

A. Questions on general knowledge about functioning of preliminary reference procedure

1. How do you consider the knowledge that judges in your country have about the preliminary rulings procedures?

The judges in my country have vast knowledge about the preliminary rulings procedures. However, when it comes to environmental protection then there are not many preliminary questions posed by Polish courts. Nevertheless, judges become familiar with judgments of CJEU connected with the cases they sit in.

2. Have you benefited from training courses either at national level or within the programme offered by DG Environment or ERA (Academy of European Law) about CJEU environmental case law and preliminary rulings? What is your estimation of the level of knowledge and specialisation of judges in (European) environmental law?

I participated in training courses offered by ERA about CJEU environmental case law. I consider the knowledge of EU judges about the environmental protection to be very high. Moreover, these courses created a possibility to meet judges from whole EU and to discuss topics connected with environmental protection, to learn about other European court systems.

3. Does your country have statistics showing in which subject-areas of EU environmental law are the majority of preliminary rulings requests? (If possible, please provide the link to such statistics.)

Could you provide a short explanation for the fact that one or more areas of EU environmental law generate more preliminary questions than others? Does this have to do with the quality / clarity of the legislation or a specific focus on individual areas due to national peculiarities?

There are no separate statistics showing in which subject-areas of EU environmental law are the majority of preliminary ruling requests. However, the Supreme Administrative Court **keeps statistics** on all questions (regarding all areas of administrative law) posed by administrative courts, i.e., regional administrative courts and the Supreme Administrative Court.

When it comes to the environmental law, it should be stated that only one preliminary ruling request was submitted.

4. Does the judiciary in your country engage in the practice of interpreting EU environmental law without asking for a preliminary ruling? (Does this practice concerns also courts of last instance?)

When we face a difficulty with the interpretation of EU environmental law and there are such cases, we do not engage in the practice of asking for a preliminary ruling only when we have a possibility to use other judgements of CJEU court in similar cases. This practice concerns also the court of last instance.

5. Does you country have a system to control whether national courts request preliminary references? (If yes, please include a link to the system)

In Poland there is no system to control whether national courts request preliminary references, but the Supreme Administrative Court keeps statistics c on all questions (regarding all areas of administrative law) posed by administrative courts, i.e., regional administrative courts and the Supreme Administrative Court. Here is link to the system: nsa.gov.pl/pytanie-prejudycjalne-wsa-i-nsa.php.

6. Which are the fundamental/procedural rights of citizens to ask a national court to request a preliminary reference to the CJEU?

Yes, citizens can ask a national court to request a preliminary reference to the CJEU and if the court decides that it is essential in order to solve this case then the court requests a preliminary reference to CJEU.

B. Questions on examples of follow-up judgments after CJEU preliminary rulings in environmental matters in the last 10 years (2011-2021)

7. Have you judged in (a) environmental case(s) in which you received an answer to a preliminary question that *you* had posed to the Court (i.e. in a “follow-up case”)? If yes, could you provide the link to the judgment(s) or a copy thereof?

No, I have not judged in such cases.

8. Did you sit in other environmental follow-up cases? If yes, could you provide the link to the follow-up judgment(s) or a copy thereof?

No I did not sit in other such cases.

9. Are you familiar with environmental follow-up cases in your *country* other than those in which you were sitting as a judge? If yes, could you provide the link to (some of) the judgments or a copy thereof?

Yes, I am familiar with environment follow-up cases in my country. Here is the link: nsa.gov.pl/pytanie-prejudycjalne-wsa-i-nsa.php.

C. Questions on the answers provided by the Court of Justice

10. Did the Court of Justice consider the question(s) *admissible* and did the Court *answer* it/them?

The Court of Justice considered the questions of a regional administrative court in Kielce admissible.

11. Did the Court of Justice *rephrase* the question(s) posed? If yes, do you consider the rephrased question(s) a *proper* representation of the question(s) originally asked?

Yes, the Court rephrased the questions posed. Yes, it did it properly - it was a proper representation of the questions originally asked.

