



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 June 2007

10884/07

**PE 192
JUR 251**

NOTE

from: General Secretariat of the Council
to: Delegations
Subject : Public hearing on "*The role of the national judge in the judicial system of the European Union*", held by the **Committee on Legal Affairs (JURI)**
Brussels, 11 June 2007

In her introduction, Ms WALLIS (ALDE, UK) recalled that national judges played an important role in the application of Community law and that there was an expectation that EC law would be invoked ever more increasingly in national court proceedings.

The following questions were addressed during the hearing:

- Access to Community legislation and to the case-law of the ECJ, ECHR and the relevant case-law of courts of other Member States;
- Application of EC law by national courts;
- Training in Community law;
- Procedural rules on the application of Community law and the general principles of Community law;
- Experience of national courts in making reference for a preliminary ruling to the ECJ;
- Cooperation between national judges and the ECJ.

Mr Rt. Hon Lord Justice RIX, judge at the Court of Appeal - Civil Division in London, England, explained that Community law and its general principles are regarded as an organic part of English law pursuant to the European Communities Act 1972 and in accordance with the binding case-law developed by the House of Lords. National judges are not only familiar, with but also more and more open to applying foreign law — eg. the case-law of the ICJ, ECtHR or the ECJ— in disputes before them. Over and above the established information sources on EC law, judges also have access to the relevant case-law of national courts of other Member States, in particular to German and French case-law. As regards preliminary references, Mr RIX explained that reference may be made by the court at any stage of proceedings, either on its own initiative or on application; however for the final court of appeal a reference must be made, unless considered unnecessary for the correct interpretation of the rule of Community law. National courts, at any level of the national judicial hierarchy, refer around 20 cases each year to the ECJ. Both negative and positive decisions on referral can be appealed. Mr RIX also raised a particular problem relating to the preliminary reference system, namely the difficulty of applying the abstract rulings of the ECJ to the factual situation of the case. In his view, the problem resulted from a tension between the manner in which Community law was drafted and the legal framework of the domestic law in which the factual analysis had to be made.

Ms Ildikó MAROSI, judge at the Metropolitan Court of Budapest, Hungary, explained that the obligation for the national judge to apply Community law derived from an amendment to the Constitution in 2002; however there was no provision in domestic procedural law relating to an obligation of interpretation in accordance with Community law or setting aside national law when it conflicted with Community law. The application by the national judge of the principles of supremacy, direct and indirect effect results from the legal interpretation of the Constitution and the domestic law promulgating the Accession Treaty. As to preliminary referral to the ECJ, national civil, administrative and also criminal procedural law entitle the judge at all levels of the judicial hierarchy to suspend the case pending before him in order to refer the case to the ECJ. The court, however, is not entitled to take an *ex officio* decision on the referral, except in criminal procedure, but can only act upon the motion of the parties. Both the negative and positive decision on referral can be appealed, except in civil procedure, where only a positive decision can be subject of an appeal. Ms MAROSI then invoked examples from the jurisprudence of national courts of the application of the principles of supremacy, direct and indirect effect in the period of three years since accession to the EU.

As to the problems encountered in the application of Community law, Ms MAROSI raised the difficulty for national judges of mastering the amount of legal material coming from both national and Community law.

Ms Dana Cristina GIRBOVAN, judge at the civil section of the Appellate Court of Bihor, Romania, emphasised the crucial importance in the new Member States of the training of judges and prosecutors in Community law. Ms GIRBOVAN mentioned the difficulty for national judges of applying Community law given that the principles of the primacy of Community law and direct effect are not stipulated by law.

Mr Lothar JÜNEMANN, presiding judge at the District Court of Berlin, Germany, President of a Chamber for commercial matters, explained that under German law the parties cannot be expected to invoke Community law and therefore the judge applies EC law and refers a case to the ECJ *ex officio*. Mr JÜNEMANN also noted that eg. in disputes in the field of Company law, where the speediness of the procedure is of particular importance, the protracted nature of the preliminary reference procedure can discourage the national judge from requesting a preliminary ruling from the ECJ.

In a follow-up to the hearing, the conclusions of the experts invited will be incorporated in Ms Wallis' own-initiative report.