Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union

"Asylum and Immigration Law: the National Judge between National and European Standards"

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Procedural aspects in the matter of preliminary questions

(according to Estonian law).

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As Estonian Supreme Court already mentioned in our answers to the questionnaire prepared for this seminar, Estonia law in force does not provide for any special provisions regarding the procedure, substance or form of applications for questions referred for a preliminary ruling.

Consequently there are no special rules for asylum or immigration cases.

So, Estonian courts have to apply the general provisions of administrative court procedure and to follow our current case law.

Parties may submit preliminary questions in any court instance. They may submit the applications in the same document as appeal to the first instance court or appellate court or the appeal in cassation or they may submit a separate application.

According to the general principle of the Code of Administrative Court Procedure, there are the time limits for parties. The parties can file different kinds of applications until the beginning of judicial dispute in a court hearing or, when the case is decided by written proceeding, the parties can submit applications until the term for submission of additional applications and evidence has expired.

Consequently the parties may also submit the oral application during the oral hearing. In the administrative court of first instance and in the appellate court the minutes shall be taken during the hearing, but not in Supreme Court. Oral application on the hearing of Supreme Court is also allowed, in principle, but they are not usual. These applications shell be fixed in the judgement of the Supreme Court.

The above mentioned regulation and practice is applicable also in the situation when the parties desire to submit the application to ask questions referred for preliminary ruling.

So, for the parties there are general time limits. But the court can also ask a preliminary question at its own initiative.

According to the current legislation on administrative court procedure and the relevant case-law, the court is obliged to solve the submitted application in the frames of reasoned judgement or by a separate ruling. Consequently: if the court decides to dismiss the application and not to ask the preliminary questions, the reasons have to be given.

Estonian Supreme Court, for example has reasoned the dismissal of the application explaining that in similar matter there is already a judgment (of the Supreme Court) in force basing on the relevant case law of the European Court (case No 3-3-1-86-07). Another example from the field of immigration law (case No 3-3-1-76-07): the Supreme Court dismissing the application to initiate the preliminary ruling proceeding explained that the legal provisions of European Law indicated in the application, are not relevant and applicable in this case.

And one more example: the Supreme Court didn't pay attention on the application. This application was submitted in the case where the appeal was filed with the Supreme Court only against the ruling of appellate court in procedural question and the application of substantive law was not under discussion in this stage of the procedure.

In Estonia a new administrative court procedure code is before the parliament just now. The planned regulation doesn't include remarkable changes concerning the initiating of the preliminary ruling procedure in Estonian administrative court. It's important to point out that the draft law provides a clear legal basis, that when the request for preliminary ruling has been forwarded to the Court of Justice of the European Union, Estonian court shall to suspend the proceeding in national court until the judgment of the Court of Justice.