

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

COMPOSITION

The function of the European Court of Justice (ECJ), which sits in Luxembourg, is to ensure that in the interpretation and application of the Treaty of Rome the law is observed (Article 164, Treaty of Rome).

It consists of 15 judges and is assisted by nine Advocates-General. The Advocate-General assigned to a particular case delivers an independent opinion in which he indicates the issue raised and the reasoned conclusions he has reached (Art. 166). The opinion is not binding on the court, although it will be taken into account when the ECJ is considering its decision.

The Judges and Advocates-General are chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their countries or who are jurists of recognised competence. They are appointed by the governments of the member states for a term of six years. Every three years there is a partial replacement of the Judges and Advocates-General. Re-appointment is permissible. The Judges elect the President of the ECJ from among their number for a term of three years (Art. 167).

The ECJ may sit in plenary session or in chambers of three or five judges. Decisions are made by a majority vote. Only one judgment is given, without any dissenting judgments, which is printed with the submissions of the advocate-general.

The ECJ does not have to follow the doctrine of precedent although it generally follows earlier decisions, unless, for example, the circumstances have changed.

JURISDICTION

The vast majority of cases heard by the ECJ are (a) brought by member states or by the institutions of the European Communities, or are (b) references on questions of European law sent to it by the national courts of the various Member States. It has only limited power to deal with cases brought by individual citizens.

(A) BREACH OF OBLIGATION UNDER THE TREATIES

The European Court has jurisdiction to hear complaints that a member state has not fulfilled its obligations under the treaties, to decide whether the Council of Ministers and the Commission of the European Communities have acted legally, and to decide disputes between member states about the subject-matter of the treaties (Arts. 169-76, 182). For example:

* In *Re Tachographs: EC Commission v UK* [1979] 2 CMLR 45, a complaint against the UK was upheld for failing to implement a regulation which provided for the compulsory installation of tachographs in lorries used to carry dangerous goods.

Note: such actions take place entirely in the ECJ and are of no direct concern to the English courts.

(B) REFERENCES UNDER ARTICLE 234 (formerly A 177) OF THE EC TREATY

The ECJ has jurisdiction to give **preliminary rulings** on references made to it by UK courts under Article 234 of the EC Treaty, concerning questions of Community law. Article 234 provides:

(1) The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community...;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

(2) Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

(3) Where any such question is raised in a case pending before a court or tribunal of a member state, against whose decision there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

The meaning of Article 234

Article 234 is designed to secure the uniform judicial interpretation of European Union law. The reference is not an appeal. The ECJ makes its ruling on the point of law and the case then goes back to the national court for it to apply the law to the facts of the case.

Under Art. **234(2)** there is a discretion whether or not to refer the question to the ECJ (the "court or tribunal *may* ... "). Under Art. **234(3)**, however, there is a positive duty to refer the question (the "court or tribunal *shall* ... "). In relation to the English legal system, Art. 234(3) applies to the House of Lords since, under English law (the "national law"), there is no appeal ("judicial remedy") from decisions of the House. Article **234(3)** also imposes an obligation to refer on any national court, not necessarily the highest in the land, whose decision is (or may be) final in a particular case.

Exercise of the discretion under Art. 234

Guidelines for the exercise of the discretion under Art. 177(2) were suggested by Lord Denning MR in *HP Bulmer Ltd v J Bollinger SA* [1974] 2 All ER 1226, and for Art. 177(3) by the ECJ in *CILFIT v Ministry of Health* [1982] ECR 3415. However, the ECJ recently provided an *Information Note on References by National Courts for Preliminary Rulings*. It states:

1. Any court or tribunal of a Member State may ask the ECJ to interpret a rule of Community law if it considers that that is necessary for it to give judgment in a case pending before it. Courts against

whose decisions there is no judicial remedy under national law must refer questions of interpretation arising before them to the ECJ, unless the ECJ has already ruled on the point or unless the correct application of the rule of Community law is obvious: *CILFIT v Ministry of Health* [1982] ECR 3415.

2. The ECJ has jurisdiction to rule on the validity of acts of the Community institutions. All national courts raising the question of the validity of a Community act must refer that question to the ECJ.

