questions, which are independent for the interpretation of primary law, international law, general principles of law, of the CFREU as well as the regulatory context to a main proceeding, which enters into the precise matters. The preliminary question does not exclude within precise substantive areas the knowledge of the court according to ex Art. 256, par. 3, letter 1) TFEU.

From a procedural point of view, Art. 50ter, letter 3 of the Statute provides that a quo judge continues to submit questions directly to the CJEU, through the guichet unique-one-stop shop. It is the CJEU itself and the Tribunal that motivate the requests for a preliminary ruling and its own knowledge by means of a provision, also verifying the requirements. This is a rule that according to Art. 54, letter 2 of the Statute provides that the Tribunal refers to the CJEU questions that it cannot know and defers the obligation that the CJEU deals with, which decides by means of a justified provision to assign the case ex novo.

The considerations of exclusivity of the matter, as an object of ex post research, are based on the content of the question, that is formulated by the judge a quo, who proceeds with a report containing the profile of ex ante precision of the subjective and identified areas of the new Art. 50ter, letter 1 of the Statute and of the canons of interpretation. This methodology of division of competence guarantees and attributes the causes, that determine first of all the bases of general rules and the protection of the principles of independence, impartiality of the CJEU and the right to a Tribunal with a judge pre-established by law.[38]

Defining the boundaries in the matters subject to devolution represents one of the obstacles to the implementation of Art. 256, par. 3, lett. 1 TFEU (Kellerbauer et al., 2024). The reform addresses the problem of ex ante precision according to the devolution of knowledge, through the directive criterion, which separates and distinguishes the matters in a unitary manner, within the areas that the CJEU has developed the relevant jurisprudence.[39]

The emergence of the opinion of the European Commission, as a criterion based on recitals no. 9 and 10 of the reform regulation finds space in a timely manner to the need for precision and in the drafting technique, that leaves room for criticism.[40] Recital no. 9 is dedicated to the clarifications, that concern the system of value added tax, excise duties, the customs code and the tariff classification of goods, through the technical articulation referred to legal nuclei and institutes, that have as their object regulatory questions of a jurisprudential nature in specific matters reconstructable within the adoption of the reform regulation.[41]

The granting of preliminary ruling to the court for matters under Art. 50ter, par. 1, letters a)-d) of the Statute does not cover the scope of application of legal acts deriving from these areas. From an indicative point of view, the common system of value added tax as well as the list do not take into account the system of rates. Furthermore, the Customs Code does not refer to the areas of customs representation as well as to sanctions relating to appeals.[42] The application of excise duties is very different. Recital no. 9 bears the reference title and reports that the "(…) general regime of excise duties and the framework relating to excise duties on alcohol, alcoholic beverages, tobacco, energy products and electricity (…)" with the use of such language corresponds to the nomen iuris in the acts relevant to the matter in question.[43] The doubt of effective connection to the fields under examination and the substantial extension of attribution remains in the jurisdiction in favour of the court.

In the case of matters pursuant to Art. 50ter, par. 1, letter e)-f), the legislator has oriented itself towards a criterion, that identifies the precise profiles of matters, that are part of the application of acts of secondary legislation, according to recital no. 10, which refers to the "(…) moment of adoption of this regulation (…)". The reasons based on choices of drafting technique are not explicitly referred to. It is logical that the difference in the methods for the regulation, that implements the fundamental requirements of Art. 47 CFREU, was related to the clarifications included in ex Art. 256, par. 3, letter 1 TFEU.

The provisions, that call and consider the precise contents of the recital, according to the list of Art. 50 ter, par. 1 of the Statute, are not exhausted.

They include, however, the violation of the primary norm. These are matters that are called and oriented to attempts of automaticity. It is logical to transfer the knowledge to the court as well as to the distribution of the prejudicial competences ex ante, according to the canon of certainty and respect for the right to the natural judge, who is pre-established by law, as well as the letter of the same recital n. 9, that doubts the effects brought with a peremptory manner to the thematic list reported.[44]

The need for a specific drafting technique is recognized, which refers to specific legislative acts. Such acts define the objective and subjective scope of application by referring to specific legal questions and used in a precise manner to the acts of secondary and applied law. The cases indicated address future developments of a jurisprudential nature as well as changes in regulations excluding the amendments of ex Art. 281, par. 2 TFEU and the material areas, which are part of the provision of Art. 50ter, par. 1 of recital no. 9 and 10 of the Statute without undergoing changes to the limits of the extension, which respects the adoption of the reform regulation. Identifying the precision in an explicit manner comes in the face of the consolidation of jurisprudence in practice that "(...) ensure that such determination can continue to be made in the future, offering the necessary legal certainty despite the developments of Union law in such specific matters (...)".[45] This is a derogation, which establishes, that the text of the reform regulation clashes with the resistance of the sources of revision, that delegate and respect the acts of secondary legislation.

