

# The Preliminary Reference to the Court of Justice of the European Communities - Ireland

Report prepared for the Colloquium of the Association of  
the Councils of State and Supreme Administrative  
Jurisdictions, Helsinki, 20-21 May 2002\*

## 1. GENERAL QUESTIONS

1.1. Does the internal legal system of your country provide for a procedure resembling the procedure for preliminary rulings established in Article 234 of the EC Treaty? Can a court of law refer a question relating to a pending case to another court of law (a special court, a court of a different branch of law, a court of higher instance), and receive an answer which is binding (or not binding)? What are the principal differences between such national arrangements and the procedure referred to in Article 234?

In civil cases in the District Court, either party can request that the judge should refer any question of law to the High Court for determination, either while the case is ongoing (a 'consultative case stated'),<sup>0</sup> or after final determination of the case has been made.<sup>0</sup> The point of law must be referred unless the judge considers the request to be frivolous,<sup>0</sup> and any such refusal can be judicially reviewed.<sup>0</sup> In the Circuit Court, a similar procedure is available,<sup>0</sup> with the case stated being sent to the Supreme Court for determination.

In criminal cases, the same provisions apply to cases in the District Court. They do not apply to cases in the Circuit Court.

1.2. Is your country bound by other international arrangements outside the EU involving the possibility of referring questions for a preliminary ruling to an international court of law?

No.

---

\* National Reporter: The Hon. Mr. Justice Ronan Keane, Chief Justice of Ireland (with the assistance of Mr. Rónán Kennedy, Executive Legal Officer to the Chief Justice).

<sup>0</sup> Under section 52 of the Courts (Supplemental Provisions) Act, 1961.

<sup>0</sup> Under section 2 of the Summary Jurisdiction Act, 1857, as extended by section 83 of the Courts (Supplemental Provisions) Act, 1924.

<sup>0</sup> *Sports Arena Ltd. v. O'Reilly* [1987] I.R. 185.

<sup>0</sup> *The State (Turley) v. Ó Floinn* [1968] I.R. 245.

<sup>0</sup> Under section 16 of the Courts of Justice Act, 1947.

1.3. Are there any supplementary provisions issued in your country concerning the procedure referred to in Article 234 of the EC Treaty, or is the procedure solely and directly based on Community law? What is the level of such national norms, and what questions do they involve?

The procedure is solely and directly based on Community law.

1.4. If appeal to a court of higher instance has been restricted (e.g. leave to appeal is required), has this been deemed to have the effect of treating courts of lower instance as being in the position of a court or tribunal of last instance referred to in Article 234(3)? Which of the national courts in your country are, in general or in certain circumstances, courts or tribunals as referred to in Article 234(3)?

Where the decision of a court cannot be appealed against, that court is likely to be treated as being a court of last instance under Article 234.<sup>0</sup> Although there is no decision on the point to date, the following courts are therefore likely to be considered courts of last instance in Irish law:

- The Circuit Court when hearing an appeal *de novo* from the District Court
- The High Court when hearing an appeal *de novo* from the Circuit Court
- The Supreme Court

1.5. If the legal order of your country provides for a particular judicial remedy before a constitutional court, how might this have affected the application of Article 234?

Ireland does not have a constitutional court.

1.6. Is it possible to lodge a separate appeal to a court of higher instance against a decision of a court of lower instance to refer a question to the Court of Justice for a preliminary ruling?

No.<sup>0</sup>

Do these kinds of appeals occur in practice, and what criteria does the court of higher instance use when judging the legality of the decision by the court of lower instance to make a reference to the Court of Justice?

No.

Correspondingly, have there been appeals lodged against the fact that a court of lower instance has not referred for a preliminary ruling?

No, as the *Campus Oil* case makes it clear that the judge at first instance has an untrammelled jurisdiction in this regard.

Can an appeal be lodged on some specific grounds (for instance on the grounds of a violation against the Constitution) against a decision not to refer for a preliminary

---

<sup>0</sup> McMahan and Murphy, *European Community Law in Ireland*, p. 227.

<sup>0</sup> *Campus Oil Limited v. Minister for Industry and Energy* [1983] I.R. 82.

ruling made by a court or tribunal referred to in Article 234(3)?

No, as the *Campus Oil* case makes it clear that the judge at first instance has an untrammelled jurisdiction in this regard.

1.7. If your country has a Constitutional Court, has it made a reference to the Court of Justice? If, on principle, it does not make references for preliminary rulings, what are the reasons for that refusal?

