

Litigating before the European Court of Justice: practical issues to consider

Declan O'Dempsey, Barrister, Cloisters Chambers, London EC4Y 7AA

dod@cloisters.com

1. I will talk about practical issues in cases involving a reference of questions for a preliminary by a national court to the Court of Justice (ECJ). For most practitioners here this will arise in the context of the Directives 2000/78 and 2000/43, and other discrimination Directives. A practitioner influences the process, rather than dictates it at many stages. However in two respects the practitioner's role is direct – in making observations to the Court and in making oral submissions.

2. EC Article 234 [ex Article 177] reads: **'The Court of Justice shall have jurisdiction to give preliminary rulings concerning :**

a. the interpretation of this Treaty;

b. the validity and interpretation of acts of the institutions of the Community and of the European Central Bank;

c. the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice'.

3. Most often practitioners will be concerned with seeking the interpretation of the ECJ. In that regard it is important to remember that the most important function of the referral procedure is to ensure uniformity in the interpretation of Community law. The ECJ aims to avoid variations in interpretation which would otherwise arise because of the different legal traditions of the Members, or differences between the Community languages. The Community would suffer if particular rules were to develop along different lines in each member state.

4. The ECJ sees itself as assisting the national courts in overcoming the difficulties they encounter when applying Community law. This is mirrored in the choice of language for the conduct of the

case; in preliminary rulings, the language of the case is always that of the national court making the reference¹.

5. The ECJ's rulings are binding on the national court. They are not mere opinions.

6. A court, against whose decision there is no appeal, may not refuse to make a reference where one is required for the determination of the case before national law.

Funding

7. National agencies may provide public funding for litigation in the form of "legal aid". This funding can apply in many jurisdictions to the preliminary ruling procedure. However where there is a lack of means, the ECJ can grant funding for the purposes of facilitating the representation or attendance of a party (Art 104(6) ECJ Statute, and Art 103(1)). An application can be made pursuant to Article 76 of the Rules of Procedure². These provide that a party who is wholly or in part unable to meet the costs of the proceedings may at any time apply for legal aid. The application shall be accompanied by evidence of the applicant's need of assistance, and in particular by a document from the competent authority certifying his lack of means.

8. The Court will consider whether there is manifestly no cause of action. Where the application for legal aid is refused in whole or in part, the order shall state the reasons for that refusal. Where legal aid is granted, the cashier of the Court shall advance the funds necessary to meet the expenses.

Procedure

9. The points for discussion can be broken up into:

(a) the procedure leading up to the making of an order by the national court;

(b) the contents of the questions – avoiding bad questions;

(c) dealing with a "bad" set of questions;

(d) making observations;

(e) oral advocacy before the Court of Justice.

10. Of course throughout, there is the following basic structure.

(a) the national court procedure for asking the national court to make a reference;

¹ The Member States may use their own language where they intervene in a direct action or take part in preliminary-ruling proceedings.

² In a preliminary ruling case the party concerned must first seek legal aid from the competent authorities in his own country. In order to establish his lack of means, the person concerned must provide the Court with all relevant information, in particular a certificate from the competent authority to that effect. Where legal aid is applied for before the commencement of proceedings, the party must give a brief description of the subject matter of the application in order to enable the Court to consider whether the application is not manifestly unfounded.

- (b) transmission of the questions (done by an official of the national court³) (Art 23 ECJ Statute).
- (c) Notification by the Registrar of the Court to the parties, to the Member States and to the Commission;
- (d) within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the European Parliament, and some other institutions shall be entitled to submit written observations to the Court.
- (e) the oral hearing;
- (f) Advocate General's opinion
- (g) judgment.

Purpose of a reference

11. Remember that

- (a) The Court can use its preliminary ruling procedure to state the effect of community law in general terms⁴.
- (b) the Court regards itself as able to assist the national court when a provision of national law is challenged. However it is not for the ECJ to rule on the compatibility of the national law. It does not have the jurisdiction to provide the national court with all the elements of interpretation of Community law to enable it to assess that compatibility for the purpose of deciding the case⁵. However in practice its judgments and orders may well determine the case.
- (c) Its decisions bind the national court on the interpretation of the Directives.
- (d) it is in practice for the national court to make findings of fact. This should generally be done before a reference is made. Once findings are made the ECJ will consider itself bound by them. They may be agreed facts. Although the ECJ has a power to make findings, it is rarely used.
- (e) if in fact the question referred is a challenge to the validity of a community instrument the court can treat it as such and the court can also redefine the questions that have been referred to it so as to give a more helpful answer to the referring court. It may give such a ruling even if the situation does not ultimately fall within the scope of the Community law⁶.