12. Do you consider the answer given by the Court of Justice to be a legally correct answer to the question posed?

Yes, the answers given by the Court of Justice were legally correct.

13. Did the Court of Justice formulate the answer by setting out *criteria* to be applied by the national court or did the Court of Justice provide a binary answer, e.g. an unconditional *affirmative/negative* answer?

One answer set out criteria to be applied by the national court and the other answers were binary.

14. Did the answer given by the Court of Justice *enable* to solve the national case and did the answer make it *clear* how it had to be applied? Please provide a short explanation for your answer.

These answers enabled to solve this case and they were clear because in two examples these were binary answers (yes/no) and in the other example - criteria left to be evaluated by the national court. These criteria were formulated in a clear manner and their evaluation was supposed to be done based on national law.

D. Questions on the follow-up case

15. Was it *possible* for the national court to render a judgment after it received the answer from the Court of Justice, or did (new) elements arise that complicated this, *such as* the withdrawal of the case, the need for further clarifications from the national Constitutional Court or the Court of Justice, constitutional or factual barriers, or the political sensitivity of the subject matter?

After receiving the answer from the Court of Justice, the national court rendered a judgment.

16. Do you consider the follow-up judgment a case of *cooperative* or *uncooperative* administration of justice? With cooperative administration we refer to a follow-up judgment that complies with the contents of the answer received from the Court of Justice. When this is not (fully) the case we refer to uncooperative administration of justice.

I consider the follow-up judgement a case of cooperative administration of justice.

17. Do you (still) *agree* with the manner in which the follow-up judgment applied the preliminary ruling?

Yes, I agree with the manner.

E. Questions on the environmental law background of the disputes

18. Did the national environmental legal framework applicable to the follow-up judgment represented a one-on-one transposition of the EU law framework at stake? If no, in which manner (a brief explanation will suffice)? Please provide a link to the relevant regulatory framework.

The national environment legal framework represented a one-to-one transposition of the EU law framework.

19. In your subjective opinion, do you consider that environmental law in your country has its own *identity* or do you see it as a mere representation/implementation? of EU environmental law? A mixture of the two is possible, of course.

In my opinion, it is a mixture of its own identity and implementation of EU environmental law.

20. Is there any *remedy/monitoring* in case the judges do not ask the CJEU (ruling as last instance) or on how they follow up on preliminary rulings of CJEU (possibly also in other cases, not only in their own, since clarifications given by CJEU are valid in all similar cases)? Could you provide a link to any such regime, if present?

There are no specific remedies in case the judges do not ask the CJEU but the judges should keep in mind that it may be considered a breach of law and result in the possibility of a disciplinary ruling.

F. Case

Providing a short answer to this question, taking into consideration the judgement of the Court of Justice, in my opinion, assuming that the withdrawn decision about “low-emission zone” is a local act of law, I would decide to withdraw that decision. In this way, “low-emission zone” would come back. It should be stressed that the main idea of the Directive 2008/50 is not the sole duty to establish the Air Quality Plan therefore, this action is only illusory and is not enough to secure the protection of air quality standards. In reference to that, the Air Quality

Plan would be ineffective and would not achieve the Directive's goal. Applied here is the act of January 11, 2018 on "Electromobility and Alternative Fuels", (Dz.U. z 2021 r. poz. 110). [Journal of Laws of 2021, item 110] and in particular art 39-40. Useful would be also the act on Environmental Protection Law from April 27, 2001 (Dz.U. 2020, 12-19) [Journal of Laws of 2020, item 12-19], in particular art. 80-96a and art. 6. Assuming that this decision would be a local act of law then Polish law would allow to withdraw it. In my opinion, this judgement would be according to the Court of Justice. It is worth considering the principle of proportionality, i.e. take into account the case of higher importance of the protected goods, which are the life and health of people than the limitations imposed on Diesel vehicle owners.

G. Conclusion

In my opinion, the preliminary ruling procedures support national judges to achieve uniform application of EU environmental law and contribute to effective environmental justice on the ground. I wholeheartedly agree with it.