Colophon

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1. From the Secretary-general’s desk

Our Association's 18th colloquium, held in Helsinki on 20-21 May 2002, focused on 'preliminary reference to the Court of Justice of the European Communities'. The national reports and the general report can be consulted on the Association's website. In addition, a brochure on the general report has been compiled and sent to all members.

The supreme (administrative) courts of the 10 new EU Member States joined our Association on 15 June 2004. Given the importance of the mechanism for referring questions to the Court of Justice of the European Communities for a preliminary ruling, we thought that it would be useful to allow these courts to benefit from the lessons learnt at the Helsinki Colloquium. This is why a seminar was organised for their benefit at the European Academy of European Law (ERA) on 22-23 March 2004. This seminar was the result of highly productive cooperation between the Association, ERA and TAIEX (European Commission: Directorate-General for Enlargement).

It brought together 62 judges: five magistrates representing each Member State's supreme (administrative) court and colleagues from the Bulgarian supreme administrative court, the Romanian supreme courts and the Turkish council of state.

The seminar was hugely successful, so successful in fact that the European Commission decided to hold a similar meeting with the same agenda and, if possible, the same speakers in each new Member State but this time aimed at the largest possible number of judges from all courts.

I would therefore like to thank not only TAIEX and ERA and, of course, Mr Richard Crowe, but also all the speakers who took part in the seminar: Mr Takis Tridimas, Professor at the University of Southampton and at the College of Europe in Bruges, Mr Francis Jacobs, Advocate General of the Court of Justice of the European Communities, Mr Pieter Van Dijk, Member of the Council of State of the Netherlands, Mr Richard Lauwaars, Member of the Council of State of the Netherlands, Mr Martin Köhler, judge at the Austrian Administrative Court, Mr Michael Gröpper, judge at the German Federal Administrative Court and Mr Göran Schäder, judge at the Swedish Supreme Administrative Court. A special vote of thanks must go to our colleague Heikki Kanninen, judge at the Finnish Supreme Administrative Court and general rapporteur at the Helsinki Colloquium in 2002 for agreeing to organise and chair the seminar.

We thought it would be a good idea to publish the seminar report in the current edition of the newsletter.

You will also find a summary of the ceremonies of the 85th anniversary of the Supreme Court of Estonia, where President Hien has represented our Association, and a brief presentation of two new members: the Supreme Court of Slovenia and the Supreme Administrative Court of Lithuania.

Yves Kreins
Secretary General

2. From the President's desk.

- *The 85th Anniversary of the Supreme Court of Estonia*

Although our new Members are "young jurisdictions" in terms of European law they often have a long tradition as national institutions. One of these institutions is the Supreme Court of Estonia which has recently reached the significant age of 85 years.

The anniversary celebrations took place from 13 - 15 January 2005 in the City of Tartu where the Court was founded in 1919/20 and re-established in 1993. Tartu with its famous university has always been an important centre of Estonian intellectual and cultural life. Today it is not only the second largest town in Estonia but also known as the "City of Good Thoughts" and - thus - a perfect place for a Supreme Jurisdiction.

The celebrations started with a welcoming dinner for the foreign guests on 13 January 2005 and continued with a ceremonial conference on 14 January 2005 - exactly 85 years after the Supreme Court had held its first public session in the Tartu Town Hall on 14 January 1920. At that time the Court comprised 11 judges in three departments and acted mainly as a court of cassation in civil, criminal and administrative law matters. In 1935 the Court moved to Tallinn where it continued its activities until the former Soviet Union occupied and annexed Estonia in 1940. During the following decades of the Soviet regime the activities of the Estonian jurisdiction were suspended.

After Estonia had regained its independence, however, the Supreme Court was re-established as Court of cassation for all branches of law and the Estonian Constitution of 1992 extended its competence even to matters of constitutional review. On 27 May 1993 the first public session of the "new" Supreme Court of Estonia took place - again as 1920 in the Town Hall of Tartu. And we all know that with the accession of Estonia to the European Union in 2004 the Court has adopted yet another important function as a guardian of Community law.

Today the Court comprises 19 justices and 66 members of support staff.

The anniversary conference on the subject "Judgements of the Supreme Court of Estonia - Implications and Critique" illustrated the comprehensive competence of the Supreme Court as well. Six renowned Estonian lawyers discussed the role of the Court in the development of civil, criminal, administrative and European law and gave an idea of the great effort and enthusiasm with which our Estonian colleagues mastered the difficult transition from a state under communist regime to an independent democracy.

In the evening the celebrations continued with a ceremonial reception held by Chief Justice Märt Rask on the premises of the Tate University. I seized the opportunity to make a short salutatory speech on behalf of the Association in which I expressed my congratulations and welcomed the Supreme Court of Estonia once again in our "family".

On Saturday 15 January the celebrations closed with a sightseeing programme in Tallinn for the foreign guests. I have taken home a lasting impression of Estonian culture and hospitality and I am looking forward to reciprocating the invitation in Leipzig next June at our Annual General Meeting.

Eckart Hien,
President of the Association

3. Communications

- *President of the Supreme Court of Denmark and Danish Contact Person for the Association*

The former contact person for Denmark, Mr. Torben Melchior, has become “President” of the Supreme Court of Denmark. We congratulate him with his new function.

- *Chief Justice of the Supreme Court of Ireland*

The supreme Court of Ireland has a new Chief Justice: Mr. John Murray. We congratulate him with his new function.

- *President of the Administrative Chamber of the Supreme Court of Spain*

Mr. Angel Rodriguez Garcia has retired and leaves his office tot Mr. Ramon Trillo Torres as President of the Administrative Chamber of the Supreme Court of Spain. We congratulate him with his new function.

- *President of the Swedish Supreme Administrative Court*

The president of the Swedish Supreme Administrative Court, Mr. Hans Ragnemalm has retired. We welcome his successor, Mr. Rune Lavin, among us.

- *President of the Supreme Administrative Court of Poland*

Mr. Janusz Triscinski of the Supreme Administrative Court of Poland replaces Mr. Roman Hausser. We wish him every success in his new function.

- *President of the Supreme Court of Slovenia.*

Mr. Franc Testen is the new President of the Supreme Court of Slovenia. We wish him every success in his new function.

4. Seminar Report: The Preliminary Reference Procedure, 22nd – 23rd of March 2004

THE PRELIMINARY REFERENCE PROCEDURE: REFLECTIONS BASED ON PRACTICAL EXPERIENCES OF THE HIGHEST NATIONAL COURTS IN ADMINISTRATIVE MATTERS

Richard Crowe, Academy of European Law (ERA), Trier

Report of the international seminar hosted by the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, the Academy of European Law (ERA) Trier and the TAIEX Office of the European Commission at the ERA Congress Centre, Trier, 22-23 March 2004

1. Introduction to the Seminar

This seminar was the result of a tripartite cooperation between the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (hereinafter "the Association"), the Academy of European Law (ERA) Trier and the TAIEX Office of the European Commission. The objective was to give judges of the highest administrative courts of the future Member States an opportunity to learn from the experiences of judges from the existing Member States in making use of the preliminary reference procedure provided for in Article 234 of the EC Treaty.