IV. REFORM, DIALOGUE BETWEEN NATIONAL JUDGES AND THE UNION IN THE FIELD OF HUMAN RIGHTS. CONTROL OF THE PRELIMINARY RULING BY THE NATIONAL JUDGE

The substantial attempt to create an interinstitutional debate, that refers to the matters, which fall within the preliminary ruling jurisdiction of the tribunal and within the centrality of the law of the pre-established judge, is a reality. The criticisms of the reform focus on the guichet unique-one-stop shop governed by ex Art. 50ter, par. 3, of the Statute and by Art. 93 bis of the regulation of procedure of the CJEU. The framework of the guichet unique-one-stop shop mixed through the participation of members of the CJEU and of the Tribunal is not connected with the CJEU to a panel, that is composed of the president, the vice-president and the Advocate General to carry out an analysis of a preliminary nature to all the requests for preliminary rulings. The third paragraph of Art. 93bis refers to the question relating to the CJEU after the general meeting.[46]

The division of preliminary jurisdiction follows the jurisdictional issues, that are decided and deal with the administrative issues and the meeting, that is regulated by Art. 25 of the regulation of procedure of the CJEU. The choice of reform seems to respect and frame the respect of general meeting tasks, according to Articles 59, 60 of the regulation of the procedure of the CJEU, that fall to the attribution of cases to the panels that judge the presentation of preliminary report, according to the reporting judge.

The absence in the CJEU of sections, meetings, mixed panels, which are composed of the judges of the CJEU and by members of the tribunal with jurisdictional competence, is obvious. As well as the possible solution, that is in favor of a specific, mixed mechanism, requires the creation ex novo of a similar instance without being suitable for the existing mixed committee, which is composed of members of the CJEU itself and from the tribunal, that is called to take a position at the general meeting, that carries out administrative functions.

As regards the sources, are safe from the necessary, precise reservations to the rules of procedure given that the intervention finds its place within the Statute, according to the primary value of the provisions, which include the jurisdictional, institutional internal system of the CJEU itself. This is a position that finds its basis in Art. 251, par. 1 and 2 TFEU and Art. 254, par. 6 TFEU of the tribunal (Kellerbauer et al., 2024). In other words, this position finds its precise path in the Statute, in the rules of procedure of the CJEU and of the Tribunal. The amendment affects more Articles 16 and 50 of the Statute, which regulate the organizational profiles, that respect the CJEU and the tribunal.

This is a mechanism of the guichet unique, one-stop shop based on positive data, which is reasoned without fully satisfying the need for certainty and the impartiality of identification of the judge in a compatible manner, according to Art. 256, par. 3 TFEU and by the framework of the institutional distinction between CJEU and tribunal. They are like two distinct centers of competence within the same jurisdictional institution. The incompatibility that is noted through the relative position of the one stop shop, as well as the procedural conditions have as their objective the exclusivity of the preliminary question, which respects matters originating from the tribunal, which are precisely connected with the needs of impartiality of the judge based on ex Art. 47, par. 2 CFREU (Peers et al., 2021), as well as the violation of Art. 256, par. 1 TFEU (Kellerbauer et al., 2024).

Implicitly, it is requested to provide for procedural methods, that implement provisions appropriate to the position of hierarchy relating to the system of sources. This is a position based on Art. 281, par. 2 TFEU (Kellerbauer et

al., 2024). The mechanism of the unique, one-stop shop guichet finds the objective impartiality relating to the deciding body. The impartiality of the body decides on the preliminary jurisdiction of the CJEU and the Tribunal. The CJEU has thus defined in broad terms the discretion relating to the adoption of measures of administration of justice, that involves workloads with the parties, who decide on the assignment of individual cases of the national sections of the Tribunal.[47] The broad and discretionary justification automatically opens the distribution of knowledge between two distinct bodies such as the CJEU and the Tribunal.[48] The CJEU has tried to identify the violation of a fair profile at each trial. The appointment of judges according to the positions of the ECtHR highlights an irregularity for the appointment of judges to a judicial system, that leads to a violation of Art. 47, par. 2 CFREU (Peers et al., 2021). An irregularity of nature, which burdens the executive power, that exercises a discretionary power, that endangers the integrity of the relevant outcome to an appointment process as a legitimate doubt in individuals and to the independence and impartiality of the judge as well as to fundamental norms, i.e. as an integral part of the functioning of the judicial system.

The work entrusted with a precise and unique way to the CJEU seeks to verify possibly the question relating to the preliminary reference, that does not enter with an exclusive way to the matters of Art. 50ter, par.1 of the Statute. It is a question with an exclusive way of not attributing to the court the question of preliminary ruling connected with precise matters that concern, according to ex Srt. 50 ter, par. 2 of the Statute, questions of interpretation of primary law, of independence, of international law and of the general principles of law and/or of the CFREU.

