

CIRCLE I

Working Document 02

“Discussion Circle” on the Court of Justice

Subject: Questions contained in the terms of reference
by Mr Antti Peltomäki

Members of the “Circle of discussion” on the Court of Justice will find hereafter a paper by Mr Antti Peltomäki, alternate member of the Convention, concerning the questions contained in the terms of reference.

Comments by Mr. Antti Peltomäki, alternate representative of the Finnish Government, 19 February 2003

CONVENT - COURTS OF THE EUROPEAN COMMUNITIES

a) Appointment of Judges and Advocates-General

Should the procedure for appointing the Judges and Advocates-General (Article 223 EC) be altered? What about the appointment of members of the CFI (Article 224 EC)?

Finnish position:

Finland does not find it necessary to amend the existing provisions of the Treaty as the present system may be improved without significantly changing the appointment procedures. The equality of the Member States must be ensured in the appointment of judges.

Reasons:

In the opinion of Finland, the present system has worked without major problems. Judges have often been reappointed for another term, which has made it possible to avoid significant disruptions in the Court's work.

If the Judges were appointed e.g. for a term of nine years, without a possibility for reappointment, half of the Judges would be replaced every four or five years. This would probably entail more significant disruptions in the administration of justice.

The procedure applied to the appointment of Judges could be improved, without amending the Treaty provisions, e.g. through more profound discussions on the proposals made by Member States. However, the use of electoral committees might make the appointment of Judges more complicated and compromise the impartiality of Judges.

b) Increased use of majority decisions; Articles 225a, 229a and 245 EC

To facilitate application of Articles 225a, 229a and 245 TEC, should the present unanimity rule be replaced by a qualified majority rule?

Finnish position:

Finland does not find the use of majority decisions possible in these cases, at least not in all respects.

Reasons:

The afore-mentioned Articles relate to certain fundamental issues, including the competence

and structure of judicial panels. However, the possibility of extending the use of majority decisions to some issues may be considered.

c) Adjustment of the Courts' titles

Would it be better to reconsider the titles Court of Justice and Court of First Instance or leave them unchanged?

Finnish position:

The Courts' titles would probably need to be changed.

Reasons:

Were the Courts' competencies extended, it would be necessary to at least replace the words "European Communities" with the words "European Union", in the Courts' names. Furthermore, the present name of the Court of First Instance does not correspond to the reality as at present also appeal may be made to the Court of First Instance in certain cases. Attention should be paid to that the names are logical in all languages.

d) Extension of the right of action under Article 230 EC

Should the wording of the fourth paragraph of Article 230 EC concerning direct appeals by individuals against general acts of the Institutions be amended? What about acts of agencies or bodies set up by the Union?

Finnish position:

Finland is in favour of extending the right of action by amending the provisions of the Treaty to cover any acts that contain a decision on facts and may be compared with decisions given in individual cases. However, there should be no general right of action against legislative acts.

Reasons:

In principle, the restricted right of action of individual persons is most problematic in respect of such regulations and directives that contain decisions on facts and may be compared with decisions given in individual cases. Extension of the right of action in respect of such regulations and directives would supplement the legal remedies available under the Community's legal system.

However, a complete right of action of individual persons (covering legislative acts) would inevitably increase the Court's workload with proceedings instituted by natural and legal persons against legislative acts. Making a distinction between decisions and legislative acts is a difficult question of definition relating to the question of clarifying the hierarchy of Community acts.

Extension of the right of action to the decisions of all Community institutions seems justified and necessary to the extent that the decisions contain binding legal effects.

It is of particular importance to ensure adequate legal remedies for violations of fundamental rights. In this respect, reference may be made to the possible change in the legal status of the Charter of Fundamental Rights.

e) Mechanism of sanctions

Should the system of penalties for non-compliance with a judgment of the Court of Justice be made more effective? How? By giving the Court the option of imposing fines where a Member State fails to comply with its judgment within a given period? By other means?

Finnish position:

Finland is in favour of making sanctions more effective and of intensifying their implementation. The first stage of the procedure under Article 228 EC could be given up, in which case the Commission could directly request the Court to order a lump sum or a penalty payment to be paid by the Member State concerned.

Reasons:

The present system makes a continued infringement possible for a relatively long time after the judgment has been given. This problem would be removed if the Commission was able to directly request the Court to impose a sanction, without needing to issue first a formal notice and a reasoned opinion.

The wording of the Article could also be clarified. For example, both a lump sum and a penalty payment could be possible, even in respect of the same infringement.

However, any sanction should also in future be ordered on the Commission's request and not by the Court *ex proprio motu*.

Other possible issues to be discussed:

Extension of the Court's competence to cover all pillars of the Union; Increased consistency of the system of preliminary rulings

In view of the need to ensure the protection of natural and legal persons under law, it is not justified to make a distinction between different matters on the basis of the pillar under which they belong.

A system where the right/obligation, within the framework of the first pillar, to request a preliminary ruling may even vary within the same group of matters is defective from the perspective of protection of persons under law and is confusing. Therefore, in order to improve protection and clarity, it is justified to change the mechanism of preliminary rulings.