The seminar was chaired by Judge Heikki Kanninen of the Supreme Administrative Court of Finland and included presentations by Advocate General Francis G. Jacobs of the European Court of Justice and Professor Takis Tridimas of the University of Southampton. Three discussion panels made up of judges of the highest administrative courts of the existing Member States addressed issues such as the procedure before the national court, the question of when a reference should be made, the role of the national court after a reference has been made and the procedure following receipt of the preliminary ruling. The programme was largely inspired by the proceedings of the 18th Colloquium of the Association, held in Helsinki in May 2002, which also addressed the topic of the preliminary reference procedure from the perspective of national supreme administrative courts. The results of that colloquium have since been published by the Association and this publication was distributed to all participants at the Trier conference.

Judicial institutions of the existing Member States represented at the Trier seminar included the Council of State of the Netherlands, the Austrian Administrative Court, the Federal Administrative Court of Germany, the Supreme Administrative Court of Sweden, the Council of State of Belgium, the Administrative Court of Luxembourg, the Supreme Administrative Court of Portugal and the Supreme Administrative Court of Finland. Almost sixty judges of the superior courts of the future Member States attended the event, including representatives of the Supreme Court of Hungary, the Supreme Administrative Court of Poland, the Supreme Administrative Court of the Czech Republic, the Supreme Administrative Court of Lithuania, the Supreme Court of Latvia, the Supreme Court of Estonia, the Supreme Court of Slovenia, the Supreme Court of the Slovak Republic, the Supreme Court of Malta, the Supreme Court of Cyprus, the Supreme Administrative Court of Bulgaria, the High Court of Cassation and Justice of Romania and the Council of State of Turkey. The seminar ran in English and French languages, with simultaneous interpretation provided.

The seminar was formally opened by Dr. Wolfgang Heusel, Director of the Academy of European Law, and Mr. Jan-Kees Wiebenga, Member of the Netherlands Council of State and representative of the Association. Both extended a warm welcome to the many participants from the future Member States and expressed their great pleasure that the Academy and the Association had been able to work so well together in order to make this seminar a reality. Tribute was also paid to the TAIEX Office of the Commission, without whose financial and organisational support the seminar could not have taken place. Both speakers went on to recall the historic significance of the imminent enlargement of the Union and noted the important role that the preliminary reference procedure will continue to play in the enlarged Union of the future.

2. Day One

2.1 Takis Tridimas: Current Trends in the Preliminary Reference Procedure

The first presentation of the seminar was delivered by Professor Takis Tridimas of the University of Southampton. Over course of an hour and a half, Professor Tridimas provided a general introduction to the Article 234 procedure and discussed the most recent developments concerning matters such as the types of legal provisions that may form the subject of a reference, the definition of a court or tribunal for the purposes of Article 234, the discretion and obligation to make a reference, the decision to refer, control of admissibility and the effects of the Court's final ruling. Particular mention was made of the increased use of Article 104(3) of the Court's Rules of Procedure and a good deal of time was devoted to the *acte clair* doctrine and the *CILFIT*[1] guidelines. This element of the presentation provoked some lively discussion focusing on the consequences of a failure by a national court of final instance to fulfil its obligation to make a reference and the possible implications in this regard of the recent *Köbler*[2] judgment of the Court of Justice.

2.2 Panel Discussion I: The Procedure Before the National Court

The first panel discussion of the seminar addressed the topic of how the preliminary reference procedure is applied within the national legal orders of selected EU Member States. At the outset of the discussion, the Chairman, Mr. Kanninen, noted that although a great deal has been said and written about the preliminary reference procedure from the perspective of the Court of Justice, much less has been said and written about the procedure from the side of national courts. This seminar therefore provided an ideal opportunity to hear about the practical experiences of national judges who have been involved in making references to Luxembourg and in applying the rulings delivered by the Court of Justice.

The discussion was opened by Prof. Pieter van Dijk of the Netherlands Council of State, who explained at the outset that there are no Dutch national laws specifically designed to implement the procedure. Nevertheless, guidelines have been drawn up with a view to providing assistance to the national judge in dealing with the procedure. In the very early days, Dutch courts were rather hesitant about making references to Luxembourg. Over time, a new generation of judges became more familiar with the requirements of Community law and Dutch courts became rather active in making references. In recent years, however, Dutch courts have shown a greater willingness to decide matters of Community law for themselves without referring to Luxembourg. Partly this is because Dutch judges have become more familiar with substantive Community law and the case law of the Court of Justice and therefore feel more confident in resolving matters of Community law for themselves. However, awareness of the long delay involved in making a reference to Luxembourg may also be a factor in this trend. The Industrial Appeals Tribunal is currently the most active Dutch court in making

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[1] Case 283/81 *CILFIT v Minister of Health* [1982] ECR 3415

[2] Case C-224/01 *Köbler v Austria*, judgment of the Court of Justice of 30 September 2003

references, with the Council of State a good second. Most references by the latter are made on matters of environmental law, zoning law and administrative sanctions in the area of competition.

An order or decision of a Dutch court to make a reference to the Court of Justice is subject to the general system of remedies. Consequently, if the court is an instance against whose decisions appeal or appeal in cassation lies, that also holds good for the order or decision of reference. However, most references are in fact made by courts whose decisions are not open to appeal. Moreover, the appellate court may annul the decision to refer only if it is of the opinion that an answer to the questions referred to the Court of Justice is not necessary in order to decide the case. Dutch courts may decide *ex officio* to ask for a preliminary ruling, but as a general rule they will not do so without consulting the parties and seeking their views on whether a reference should be made. The questions to be referred are formulated by the national court in its order or decision, though – at least in the case of the Council of State - the parties are usually given an opportunity to comment on this formulation. The Council of State has adopted the practice of indicating in its decision for reference a provisional opinion on how it thinks the questions should be answered in relation to the case before it. In this way, it hopes to assist the Court of Justice so that it can give a ruling as soon as possible and so that it can give answers that are appropriate to solve the dispute pending before the national court. In its decision to refer, the Council of State endeavours to settle all the issues which are not related to the Community law questions being referred to the Court. In that respect, the examination of the case is closed, so that the exchange of views between the parties after the Court of Justice has given its ruling will only concern the issues to which the reference relates.

This discussion of the situation in the Netherlands was followed by a discussion on the Austrian situation, led by Judge Martin Köhler of the Austrian Administrative Court. Like the Netherlands, Austria has not adopted specific national rules to implement the reference procedure, with the exception of a provision concerning the effects of a reference for a preliminary ruling (section 38a of the Act on the Administrative Court, after amendment now section 38b)[3]. The Austrian courts have been particularly active in making references since Austria joined the EU in 1995. The parties are not specifically asked to give their opinion on whether a reference should be made when the question at stake has already been discussed in the administrative procedure or has already been brought up in the action. In such a case, the administrative authority or the other parties to the case have already had an opportunity to submit their observations on the question. However, they are invited to make submissions on the problem when the Administrative Court thinks that the decision requires the resolution of a question of Community law that has not yet been discussed among the parties. However, no oral hearing is held specifically for this purpose. The wording of the reference is decided upon by the court without hearing the parties on that question. As regards the structure of the

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[3] Section 26a and 27 of the Act on the Administrative Court and Section 38a of the General Administrative Procedure Act also deal with problems of administrative procedure and the procedure before the Administrative Court when a reference is made.

reference, there are no particular rules or guidelines in Austria.[4] Judges are encouraged to follow the guidelines of the Court of Justice, particularly as regards being precise with respect to the facts of the case and the national legal situation.