Art. 50 ter of the Statute as well as recital no. 12 added by the co-legislators of the Union have amended the proposal of the CJEU. This is an interpretation that aims to clarify and investigate the criteria for the distribution of jurisdiction, through the ex post examination of the wording of the referring courts. More specificaly, such an interpretation is a requirement for the implementation of the principles, that are linked to effective jurisdictional protection, the good administration of justice, the right to a judge pre-established by law and the objective of guaranteeing the effective distribution of workloads between the Tribunal and the CJEU.

The preliminary argument before the CJEU depends on the precise formulation by the judge a quo and on the ex ante precision of the matters devolved. The absence of normative and jurisprudential indices, that are oriented towards the limitation and the evaluation of the CJEU to the mechanism of guichet unique-one-stop shop, recognize to the national judicial

authorities a capacity, that affects the procedural fate of the preliminary reference, as well as to the sufficient formal reference to primary norms and evidently in the same CFREU, that automatically determines the question at the CJEU as well as at the court.

The delivery to a procedural, institutional space is presented to the judge a quo as a shopping of potential negative profiles even if he respects the position of the rights, according to the CFREU and the jurisprudence of the CJEU. Such a delivery is presented as an excessive self restraint of the national judges, which are relative to the provisions of the CFREU and as interpretative parameter of legitimacy of the law of the Union, which involve an instrument of choices of judicial policy. A choice that privileges the dialogue with the Tribunal, to benefit and prefigure the procedure in a precise way. The questions of the principle of horizontal character, that concern the sections specialized in this objective, are excluded. This is a negative consequence that leads to procedural interventions for the legislator of the Union, which guarantee the amendments and ensure the confidence of the national judges in front of the new architecture of the preliminary reference procedure.

The jurisprudence of national courts develops a systematic invocation of CFREU rules, as primary law rules, that direct the referral towards the framework of the CJEU, thus, avoiding environments not well known, such as the Tribunal. In this way, the objective pursued by the reform in question is frustrated and the CJEU examines the number of preliminary rulings, that are sufficient and guarantee a precise lightening of the workload and the shift of its attention towards proceedings of constitutional value, that include questions, that are part of the content of the CFREU. Such a practice entails the devaluation of the CFREU itself as well as provisions, that are the object of an excessive load of interpretative questions, that require a certain degree of evaluation by the judge in the exercise of the related tasks provided for by Art. 94 of the procedural regulation of the Court. Of course, the risk is high towards a negative fallout in terms of greater organizational efforts in the management of appeals as well as the quality of issued judgments.[49] These are scenarios, that have an abstract basis to subjects, that influence meta-legal factors based on a general relationship of trust between jurisdictional bodies, that involve dialogue between courts. A dialogue that remains guided by the principle of loyal cooperation.

The operating mechanisms, that concern the reformed preliminary ruling procedure, do not raise further reflections on its precise impact and suitability, that pursues declared objectives. The modification of the text of the regulation seems suitable within a framework with significant problems. The reference

to the preliminary ruling of validity and the doubt of the examination of this question at the CJEU is sufficient in the need for screening and control of legitimacy of an act related to primary law provisions. Thus, the problem of knowledge of questions, that fall within the perimeter of established matters and interpretative questions related to the provisions of the CFREU, arises.

Art. 50 ter, par. 2 of the Statute excludes the reference to primary law provisions and of the CFREU, which are part of a context of preliminary reference for interpretation and validity, that automatically determine the knowledge at a high level. This is expressed by the European Parliament, which observes the interpretation of secondary law, occurring with higher-ranking provisions, that must be interpreted by the court.[50] The scrutiny of the legitimacy of acts relating to specific matters remains with the court as well as in cases that lead to the relationship of provisions of a primary nature. This profile of the knowledge of the CJEU activates the request to the judge a quo, that is devoid of the exclusive character, which partially exits from the precise perimeter of matters, that raise interpretative questions to primary law and to questions independent of the interpretation of higher-ranking rules.

Even partial appeals in material sectors are different from Art. 50ter, par. 1 of the Statute. The interpretation of the division of competence puts and shifts the meaning of its attribution to the independence, that raises a regulatory context that falls within the perimeter of established matters. A perimeter that includes a horizontal character to the relationship of independent questions and questions of principle that imply the coherence and uniqueness of the law of the Union according to Art. 256, par. 3, lett. 2 and 3 (Kellerbauer et al., 2024).[51]

In this context, the new Art. 93a of the CJEU Rules of Procedure seeks to regulate procedural profiles in a guichet unique-one-stop shop, that refer to and respect the provisions of the Statute. The report of the European Parliament links the requirement of independence to situations, where requests for preliminary rulings arise questions of an autonomous nature of interpretation to higher standards "(...) questions which are not intended to serve as a guide for the interpretation of secondary law necessary for the decision of the main proceedings (...)".[52] The parliamentary instance states that: "(...) questions are by their nature horizontal and therefore, pursuant to Art. 256, paragraph 3, TFEU (Kellerbauer et al., 2024), they should not fall within the jurisdiction of the General Court (...)".[53] This is a statement that integrates and guarantees coherence, with the relative right/duty of the CFREU, to provide the national judge with the scope of the procedure, pursuant to Art. 267 TFEU (Kellerbauer et al., 2024) as well as the elements that interpret the dispute, that has been invested in a useful and definitive way. These are questions

that are not intended to go beyond the interpretative parameter of a context with a general, horizontal scope, that resolves questions of principle having a prodromal character, that respects the solution of interpretative doubts and the legitimacy, that is connected with the object of referral, which respects other cases, in this regard.