Ireland does not have a constitutional court. The Supreme Court has made references to the Court of Justice.

1.8. What is the proportion of cases brought before your court, where it is essential to apply or take into account Community law?

Such statistics are not kept, but the proportion would be very low.

1.9. Does application of Community law often come up in the work of your court *ex officio*?

No.

1.10. Does the internal work of your court involve specific measures for the preparation and hearing of cases dealing with the application of Community law?

No. As Ireland's legal system is adversarial, the primary responsibility for providing information to the court on the law in force rests on counsel for the parties in a case.

What means do you have, on the whole, to seek necessary information about Community law?

The Judges' Library has subscriptions to the European Court Reports, various journals dealing with community law and textbooks on community law. All judges and many Courts Service staff have Internet access, allowing use of sites such as Eur-lex.

-Can the judges deciding the matter and the staff assisting them procure information (e.g. about the pertinent case law of the Court of Justice) from a particular unit within the internal organisation of your court, from a service assisting courts in general or from a similar service?

Yes - the Judicial Researchers (see below).

Do you consult the research and documentation unit of the Court of Justice?

No.

Does your court have a research and documentation department?

Not as such. The Judicial Researchers, who work in the Judges' Library, provide a research service for the judiciary. The Judicial Studies Institute organises conferences, seminars and study trips for judges.

-How do you undertake to guarantee that you will have access to up to date information on the case law of the Court of Justice (court reports, legal literature, data bases, etc.)?

The subscriptions for the material mentioned above are kept current by the staff in the Judges' Library.

-What means do you have to keep informed about the kind of cases pending before the Court of Justice and their stage of proceedings?

In general, this information is not monitored.

-Your experience of using the Internet site of the Court of Justice.

The Judicial Researchers would have limited experience of this. As Ireland's legal system is adversarial, the primary responsibility for providing information to the court on the law in force rests on counsel for the parties in a case.

Is there an organised exchange of information on questions concerning Community law between the courts in your Member State?

No.

In complicated questions of Community law, do you attempt to ascertain the contents of the legislation and case law of other Member States?

At times, although as mentioned above, this is primarily the responsibility of counsel for the parties.

Have you heard or otherwise asked the Commission, for example, for information on points of fact, for acts preparatory to Community legislation or for its opinion?

No.

Has your court contacted the Commission in matters related to competition or state aid?

No.

1.11. In situations where the legality of a Community act is contested, has your court decided to prohibit the enforcement of a national administrative decision based on the contested Community act (see judgment of 21 February 1991 in joined cases C-143/88 and C-92/89 Zuckerfabrik)?

Not to the best of our knowledge.

Has your court applied any of the principles (so-called positive interim measures) arising from the judgment in the Atlanta case (9 November 1995, case C-465/93 Atlanta Fruchthandels-gesellschaft)?

Not to the best of our knowledge.

1.12. When dealing with questions concerning the illegality of a Community act (and especially as regards suspension of a national act adopted on the basis of a Community act), has your court heard the Commission (or other representatives of the Union)?

No.

1.13. Statistical data concerning references for a preliminary ruling made by your Court

-Total number of references for a preliminary ruling made by your court.

16

-Development of the annual number of references for a preliminary ruling made by your court, and particularly the numbers during the period 1995-2000.

1983 - 1

1984 - 1

1985 - 1

1987 - 1

1989 - 2 (both on the same issue)

1990 - 2 (both on the same issue)

1991 - 2 (both on the same issue)

1993 - 1

1995 - 1

1998 - 3

1999 - 1

-Are the questions referred by your court for a preliminary ruling related mainly to a certain domain or to certain domains of cases?

62% relate to agriculture.

-How long has the handling time been in recent years as regards the cases referred by your court for a preliminary ruling?

23 months with the European Court of Justice, leading to an overall time of 49 months.

If possible, please present facts or an estimate of how the total handling time has been distributed: the handling time from the moment the proceedings were started until the reference for a preliminary ruling was sent to the Court of Justice; the handling time at the Court of Justice; the handling time after the preliminary ruling was given.

- A) 12 months
- B) 23 months
- C) 14 months

If your court hears also cases other than administrative judicial matters, please specify the above facts, if possible, according to whether or not they concerned administrative judicial matters.

Such statistics are not kept.

## 2. THE PROCEDURE OF A DECISION TO REQUEST A PRELIMINARY RULING

2.1. Please estimate how often and particularly in which categories of cases the parties have asked your court to request a preliminary ruling.

Such statistics are not kept, but it is not common for a request to be refused.