The German situation was discussed by Judge Michael Groepper of the Federal Administrative Court in Leipzig. Again there are no national rules governing the procedure in Germany. References are normally proposed by the courts themselves, though the parties are of course consulted. In Germany there are six possible courts of final instance, the Five Federal Supreme Courts and the Federal Constitutional Court. However, the Federal Constitutional Court has never made a reference. As regards the procedure before the national court, the German Federal Administrative Court will try to resolve all matters of national law before making a reference. If the application of national and Community rules lead to the same conclusion, the court will try to resolve the case with national law. The preliminary reference procedure is therefore seen as something of a last resort. As regards a refusal to make a reference by the Federal Administrative Court, it is of course possible to make an appeal to the Federal Constitutional Court on grounds of a breach of the right to a lawful judge as guaranteed by the Basic Law.

Judge Göran Schäder of the Supreme Administrative Court in Stockholm discussed the situation in Sweden. Mr. Schäder worked at the Swedish Ministry of Justice during the Swedish accession negotiations in the early 1990s and remembers much discussion at the time on whether specific national regulations would have to be adopted in order to implement the preliminary reference procedure. In the end, no such enactments were considered necessary. However, a special law was later adopted giving Swedish courts the right to ask questions on the interpretation of certain international conventions concluded within the Community framework. Problems have arisen in Sweden concerning the question of what is to be considered a court or tribunal for the purposes of Article 234. In one case, a board on tax matters was not considered to be a court or tribunal by the Court of Justice, while in another case a Board of Appeal responsible for dealing with the appointment of university professors was considered to be a court or tribunal for the purposes of Article 234 by the Court of Justice, even though it was not considered a court by Swedish national law. Parties before Swedish courts are often keen to argue on the question of whether a reference should be made and they invariably submit comments on the draft reference. Many Swedish references have come from lower courts, particularly in the areas of social security, VAT, direct taxation and the free movement of labour and capital. Former Swedish lawyers at Luxembourg are now returning to the national courts and this assists in the interpretation and application of Community law at national level.

[4] Though subsequent to this seminar a paper was in fact issued by the Constitutional Service of the Federal Chancellery summing up what elements a reference should contain.

2.3 Christophe Stassart: Presentation of the Association's Website and Research Tools

The Monday afternoon session began with a short presentation of the website of the Association by Mr. Christophe Stassart, who is based in Brussels and is responsible for the development of the Association's online research tools. The Association's website is hosted on the server of the Belgian Council of State.[5] Particular attention was drawn to the website's database of papers from previous colloquia organised by the Association. This includes the national reports prepared for the Helsinki colloquium of May 2002 on the preliminary reference procedure. Mr. Stassart also gave a practical demonstration of how to use the two national case law databases available on the site. Firstly, there is the *Dec.Nat* database. This database contains some 17,000 searchable references to national decisions concerning Community law from 1959 up to the present day. This is complemented by the *JuriFast* database, which contains full texts of orders for reference sent to Luxembourg by national courts, the Court of Justice's rulings on such references and the subsequent national decisions applying the rulings of the Court. It also contains other national decisions on the interpretation of Community law (decisions without reference). The *JuriFast* database is still in the early stages of development, but should prove an extremely useful tool for judges across the Community in the years ahead.

2.4 Richard Lauwaars: Presentation of the Dutch Guidelines on Preliminary References

Professor Richard Lauwaars of the Netherlands Council of State then gave a brief overview of the Dutch courts' *Guide to preliminary ruling proceedings before the Court of Justice*, which is also freely available on the website of the Association.[6] The *Guide* was prepared under the auspices of the Dutch Euro Group. The Euro Group is an informal working group of the Netherlands Association for the Judiciary. The aim of this working group is to study developments in Community law and the decisions of Dutch judicial bodies in the field of Community law. Prof. Lauwaars is a member of the Group and was one of the final editors of the Guide.

At the outset, Professor Lauwaars pointed out that the *Guide* is meant for information purposes only and is not binding in any respect on Dutch judges. The *Guide* aims to provide practical advice derived from the experiences of Dutch courts in making use of the preliminary reference procedure. Following a general introduction to the procedure, the *Guide* provides information on the division of competences between the Court of Justice and national courts and on the issues of when to refer and how to refer. On the latter point, particular guidance is given on the structure of the order for reference and the phrasing of questions.

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[5] www.raadvst-consetat.be

[6] http://193.191.217.21/en/jurisprudence/guide/

2.5 Panel Discussion II: When to Make a Reference

The second panel discussion of the seminar took place on Monday afternoon and addressed the issues of when a reference should be made and the practical application of the *CILFIT* criteria. The Chairman, Mr. Kanninen, introduced the discussion by noting that his experiences as a *référendaire* at the Court of Justice and then as a judge at the Finnish Supreme Administrative Court have taught him that the problems with which the judges are confronted are not identical at the Court of Justice and, on the other hand, at the national court. At the Court of Justice, it is clear that the case concerns Community law and this is the only law that the Court is required to apply. At the national court, however, one must first decide whether Community law is applicable to the case. In his five years as a member of the Finnish court, Mr. Kanninen has been involved in eight cases where references were made and has sat on some sixty to eighty further cases where a reference was seriously considered.

Speaking on the Swedish experience, Göran Schäder noted that Swedish courts have shown a strong willingness to apply Community law directly without making a reference to Luxembourg. As regards the obligation of the court of final instance to make a reference, Mr. Schäder recalled that identifying the national court of final instance in a particular case has given rise to problems in Sweden, as evidenced by the *Lyckeskog*[7] case before the Court of Justice. As for the *CILFIT* criteria, Mr. Schäder remarked that if everyone who had a doubt about a question of Community law referred a question to Luxembourg then the system would have collapsed long ago. The *CILFIT* criteria have to be applied with common sense, especially in view of the workload of the Court of Justice and the length of proceedings there. The reality of *CILFIT* is quite different to the theory. Mr. Schäder feels that the idea of asking the national supreme court to propose an answer to its own question would not work, as this would make the Court of Justice supreme over the supreme courts and would adversely affect the relationship of cooperation between them. Mr. Schäder also emphasised the importance for the national court and the parties of knowing if an identical or similar question is already pending before the Court of Justice in another case. Mr. Schäder highlighted the need for national supreme courts in particular to have access to information on pending references and similar cases arising before other supreme courts. The online research tools of the Association of Councils of State and Supreme Administrative Jurisdictions can play an important role in this regard.