The reform process proposes a distinction between questions of abstract interpretation, which is understood as determination of the meaning of legal provisions, in opposition of course to the related questions, which are presented as factual interpretation understood as "(…) facts come within the scope of the meaning of legal provisions (...)".[54] This is an approach, which remains within the spirit of knowledge of the CFREU. It substantially integrates the decisions of principle, which affect the unity and coherence of the law of the Union, according to Art. 256, par. 3, lett. 2 and 3 TFEU (Kellerbauer et al., 2024). The relationship with the notion of exclusivity of the preliminary questions, the functional parameters and the activation of the referral and re-examination of the question before the court "(…) reaches relatively outside one of the specic areas need[s] to be equated to a risk of affecting the unity or consistency of EU law (…)" (Iglesias Sánchez, 2023; Sarmiento, 2023). This is a boundary, i.e. the margins of overlap between notions based on Art. 50 ter, par. 2 of the Statute and Art. 256, par. 3, lett. 2 and 3 TFEU (Kellerbauer et al., 2024) specified by the CJEU and from the Tribunal stating that the CJEU in the reform proposal the question is exclusive on the matters provided for by Art. 50ter, par. 1 of the Statute with automatic mode and is transferred to the Court excluding the relevance of the cause, as well as the submitted questions.

The issue seems to be resolved not only by the CJEU but also by the Tribunal. The court has more time than the panels to exercise the functions of the non-stop shop, as a body that is not exclusively responsible for the choice of obtaining the relevant knowledge at the CJEU.

Respect for fundamental rights and fair treatment, such as pre-constitution by law, certainty, transparency of decisions at the time of competence, define the standard of preliminary questions as a stage, which proceeds to the jurisdictional requests. The procedural profile of the questions, that arise questions to the national principle relating to the devolved matters and especially in customs matters, is a problematic issue, that has been resolved ex ante, through a delimitation containing the matters affirmed to the knowledge of the court, leaving within this perimeter questions, that include legal profiles of wide scope. The doubt that arises has to do with the competence to decide on the preliminary reference relating to the system of exchange of quotas on greenhouse gas emissions, which affect the discipline of sanctions according to

Art. 16 of Directive 2003/87/EC,[55] which calls for recital no. 10 of the reform regulation. This point seems very doubtful and questions arise regarding the proportionality of national punitive measures within the spirit of Art. 49, par. 3 CFREU adopted with reference to the ETS system.[56]

In the reform process it does not seem that the questions find a precise answer. The terms that lead to the balance between the fundamental needs of the division of competence are found in the Tribunal and the CJEU. The interpretation coming from the European Parliament decisively directs the fate of the CJEU as a canon of exclusivity to a precise model with parameters pre-established by the treaties to the objectives of referral in questions of the Tribunal and to a large extent to objectives of review of judgments by the CJEU. This approach offers a degree that simplifies and respects the ongoing "(…) crucial difficulties and uncertainties (…) within the reform intervention (Sarmiento, 2023). An approach full of criticisms. The interpretation hypothesized a convergence, that lives with other elements of the reform, that suggest a control mechanism as the object of a precise model regulated by Art. 50 ter, par. 2 of the Statute that is considered additional respecting those provided for by Art. 256, par. 3, lett. 2 and 3 TFEU (Kellerbauer et al., 2024). The assessment of this prejudice puts the sieve of a prejudice that unites and is consistent with the law of the Union. Such an assessment is reserved by the court, excluding, therefore, the horizontal character of questions that concern the independence of interpretation according to the precision model.

This is a discipline, which according to Art. 207 of the regulation of the tribunal, provides for procedural paths of referral of preliminary questions from the tribunal to the CJEU as well as the function of different circumstances that can be justified. This provision distinguishes the emergence of a cause of incompetence of ex Art. 54, par. 2 of the Statute "(...) in the event that pending judgment questions of interpretation of primary law arise (...)".[57] The referral determines in fact the cause, that requires a decision at the beginning, which uniquely compromises the coherence of the law of the Union, which provides for the referral, that proceeds to the judging panel according to the plenary conference based on Art. 42 of the regulation of procedure of the tribunal. Affirming and adding the element that lists the questions within the transfer of internal competence to the sections of the tribunal derives from Art. 28, par. 1 of the regulation of procedure of the tribunal, as a rule of referral to the intermediate section of nine judges and when difficulties in law or the importance of the case or particular circumstances require it.

