

1.3.2002

Association of the Councils of State and Supreme Administrative
Jurisdictions of the European Union
18th colloquium in Helsinki 20th and 21st May 2002

**Preliminary reference to the Court of Justice
of the European Communities**

Supreme Administrative Court of Finland

Finnish Report

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?

There is no national procedure similar to that of Article 234 of the EC Treaty.

It seems that there is only one national provision stating that a court may ask the opinion of another national court: Any court may ask the opinion of the Labour Court on a question requiring specialist knowledge on collective agreements. There is, however, no obligation to ask for an opinion, and the opinions of the Labour Court are not binding.

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.

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?*

No.

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)?*

The Supreme Court and the Supreme Administrative Court are the two highest courts in Finland. They are thus precisely the Finnish courts referred to in Article 234(3).

An appeal against the decisions of the courts of appeal is subject to leave, which is granted by the Supreme Court under certain special conditions. In administrative matters, there is no general system restricting appeal from the regional administrative courts to the Supreme Administrative Court. However, certain law matters, particularly taxation cases and some social cases, are admissible only when leave to appeal has been granted in advance by the Supreme Administrative Court. In agricultural matters, appeal against the decisions of the Appeals Board for Rural Industries is subject to leave granted by the Supreme Administrative Court.

There is no judgment of the supreme courts on the question whether

a lower court, whose decisions can be appealed against only if leave to appeal has been granted by the higher court, is to be considered a court of last resort within the meaning of Article 234(3). It is worth noting that in its judgment of 26 May 1998 (No. 1275) the Court of Appeal of Turku took the view that it is a court having the obligation to make a preliminary reference.¹

The Insurance Court is a special court which examines cases within the field of social security (e.g. pensions). Its decisions are not subject to appeal with the exception of very few matters. Therefore, it is in most cases a court of last instance referred to in Article 234(3).

In addition, there are a certain number of other matters where a lower court or tribunal is the final instance, since ordinary appeal is prohibited. As the decision of the lower court or tribunal in these matters can be deferred to the higher court only by way of extraordinary judicial remedy, the lower court or tribunal may, in those cases, be considered a court or tribunal having the obligation established in Article 234(3).

Until now, the following courts have made a reference to the Court of Justice (in total 22 references plus one withdrawn):

- Supreme Court	1	
- Supreme Administrative Court		7
- Courts of Appeal	1	
- Regional Administrative Courts		4
- District Courts	4	
- Insurance Court	1	
- Appeals Board for Rural Industries	2	
- Competition Council	1	
- Social Welfare Board	1	
- Customs Board		1 (withdrawn)

1.5. If the legal order of your country provides for a particular judicial

¹ The impact of the leave to appeal on the obligation to make a reference may get an answer in the Swedish case C-99/00 pending before the Court of Justice (opinion of the Advocate General 21.2.2002).

remedy before a constitutional court, how might this have affected the application of Article 234?

Finland 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? 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?

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

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

There are no specific national provisions on appeal against a decision concerning preliminary reference.

According to the general procedural rules a separate (interim) decision of a lower court to make or not to make a reference to the Court of Justice is not subject to appeal to a higher court. Such separate decisions as well as decisions contained in the final ruling can be challenged before the higher court when appealing against the final ruling.

In practice, there have not been appeals against decisions to refer a question to the Court of Justice. Some appeals have, however, been made on the grounds that the lower court had not referred the case for a preliminary ruling.

A decision of a court of last instance can be contested only by an extraordinary judicial remedy on very limited grounds. This judicial remedy is sought before the Supreme Court or the Supreme

Administrative Court (meaning that remedy against a decision of the Supreme Administrative Court shall be sought before this court). Such remedy can be successful only if the decision not to make a preliminary reference is manifestly illegal.

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?

See 1.5.

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

It may be estimated that Community law has some impact on about one third of the cases heard by the Supreme Administrative Court. The impact varies a great deal depending on the nature of the case. (The number of all cases settled yearly is about 4500.) The number of cases where the role of Community law is essential is of course considerably lower.

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

It is not uncommon for the Supreme Administrative Court to raise a question of Community law on its own initiative. In some fields, like public procurement and indirect taxation, the Court systematically studies almost every case in respect of Community law, even if the parties have not invoked it.

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?

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

_ 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? Do you consult the research and documentation unit of the Court of Justice? Does your court have a research and documentation department?

_ 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.)?

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

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

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

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

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

Cases involving Community law are handled following the same procedures and routines as other cases. There is no basic division into Community law cases and other cases.

The importance of the information services provided by the library of the Supreme Administrative Court has increased in Community law matters. The library offers good facilities for research using internal and external data bases. It has also consulted the Department of Research and Documentation of the Court of Justice. The staff of the Supreme Administrative Court have each their own computer and Internet connection.