Following on from Mr. Schäder's discussion, Mr. Kanninen remarked that there have been signals from Luxembourg, and particularly from judges of the Court of Justice speaking extra-judicially, that national courts should not refer too many questions. However, there must be a concern that in seeking to avoid unnecessary questions, national supreme courts may go too far and may become too cautious when it comes to deciding whether or not to make a reference in a particular case.

The discussion was continued by Martin Köhler from Austria, who noted the enormous practical significance of the Court of Justice's assertion in the *Dior*[8] judgment that it is not necessary to make a

[7] Case C-99/00 *Lyckeskog* [2002] ECR I–4839

[8] Case C-337/95 *Christian Dior* [1997] I-6013

reference when the question raised is “substantially the same” as one which has already been the subject of a preliminary ruling in a similar case. The great difficulty for the national court, however, is to determine what is “substantially the same”. As for the obligation of the national supreme court to make a reference, Mr. Köhler spoke in some detail about the Austrian Administrative Court’s experience with the *Köbler* case and expressed the view that in future the Austrian Administrative Court will think very carefully before withdrawing a reference as it did in the circumstances that gave rise to the *Köbler* action.

The debate was then taken up by Michael Groepper from Germany. German references in recent times have mainly concerned the four freedoms, equality law, environmental law, agriculture and the EU-Turkey agreement. The Bundesfinanzhof has also been very active in making references on VAT and customs classification issues, including the notorious *Wiener*[9] reference of 1997 on the classification of nightdresses, where Advocate General Jacobs suggested that national courts should exercise greater discretion in not seeking a ruling on every possible detail of interpretation. The obligation of the court of final instance to make a reference is taken seriously in Germany, but German courts nevertheless often apply the *CILFIT* guidelines so as to hold that an issue is *acte clair*. Where a chamber formation of a Federal Supreme Court must decide on the issue of whether there is a doubt about the correct interpretation to be given to a provision of Community law, the practice is to ask whether a majority of judges has a doubt. Hence, if three judges on a five-judge chamber have a doubt, a reference will be made. The Federal Administrative Court views the Court of Justice as a colleague rather than a superior court and endeavours to refrain from bothering the Luxembourg court with unnecessary questions. The German court has now also adopted the practice of including in the order for reference its own opinion of the answer to be given to its question. This practice clearly has its pros and cons, but the aim is first and foremost to open up a friendly dialogue with the Court of Justice. Where the German court is on notice that a similar question is pending before the Court of Justice, it will stop and wait for the Court of Justice to render its judgment before deciding how to procede. The long delay involved in awaiting the reply to a reference is however perceived in Germany to be an obstacle to the good functioning of the reference procedure. As regards the domestic procedure for handling a reference, once a reference is made the responsible judge is then relieved of all responsibility for the case. When the answer comes back, the case is given a new number and is listed as a new case. Therefore, the judge who ultimately decides the case may not be the same judge who made the reference. This is a very practical procedure from the point of view of the German judge, although the parties may not always like it.

Richard Lauwaars of the Netherlands then continued with a Dutch perspective on some of these issues. From a personal point of view, he feels that the *CILFIT* doctrine is not useful as it is not clear. He fears that post-enlargement a question may be referred to the Court of Justice asking whether *CILFIT* is still good law and worries that the Court of Justice may reply in the affirmative. A further difficulty that he encounters in deciding whether to make a reference is the problem of clusters of cases. It is easy to make a reference when a point of Community law arises in an isolated case, but

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[9] Case C-309/97 *Angestelltenbetriebsrat der Wiener Gebietskrankenkasse* [1999] I-2865

what is the national court to do when there are 76 cases with very similar but not identical facts? Should a question be referred in all 76 cases or should the court select just one or two illustrative cases? The Council of State was once faced with a cluster of cases on the export of waste materials where it decided to refer more or less the same questions in five different cases in order to present the Court with a clear picture of the different fact situations in which these questions arose. In this case, however, the Court of Justice joined the cases and delivered a single decision by order and without hearings. This is not an altogether satisfactory approach from the point of view of the parties to these cases and from the point of view of the national judge. The new fast-track procedure of Article 104a of the Courts Rules of Procedure is to be welcomed and it worked well in the *Jippes*[10] case, concerning measures to control mad-cow disease. There, the Industrial Appeals Tribunal requested that the case be dealt with according to the fast-track procedure and a judgment was given by the Court of Justice within three months. However, Mr. Lauwaars noted that if too many courts are going to ask for and be granted the fast-track procedure then it will take four years for all other courts to receive a reply to their questions!

In bringing the debate to a close, Mr. Kanninen recalled that when *CILFIT* was decided the Community had only 9 Member States. However practicable the *CILFIT* criteria may have been in 1981, they simply cannot be strictly applied in a Union of 25 Member States and 20 official languages. In conclusion, however, he put forward the view that the Court of Justice appears to be quite happy with the way the *CILFIT* guidelines are working in practice, but accepts that there certainly are problems in theory.

3. Day Two

3.1 Advocate General Francis Jacobs: The Experiences of a Member of the Court of Justice

The second day of the seminar began with a presentation by Advocate General Francis Jacobs of the Court of Justice and the subject-matter of his talk followed on nicely from the discussions of the preceding afternoon. At the outset, the Advocate General urged that the essential *purpose* of the preliminary ruling system, namely to ensure that Community law is applied uniformly, must be borne constantly in mind. The Court of Justice adopts a purposive approach to interpretation of the law and this purposive approach is also evident in the Court's approach to the *system*. A preliminary reference is of most use where the question is a general one and where the application of the ruling will not be confined to the facts of a particular case. The national court might therefore take account of whether its reference will further the general purpose of the system.

As for the *CILFIT* criteria, the Advocate General feels that the conditions laid down are perhaps too strict, especially as regards the need to consider all the different language versions of the Community provision in question. This may have been practicable when there were only seven official languages,

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[10] Case C-189/01 *Jippes and Others* [2001] ECR I-5689

as there were at the time of the *CILFIT* ruling, but this is clearly not the case where we have twenty official languages. The criteria are also out of sync with the purposive approach of the Court of Justice and leave open the issue of how to resolve the matter when discrepancies are found. It must be recalled that at the time of the *CILFIT* judgment there was a fear that courts of final appeal were not always abiding by their obligations under Community law. There was therefore a concern to curb possible abuse and to ensure full compliance. However, one should not go too far and impose excessive burdens on national supreme courts on that account.

On a related issue concerning the use of languages, it seems it may not be possible to continue with the official publication of every single judgment of the Court of Justice in all twenty languages. In any event, the Advocate General suspects that publication of all cases is not necessarily a good thing and feels it might be better to concentrate resources on publication of only the more important cases.