In contrast, the absence of impediments, which are explicit in places of the primary legislation adopting the interpretative solution within the approach followed by the European Parliament and the CJEU, extend the notion of horizontal nature to independent questions.[58] This model of uniqueness and precision follows the ex Art. 50 ter, par. 2 of the Statute and Art. 83bis of the regulation of the procedure of the CJEU. This approach seems to coincide with what is supported by the CJEU within the reform proposal. The distinction of typologies in question of screening of the principle offers in a particular way secondary suggestions regarding what will happen to the new discipline of the regime.[59]

A connection with Art. 47, par. 2 CFREU is established as an unreasonable application of the criteria, that direct different procedures in the matter of distribution and competence according to the doubt, that arises before the CJEU and/or before the Court to a plan that falls negatively on the duration of the process, when the profiles of compromise for the unity and coherence of the law of the Union seems to emerge in the seat of the single and precise model of the jurisdiction of the Court. This is a scenario in which the cause that circulates with a mandatory manner before the court determines a lengthened path of procedural times according to Art. 114bis of the regulation of the procedure of the CJEU, which reserves a fast treatment to requests for preliminary rulings, which refers to the Tribunal that this is also the basis of the referral.

This is a coherent orientation, that focuses on the reform and procedural precautions, that limit the assertion of the prejudicial jurisdiction with a potential and negative way on the objective of workloads before the CJEU and on profiles of autonomy of the same court. It is a fundamental role that considers the motivations that are extended by the judges when they exist from their own competence and in the name of the principle of transparency, that is valued the right of access to documents as well as to jurisdictional proceedings, that affirm the reform, that makes public and knowable the arguments of the costs for the parties, as well as the attribution of cognition.[60]

V. CONCLUDING REMARKS

From the previous paragraphs what immediately comes to mind is that we must look at the past to lay the foundations of imagination for the future and above all the mistakes made to be able to fix them. Reforms are always welcome if they concern the amendments, that are part of the Statute of the CJEU and the rules of procedure of the CJEU and of the court that with necessary manner awaits the effective implementation of the new discipline.

This is an application that does not exclude the interpretative reference, that constitutes a system of fundamental rights of the Union, which concerns principles, needs relevant to the jurisdictional activity of the CJEU. Activities that require confirmation through the regulation of reform of the Statute. We have seen the obligation of interpretation in accordance with the fundamental principles linked to the nature of the act of revision that delegates and implements the reform, which derives the same voluntas legislatoris within the regulation of the reform.

The connection of law requires effective jurisdictional protection and good administration of justice, which constitutes the fundamental interpretative canon oriented to the application of the discipline of the division of preliminary jurisdiction between the Tribunal and CJEU. This is a discipline that guarantees a balance between needs that arise from the reform intervention. A reform that has taken into account the reasonable procedural duration according to ex Art. 267 TFEU, which follows a quantitative simplification of the workload at the CJEU. It coexists with the need for predetermination within the terms of certainty, of the criteria for the division of jurisdiction between different, autonomous jurisdictional instances of the Union. The safeguard of the need to judge independently remains central, as it seems in the eyes of the parties involved in preliminary proceedings. The conformation of this balance sheet finds space in the application stage within the unique-one-stop shop guichet, which derives from large falls in the same role, taking place as a keystone within the system of jurisdictional protection of the Union between the function of the mechanism of dialogue between courts, as a guarantee of the effectiveness and uniformity of the law of the Union and as a tool for individuals, who value their rights.

The reform regulation appears to be oriented towards a guarantee of needs with reference to an ex ante interpretation in the precise matters, that are the object of competence with a non-perfect and coherent way for the substantial and individual areas of ex Art. 50 ter of the Statute. The ex post counter mechanisms, within the profile of exclusivity of the preliminary question, that evokes Art. 50 ter of the Statute, raises some doubts regarding the effective participation of the criteria of competence, within the principle of independence and impartiality of the judge. Within this context, the application of a new discipline, that can assess, as the CJEU, uses the open discretionary space based on Art. 50 ter, letter 2 of the Statute. It also ensures the control and investigations of any horizontal profiles of the preliminary questions, that do not constitute a subterfuge in themselves causes and in logic of the relevance and importance of the questions, which are posed in a special way to the

questions, which arise questions relating to the internal principle and in the matters stated.

This measure gives the CJEU jurisdiction over horizontal issues based on ex Art. 50 ter, par. 2 of the Statute, which change through the lines of argumentation in relation to the function of the review judge according to the decisions of the court of former Art. 62 of the Statute. Within this context, the compromise of the unity and coherence of Union law, as a legal error, falls on the application of the case law of the CJEU in a constant manner.[61] A case law practice, which finds application in the rules or legal principles, which are part of the position. It is also relevant in the legal system of the Union and in principles, which concern fundamental rights in the jurisdictional sphere,[62] as well as the rules, which concern the distribution of jurisdiction between competent bodies, within the jurisdictional system of the CJEU in application of the right to a natural judge which is pre-established by law.[63] And/or a judge, who is attentive to the legal principle, applies within the scope of the instance's stated jurisdiction, the object of review, that is precisely the final decision.[64]

