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A NEW PROCEDURE IN THE AREA OF FREEDOM, SECURITY AND JUSTICE: THE URGENT PRELIMINARY RULING PROCEDURE

The area of freedom, security and justice is one which has given rise to a considerable amount of legislative activity in recent years. New provisions have thus been introduced which from time to time raise sensitive issues before the national courts as to the interpretation or validity of Community law. In this area, as in any other, it is essential that Community legislation is applied uniformly throughout the European Union.

One of the tasks of the Court of Justice is precisely that of contributing to that unity of application by means of the preliminary ruling procedure. However, the matters covered by the area of freedom, security and justice and referred to, respectively, in Title VI of the Treaty on European Union (police and judicial cooperation in criminal matters) and Title IV of Part Three of the EC Treaty (visas, asylum, immigration and other policies related to free movement of persons, in particular judicial cooperation in civil matters) are often characterised by their urgency. Such urgency cannot be accommodated by the ordinary preliminary ruling procedure, which takes, on average, a year and a half, particularly on account of the number of parties involved and the inherent constraints of translating the observations which every Member State is entitled to make if it wishes to do so. As a result, the national courts might be deterred from calling on the Court of Justice in that type of proceedings.

It is for that reason that, at the request of the Council, the Court proposed the introduction of a **new form of procedure: the urgent preliminary ruling procedure**.¹ This procedure is applicable as from 1 March 2008 and should enable the Court to deal far more quickly with the most sensitive issues relating to the area of freedom, security and justice, such as those which may arise, for example, in certain situations where a person is deprived of his liberty and the answer to the question raised is decisive as to the assessment of the legal situation of the person detained or deprived of his liberty, or, in proceedings concerning parental authority or custody of children, where the jurisdiction under Community law of the court hearing the case depends on the answer to the question referred for a preliminary ruling.

Three important features distinguish the new procedure from the ordinary preliminary ruling procedure.

¹ Council Decision of 20 December 2007 amending the Protocol on the Statute of the Court of Justice and amendments to the Rules of Procedure of the Court of Justice adopted by the Court on 15 January 2008 (OJEU 2008 L 24, p. 39).

In the first place, with the aim of speeding up the process, the urgent preliminary ruling procedure makes a distinction between the persons who may participate in the written stage of the procedure and those entitled to participate in the oral stage. In the new procedure, only the parties to the main proceedings, the Member State of the court making the reference, the European Commission and, if appropriate, the Council and the European Parliament (if one of their measures is at issue) are authorised to lodge written observations in the language of the case within a short period of time. The other interested persons and, in particular, the Member States other than that of the referring court, do not have that opportunity but are invited to a hearing at which they may, if they wish, submit their oral observations on the questions referred by the national court and on the written observations lodged.

In the second place, the internal handling of cases under the new procedure is accelerated considerably, as all cases falling within the area of freedom, security and justice are, as soon as they reach the Court, referred to a Chamber of five judges specifically designated for a period of one year to be responsible for the screening and processing of such cases. If that Chamber decides to allow a request for the urgent procedure to be applied, it will go on to give its ruling shortly after the hearing, and after hearing the Advocate General.

Finally, to ensure the desired expeditiousness, the procedure will, in practice, essentially be conducted electronically. Communication between the Court and the national courts, the parties to the main proceedings, the Member States and the Community institutions will, as far as possible, be electronic.

With these substantial adjustments to the preliminary ruling procedure, the Court thus seeks to accommodate the urgency which can be a feature of proceedings in the area of freedom, security and justice.

Practical information is provided by the Court in an information note intended for the national courts, which is available on its website:

<http://curia.europa.eu/en/instit/txtdocfr/txtsenvigreur/noteppu.pdf>

Languages available: All

This information for the press is also available on the Court's internet site

<http://curia.europa.eu/en/actu/communiqués/index.htm>

For further information please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731