Looking to the future, the Advocate General does not see any immediate need to transfer a limited preliminary ruling competence to the Court of First Instance, a possibility opened up with the entry into force of the Treaty of Nice. First of all, the backlog of cases facing the Court of Justice is the same backlog that would then be faced by the Court of First Instance and a large part of the delay is due to the demands of multi-lingualism which are common to both Courts. Secondly, is not clear how one would define the categories of cases to be transferred. The situation is different with respect to the transfer of jurisdiction to hear direct actions. It was easy in principle to say that the Court of First Instance, which is already competent to hear all direct actions brought by individuals, should in future have jurisdiction over direct actions brought by Member States. There appears to be a natural progression there. However, there is no such natural progression involved in the transfer of preliminary ruling competence. One could, for example, decide to transfer preliminary ruling competence over competition cases, but competition cases frequently also give rise to questions of the free movement of goods. In the Advocate General’s opinion, it would be preferable to concentrate for now on shifting all direct actions to the Court of First Instance and to consider the future of the preliminary ruling system on the basis that only the Court of Justice will have preliminary ruling jurisdiction.

Asked about the *Köbler* judgment and the possible liability of a national supreme court for failure to make a reference, the Advocate General feels the judgment should be read as applying only in exceptional cases, for example in cases of abuse. A Member State will really only be held liable in a case of bad faith. There should be no problem if the national supreme court in question was acting in good faith.

3.2 Panel Discussion III: The Role of the National Court after having submitted a Reference for a Preliminary Ruling and the Procedure following the Preliminary Ruling

The third panel discussion of the seminar took up the rest of the morning of Day Two and looked at the role of the national court after a question has been referred to Luxembourg and the procedure when the national court receives the reply of the Court of Justice.

Pieter Van Dijk of the Netherlands Council of State started by discussing the situation in the Netherlands. The Council of State has never withdrawn a request for a preliminary ruling, althought the Higher Social Security Court did once withdraw a reference at the request of the Court of Justice after the latter Court had ruled on a similar question arising in separate case. There was another Dutch case where the Court of Justice asked the national court to withdraw its reference, but the national court did not agree with the Court's assessment and merely rephrased slightly its question. The Court of Justice accepted the revised question. Rephrasing of questions has also been accepted by the Court of Justice in cases originating from the Council of State.

Legal staff at the Council of State will follow the proceedings at the Court of Justice very closely after the reference has been made. One or two staff members will normally go to Luxembourg to attend the oral hearing of the case. If the Council of State observes that there is a misunderstanding on the part of the Court of Justice or a danger of misinterpretation taking place, it will send additional information to Luxembourg. On the issue of admissibility, a question referred by the Council of State was once found to be irrelevant by the Court of Justice. The simplified procedure of Article 104(3) of the Court's Rules of Procedure was applied in a reference from the Council of State in the waste export case mentioned earlier. The case in question involved five references which were joined and Mr. van Dijk thinks that at least one of these cases should have been treated separately by the Court of Justice and should not have been dealt with in a simplified procedure. However, there is no dialogue on this issue between the Court of Justice and the requesting court and so the Council of State could not express a view on the matter. After the Council of State receives the ruling of the Court of Justice, this is communicated to the parties to the case. Parties are entitled to request an additional hearing as the preliminary ruling is a new element in the case. They will sometimes seek to extend the scope of this hearing to cover other issues too, but the Council of State will restrict the hearing to possible implications of the preliminary ruling. As regards the utility of the ruling, sometimes rulings can be rather vague and the national judge must be quite creative in applying them to the case before him. Sometimes the Opinion of the Advocate General can prove of use to the national judge as it may assist in interpreting the preliminary ruling.

Speaking from the perspective of the German Federal Administrative Court, Mr. Groepper recalled that the German court has withdrawn references where the Court of Justice has given judgment on a similar question and has suggested to the German court that it might like to reconsider the need to maintain its reference. In Mr. Groepper's view, such a request from the Court of Justice is difficult to refuse. German references tend to be very detailed as the national judge seeks to ensure that the Court of Justice has no need to ask for further information after the reference has been made. Much of the information contained in the early parts of a German reference is really included for the benefit of the parties and it is only towards the end of the reference that the Community law questions are raised. The role of the German court once the reference has been made is passive and even though the national judge may be very interested to hear the submissions of interveners before the Court of Justice, he has no access to this information and cannot comment. On the question of admissibility, Mr. Groepper feels that the Court of Justice is in fact quite generous and is in fact more generous than the German Federal Constitutional Court. The ruling of the Court of Justice is communicated to the parties upon receipt by the national court and the parties are then invited to settle the case in light of

the ruling. The style of Court of Justice judgments may not always be to the liking of German judges, but in general they are happy with the answers they receive from Luxembourg.

Martin Köhler then took up the discussion with reference to Austria. The Austrian court adopts a very passive role once the reference has been made, though exceptionally in the *Köbler* case the national court did present some further observations. There have been no problems with the admissibility of references from the Austrian Administrative Court. However, the Administrative Court has not always found judgments sent to it by the Registry of the Court of Justice to be of much use. Mr. Köhler recalled a case where a reference was made by the Austrian court concerning the mutual recognition of dentistry qualifications and certain provisions governing the transitional period within which the former Austrian training scheme could be maintained. The question arose whether Austria was obliged to admit a citizen of another Member State to a course in accordance with the old system. The Registrar sent the Austrian court copies of two old Court of Justice judgments relating to transitional periods in Italy, but the Austrian court could not see the implications of these judgments in the context of the case before it, as in those cases Italy had maintained the old system for a longer time than the transitional period. There have also been some problems in using the ruling of the Court of Justice where the Austrian court did not consider the ruling of the Court to be particularly clear. This arose in two tax cases in particular. However, the Austrian court has sometimes found that the Advocate General's Opinion sheds some light on the ruling of the Court. In particular, if the Advocate General makes a point and the Court's ruling does not say anything to contradict this point, the Austrian court will tend to follow the Advocate General if the point needs to be decided in order to resolve the case before it.

In Sweden, Göran Schäder explained, there has only been one case of a reference being withdrawn. This only happened because the plaintiff, the national tax office, decided to withdraw its case before the national court. In fact the national court was a bit annoyed with the tax office in this case as it seems the tax office saw that new developments domestically were likely to favour its interests and simply changed its mind about the desirability of getting a ruling from Luxembourg on the point in question. As far as clarifications and questions are concerned, the Swedish Supreme Administrative Court has good informal contacts with the Court of Justice and members of the Swedish court are happy to pick up the phone and talk to Swedish lawyers working in Luxembourg where informal assistance is required. During the procedure, the Swedish court does not send any observers to Luxembourg but does try to keep informed about what is happening. As far as admissibility is concerned, there have not been any problems with references from the superior courts, though there have been problems with lower courts and the question of what is a court or tribunal for the purposes of Article 234.

The parties are of course consulted once the ruling is received from the Court of Justice. Provided the question has been put correctly, it should be easy in Mr. Schäder's view to apply the answer to the case before the national court. However, there was one case where the highest Swedish court for private law matters sent a reference to Luxembourg concerning the obligation of a foreign party to court proceedings in Sweden to put up security for costs. There was some confusion about one point of the case which the Court did not deal with in its ruling but which the Advocate General addressed in his Opinion. The national court decided to follow the approach of the Advocate General without

referring again to the Court of Justice. However, a subsequent judgment of the Court of Justice showed the approach favoured by the Advocate General and subsequently applied by the Swedish national court to have been incorrect. In a way, the Swedish court could be seen to have been led astray by the Opinion of the Advocate General. This mistake on the part of the Swedish court was certainly made in good faith and according to Mr. Schäder no question of *Köbler* liability should arise in such circumstances. As a final point, Mr. Schäder mentioned that the accelerated procedure of Article 104a of the Court's Rules of Procedure is likely to become very important in asylum cases, where an individual has been given only a very short time to leave a country.