These are notions, that are developed in a context without a framework, in a dogmatic nature that is part of the existence of a legal error, which seeks to put the serious risk for the order of the Union in the stage of re-examination. It detects once again a trend, which overlaps the horizontal planes, i.e. interpretative questions within Art. 50 ter, letter 2 of the Statute and the notions of compromise of coherence to the law and unity of the Union. It is not a full and consolidated trend that considers a "collapse" of the court in the public function at least in cases that the CJEU itself demonstrates to be different and with greater respect for the prerogatives of other institutional connections of the CJEU within the areas of knowledge that are conferred. One of these has to do with the new principle of applicable law. With an exclusive way in the sector of its own competence and in the CJEU has affirmed the jurisprudential evolution achieved with a non-integrated way in itself, as a compromise of the unity and coherence of the law of the Union.[65]

The application practice effectively illuminates the distinction of the overlap between the issues falling within Art. 256, par. 3, lett. 2 and 3 TFEU (Kellerbauer et al., 2024). An article that refers in the case that the court is disposed by the plenary conference. From the point of view of a choice of the guichet unique-one-stop shop, the jurisprudential indices operate to a necessary arrangement the adjustments with relation to the contexts of operation of the institutes under examination as well as to issues that lead to the basis of Art. 256, par. 3, lett. 2 and 3 TFEU (Kellerbauer et al., 2024). The indices of compromise, according to the coherence and unity of the Union,

are part of the review relating to the referral. The judgment affirms the legal principle, which is suitable to constitute a relative precedent for future causes. The principle of law coming from the CJEU in the case of referral. A re-examination is applied in the case we note erga omnes effects. As regards the re-examination with exceptional manner, the decisions of the tribunal are final since they await a ruling relating to the proceedings before the national judge, who suspends it.

From a general point of view, a fundamental choice is made by the CJEU regarding the admissibility of the scrutiny of profiles of compromise of the law of the Union. In the absence of the referral, they ask for the re-examination of decisions of the court. This is a choice not without shortcomings, such as the maintenance of the control profiles that are translated through a weakening of deflationary effects of the reform and in terms of distributing workloads.

The interpretative and application indications formulated by the CJEU delimit the possible choices of referral in function of indices, which are developed at a high and superior instance. The space of autonomy is affirmed, highlighting a dialogue with the CJEU, through extended and combination reasons, in the cases of referral decisions that are formulated by the plenary conference, as a weight counted within the internal dynamics of the jurisdiction. It is foreseeable that the decisions in the sector of competence, qualified to the provision that imposes the publication, highlight an internal comparison with the CJEU. A comparison of a useful nature within the perspective of a greater certainty, that is the distribution of knowledge and a better balance between the needs clarifying the contours of the notions under discussion.

Overall, departing from the orientation taken by the Tribunal and the CJEU, it is logical that the relative path of the arguments is in any case compared with interpretative parameters and set within the system of guidelines for implementation, according to Art. 281, par. 2 TFEU (Kellerbauer et al., 2024).

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Notes

1 Press release of European Council (7 December 2023): Reform of the Statute of the Court of Justice: Council and Parliament negotiators reach provisional agreement: https://www.consilium.europa.eu/en/press/press-releases/2023/12/07/reform-of-the-statute-of-the-court-of-justice-council-and-parliament-negotiators-reach-provisional-agreement/; Council document of 6 March 2024, PE-CONS 85/23: https://data.consilium.europa.eu/doc/document/PE-85-2023-INIT/en/pdf; and Council document 8001/24 of 19 March 2024: https://data.consilium.europa.eu/doc/document/ST-8001-2024-INIT/en/pdf

2 The Council was based on ex art. 253, lett. 6 TFEU and 254, lett. 5 TFEU of the first documents with n. 7225/24 of 1st March 2024 (CJEU) and n. 7226/24 (Tribunal). Press release of the Court n. 126/24 of 30 August 2024.

3 Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, PE/85/2023/REV/2, *OJ L, 2024/2019, 12.8.2024*: https://eur-lex.europa.eu/eli/reg/2024/2019/oj/eng

4 See Practice Rules for the implementation of the Rules of Procedure of the General Court [2024/2097], *OJ L, 2024/2097*, *12.8.2024. Decision of the General Court of 10 July 2024 on the lodging and service of procedural documents by means of e-Curia [2024/2096], OJ L, 2024/2096, 12.8.2024*.

5 CJEU, C-370/12, T. Pringle v. Government of Ireland and others of 27 November 2012, ECLI:EU:C:2013:756, published in electronic Reports of cases, par. 34-37.

6 CJEU, C-112/00, Schmidberger of 12 June 2003, ECLI:EU:C:2003:333, I-05659, par. 57 and 58.

7 CJEU, C-105/14 Ivo Taricco and others of 8 September 2015, ECLI:EU:C:2015:555, published in the electronic Reports of the cases, parr. 54-57. C-42/17, M.A.S. and M.B. of 5 December 2017, ECLI:EU:C:2017:936, published in the electronic reports of the cases, par. 52.