3. Questions referred for a preliminary ruling must concern the interpretation or validity of a provision of Community law only, since the ECJ does not have jurisdiction to interpret national law or assess its validity. It is for the referring court to apply the relevant provisions of Community law in the specific case pending before it.

4. The reference of a question(s) to the ECJ generally causes the national proceedings to be stayed until the ECJ gives its ruling, but the decision to stay proceedings is one which the national court must take in accordance with its own national law.

5. The decision making the reference and containing the question(s) referred to the ECJ will have to be translated by the ECJ's translators into the other official languages of the Community. It is therefore desirable that the decision making the reference should be drafted as clearly and precisely as possible.

6. It must contain a statement of reasons which is succinct but sufficiently complete to give the ECJ a clear understanding of the factual and legal context of the main proceedings.

7. A national court or tribunal may refer a question to the ECJ for a preliminary ruling as soon as it finds that a ruling on the point(s) of interpretation or validity is necessary to enable it to give judgment. It must be stressed, however, that it is not for the ECJ to decide issues of fact or differences of opinion as to the interpretation or application of rules of national law.

8. The decision making the reference and the relevant documents are to be sent by the national court directly to the ECJ. The ECJ will send its judgment to the national court. It would be grateful to receive word that its judgment has been applied in the national proceedings and a copy of the national court's final decision.

9. Proceedings for a preliminary ruling before the ECJ are free of charge.

This guidance has also been incorporated into the Practice Direction for the Court of Appeal, 19 April 1999.

Some references to the ECJ by the English courts:

The first reference to the ECJ by an English court was made by the High Court in *Van Duyn v Home Office* [1974] 3 All ER 178. The first case to be referred to the ECJ by the Court of Appeal was *Macarthys Ltd v Smith* [1979] 3 All ER 325. A case referred to the ECJ for a preliminary ruling by the House of Lords was *Garland v British Rail Engineering Ltd* [1982] 2 All ER 402.

COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

INTRODUCTION

Since it was set up in 1952, more than 8,600 cases have been brought before the ECJ. There were 200 new cases a year by 1978, and 1985 saw more than 400 cases brought. Because of this increasing workload, the Court of First Instance (CFI) was established in 1988 (under the authority of the Single European Act 1986), enabling the ECJ to concentrate on its essential task, the uniform interpretation of Community law.

Initially twelve judges were appointed but now there are 15 who hold office for six years. They are appointed by the governments of the member states from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office (Art. 168a). The Court normally sits in chambers of three or five judges.

JURISDICTION

The jurisdiction of the CFI is limited to:

- (a) All actions for annulment, for failure to act and for damages brought by natural and legal persons against the Community;
- (b) Competition proceedings and European Coal and Steel Community cases;
- (c) Disputes between the Community and its officials and other servants.

The CFI is not competent to hear and determine questions referred for a preliminary ruling under Art. 234 (Art. 168a).

There is a right of appeal to the ECJ from a decision of the CFI, but only on points of law. If an appeal is successful, the ECJ must quash the decision and either give final judgment itself or refer the case back to the CFI for final judgment.

EUROPEAN COURT OF HUMAN RIGHTS

INTRODUCTION

The European Court of Human Rights (ECHR), which sits in Strasbourg, was set up under the European Convention on Human Rights (1950) to supervise the rights given under the Convention, for example, the right to liberty, security, fair trial, freedom of thought, conscience, assembly, etc, right to life, right not to be subjected to torture or inhuman or degrading treatment, etc. It has no jurisdiction over the laws of the European Union.

The European Convention was brought into being by the Council of Europe (which has no relationship with the European Economic Union), and any alleged breaches of the Convention may be referred ultimately to the ECHR. For example:

- * In *Costello-Roberts v UK* (1993) The Times 26 March, the ECHR decided (by five votes to four) that corporal punishment (slippering) inflicted on a boy in a UK private boarding school did *not* constitute degrading punishment under the Convention as it had not reached the required minimum threshold of severity.

HUMAN RIGHTS ACT 1998

The Human Rights Act 1998 enshrines the ECHR into the UK, and will be brought into force in October 2000. Section 6(1) states that it is unlawful for a public authority to act in a way which is incompatible with a Convention right.