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Third Session: How can we reduce the time taken to
dispose of a case?

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Introduction

1. The right of the national court to refer a question to the Court of Justice for a preliminary ruling is of great importance. It enables the national court to approach the Court of Justice before it gives its decision, and to specify the question on which it needs assistance. It is therefore unlike an appeal procedure, over which the court whose order is being appealed against has little control.
2. While the English courts have no hard data on this point, it is likely to take about two years from the time the national court makes its decision to refer a question to the Court of Justice down to the time when the response is received. Some of the delay is caused by the complexity of the internal procedures of the Court of Justice. It would be a good idea to streamline those processes if that can be done, but that is a matter for the Court of Justice. The rest of the delay is taken up by the national court in transmitting the reference. National courts ought to do everything within

their power to prevent unnecessary delays occurring in the transmission of references.

Measures to speed up the reference procedure

3. Specific measures are proposed in the agenda for this session:

CILFIT criteria

4. The first proposal involves giving the national court more discretion as to the type of questions to refer. This raises more generally the issue of the *CILFIT* criteria. These are very difficult to apply and, if no research has been done hitherto, the Court of Justice should institute some empirical research so that better information could be obtained as to the types of cases for which a reference was required by these criteria but which was in the result unnecessary. Such research would inform a decision by the Court of Justice as to changes to the *CILFIT* criteria and indeed other improvements in the reference procedure.

Summary Disposal

5. The second possibility raised in the agenda is described as an extension to the possibility of deciding by order in cases of minor importance for the unity, coherence and development of Community law. The Court of Justice would probably act more efficiently in response to references if it had a range of options for the most simple to the most serious case. That could certainly include a method for the summary disposal of cases of minor importance.

Green light system

6. The third possibility is introduction of a green light system. There are various ways in which this might work, but crucially, it would require the

national court to give a judgment that the Court of Justice could review and (if thought fit) accept. The Court of Justice could then exercise one of a range of options, including (1) an option to approve the judgment of the national court; (2) an option to direct that the case be submitted for the full reference procedure; (3) an option to approve the national court's judgment with modifications; and (4) an option to rule that the question does not involve any issue of importance to the Community legal order. The last option would enable the national court to apply its own decision to the question of Community law in issue, and the case would continue as normal within the national system.

7. It would have to be provided that the national court could decide whether or not to use the green light system. It ought to be possible within the national system to limit the power to use the green light system to higher courts and tribunals.
8. It ought further to be provided that under the green light system only a ruling of the Court of Justice with reasons should constitute any form of binding precedent on national courts generally. This would mean that, if the Court of Justice took option (1), only the referring court and not other national courts would be bound.
9. Any decision on any case submitted under the green light system would have to be publicly available.
10. The green light system has the advantage that national courts could contribute to the development of Community law. This would enhance cohesion between the legal orders of the member states.

Clarification on appeals against decisions of the referring court

11. The fourth possibility is to clarify the specific case of appeals against decisions of the referring court. In England and Wales it is not possible for a decision to be referred to the Court of Justice until the time for appealing has elapsed unless the court has made some other order. The court would make such an order if, for example, all the parties to the litigation agreed.

Other measures to speed up the reference procedure:

(a) Expression of opinion by the national court

12. National courts often like to set out their views on the point of Community law referred. In England and Wales, courts are encouraged to do so. The Court of Justice in general finds this approach to be helpful. No doubt, the determination of the national court provides an answer against which the Court of Justice can test its conclusions. This system also makes the national courts more confident about Community law, and that may reduce the number of references. On the other hand, this system may mean that there has to be a hearing in the national court before the reference is made, which may be costly.

(b) Delays in the national system

13. Sometimes the delay is caused by delays within the referring state. Each state should accept an obligation to streamline its procedures for references. In the Court of Appeal of England and Wales, we found that avoidable delays were occurring between the time of making the order for reference and the despatch of the order to the Court of Justice. We have improved our procedures.

14. Under our draft new Civil Procedure Rules, the court making the reference in England and Wales will have more control over this part of the procedure.

(c) Database of decisions in the member states on questions as to the meaning of Community instruments

15. It might help reduce the number of references if courts in the member states had better access to decisions in other member states on issues arising from the interpretation of Community instruments. Some information is available on Jurifast, but more is needed.

(d) Depth of decisions of the Court of Justice

16. it goes without saying that the clearer the decision of the Court of Justice, and the fuller the reasoning to support its conclusion, the easier it will be the national courts to reach their own conclusions rather than refer questions for the opinion of the Court of Justice. Moreover, it should be borne in mind that the committee style of judgment of the Court of Justice has the disadvantage that it can lead to obscurity and cause difficulties.

Lady Justice Arden

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