8 CJEU, C-72/15, Rosneft of 28 March 2017, ECLI:EU:C:2017:236, published in the electronic Reports of the cases, par. 74. C-583/11 P, Inuit Tapiriit Kanatami and others v. European Parliament and Council of European Union of 3 October 2013, ECLI:EU:C:2013:625, published in the electronic reports of the cases, par. 51.

9 Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, *OJ L 341, 24.12.2015, p. 14–17. Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 17 April 2019 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, PE/1/2019/REV/1, OJ L 111, 25.4.2019, p. 1–3*.

10 CJEU, C-69/89, Nakajima v. Council of 7 May 1991, ECLI:EU:C:1991:433, I-02069, parr. 29-32. C-21/14 P, Commission v. Rusal Armenal of 16 July 2015, ECLI:EU:C:2015:494, published in the electronic Reports of the cases, 39-41 and 45.

11 Recital nn. 2, 13, 22 and 23 of the regulation of reform.

12 Recital nn. 1, 2, 14 and 21.

13 Recital nn. 6, 8, 11 and 15.

14 Recital nn. 4 and 15.

15 Council document n. 15936/22 of 2 December 2022.

16 CJEU, C-431/22, Scuola europea di Varese of 21 December 2023, ECLI:EU:C:2023:1021, published in the electronic Reports of the cases, par. 93.

17 See recital nn. 25 and 26 of the regulation of reform.

18 See recital nn. 1 and 2 of the regulation of reform. See also document n. . A9-0278/2023, p. 21 of 27 November 2023 which amended Protocol No 3 on the Statute of the Court of Justice of the European Union.

19 CJEU, C-270/99 P, Z v. Parliament of 27 November 2001, ECLI:EU:C:2001:639, I-09197, par. 24.

20 See art. 23, parr. 2 and 3 of the statute; art. 96 of the regulation of procedure of the CJEU.

21 Recital nn. 13 and 14 and art. 93 bis.

22 Recital rt. 93 bis, parr. 1-3 and art. 114 bis.

23 See art. 23 bis of the statute and artt. 107 and following of the regulation of the proceudre of the CJEU.

24 CJEU, C-603/13 P, Galp Energía and others v. Commission of 21 January 2016, ECLI:EU:C:2016:38, published in the electronic Reports of the cases, parr. 55-58.

25 CJEU, C-497/20, Randstad Italia of 21 December 2021, ECLI:EU:C:2021:1047, published in the electronic Reports of the cases, par. 69. joined cases C-363/21 and C-364/21, Ferrovienord of 13 July 2023, ECLI:EU:C:2023:563, published in the electronic Reports of the cases,

26 CJEU, C-64/16, Associação Sindical dos Juízes Portugueses of 27 February 2018, ECLI:EU:C:2018:117 published in the electronic Reports of the cases, parr. 34-35 and 41. C-718/21, Krajowa Rada Sądownictwa of 21 Decembcr 2023, ECLI:EU:C:2023:1015, published in the electronic Reports of the cases, parr. 30, 44 and 58.

27 CJEU, joined cases C#562/21 PPU and C#563/21 PPU, X and Y of 22 February 2022, ECLI:EU:C:2022:100, published in the electronic Reports of the cases, parr. 55-58. C-487/19, W. Ż. () and des affaires publiques de la Cour suprême-nomination), ECLI:EU:C:2021:798, published in the electronic Reports of the cases parr. 124-125. C-216/18 PPU, LM of 25 July 2018, ECLI:EU:C:2018:586, published in the electronic Reports of the cases

28 CJEU, C-216/18 PPU, LM of 25 July 2018, op. cit., parr. 62-67.

29 See the opinion of the Commission AFCO, A9-0278/2023: REPORT on the draft regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union 27.9.2023-(07307/2022-C9-0405/2022-2022/0906(COD)): h ttps://www.europarl.europa.eu/doceo/document/A-9-2023-0278_EN.html

30 CJEU, C-127/13 P, Strack v. Commission of 2 October 2014, ECLI:EU:C:2014:2250, published in the electronic Reports of the cases, parr. 48-55.

31 CJEU, C-417/14 RX-II, Missir Mamachi di Lusignano v. Commission of 10 September 2015, ECLI:EU:C:2015:588, published in the electronic Reports of the cases, parr. 56-57. order C-517/03, Commission v. IAMA Consulting of 27 May 2004, ECLI:EU:C:2004:326, not published, par. 15.

32 Recital n. 13 of the regulation.

33 See art. 50, par. 4 of the statute which is affirmed that: "(...) at the request of a Member State or a Union institution which is a party to the proceedings (…)"

34 See Council document n. 7296/24 of 8 March 2024, p. 2.

35 Art. 3, parr. 1 and 2 of the Reg. 2015/2422, op. cit.

36 Document n. 7225/24, op. cit., p. 4.

37 COMMISSION OPINION on the draft amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union, presented by the Court of Justice on 30 November 2022, COM/2023/135 final: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0135

38 See the report of the commission AFCO, A9-0278/2023, op. cit., p. 22.

39 See recital no. 8) of the regulation of reform which includes as a safety net the risk relating to the divergences in jurisprudence which define the competence between CJEU and tribunal.

