

ECJ: Court of Last Instance Must Justify Refusal to Refer

Thomas Wahl



News

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

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On 24 March 2026, the ECJ ruled in the *Remling* case (C-767/23) that a national court of last instance must always provide reasons for refusing to refer questions to the Court of Justice of the EU for a preliminary ruling. Even if such a court or tribunal is permitted to dismiss appeals with a summary statement of reasons, it must in any case explain specifically and concretely why one of the exceptions to the obligation to refer questions for a preliminary ruling applies.

In its **reasoning**, the ECJ calls to mind the fundamental role of the preliminary ruling procedure in general and the obligation to refer in particular for the judicial system of the European Union. An exemption from the obligation to refer exists only in the three exceptional cases set forth in the CILFIT ruling: the lack of relevance to the decision of the question of EU law raised; the existence of a decision by the Court of Justice in which the relevant provision of EU law has already been interpreted; or the existence of an “acte clair.” If courts decide against a referral, they must, taking into account the relevant factual and legal circumstances, set out concretely and specifically the reasons why one of these three exceptions would apply. A mere brief standard justification is not sufficient.

While the court of last instance may adopt the reasoning of a lower court, the lower court must, for its part, have explained why a question of EU law is not relevant to the decision, has already been clarified, or is unambiguous.

The background to the case was a legal dispute in the Netherlands in which a Moroccan family applied for a residence permit valid throughout the territory of the EU. Their appeal against the refusal of the permit was unsuccessful all the way up to the Dutch Council of State.

Overall, the ECJ’s decision in *Remling* strengthens the preliminary ruling procedure under EU law (Art. 267 TFEU). In practice, this means that the pressure on supreme courts to provide reasoning is increased, which can result in a noticeable additional burden, particularly when dealing with a high caseload.

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