4. Case Studies

The final afternoon of Day Two was devoted to the study of three sample case studies. Participants were divided into smaller working groups and were requested to examine the hypothetical cases presented and to decide whether a reference was necessary in each case and, if so, the nature of the questions that should be asked. A final plenary session brought all the groups together to discuss the overall results of their analyses.

The first case study concerned the building of an airport in a new Member State and the possibility for certain interested parties to rely on that State's non-compliance with Directive 85/337 on environmental impact assessments in order to object to the development. This case raised issues of the role of the parties in the reference procedure and more general questions about the effectiveness of the procedure as a means of protecting individual rights deriving from Community law. A particular issue which is likely to give rise to references from the courts of the new Member States over the next few years concerns the proper interpretation to be given to transitional arrangements applying in the context of EU accession. The facts of this case provided an example based around the possibility of classifying the airport development as a "pipleline project" to which the Directive did not apply. Mr. Köhler addressed this issue in the plenary session with reference to his experiences of cases arising in the context of Austrian EU accession.

The second case study concerned a Russian footballer playing in Spain who felt that he was being discriminated against on grounds of nationality by the rules of the Spanish football federation, contrary to the terms of the EU-Russia Association Agreement. The question arose whether the relevant provision of the Association Agreement could be considered to be directly effective, especially given that similar provisions of the Polish and Slovak Europe Agreements were held to be directly effective by the Court of Justice in the *Pokrzeptowicz-Meyer*[11] and *Kolpak*[12] cases. Some working groups felt that this was *acte clair* and that there was no need for a reference. Other groups felt that a reference might be necessary in view of the different context in which the EU-Russia Agreement was signed. Some interesting debate ensued in the plenary session, with Mr. Kanninen suggesting that post-

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[11] C-162/00 *Pokrzeptowicz-Meyer* [2002] ECR I-1049

[12] Case C-438/00 *Deutscher Handballbund v Maros Kolpak* [2003] ECR I-4135

Köbler national courts may be a little more reluctant to decide matters for themselves. Indeed, we may see a tendency for national supreme courts to indicate in their order for reference that they are almost sure of the answer to the question but would nevertheless like the Court of Justice to confirm their analysis, if necessary by means of a reasoned order issued in accordance with Article 104(3) of the Court's Rules of Procedure. Thus we may see a subtle shifting of the *acte clair* 'filter' from the the highest national courts to the Court of Justice.

The final case study concerned a migrant worker who contested certain decisions of the tax authority of the host Member State on the ground that they infringed Community law. He lost his case before the national court, but in subsequent Article 226 infringement proceedings the national regulations which were applied to his case were found to have been contrary to Community law. Relying on the judgment of the Court of Justice, the worker in question brought fresh proceedings before the national court seeking reimbursement of the contributions made under these national regulations. The tax authorities opposed this action on the basis that the outcome of the original administrative procedure had been confirmed by a court judgment and could not be reopened. These facts gave rise to several issues relating to the possibility of reopening national administrative procedures on Community law grounds and possible liability on the part of the host Member State for breach of Community law by its courts. The discussions on this case gave rise to several comments on the difficulty for the national judge of deciding whether national law or Community law governs a particular case and also the possible need for further clarification from the Court of Justice on the implications of its recent judgments in the *Kühne and Heitz*[13] and *Köbler* cases.

Mr. Kanninen drew the seminar to a close by thanking the audience for their lively participation in the case study workshops and plenary discussion. The most important thing, he said, was not to arrive at right or wrong answers to these hypothetical cases but to discuss the issues and to gain new insights. Mr. Kanninen also expressed his thanks to his colleagues in the Association for their support in making the seminar possible and also to his fellow organisers at the Academy of European Law and the TAIEX Office of the Commission. Finally, he wished the judges of the accession countries all the best for EU enlargement on 1st May and said that he looked forward to welcoming them as colleagues in the Association and as fellow judges of Community law.

5. Summary and follow-up

The Supreme administrative courts (or, where relevant, the supreme courts) of the ten new Member States, all of whom were represented at the Trier seminar, automatically became members of the Association on 1st May 2004. This seminar was certainly seen by all concerned as a fitting launch to the new, enlarged, Association and it is hoped that the relevant judicial institutions of the new Member States will play a full and active part in the Association's projects in the years ahead. This seminar showed once more the benefits of a horizontal dialogue between national supreme courts across the

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[13] Case C-453/00 *Kühne and Heitz*, judgment of the Court of Justice of 13 January 2004

Community and the pressing need for appropriate tools to facilitate this dialogue. In this respect, the Association and its web-based research tools clearly have an important role to play.

This seminar also marked a new level of cooperation in the relationship between the Association and the Academy of European Law. Relations between the Association and the Academy have long been extremely close at a personal level and the two have cooperated in the past on smaller projects. However, this was the first major seminar undertaken together and it is hoped that it will provide a good precedent for future cooperation. Moreover, the programme of the Trier seminar was used as a model for a subseqent seminar organised by the Academy for the Hungarian Ministry of Justice in Budapest on 22nd-23rd April 2004. The Academy is now very well positioned to provide further high-level professional training on the preliminary reference procedure to national judges across Europe and thereby to play a leading role in opening up the desired horizontal dialogue between national courts.

Finally, mention should be made of the important role played by the TAIEX Office of the European Commission in making the Trier seminar possible. The idea for this event came originally from the Association and the Academy, but Christiane Kirschbaum of the TAIEX Office was extremely receptive to the idea and without the financial and organisational support of TAIEX the participation of almost sixty judges of the new Member States and remaining candidate countries simply would not have been possible. Again, it is hoped that this seminar will provide a model for future cooperation with the TAIEX Office in the field of judicial training.

5. Presentation of the New Members

5.1 Presentation of the Supreme Court of Slovenia

1. The Supreme Court, Its Role and Organisation

The Supreme Court is the highest appellate court in the state[14]. It functions primarily as a court of cassation[15]. It is a court of appellate jurisdiction in criminal and civil cases, in commercial lawsuits and in labour and social security disputes. It is the court of the third instance in almost all these cases within its jurisdiction. The grounds of appeal to the Supreme Court (defined as extraordinary legal remedies in our procedural laws) are therefore limited to issues of substantive law and to the most severe breaches of procedure.

After the Law on Administrative Courts has been passed, the Supreme Court has become the court of the second instance in most cases of administrative review.