If the request is turned down, are the reasons always stated in the ruling?

If the application is reasoned, the court will give its reasons for refusal.

Does the statement of reasons contain a reference, where necessary, to the case law of the Court of Justice?

To the best of our knowledge, no.

Do you make a separate interim decision in case of a negative decision, or is the answer generally given only in the final decision?

It would depend on the circumstances of the case.

Have you requested a preliminary ruling although it had not been demanded by the parties?

This may have arisen in one case.

2.2. As the annual number of requests for a preliminary ruling, even made by courts of last instance, for obvious reasons, is not very high, is it possible for you to make a general estimate of the annual number of cases where a request for a preliminary ruling has been seriously considered (on a party's initiative or ex officio) although the request was finally never sent to Luxembourg?

No.

2.3. In its practices, has your court developed criteria to be taken into account when applying the obligation to request a preliminary ruling under Article 234(3) in the light of the case law of the Court of Justice (in particular, the CILFIT case)?

None that have been made explicit.

2.4. Given the fact that a matter is pending before your own court and a matter concerning the same question of law is pending before the Court of Justice, which factors then determine whether

- a) the matter will be settled immediately without considering the fact that the same question of law remains to be answered by the Court of Justice in a pending reference procedure
- b) the matter will be settled after the ruling of the Court of Justice, or
- c) a preliminary ruling should be requested on the same question?

These would all be taken into account, although the extent to which they are is not explicit.

2.5. What is the procedure in a situation where a question requiring preliminary ruling appears in several cases pending at the same time?

It is likely that they would all be adjourned awaiting the ruling.

Generally speaking, does your court in its decision to request a preliminary ruling pay attention to the consequences of that reference for other cases, for example the paralysing effect suspension of the case referred may have on the handling of other cases?

It would be considered if it was brought to the attention of the Court.

If there are several cases pending before courts of lower instance, similar to the one subject to a request for a preliminary ruling made by your court, do the courts of lower instance wait until the Court of Justice has ruled on the question referred?

There is no standard procedure, but it is likely.

2.6. Has your court requested a preliminary ruling in connection with a procedure concerning precautionary measures or other similar summary procedures?

Not to the best of our knowledge.

2.7. Has your court referred for a preliminary ruling on the grounds of the cases C-28/95, Leur-Bloem, and C-130/95, Giloy, i.e. regarding the interpretation of a concept of Community law or of Community origin which has been transposed into national law where the situation in question is not governed directly by Community law?

Not to the best of our knowledge.

2.8. At which stage of the proceedings is the request for a preliminary ruling normally made?

It would depend as to when the question arises.

Will the parties be heard before making the request for a preliminary ruling?

Yes.

Will they be submitted a draft of the order for reference for comments?

It is usually agreed between the parties.

What, all things considered, is the role of the parties in practice, when a request for a preliminary ruling is considered and the questions are formulated?

To draft the order for reference to the Court of Justice.

2.9. What form does your court follow when referring a case for preliminary ruling? Is it possible to give an interim judgment or do you have to apply another kind of judgment?

The matter is adjourned until the preliminary ruling is obtained.

Are the decisions concerning requests for preliminary ruling and their formulations made by a normally constituted court?

Yes.

2.10. Has your court developed any established practices as regards the manner of drafting the order for reference (description of the facts, the national law, arguments of the parties and the justification of the questions in the light of Community law)?

Not as yet. The drafting of the order for reference is a task for the parties.

Does the order for reference contain an advance opinion of the national court as to the nature of the answer to be given to the question referred?

Not usually.

How long are the orders for reference in general?

The curial part of the order is usually only 2-3 pages. As the order will also usually include a statement of facts the total number of pages will vary greatly depending on the case.

When drafting the decision, do you endeavour to keep in mind that it will be translated into the other official languages of the Union?

The decision is drafted by the parties' legal representatives rather than by the Court.

Please attach to your report one or more typical decisions made by your court requesting a preliminary ruling.

Attached are the orders in *Kerry Co-operative Creameries Ltd. v. An Bord Bainne and Avonmore Creameries Ltd. v. An Bord Bainne* (which were referred together) and *H.M.I.L. Ltd. v. The Minister for Agriculture and Food*.

2.11. If the case referred involves documents containing information which is confidential under national law, how is this taken into account when drafting the request for a preliminary ruling?

To the best of our knowledge, this has not arisen.

Is the Court of Justice informed of the fact that the case contains documents which are confidential under national law?

To the best of our knowledge, this has not arisen.