³ The order for reference, the form of which is governed by the rules of the national jurisdiction, is forwarded to the Court of Justice either by the registry of the national court or by the Judge himself. The Court of Justice has drawn up guidance notes for the use of national courts when submitting requests for preliminary rulings.

⁴ This will include whether a provision has direct effect, supremacy of community law etc.

⁵ C186.90 Durighello v INPS [1991] ECR I-5773

⁶ e.g. Dechmann Case (154/77), 29 June 1978, paras 7, 8, 10, [1978] ECR 1582.

(f) the relationship between the referring court and the ECJ may be relatively informal. Thus where facts come to light in the course of the reference, a letter from the national court to the ECJ setting out the additional facts may be taken into account⁷.

Getting the questions right

12. It is important that the parties should try to assist the national court, if it will let them, in formulating the questions. This will, of course be a matter of the national procedure for such references. However the practitioner must ensure the clarity and relevance of those questions so far as possible.

13. The ECJ tells national courts:

20. The decision by which a national court or tribunal refers a question to the Court of Justice for a preliminary ruling may be in any form allowed by national law as regards procedural steps. It must however be borne in mind that it is that document which serves as the basis of the proceedings before the Court and that it must therefore contain such information as will enable the latter to give a reply which is of assistance to the national court. Moreover, it is only the actual reference for a preliminary ruling which is notified to the parties entitled to submit observations to the Court, in particular the Member States and the institutions, and which is translated.

21. Owing to the need to translate the reference, it should be drafted simply, clearly and precisely, avoiding superfluous detail.

22. A maximum of about ten pages is often sufficient to set out in a proper manner the context of a reference for a preliminary ruling. The order for reference must be succinct but sufficiently complete and must contain all the relevant information to give the Court and the parties entitled to submit observations a clear understanding of the factual and legal context of the main proceedings. In particular, the order for reference must:

- include a brief account of the subject-matter of the dispute and the relevant findings of fact, or, at least, set out the factual situation on which the question referred is based;
- set out the tenor of any applicable national provisions and identify, where necessary, the relevant national case-law, giving in each case precise references (e.g. page of an official journal or specific law report, with any internet reference);
- identify the Community provisions relevant to the case as accurately as possible;
- explain the reasons which prompted the national court to raise the question of the interpretation or validity of the Community provisions, and the relationship between those provisions and the national provisions applicable to the main proceedings;
- include, where appropriate, a summary of the main arguments of the parties.

⁷ Bernini Case (C-3/90), 26 Feb. 1992, para 9, [1992] ECR I-1071.

In order to make it easier to read and refer to the document, it is helpful if the different points or paragraphs of the order for reference are numbered.

23. Finally, the referring court may, if it considers itself to be in a position to do so, briefly state its view on the answer to be given to the questions referred for a preliminary ruling.

24. The question or questions themselves should appear in a separate and clearly identified section of the order for reference, generally at the beginning or the end. It must be possible to understand them without referring to the statement of the grounds for the reference, which however provides the necessary background for a proper assessment.

14. The Notes for Guidance for Counsel state: If Counsel propose the text of the order for reference, it is important that they give a clear account of the factual and legislative background so that the meaning of the questions is clear.

15. A few basic rules:

(a) better to **ask a specific question** about the interpretation of the directive rather than to ask whether a situation “constitutes discrimination” unless your question specifically needs an interpretation of what “discrimination” is. Thus, if you are asking about the scope of the concept of “conditions of access to ... occupation” in Art 3 Directive 2000/78 you do not need to know whether the underlying facts amount to discrimination or not;

(b) better to **draw out nuances** by means of separate questions;

(c) the order for a reference will be translated into the languages of the members states, so it is important to make your language **easy to translate**. Avoid complex sentences.

16. The Court’s role is not to interpret law in a vacuum, but to provide an answer that will enable the national court to resolve the case pending before it.

17. Bearing this in mind, the **order** for reference should identify clearly the relevant Community and national legal provisions and succinctly set out the facts of the case at issue.

18. From a reading of the order for reference, it should be clear why the interpretation requested is necessary for the resolution of the case pending before the national court. If the reference concerns the compatibility of a national measure with a provision of Community law, the order should set out what exactly the national measure entails.

19. What if questions occur after the reference is made? The general principle is that it is up to the national court to formulate the question, and the ECJ is reluctant to permit the parties to submit further questions which have not been raised by the national court⁸. However you might persuade a court to add questions or simply to write to the ECJ with your question.

⁸ Hessische Knappschaft Case (44/65) and Agricola Tabacchi Bonavicina Case (C-402/98).