The Supreme Court is not authorised to determine procedural norms for itself and for courts in general. It is only authorised to give prior opinion to the Minister of Justice, regarding the Court Procedural Code[16] - which determines such matters as the internal organisation of courts; the case flow management; detailed rules on the assignment of cases to individual judges; the limited functioning of courts during the court recess (15 July to 15 August); the business of court administration and technical work of courts etc. It is also authorised to determine the details of those procedural norms, set by the Law on Courts, which regulate the functioning of the Supreme Court "en banc" (in session attended by all the justices composing it[17]).

The Supreme Court does not decide whether to review a case or not. All the appeals to the Supreme Court can be made as of right and no leave to appeal is needed. Apart from administering justice (reviewing cases in its jurisdiction), the Supreme Court also determines most cases of disputes over jurisdiction between lower courts, grants the transfer of jurisdiction to another court in cases provided by law, and keeps records of the judicial practice of courts. The Supreme Court takes active part in the training of judges, mainly during their service.

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[14] Art. 127 of the Constitution of the Republic of Slovenia: "The Supreme Court shall be the highest court in the State. It shall be a court of appellate jurisdiction and shall deal with such other matters as are laid down by statute."

[15] In the sense of its prerogatives, and not in the sense of the organisation of the judiciary in the Republic of Slovenia.

[16] Official Gazette of the Republic of Slovenia, Nr. 17/95

[17] Court in bank (en banc), Black's Law Dictionary, 1990, p. 353

The judges of the Supreme Court preside the State Election Commission. They also preside and sit on the following disciplinary boards:

- the State Prosecutor Office's disciplinary board of the second instance and, in disciplinary cases against high ranking State Prosecutors, of the first instance as well;
- the Bar Association's disciplinary board of the first instance (the president and one member of the board) and of the second instance (this board is constituted of five Judges of the Supreme Court);
- the Notaries Public Association's disciplinary boards of the first and the second instance (in the same way as with the Bar Association's boards).

According to the Constitution (q.v. footnote 1) the Supreme Court is the highest court in the state. There is also the Constitutional Court of the Republic of Slovenia. It has been defined (in the Law on the Constitutional Court) as "the highest body of the judicial power for the protection of constitutionality, legality, human rights and fundamental freedoms"[18]. Apart from this - and the regulation of the effect of the decisions of the Constitutional Court in cases of constitutional complaint[19] - the relations between the Supreme Court and the Constitutional Court are not regulated by statutes.

The Supreme Court is not empowered to decide upon matters relating to the conformity of statutes, regulations and by-laws with the constitution and with international law, and similar matters. These matters, as well as matters relating to complaints of breaching of the constitution involving individual acts infringing human rights and fundamental freedoms (constitutional complaints), belong within the jurisdiction of the Constitutional Court.

The Supreme Court can exercise inside inspection of lower instance courts' activities which are not related to the administration of justice. Thus, the Supreme Court can demand to be given insight into the work of a lower court by way of examining cases already closed, chosen at random (the object of this examination being a later exchange of experiences with the judges of the lower court, planned as a kind of collegial help and part of in-service training) - and not of cases still under procedure. The President of the Supreme Court can also - upon the complaint of a party in a case not yet closed (the complaint being that the case is not being adjudicated within a reasonable time) - ask the president of a High Court (court of the second instance) to inform him/her of the reasons for the delay in the individual case.

The independence of the Supreme Court is safeguarded in the same way as that of the lower courts. The way the President and Vice-President of the Supreme Court are appointed (q.v. 7), represents an additional safeguard of the independence of the Supreme Court from the executive power (the

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[18] Para. 1, Art. 1 of the Law on the Constitutional Court (Official Gazette of the Republic of Slovenia, Nr. 15/94)

[19] Art. 112 of the Law on Courts: "If pursuant to a constitutional complaint a final judgment or another decision of a court has been modified by a decision of the Constitutional Court of the Republic of Slovenia, the court shall enforce it in accordance with the decision of the Constitutional Court."

Ministry of Justice, i.e. the government). The independence of Judges of the Supreme Court is safeguarded in the same way as that of other judges, with only one additional safeguard: the disciplinary measure of transfer (to a court one level lower or a court of equal status in a different town) may not be taken against a Judge of the Supreme Court[20].

The affairs of the administration of courts[21] are handled by their presidents. A court may have a secretary charged with the execution of the affairs of court administration. Therefore, the Supreme Court is administered by its President - and the Supreme Court is not the administrator of the whole court system. The independence of the courts, as parts of the judiciary, is safeguarded by the limited prerogatives the Ministry of Justice has in the administration of the judiciary[22].

2. Safeguarding Uniformity of Judicial Practice

Safeguarding uniformity of judicial practice is one of the important tasks of the Supreme Court. Most important in this context, the Supreme Court passes "en banc":

- memorandum opinions on questions of judicial practice (i.e. it accepts and gives a generalized significance to interpretations of law given in the statements of reasons of a judgment, or another decision, of the Supreme Court or a court of the second or the first instance);
- memorandum opinions of principle (i.e. it accepts interpretations of law, important in view of the uniformity of judicial practice, proposed by one of the Divisions of the Supreme Court of its own accord or upon the proposal of a lower court).

According to the law[23], all these interpretations of law are binding on all the panels of the Supreme Court - and only on them, while there is no legal obligation for the lower courts to respect them. These memorandum opinions, however, are usually accepted as correct interpretations of law by all the lower courts as well.

All the decisions of the Supreme Court are accessible to all the courts and to the professional public through a computer network. The Supreme Court draws attention of the lower courts to those of its

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[20] Para. 3, Art. 84 of the Law on Judicial Service (Official Gazette of the Republic of Slovenia, Nr. 19/94)

[21] Para. 1, Art. 60 of the Law on Courts: "The affairs of the administration of the court include the decision-making and other responibilities by which conditions are provided for the regular exercising of judicial authority in accordance with law, the Court Procedural Code and other regulations."

[22] Art. 74 of the Law on Courts: "The administration of the judiciary provides general conditions for the succesful exercising of the judicial aurhority, including in particular the preparation of laws and other regulations in the field of organisation and operation of the courts, care for the education and in-service training of personnel, the provision of personnel, material, professional and physical conditions, the provision of international legal aid, the enforcement of penal sanctions, statistical and other research into the operation of the courts, and other administrative tasks provided by law."

[23] Para. 2, Art. 110 of the Law on Courts

decisions that bring new aspects to the interpretations of law or might be of general interest in another way, by publishing excerpts from the statements of reasons for these decisions in the "Judge's Informer" (a bulletin of internal character, distributed among judges only). The memorandum opinions (q.v. 16) passed by the Supreme Court "en banc" twice a year, are published in a semi-annual periodical "Memorandum Opinions", distributed (on a commercial basis, the price covering costs only) to all the courts (each judge receiving a copy as a rule), to other institutions and members thereof (e.g. the Public Prosecutor's Offices, the Bar Association and those members of the Bar who wish to receive it) and other interested parties, mainly members of the legal profession that subscribe to it.

5.2 Presentation of the Supreme Administrative Court of Lithuania

1. Short introduction to Lithuanian court system

The court system of Lithuania consists of *courts of general jurisdiction* and *administrative courts*.

