



Request for a preliminary ruling to the Court of Justice of the EU may be refused in summary terms

In today's **Chamber** judgment¹ in the case of **Baydar v. the Netherlands** (application no. 55385/14) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 (right to a fair trial) of the European Convention on Human Rights.

The case concerned a complaint by Mr Baydar about the Supreme Court's refusal, based on summary reasoning, to refer his request for a preliminary ruling to the Court of Justice of the European Union (CJEU).

In October 2011 Mr Baydar, was convicted of transporting heroin and of people trafficking. The judgment was upheld on appeal with the Supreme Court sentencing him to 34 months' imprisonment. Mr Baydar, with reference to the people-trafficking conviction, requested the referral of a question to the CJEU on the definition of the word "residence" in EU law, as applied in the national Criminal Code, but the Supreme Court refused.

The Court found in particular that in the context of accelerated procedures it was acceptable under Article 6 § 1 of the Convention for an appeal in cassation which included a request for referral to be declared inadmissible or dismissed with a summary reasoning when it was clear from the circumstances of the case that the decision was not arbitrary or otherwise manifestly unreasonable.

Principal facts

The applicant, Ilkay Baydar, was born in 1968 and lives in Apeldoorn (The Netherlands). He holds both Dutch and Turkish nationality.

In October 2011 Mr Baydar was convicted by the Arnhem Court of Appeal of transporting heroin and of people trafficking and given a sentence of 40 months' imprisonment. The Court of Appeal found established that the applicant had, for purposes of financial gain, between November 2006 and January 2007 facilitated the unauthorised residence of 20 Iraqi migrants in the Netherlands, Germany and Denmark. The judgment was upheld on appeal (in cassation), although the Supreme Court reduced the sentence to 34 months on the grounds of the excessive length of the subsequent cassation proceedings.

When it came to the people-trafficking conviction, he contended that the evidence relied on by the Court of Appeal had not proven that the Iraqi migrants had had "residence" in the Netherlands, Germany or Denmark. Instead, the evidence had showed that the Iraqi migrants were to be transported by the applicant to Denmark *via* the Netherlands and Germany, but that they had been intercepted on each occasion in Germany. The migrants' stay in the Netherlands and in Germany had only been brief and transitory, thus there was no proof of "residence" in those countries. In that regard the applicant referred to EU Law (Council Directive 2002/90/EG and Council Framework Decision 2002/946/JBZ) and requested for a referral to the CJEU for a preliminary ruling about the interpretation of "residence".

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The Supreme Court refused and dismissed the appeal in cassation, stating that – based on national law - no further reasoning was required as the grievances did not give rise to the need for a determination of legal issues in the interests of legal uniformity or legal development.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 1 August 2014.

Relying on Article 6, the applicant complained that the Supreme Court refused to refer his request to the CJEU and that it failed to provide adequate reasoning for its decision although it had a duty to do so.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena **Jäderblom** (Sweden), *President*,
 Branko **Lubarda** (Serbia),
 Helen **Keller** (Switzerland),
 Pere **Pastor Vilanova** (Andorra),
 Alena **Poláčková** (Slovakia),
 Georgios A. **Serghides** (Cyprus),
 Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 6

The Court considered that it was not contrary to Article 6 § 1 of the Convention for superior courts to dismiss a complaint by mere reference to the relevant legal provisions if the matter raised no fundamentally important legal issue, especially in the context of accelerated procedures. The Court's competence was limited to ascertaining whether the decisions of national courts were not flawed by arbitrariness or were otherwise manifestly unreasonable.

The Court agreed with the national Supreme Court's explanation that it was clear that when an appeal in cassation was dismissed, there was no need to seek a preliminary ruling as the matter did not raise a legal issue that needed to be determined.

The Court noted furthermore that the CJEU had ruled that domestic courts (within the meaning of Article 267 § 3 TFEU) were not obliged to refer a question about the interpretation of EU law raised before them if the question was not relevant, that is to say, if the answer could not have any effect on the outcome of the case.

As the Supreme Court had duly examined the grounds of the appeal on points of law by Mr Baydar and no appearance of unfairness in its proceedings was discerned by the Court, there had been no violation of Article 6 § 1 of the Convention. In particular, the Court noted that the request had been dismissed by three members of the Supreme Court with summary reasoning on the basis of national law, after having taken cognisance of the whole of the applicant's written grounds of appeal and the Advocate General's advisory opinion.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.