20. In **First Getreidehandel Case** (17/72), 8 Nov. 1972, [1972] ECR 1077, 1078, a party who knew that the ECJ would not respond to a question directly posed by him, wrote a letter to the national court which had asked for the preliminary ruling, requesting the court to add his specific question to its original questions. The national court forwarded this letter to the ECJ, leaving it to the ECJ to decide whether such an additional question was admissible or not. The Court of Justice considered that the question had come from a national court and that it could be derived from the wording of the covering note that the national court expected an answer. Therefore the additional ruling was given.

21. What if the questions do not cover the issues that need to be determined? The ECJ may decide on additional questions ex officio, if it considers them to be of a sufficient general interest. So raise possible additional questions whenever such questions are of importance. You will need to suggest them in a way that permits the ECJ to adopt them and shows their importance. This can be done in the observation process. For that reason, the ECJ will however have to take into account the fact that the other parties (and institutions or member states) will have limited opportunity to comment on them. Thus it may be prudent to ensure that all known parties are notified of such questions and then refer to that fact in the observations.

Making observations

22. The notes for Guidance state “The purpose of the written observations is to **suggest the answers** which the Court should give to the questions referred to it, and to **set out succinctly, but completely, the reasoning** on which those answers are based. It is important to bring to the attention of the Court the factual circumstances of the case before the national court and the relevant provisions of the national legislation at issue. It must be emphasised that none of the parties is entitled to reply in writing to the written observations submitted by the others. Any response to the written observations of other parties must be made orally at the hearing. For that purpose, the written observations are notified to all the parties once the written procedure is completed and the necessary translations have been made.

The submission of written observations is strongly recommended since the time allowed for oral argument at the hearing is strictly limited. However, any party who has not submitted written observations retains the right to present oral argument, in particular his responses to the written arguments, at the hearing, if a hearing is held.”

23. Basic rules:

(a) In a reference for a preliminary ruling, appeal), the purpose of the written procedure is always the same, namely to put before the Court, the Judges and the Advocate General, an exhaustive account of the facts, pleas and arguments of the parties and the forms of order sought.

(b) The entire procedure before the Court, in particular the written phase, is governed by the principle whereby new pleas may not be raised in the course of the proceedings, with the sole exception of those based on matters of law and fact which come to light in the course of the procedure.

(c) The procedure before the Court does not therefore have the same flexibility as that allowed by certain national rules of procedure.

(d) When a national court or tribunal has asked for a preliminary ruling, the litigants in the case concerned may submit one set of written observations to the ECJ.

(e) You have two months⁹ to make the written observations from the date the case is registered by the ECJ.

(f) The observations should deal with the questions, your proposed answer, the reasons for your answer and observations on what the other party is known to say about the proper interpretation of the Directive.

(g) A useful template to follow would be:

(i) Introduction – introduce the advocates and solicitors, the claimants, the Directive, the national law in question, the Defendant and summarise the concerns of your party¹⁰. Then turn to introduce the question giving a summary of your party's position. Tell the ECJ what you want it to do. E.g "Explain whether it is permissible under Article --- for a member state to implement a measure which has the following effect"; or "Provide guidance to the national court as to how it should evaluate the social policy arguments before it".

(ii) Proposed answer to questions: set out the question and your answer.

(iii) set out the national legislation in issue;

(iv) describe the proceedings in the national court;

(v) make detailed submissions on the points referred. If the questions referred concern the compatibility of national law with Community law, it is important to set out precisely the terms and scope of the national legal provision and how it is applied in practice. The detailed submissions should deal with:

(a) the underlying purpose of the Directive

(b) Use the recitals and legislative history (from the Commission's proposal through the parliamentary amendments and the discussions surrounding amendments by the various committees).

(c) any case law that has dealt with the meaning of the relevant provisions, or which deals with analogous concepts. This case law can be European, national, Convention on Human Rights, international, or from specific countries (probably at the level of the Supreme or

⁹ Time limits are extended on account of distance by a fixed period of 10 days regardless of the place of establishment or habitual residence of the person concerned.

¹⁰ The original of every pleading must be signed by the party's agent or lawyer. The original, accompanied by all annexes referred to therein, shall be lodged together with five copies for the Court and a copy for every other party to the proceedings. Copies shall be certified by the party lodging them (Rules of Procedure Art 37.1).

Constitutional Court of the country in question). It is important to cite relevant EC case-law and to give full citations of the cases as authority for assertions made.

