# Development of and access to article 234 (indirect actions)

# Critically assess the evolution and development of access to and operation of Article 234 (indirect actions) with regard both to general and validity references for preliminary rulings.

It is important to clarify that referral to the ECJ via Article 234 does not constitute an appeal, but recognises the necessity to correctly interpret the distinction between the rules and principles associated with maintaining the application of Community law. The inclusion of Article 234 ensures that the law continues to be applied consistently amongst all Member States according to the intentions of Article 220 as noted above. Accordingly, within the precepts of EU policies, the law must always be maintained. However, it is also interesting to note that rulings in subsequent case law have attracted criticism in relation to restrictive interpretations of the meaning of individual concern, considered to be at variance with the requirement for effective judicial protection for Community law rights, a principle established and upheld by the Community courts in pursuant of Article 234.

When reading Article 234 contradictions would appear to suggest a conflict as to when applications for rulings should be made. This is, however, fairly easily negotiated if discretion is applied in conjunction with the interpretation of individual case law and, since January 1999, through Guidelines issued by the ECJ itself subsequently incorporated into the Court of Appeal’s Practice Directive and the Civil Procedure Rules, Part 68. Settling disputes between Member States, the various institutions within the EU and those individual nations, and settling individual and company disputes at variance with EU

policies are more important functions exhibited by the ECJ. EU policies and legislation has to be interpreted and adhered to within the auspices of the law, a factor which the ECJ observes through Article 234 of the Treaty of Rome.

DISCUSSION

A particularly important function the ECJ carries out, within Article 234, is to maintain the concept of harmonisation between Member States and to ensure that the law is consistently applied between all of its members. As rulings made by the ECJ are binding on all Member Nations, any referrals made by individual domestic courts to clarify EU legislation maintains homogeneity amongst the European Union. According to Article 234 jurisdiction may be applied by the ECJ in matters of interpretation of policy issues, ' *the validity and interpretation of acts of the institutions* ...', and ' *the interpretation of the statutes of bodies established by an act of the Council* ...'. A particularly important clause within Article 234 relates to referrals from domestic courts who require the law clarified within the auspices of EU protocols which, due to the stringent applications of many of the rules and regulations can be particularly adumbrative.

This particular aspect was revealed in the case of *Jégo-Quéré et Cie SA v Commission* , and again in the case of *Brown* , the latter of which was particularly interesting because of the lack of specific precedent within UK national law and, similarly at that time, EU legislation itself. In this particular case the ECJ ruled that a submission might be presented to the ECtHR for their consideration. Accordingly, referrals could be either mandatory, in

cases where the House of Lords considers further clarification is necessary, after which the case is decided by the court which made the referral. Additionally discretionary referrals may be made in terms of the Court of Appeal or a lower court who may decide to refer a case to the ECJ for clarification, or choosing to implement their own acumen to reach a decision.

In the case of *Bulmer v Bollinger* it was decided by Lord Denning that Article 234 [para 2] rulings should only be cited where their implementation would result in the case being concluded, *acte clair* doctrine should be excluded, and in cases already elucidated by an ECJ ruling further clarification should not be deemed necessary. Furthermore, any factor resulting in potential injustice due to unseemly delay must also be considered, together with various other factors. If Jégo-Quéré, for instance, had been successful in their first Action for Annulment, various outcomes could have resulted, although the results would be dependent upon semantics: through intervention invoking Article 231, a Regulation could be limited, even though an Act need be declared void.

CONCLUSION

Although this matter of delay should have been partly resolved by the introduction of the Court of First Instance which was given the remit to relieve some of the burden from the ECJ, referring on as necessary any evaluation of principle to the ECJ for a review of its judgement " *where a serious risk of unity or consistency of Community law* " might otherwise ensue. Any obstruction should also have been determined through the introduction, following the Treaty of Nice, of Judicial Panels, which makes certain referrals to the Court of First Instance, although little actual evidence

of this has been recorded as EU membership has continued to grow exponentially. After the Treaty of European Union and the Treaties Establishing the European Communities were incorporated into the Treaty of Amsterdam, economic co-operation between Member States became more of a reality. This effectively increased the extent of influence the European Parliament could have on each nation's domestic arrangements.

Prior to the Treaty of Rome, it took a perceived breach of Community law for the rights of the individual to be recognised by a Judicial Review of Community Acts, through the invocation of Articles 230 to 233. However, in accordance with the ethos of Article 234, the European Court of Justice may now apply the necessary legislation intended to interpret and apply EU policies through maintaining the balance of power within the Member States and defining the balance yielded amongst the EU Community to maintain harmony between the disparate nations that constitute the Union. As a result, an individual should have the right of support, within EC law, of the ECtHR. Following this ruling the restrictive interpretation of the meaning of individual concern has been criticised as being at odds with the requirement for effective judicial protection for Community law rights, a principle established and upheld by the Community courts through their interpretation of Article 230 [para. 4], despite Advocate General Jacobs' view that " *the principal of effective judicial protection is part of Community law* ...".

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Article 119

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Article 225 (previously Article 168a)

Article 230 (previously Article 177)

Article 234

Article 234 [para. 2]

Article 234 [para. 3]

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