CHAPTER ELEVEN

REFERENCES FOR PRELIMINARY RULINGS AND THEIR PROCEDURE BEFORE THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Alejandro del Valle Gálvez
Miguel A. Acosta Sánchez

I. Introduction.

II. The initial phase. The General System of the EC Treaty for references before the ECJ.
1. Purpose of the reference.
2. Object of the reference.
3. Organs qualified for the referral.
4. Moment of the referral.
5. Form of the referral.

III. The initial phase. Particularities and specific types of references before the ECJ.
2. References in the EU’s Third Pillar: Police and Judicial Cooperation in criminal matters.
3. Other fields of application for the reference procedure.

IV. The intermediate phase: references before the ECJ.
1. General framework.
2. Registry of references and beginning of the written procedure.
3. Admissibility and request for clarifications to the national court.
4. Written observations of the interested parties.
7. Opinion of the Advocate General and final decision of the ECJ.
9. Other procedural particularities of references.

V. The final phase: the effects of preliminary rulings.

VI. Spanish practice on references.

Selected bibliography.

I. Introduction

The present text, which completes the Chapter of this book on the procedure before the ECJ, aims to explain, pragmatically and briefly, the general framework and main aspects of the references for a preliminary ruling, as well as its procedure before the Luxembourg Court.

If already by definition Community Law constitutes an original legal order, so is the design of its judicial system and perhaps references for a preliminary ruling constitute one of its most original features. This architecture which was erected in the fifties by the Treaties establishing the European Communities, is inspired by the subsidiarity principle and sets up two poles to hold the effective application and interpretation of Community Law. On the one hand, there is a centralized jurisdiction in Luxembourg with Supreme and Constitutional Court functions. On the other hand, all national courts and Tribunals of the Member States must assure the accomplishment of the Member States citizens’ rights and obligations in their territorial and functional sphere.

Article 234 of the EC Treaty—former Article 177—settles an immediate, accessible and trustworthy link that not only guarantees the daily judicial application of Community Law, but also assures its uniform interpretation. This rule strengthens the jurisdictional cooperation on a reciprocal basis between both poles and constitutes one of the greatest innovations of this legal system.

In addition, the development of the great principles that articulate the relation between the national legal systems and Community Law (primacy, direct effect, responsibility of the State) has been construed by the ECJ through an intense cooperation with national courts orchestrated on the basis of Article 234. This is not surprising since the Community Law system seeks to regulate the public and private activities of individuals, and national courts must safeguard those rights.

It is also important to recall that the ECJ is the centralized Court before which references for a preliminary ruling are submitted. Nevertheless, the Treaty of Nice of 1 February 2001 anticipated the possibility to recognize, in addition to the jurisdiction of the ECJ, the power to hear and answer questions referred to the CFI for a preliminary ruling in specific areas, with the possibility of exceptional review before the ECJ if this is proposed by the First Advocate General.

---

1 Chapter by G. C. Rodríguez Iglesias & F. Castillo de la Torre, see supra.


3 According to the new Arts. 225.3 of the EC Treaty, and 62 of the Statute of the Court of Justice, established by the Treaty of Nice.