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

41 See Title VIII of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, *OJ L 347, 11.12.2006, p. 1–118.* CJEU, C-454/12, Pro Med Logistik and Pongratz of 27 February 2014, ECLI:EU:C:2014:111, published in the electronic Reports of the cases.

42 See artt. 18-21, 42 and 43-45 of the Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), *OJ L 269, 10.10.2013, p. 1–101*. CJEU, C-153/10, Sony Supply Chain Solutions (Europe) of 7 April 2011, ECLI:EU:C:2011:224, I-02775. C-752/21, JP of 9 March 2023, ECLI:EU:C:2023:179, published in the electronic Reports of the cases. C-770/22, OSTP Italy of 11 April 2024, ECLI:EU:C:2024:229, published in the electronic Reports of the cases.

43 Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast), ST/14107/2019/INIT, *OJ L 58, 27.2.2020, p. 4–42*.

44 See document n. 7225/24, op. cit., p. 6: "(…) matters concerning, at the time of adoption of this Regulation (…) the determination of the taxable amount for value added tax or the conditions for exemption from payment of that tax (…)".

45 Recital nn. 6 and 8.

46 See document n. 7225/24, op. cit., p. 14 and art. 25 of the rules of procedure of the CJEU.

47 CJEU, C-127/13 P, Strack v. Commission of 2 October 2014, op. cit., parr. 53-54.

48 CJEU, joined cases C-542/18 RX-II and C-543/18 RX-II, Simpson v. Council of 26 March 2020, ECLI:EU:C:2020:232 published in the electronic Reports of the cases, par. 75.

49 CJEU, C-53/23, Forumul Judecătorilor din România (Associations de magistrats), of 8 May 2024, ECLI:EU:C:2024:388, published in the electronic Reports of the cases.

50 See Document A9-0278/2023, op. cit., p. 19.

51 See art. 50 ter, par. 2 of the statute and art. 93 bis of the rules of the procedure of the CJEU. Recitasl n. 13) of the statute.

52 See Document A9-0278/2023, op. cit., p. 13.

53 See Document A9-0278/2023, op. cit., p. 19.

54 CJEU, C-617/10, Åkerberg Fransson of 26 February 2013, ECLI:EU:C:2013:10, published in electronic reports of the cases, par. 19ss.

55 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance), *OJ L 275, 25.10.2003, p. 32–46*.

56 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, op. cit., which sanctions are foreseen in an effective, proportionate and dissuasive manner. See also in argument: CJEU, C#203/12, Billerud Karlsborg and Billerud Skärblacka of 17 October 2013, ECLI:EU:C:2013:664, published in the electronic Reports of the cases, parr. 33-42. order C-113/19, Luxaviation of 26 March 2020, ECLI:EU:C:2020:228, published in the electronic Reports of the cases, parr. 35-42.

57 See Document n. 7226/24, cit., p. 34.

58 See recital n. 13 of the regulation of reform.

59 "(…) cases requiring a decision of principle which normally fall within the jurisdiction of the Grand Chamber should be referred to the Court pursuant to the second subparagraph of Article 256(3) TFEU and, on the other hand (…) could be brought to rule on preliminary rulings, a circumstance which is liable to weaken the guarantee provided for in the first sentence of Article 50b(3) of the Statute (…)". (ibid., p. 7).

60 See art. 3 of the rules of procedure after reform. art. 23, par. 3 of the statute and art. 96, par. 3 of the rules of procedure of the CJEU and art. 202 of the rules of procedure of Tribunal

61 CJEU, C-579/12 RX-II, Commission v. Strack of 19 September 2013, ECLI:EU:C:2013:570, published in the electronic Reports of the cases, par. 50. C-334/12 RX-II, Arangio Jaramillo/BEI of 28 February 2012, ECLI:EU:C:2013:134, published in the electronic Reports of the cases, par. 50; C-197/09 RX-II, M/EMEA of 17 December 2009, ECLI:EU:C:2009:804, I-12033, par. 63.

62 CJEU, C-334/12 RX-II, Arangio Jaramillo/BEI of 28 February 2012, op. cit., parr. 47 and 53.

63 CJEU, C-417/14 RX-II, Missir Mamachi di Lusignano v. Commission of 10 September 2015, op. cit., parr. 55-57.

64 CJEU, C-334/12 RX-II, Arangio Jaramillo/BEI of 28 February 2012, op. cit., par. 52. C-197/09 RX-II, M/EMEA of 17 December 2009, op. cit., par. 64.

65 CJEU, C-17/11 RX, Petrilli v. Commission of 8 February 2011, ECLI:EU:C:2011:119 I-00299, par. 4.