

# **The Hypotheticality of a Preliminary Reference to the Court of Justice of the EU as a Viewpoint of its Inadmissibility**

## **Abstract**

This master thesis analyses the case-law of the Court of Justice of the EU (CJEU) concerning the admissibility of preliminary references. In particular, it focuses on one of the criteria of CJEU's admissibility review – inadmissibility on the grounds of hypotheticality. It argues that there are essentially two types of hypothetical questions: those that arise of contrived (hypothetical) disputes and those that are hypothetical in nature, because they require the CJEU to give an advisory opinion on a matter that is not adjudicated in the main proceedings. The two categories differ in the approach taken by the CJEU. Whereas in cases of hypothetical disputes the CJEU rejects all preliminary questions posed by the referring judge, it will only selectively declare inadmissible a single question or certain questions exceeding its jurisdiction in the latter case.

First, this contribution sets out the broader context of the functioning of the preliminary reference procedure, highlighting both the principles of the procedure and the roles of the numerous actors concerned. Subsequently, it follows the emergence of the hypothetical questions doctrine in the seminal C-104/79 *Foglia*, C-244/80 *Foglia II* and C-83/91 *Meilicke* rulings as well as its evolution throughout the following years. It shows that the subsequent case-law of the CJEU had to be adjusted to allow for generalization of the principles first set out in the mentioned landmark judgments. This account is accompanied by the various reactions of former CJEU judges, Advocates General as well as EU law theoreticians. Afterwards, selected examples of current case-law are examined in detail, especially the rulings in C-621/18 *Wightman* and joined cases C-558/18 and 563/18 *Miasto Łowicz*. Both are set in a wider context to allow to comprehend the CJEU's present-day understanding of the hypothetical questions doctrine. By way of conclusion, different views as to the necessity and contribution of the CJEU's review of admissibility on grounds of hypotheticality are discussed.

## **Key Words**

Preliminary reference procedure – inadmissibility – hypothetical question