EDITORIAL COMMENTS

The Re-organisation of the Court: a British View

The House of Lords Select Committee on the European Communities has recently issued a Report on the July 1978 and January 1979 proposals put forward by the Court of Justice of the European Communities for its re-organisation in the light of its increasing workload.[1] It will be recalled that the Court had suggested an increase in the number of Judges and Advocates-General, the assignment of most cases to a Chamber of the Court—the full Court hearing only cases of major importance, the amendment of the rules regarding the allocation of cases so as to give wider discretion to the Court, and various minor amendments to the Rules of Procedure.[2] Most of these proposals were concerned with a more efficient handling of the mounting volume of cases before the Court, but the House of Lords Select Committee has considered evidence and put forward suggestions of its own which affect the fundamental role of the Court in the development of the Communities.

In brief, the Select Committee gives general support for the Court's proposals but specifically recommends (i) that the Court should normally sit in Divisions of five Judges, (ii) that, exceptionally, cases could be referred either to a full Court, with a quorum of more than half the Judges, or to a Division of three Judges, (iii) parties should be able to make representations as to the mode of trial, but no litigant should have the right to insist on trial before the full Court, (iv) a further Judge, "experienced in a common law system", should be appointed before the appointment of a Greek Judge in January 1981, (v) there should be a Court of fifteen Judges by the date of accession of Portugal and Spain, (vi) at least one extra Advocate-General should be appointed "in the immediate future", and others as the number of Judges is increased, (vii) instead of a new court of first instance in competition matters, an independent fact-finding body should be created, to sit before the Commission reaches its Decision, (viii) proposals for other first instance courts should be deferred, (ix) there should be no new restriction on references for a preliminary ruling under Article 177 EEC, (x) the period for the submission of observations on a reference for a preliminary ruling should not be extended, (xi) the Court should give the parties a right to submit,

1. House of Lords: Select Committee on the European Communities. Session 1979-80; 23rd Report. London: HMSO, January, 1980.

2. See: O.J. 1979, L 238; and *cf.* Docs. R/2075/78 and 4679/79.

within a limited period, written comments on statements of fact in an Advocate-General's Opinion and should be willing to reopen the oral procedure when it is alleged that the Advocate-General has introduced a new point of law, (xii) the Court should be enabled to engage its own interpretation service, and (xiii) formal collaboration between the Court and practitioners should be encouraged, with consideration being given to the establishment of a Joint Committee.

On the central subject of Chambers, or Divisions, of the Court the Select Committee also recommends (a) that "although there can be no legal necessity for a Division hearing a case to comprise a Judge of an Advocate-General from the State concerned", this is desirable, and (b) whilst the composition of Divisions should be fixed, greater flexibility and more frequent changes would be welcome. At the present time the power to set up Chambers (*e.g.* under Art. 165(2) EEC and Art. 9, r. 1 of the Rules of Court) is used principally in preparatory inquiries and in the burgeoning number of "staff cases" which are themselves responsible for so much of the pressure at present upon the Court. References for a preliminary ruling may be assigned to a Chamber if they "are of an essentially technical nature or concern matters for which there is already an established body of case-law" (Art. 95(1) of the Rules of Court).

The evidence submitted to the Select Committee, especially that from the Bar Council and Law Society, and from Lord Mackenzie Stuart and Advocate-General J.-P. Warner,[3] amply illustrates both the nature of the Court's present predicament and a more sympathetic and sophisticated approach to that predicament than was shown in sections of the British Government's note to the Council of Ministers of Justice in October 1978. The Select Committee's proposal that an additional Judge be appointed before the accession of Greece may be criticised as both wrong in principle and politically impracticable. The suggestions with regard to the organisation of Chambers are constructive but will need to be examined in the context of a possible new classification of cases into categories which will require (i) a full Court, (ii) a Chamber of five Judges, and (iii) a Chamber of three Judges. The achievement of this much needed flexibility must *not* be confused with a need, which apparently the Select Committee felt, to secure a more balanced representation of the major legal families within the Community. The Greek legal system is a synthesis of Romanistic and modern, post-Byzantine, legal concepts. The accession of Greece in 1981 will obviously add to the language problem for the Court but the "coverage" of the major legal families within the Community must essentially point to the expansion of the number of Advocates-General. Two

3. *Op. cit.* n. 1 at pp. 43-59, 64-77 respectively.

more Advocates-General would therefore be indicated if the present "coverage" is to be completed (so as to include the Netherlands and Denmark) and account taken of the accession of Greece.