The Internet site of the Court of Justice serves well as a source of

information on recent case-law. The research functions of the site are good as well. On the other hand, it has proved difficult to obtain information rapidly on pending cases. This information would be necessary when considering whether or not a preliminary reference should be made.

There is no established system of exchange of information on Community law matters between Finnish courts.

It happens rather often that information is sought on the legislation, legal literature and case-law of other Member States. This is done especially when there is no judgment of the Court of Justice on the question at issue.

So far, our court has not contacted the Commission in the context of a particular case.

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)? 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 Fruchthandelsgesellschaft)?

Such situations have not yet occurred.

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)

The Supreme Administrative Court has not yet been faced with this question.

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

1995_2000.

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

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

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.

So far, the Supreme Administrative Court has asked for a preliminary ruling in seven cases:

1995	0	
1996	1 (C-412/96)	interpretation of Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, as amended by Council Regulation (EEC) No 1893/91
1997	1 (C-237/97)	interpretation of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours
1998	0	

1999	1 (C-513/99)	interpretation of Council Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors and of Council Directive relating to the coordination of procedures for the award of public service contracts
2000	2 (C-9/00 and C-101/00)	<ul style="list-style-type: none"> - interpretation of Directive 75/442 on waste - interpretation of Article 90 EC with reference to a national system of motor vehicle tax - interpretation of the Sixth VAT Directive 77/388/EEC
2001	2 (C-113/01 and C-114/01)	<ul style="list-style-type: none"> - interpretation of Articles 28 and 30 EC as regards national legislation under which authorisation for parallel imports of a medicinal product expires when the direct importer surrenders his marketing authorisation for reasons unconnected with the effectiveness or safety of the product - interpretation of Directive 75/442 on waste

The list shows that the references represent different subject-matters and various problems of interpretation of Community law. No reference has been

made on the invalidity of a Community act.

Up to the present, the Supreme Administrative Court has received the answer of the Court of Justice to two references. In those two cases the handling time before the Court of Justice was about 21 and almost 20 months respectively. Total handling times of the two cases are divided in the following way:

Handling time before the decision to make a reference	22 moths/7 months
Handling time in the Court of Justice	21 months/19,5 months
Handling time after receipt of the ruling	3,5 months/4,5 months
Total duration of proceedings	47 months/31 months

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.

If the request is turned down, are the reasons always stated in the ruling? Does the statement of reasons contain a reference, where necessary, to the case law of the Court of Justice? Do you make a separate interim decision in case of a negative decision, or is the answer generally given only in the final decision?

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

It is not rare that a party asks the court to make a reference. Very often these demands are manifestly irrelevant and can be easily refused.

In its final decision, the Supreme Administrative Court always gives an explicit answer to the party's request. No separate interim decision is made when a request is turned down. The reasons for negative decisions are given, if necessary, with a reference to the case-law of the Court of Justice.

A party has not asked our court to make a reference in all of the cases where a preliminary ruling has been requested. For example, in

the preliminary references concerning interpretation of Regulation 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway and interpretation of Council Directives coordinating the procurement procedures, the Supreme Administrative Court raised the question on its own initiative whether or not a preliminary reference should be made.

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 statistics exist concerning cases where a request for a preliminary ruling has been seriously considered but finally not made. Their number is, however, at least as high as the number of the preliminary references actually made. This means that Article 234 has been applied more often than the number of references shows.

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)?

No such criteria have been developed. The decision on a preliminary reference is made in application of Article 234 taking into account the characteristics of each case.

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?*

The starting point is that in a case where it is necessary to interpret

Community law, a reference is made in accordance with Article 234(3). It follows that if an identical or similar question of law is known to be pending before the Court of Justice, the case will not in any event be settled by the Supreme Administrative Court until the Court of Justice has rendered its judgment. After that, the question will be examined whether the case can be decided on the basis of the preliminary ruling without making a preliminary reference. However, if the case before the Supreme Administrative Court has a different aspect, a reference can be made before the judgment of the Court of Justice. It must be noted that it can be difficult to appreciate whether the question already pending before the Court of Justice is sufficiently identical with the question at issue before the Supreme Administrative Court. This problem is accentuated by the difficulty to obtain information on the cases pending before the Court of Justice. One factor to be taken into account is that a reference already pending before the Court of Justice may be withdrawn by the referring court, which may require a reference to be made later.

The problem of the effects a pending preliminary reference made by another court of law may have on cases before the Supreme Administrative Court presented itself in connection with the so-called Natura 2000 cases. More than 1200 appeals against the Government decision establishing the lists of sites were pending before the Supreme Administrative Court when a British court made a preliminary question on the interpretation of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora. Finally, it was judged possible to make the final decisions without waiting for the judgment of the Court of Justice.

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

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?