The Constitutional Court of the Republic of Lithuania is given the special status. According to the Constitution of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania has the exclusive competence to decide whether the laws and other legal acts adopted by the Seimas (parliament) are in conformity with the Constitution, and whether the acts adopted by the President or the Government of the Republic are in compliance with the Constitution and laws, adopted by the Seimas.

If there is a ground to believe that the law applicable in a particular case contravenes the Constitution, the administrative court or court of general jurisdiction is obliged to suspend the hearing of the case and, in view of the competence of the Constitutional Court of the Republic of Lithuania, apply to it with a request to determine whether the aforesaid law or other legal acts complies with the Constitution. Having received the ruling of the Constitutional Court, the court resumes the hearing of the case.

The right to file a petition with the Constitutional Court concerning the constitutionality of a legal act is also vested in the Government, groups consisting of at least 1/5 of all Seimas members, and the President of the Republic.

District courts, regional courts, the Court of Appeals of Lithuania and the Supreme Court of Lithuania are *courts of general jurisdiction*, hearing civil and criminal cases. District courts function as 1st instance courts. 5 regional courts (situated in Vilnius, Kaunas, Klaipeda, Šiauliai and Panevezys) function as 1st instance courts for some civil and criminal cases attributed to their jurisdiction by law, as well as courts of appellate instance for the judgments of district courts. The Court of Appeals of Lithuania is the court of appellate instance for the judgments of regional courts as 1st instance courts. The Supreme Court of Lithuania is the court of cassation instance, hearing cassation appeals against the appellate judgments of regional courts and the Court of Appeals of Lithuania. It is also responsible for developing of uniform practice of courts of general jurisdiction in interpretation and application of laws.

According to the Article 111 of the Constitution of the Republic of Lithuania, for the consideration of administrative, labour, family and other categories of cases, specialised courts may be established

pursuant to law. Following this constitutional provision, as well as the provisions of Law on the Establishment of Administrative Courts (adopted on the 14th of January 1999), the system of specialized *administrative courts* was established and started to function in Lithuania from the 1st of May 1999.

In 2001, the system of administrative courts has undergone final reforms, which resulted in the creation of the Supreme Administrative Court of Lithuania and full separation of administrative courts from the system of courts of general jurisdiction. Recently the system of administrative courts of Lithuania consists of 5 regional administrative courts (situated in Vilnius, Kaunas, Klaipeda, Šiauliai and Panevezys) and the Supreme Administrative Court.

Regional administrative courts function as 1st instance courts, and the Supreme Administrative Court of Lithuania – as the appellate instance for administrative cases. In administrative cases there is no cassation. Rulings of the Supreme Administrative Court of Lithuania are final and not subject to appeal.

2. Competence of administrative courts

The competence of administrative courts in Lithuania is regulated by the Law on Administrative Proceedings as well as number of specialized laws, such as laws on elections, public service, tax, zoning etc.

According to the Law on Administrative Proceedings, administrative courts settle disputes over issues of law in public or internal administration, that is consider complaints (applications) against administrative enactments adopted by the entities of public and internal administration and their acts or omission (i.e., neglect to perform their duties).

In addition, administrative courts hear petitions for review of conformity of regulatory administrative acts with a law or a regulation issued by the Government. This function of administrative courts is very similar to the function, performed by the Constitutional Court of the Republic of Lithuania.

Investigation of the activities of the President of the Republic, the Seimas, members of the Seimas, the Prime Minister, the Government (as a collegial body), judges of the Constitutional Court, the Supreme Court of Lithuania and the Court of Appeals of Lithuania, procedural actions of judges of other courts, also of prosecutors, investigators, persons conducting an inquiry and court bailiffs, connected with the administration of justice or investigation of a case as well as the execution of decisions are also outside the remit of competence of administrative courts.

3. The Supreme Administrative Court

The Supreme Administrative Court of Lithuania was formed and started its activities from the 1st of January 2001, following the amendment of Law on the Establishment of Administrative Courts of 19th of September 2000.

According to the Law on Administrative Proceedings, the Supreme Administrative Court of Lithuania is the appellate and final instance for cases from decisions, rulings and orders of regional administrative courts as the courts of the first instance.

The Supreme Administrative Court is also the first and final instance for certain categories of administrative cases assigned to its jurisdiction by law. It includes *inter alia*:

- cases relating to the lawfulness of regulatory administrative acts adopted by the central entities of state administration

- cases relating to the complaints against the decisions or omission of the Central Electoral Committee, with the exception of those assigned to the competence of the Constitutional Court.

The Supreme Administrative Court of Lithuania does not carry any advisory functions. However, it performs a posteriori control of legality of regulatory administrative acts, hearing petitions for review of conformity of a regulatory administrative act (part thereof) with a law, adopted by Seimas, or a regulation issued by the Government.

According to the law, a regulatory administrative act (or a part thereof) is deemed annulled and, as a rule, may not be applicable from the day of official announcement of the effective decision of the administrative court on the recognition of the relevant regulatory administrative act (a part thereof) as illegal.

The Supreme Administrative Court is also responsible for developing of uniform practice of administrative courts in interpretation and application of laws. For that purpose the Supreme Administrative Court periodically issues its bulletin under the title "Practice of Administrative Courts" (in Lithuanian only). Interpretation with regard to the application of laws found in the rulings which are published in the bulletin of the Supreme Administrative Court must be taken into account by courts, state and other institutions as well as by other entities when applying these laws.

4. Structure of the Supreme Administrative Court

According to the Law on Courts of the Republic of Lithuania, the Supreme Administrative Court is composed of the President, the Vice-president and other justices. At present there are fourteen justices serving at the Court, together with the President and the Vice-president.

Cases at the Supreme Administrative Court are heard by a chamber of three justices. For hearing complex cases an expanded chamber of five justices may be formed on the initiative of the President of court or on the recommendation of the chamber or the case may be referred to the plenary session of the court. Plenary session is deemed lawful where it is attended by at least two-thirds of the justices of the Court.

The President of the Supreme Administrative Court is ex officio member of the Judicial Council (main self-government institution of the judiciary).

The apparatus of the Supreme Administrative Court is composed of President's Office, assistants to justices, Department of Judicial Practice, Records Office, Division of Information and Computer Technologies, Finance division and Economy division.

Adviser to the President of Court and assistants to justices are officers with university degree in law, whose main function is to advise the President of Court or justices on the issues relating to the analysis, application and systematisation of laws, provide support in preparing cases for court hearing, prepare drafts of procedural documents and assist the President of Court and justices in the performance of other duties.

The main function of the Department of Judicial Practice is the generalization and analysis of the judicial practice. It includes the practice of national courts (the Constitutional Court of the Republic of Lithuania, the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania), as well as practice of Court of Justice of the European Communities and European Court of Human Rights. Director and consultants of the Department of Judicial Practice are also officers with university degree in law.

Other court divisions and personnel perform auxiliary functions.

The seat of the Supreme Administrative Court of Lithuania is in Vilnius, Tilto Street 17/4. Phone: + 370 5 2791005; Fax: + 370 5 2 685875; e-mail: info@lvat.lt