Netherlands Organisation for Scientific Research

SteR | Research Centre for State and Law
Radboud University

CALL FOR PAPERS

IT TAKES TWO TO TANGO. THE PRELIMINARY REFERENCE DANCE BETWEEN THE COURT OF JUSTICE OF THE EUROPEAN UNION AND NATIONAL COURTS

Friday 14 June 2019, Nijmegen

There has been much (quantitative) research that tries to explain why courts in some Member States refer more than courts in other Member States. The aim of such studies is to identify aggregate-level factors, such as the level of GDP, population size or the majoritarian / constitutional tradition. Yet, still little is known of the motives of individual judges and the considerations that play a role in the decision making in concrete cases. The same is true about the satisfaction of judges with the requested answers from Luxembourg. There are some older studies suggesting a high implementation rate. Nonetheless, several constitutional and supreme courts have openly rebelled against or showed their criticism about the Court of Justice of the European Union (CJEU). The recent years were marked by some high-profile cases, including the Danish *Ajos* case, the Italian *Taricco* saga as well as the German *Gauweiler* controversy, that brought some problematic features of the procedure to the surface. The question is whether often anecdotal allegations about the improper functioning of the preliminary reference procedure are real. Are these three high profile cases merely the tip of the iceberg, or the exceptions that prove the rule that the preliminary ruling procedure is generally working well? One might also wonder what (high) implementation rates tell us about the "true" ideas of national court judges about their interaction with the CJEU.

If the procedure indeed functions sub-optimally this is crucial to know, since the preliminary ruling procedure is a cornerstone of the EU legal system and has enabled the CJEU to be one of the most important drivers of the European integration. Certainly, it would mean that the effectiveness of EU law could be affected if these shortcomings were not addressed. When national courts are frequently confronted with a deficient 'dialogue' or unsatisfactory answers from the CJEU, this might discourage them to refer in future. Why would a judge refer when he or she considers the interaction with the CJEU, in the words of a Spanish judge, "a monologue"? The President of the Danish Supreme Court also pointed to such a dysfunctional/unsatisfactory relationship by stating: "If the interpretation of the European Court of Justice is taking national courts by surprise, one may fear a growing unwillingness of national courts and parties to a legal conflict to present matters before the Court of Justice." Omissions to refer could mean that breaches of EU law remain unaddressed. This could in turn have severe implications for the judicial protection of individuals, especially when it concerns asylum seekers who are generally in a vulnerable position. This is not to say, however, that more references are necessarily a good thing. Indeed, the average time taken by the CJEU to deal with references could also have negative consequences for the parties and justice more in general.

Given the identified problems and in the light of the gap in the literature, it is important to examine various questions:
- why and how do national courts use the preliminary ruling procedure and engage with the CJEU? More specifically, what are judges' (individual) motives to refer or not to refer?
- how are the requested CJEU's rulings received and implemented by national courts?
- to what extent is there a feedback relationship between the national judges' perception of their interaction with the CJEU and the national court judges' willingness to refer cases in future?

Authors are invited to submit a paper that examines (one of) these questions, or related matters dealing with the preliminary ruling procedure and the relationship between national courts and the CJEU. Particularly welcome are:

- studies comparing several EU Member States or specific fields of law;
- in-depth single country studies;
- studies using a legal-empirical research methodology, e.g. interviews or questionnaires with judges;
- quantitative studies;
- practical insights from practitioners, e.g. judges, court clerks or lawyers.

An extended abstract (400-600 words) and a CV should be submitted for review by 1 January 2019 to j.krommendijk@jur.ru.nl. The selection process will be based on the quality of the abstract, as well as its capacity to engage with other proposals. Decisions on accepted papers will be made by 20 January 2019. Authors whose contributions are accepted will be expected to submit their paper by 15 May 2019. Final papers will be circulated among the participants in advance of the conference. Each paper will be assigned a discussant and authors of accepted papers are expected to be willing to act as discussant of another paper. Although there is no commitment towards publication, conference speakers are invited to contribute to an edited volume (or a special journal issue) with a renowned publisher.

Funds are available to cover a part of the travelling and accommodation costs.

This conference forms part of the research project 'It takes two to tango. The preliminary reference dance between the Court of Justice of the European Union and national courts' (2017-2021) funded with a VENI-grant by the Netherlands Organisation for Scientific Research (NWO).