The Supreme Administrative Court has had some experience on this

question. When the court made its second reference (which concerned the interpretation of Council Directive 90/314/EEC on package travel, package holidays and package tours) there were two similar cases pending. Reference was only made in one of them. The proceedings in the other case were stayed until the receipt of the preliminary ruling in the first case. The final decision in both cases was made at the same time.

At present there are tens of similar cases pending before the Supreme Administrative Court and hundreds of similar cases pending before the Regional Administrative Court waiting for the preliminary ruling in the case C-101/00 (interpretation of Article 90 of the Treaty with reference to a national system of motor vehicle tax and interpretation of the Sixth VAT Directive 77/388).

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

No.

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?

No.

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

*Will the parties be heard before making the request for a preliminary ruling?
Will they be submitted a draft of the order for reference for comments?
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?*

The request for a preliminary ruling is made when the national proceedings have reached a stage where the Supreme Administrative Court would otherwise be able to decide the case.

Before making the reference, the Supreme Administrative Court will hear the parties as well as the administrative authority which has made the decision under review. The court informs them that it considers making a reference and indicates the problem of Community law at issue. The questions themselves are not yet formulated at this stage. The parties can give their opinion as to whether or not to make a reference and what questions should be asked. The court, however, emphasises to the parties that it will exercise its own discretion to decide whether or not to refer and how the questions finally will be formulated. No draft order for reference has been sent to the parties for comment.

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?

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

The reference is made in the form of an interim decision where it is stated that the final decision will be taken after the receipt of the preliminary ruling. The order for reference is made by a normal composition of the Court

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)?

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?

How long are the orders for reference in general? When drafting the decision, do you endeavour to keep in mind that it will be translated into the other official languages of the Union? Please attach to your report one or more typical decisions made by your court requesting a preliminary ruling.

The interim decision follows the main characteristics of other decisions of the Supreme Administrative Court. Its contents depend on the nature of the case and has varied in the seven references made up to the present. The practice has been not to express the referring court's own

opinion on the possible answer to the question. In its first reference, however, the Supreme Administrative Court expressed its opinion on the consequences of one of the possible alternatives for interpretation.

The preliminary questions as well as the whole order for reference is drafted keeping in mind that it will be translated into other languages.

The orders for reference made up to the present have been rather long, on average, about 20 pages.

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

If the national case-file contains confidential information not necessary for the proceedings before the Court of Justice, it would be left out of the order for reference and the accompanying documents. If this were not possible the Court of Justice would be told about the confidential nature of the information.

So far, the Supreme Administrative Court has not been faced with these problems. According to national law, tax matters contain confidential information. One of the references made by the Supreme Administrative Court (case C-101/00) is a tax case (motor vehicle tax) but in this case the taxpayer consented to make public the confidential information.

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

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?

No requests to proceed urgently have been made.

The necessity to handle cases without undue delay is an essential part

of good administration of justice. The question of handling time was particularly important in the before-mentioned Natura 2000 cases and in a case from 1996 (1996 A 35) concerning the application of Article 22(3) of Council Regulation 4064/89 on the control of concentrations between undertakings.

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?

In all preliminary references made up to the present, the Supreme Administrative Court has decided to stay proceedings until the Court of Justice has given its ruling.

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)?

The complete national case-file is not automatically sent to the Court of Justice. The practice has been that the order for reference is only accompanied by copies of those documents of the main proceedings which are deemed necessary for the answer to the reference.

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?

No.

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?

No.

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)?

No.

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?

If a new case involves a question of Community law which has already been submitted to the Court of Justice (by the Supreme Administrative Court or another court), a stay of proceedings is pronounced by a formal decision. However, a more flexible practice has been adopted in the so-called motor vehicle tax cases because of their large number. Without a formal decision to stay proceedings, the parties have been informed that the final decision will not be made before receipt of the answer to the reference in case C-101/00. The parties have not been heard before the stay of proceedings.

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)?

No.

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? Are the parties always heard on the preliminary ruling?

In the two cases where the preliminary ruling has already been given, the Supreme Administrative Court has heard the parties on the ruling.

After this hearing the matters were resolved without further measures of procedure.

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

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

_ 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?

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

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

Neither of the two preliminary rulings that the Supreme Administrative Court has received contained such problems.

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)?

No.

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?

The ruling of the Court of Justice and its reasons are described in the decision of the Supreme Administrative Court. The ruling is also referred to as a legal basis for the decision.

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

How has your country organised the other judgments relevant to Community

law to be forwarded for information to the Court of Justice?

A copy of the final decision is sent to the Court of Justice. Some other decisions of the Supreme Administrative Court which are interesting in respect of Community law have been forwarded to the Court of Justice. But there is no organised system to send decisions relevant to Community law to the Court of Justice for information.