2.12. Has your court in any of its references for preliminary rulings requested the Court of Justice to proceed urgently for specific reasons?

To the best of our knowledge, this has not arisen.

To what extent has such a request speeded up the proceedings?

To the best of our knowledge, this has not arisen.

Have there been situations where a request for a preliminary ruling has come up in a case which, according to a provision of national law, should be treated urgently or within a determined time limit?

To the best of our knowledge, this has not arisen.

Is it possible that the foreseeable handling time of the preliminary reference procedure could constitute, in fact and in practice, a reason not to refer a matter?

This would be a matter for counsel to argue in court.

2.13. When you have decided to request a preliminary ruling, will the main proceedings be automatically stayed pending the preliminary ruling or can the proceedings exceptionally be continued (e.g. a certain part of the case) while the matter is pending in Luxembourg?

It will generally be stayed.

2.14. The national courts are required to place the documents of the main proceedings at the disposal of the Court of Justice. Has practice led to different lines of action in this respect (for instance: has the entire material been submitted in cases involving an exceptionally large number of documents)?

This is a matter for the parties' legal representatives.

### 3. MEASURES TAKEN BY THE NATIONAL COURT OR TRIBUNAL DURING THE PROCEEDINGS BEFORE THE COURT OF JUSTICE

3.1. Has your court withdrawn a request for preliminary ruling already referred? In the affirmative, why did it happen?

Yes. The case was settled.

3.2. Have you, in practice, faced situations where a request for a preliminary ruling already referred has had to be corrected, supplemented or otherwise amended?

To the best of our knowledge, this has not arisen.

3.3. Have you met with any particular situations where a need to clarify a particular detail to the Court of Justice has occurred after the report of the Judge- Rapporteur and the opinion of the Advocate General (for instance the description of the facts of the main proceedings, the national provisions or the questions)?

To the best of our knowledge, this has not arisen.

3.4. Should a similar case become pending before your court after the request for preliminary ruling has been submitted, will there be an official decision to stay the proceedings? Will the parties be heard before the decision for postponement is made?

To the best of our knowledge, this has not arisen.

3.5. By virtue of Article 104(5) of the Rules of Procedure of the Court of Justice, the Court may now request clarification from the national court. Has there been a need to modify the national procedural rules in order to be able to answer to such a request for clarification (e.g. hearing of the parties)?

To the best of our knowledge, this has not arisen.

#### 4. PROCEEDINGS AFTER THE PRELIMINARY RULING IS OBTAINED

4.1. In what way is the national procedure continued when the preliminary ruling has been given?

It will be put into the next List to Fix Dates and be then allocated a date for hearing, as occurs with other cases which are adjourned.

Are the parties always heard on the preliminary ruling?

Yes.

4.2. Have there been situations where it has finally been impossible to make use of the preliminary ruling, because of the following:

To the best of our knowledge, this has not arisen.

The formulation of the preliminary question has finally proven not to be expedient?

To the best of our knowledge, this has not arisen.

The question referred to the Court of Justice for preliminary ruling has to be formulated in a general way and thus the preliminary ruling provided for the national court will also be of a general nature?

To the best of our knowledge, this has not arisen.

The Court of Justice has not answered the question referred (the Court of Justice as for instance misinterpreted the question)?

Yes.

Have there been other kinds of problems due to the fact that the answer of the Court of Justice has not been sufficiently precise for the purpose of settling the main proceedings?

To the best of our knowledge, this has not arisen.

The question referred has later been found unnecessary for the purpose of settling the main proceedings?

To the best of our knowledge, this has not arisen.

4.3. Have you had to request a second preliminary ruling in the same case (for instance due to the fact that the answer to the first preliminary ruling was not satisfactory)?

To the best of our knowledge, this has not arisen.

4.4. In what way and to what extent does the decision of your court, for which a preliminary ruling was requested, give an account of and otherwise refer to the judgment of the Court of Justice?

It will generally set out the questions on which a preliminary ruling, the answers given and then the conclusions to be taken from those answers. By way of illustration, the judgments in two cases where preliminary references were requested are attached - *Kerry Co-operative Creameries Ltd. v. An Bord Bainne* and *Avonmore Creameries Ltd. v. An Bord Bainne* (which were referred together) and *Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Sirketi v. The Minister for Transport, Energy and Communications*.

4.5. Is the Court of Justice informed of the final decision by the national court having made the reference?

No.

How has your country organised the other judgments relevant to Community law to be forwarded for information to the Court of Justice?

It has not done so.