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**SYMPOSIUM OF THE PRESIDENTS
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'Reflections on the preliminary ruling procedure'
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2nd session: Should references to the Court be limited to important questions?

- Introduce an opinion procedure (in particular in respect of questions of law which are new, particularly difficult and raised in numerous cases)?
- Introduce a filtering system for references?
- Move towards a 'CILFIT 2' judgment, which is less restrictive?

I would like to express gratitude to the organizers of this symposium on behalf of the President of the Constitutional Court of Poland, Dr. Zdziennicki who could not attend this conference. At the same time it is my personal pleasure to be here because of the subject of the symposium. In 2007, when I was a judge of the Polish Supreme Administrative Court I participated in the Working Group which prepared the report on the reform of the preliminary rulings procedure. This report is a starting point for the discussion today. The idea of the working group and the results of its considerations are undoubtedly great achievements of the Dutch Council of State.

The subject of the present panel concerns issues which are of the utmost importance for the highest court in all juridical systems, both at national or supranational level. How to diminish the number of new cases ? How to reduce the court's workload ? How to shorten the average time for deciding a case ? Let me mention that such questions come up for discussion at present in the Polish Constitutional Court in which the number of new cases is growing dramatically. The Constitution does not provide for filtering or selecting which cases to deal with.

1. Regarding the first question for our panel: whether to introduce a system of advisory opinions of a general nature on the interpretation of Community law, e.g. concerning new law which raises some doubts.

This proposal is based on a presumption that one ruling of the ECJ including such a general opinion would be able to prevent national courts from referring many particular cases, and as a result the number of cases before the ECJ would be smaller.

It is hard to say whether this presumption is right. It is impossible to resolve all problems in one general opinion. The result of a general opinion could as well be a number of references on interpretation of this opinion.

It seems to me that positive effects of general opinions would depend on allowing, at the same time, national courts of last instance to enjoy greater freedom of interpretation of EC law without being obliged to refer to the ECJ. I shall come back to this point later on.

2. The answer to the second question about the selection of cases needs some clarification: does it concern the selection at the national level, or on the ECJ level ? I presume it is the latter situation.

It should be noted that a formal selection, which means that some cases are admitted and some other rejected, would require amendment of the EC treaty. This is rather unlikely in the next few years.

It seems more realistic to consider a selection which consists in differentiation of the procedure depending on the complexity or importance of a given case for the development of EC law. The simplification, and, at the same time, acceleration of the procedure could consist in omitting the opinion of the Advocate General or the oral procedure. It is noteworthy that such solutions are allowed even now, and they found the support of the working group. My proposals are therefore by no means original.

There is a strong argument against a selection in a strict sense e.g. rejection of some cases. This argument is based on respect for national judges. When the judges in courts, against whose decisions there is no judicial review, feel obliged to refer a case to the ECJ it would be improper to refuse to give an answer because the problem is of minor importance. I do not mean of course the situation when the *acte clair* or *acte éclairé* doctrines can be applied. Such a refusal could discourage national judges from referring to the ECJ in future even in important matters.

3. This conclusion leads me to the third question put to this panel, about the future of the CILFIT doctrine.

In the Working Group the conviction prevailed that the conditions introduced in CILFIT almost 30 years ago can not be understood literally in the present Union of 27 Member States.

Instead of that, a pragmatic approach should be applied, based on “common sense”. I doubt whether this is a fully satisfactory solution. As we all know, “common sense” does not have any clearly defined contents or borders and can lead to various results. Lack of clear criteria can cause, on the one hand, disintegration of the jurisprudence of national courts in European matters, and on the other hand pose risk of Member States liability in damages. Such a risk exists even if conditions of Member State’s liability are rigorous according to the Köbler judgment.

I plead therefore for a new formula which could replace the CILFIT doctrine and allows more leeway for national courts of last instance, in deciding whether to refer cases to the ECJ, or try to decide themselves. This formula could include such clauses as: serious doubts, great impact on many cases, importance for the development of EC law, etc.