(d) examine whether or not national law interferes with a Community law right and if so whether such interference can or cannot be justified. In such cases the observations should examine in detail whether any seemingly justified interference also satisfies the test of proportionality. Analogies from other jurisdictions dealing with proportionality will be useful in this context, and examples of how other member states have dealt with the proportionality arguments in this type of case will be of assistance.

(h) The written observations submitted are translated into French, the working language of the ECJ¹¹, so again it is important for your text to be easy to translate. Therefore observations should be written in plain language and idiomatic expressions or legal jargon that is specific to national law should be avoided (or very clearly explained). A mistranslation of a concept may be fatal in this context. It is worth therefore consciously proof reading the text to ensure that the language is simple to translate.

(i) Include an annex of relevant documents relied upon (national legislation or documents relating to the facts of the case, Commission and other documents relating to the history of the EU legislation). If the documents are lengthy, include relevant extracts only, and include in the observations a page listing the documents annexed.

24. The written observations will be summarised in the preparation for the Report for the Hearing¹². This is the reason for the suggestion above that you should preface the observations with an executive summary of the main arguments (what I have called the introduction). This should emphasise arguments that you consider crucial. If done clearly and properly it will help ensure they do not get edited out of the summary by the juge rapporteur.

25. The text should be **well structured and sign-posted with clear headings and with a definite proposal** as to how the questions should be answered.

26. Pages and paragraphs should be numbered.

27. Where a question relates to the interpretation of a piece of EC legislation, pleadings should contain an **analysis of the wording, the scheme and the objective of that legislation** described above. If possible, as part of that analysis, you should compare different language versions of the legislation, as there may be indications of what the core meaning of the term may be by reference to the communalities of the two language versions. Alternatively it may be that the ECJ will have to comment on the language differences.

¹¹ The working language of the Court is the language used by the Members of the Court and its staff for day to day internal communication and work produced jointly. At present, the working language is French. Consequently, pleadings submitted in a language other than French are translated into French for the Court's internal purposes. (see Notes for Guidance of Counsel)

¹² I am grateful many of the practical points in this paper to the article: The Preliminary ruling procedure in the field of immigration and asylum law by Jonathan Tomkin, Solicitor, former Legal Secretary (Référéndaire), European Court of Justice at

http://www.legalaidboard.ie/lab/publishing.nsf/content/The_Researcher_March_2009_Article_4

28. The emphasis at the ECJ is on the written procedure. Therefore all the principal arguments should be included in the written observations. Do not save the best arguments for the hearing (you won't have time to develop them).

29. You are not supposed to challenge the facts submitted by the national court. In a preliminary ruling on the interpretation of the law, it is not for the ECJ but the national court to establish the facts. The ECJ cannot verify those facts.

30. **Interveners:** The various state parties are interveners and can make observations¹³. However other organisations including the Equality Bodies are not permitted to intervene in proceedings by application to the ECJ. It is possible for the national court to allow them to intervene in a case if the national rules permit this, for example because the Equality Body has a legislative power to be a party in proceedings or if it is deemed to have an interest in proceedings in the field of discrimination. Once an Equality Body has been permitted to intervene by the national court it can remain as a "party" to the proceedings for the purposes of those proceedings before the ECJ.

Report for the hearing

31. The juge rapporteur compiles the Report for the Hearing. This is why it is important to have a good summary at the start of the observations. The juge rapporteur also determines before this whether further information is needed from the parties, and whether case should be heard by a panel of 9 judges (Grand Chamber), 15 judges (Full Court) or 3 or 5 judges (Chamber). The juge rapporteur also determines whether there should be an oral hearing¹⁴. After the Advocate General's opinion the juge rapporteur also prepares a draft for discussion of the judgement.

32. If a hearing is to take place, the parties will be sent a "Report for the Hearing" usually at least three weeks before the date of the hearing. The Report contains succinct summaries of the different observations presented during the written procedure.

33. If an Advocate General has been appointed to the case, then, after the hearing, he or she will set about drafting an Opinion. The Opinion is non-binding and concludes with a recommendation as to how the Court should answer the questions referred.

Advocacy¹⁵

The oral procedure

34. The purpose of the oral procedure is:

- to reply to any requests that may be made for the pleadings to be summarised;

¹³ References for a preliminary ruling from national courts, and the observations of those entitled to submit them under Article 23 of the Statute, are notified to the parties to the proceedings, to the Member States, and to the Commission.

¹⁴ Rules of Procedure Art 44.

¹⁵ Rules of Procedure Art 55 and following.

- to provide a more detailed analysis of the dispute, by explaining and expounding the more complex points and those which are more difficult to grasp and to highlight the most important points;
- to submit any new arguments prompted by recent events occurring after the close of the written procedure which, for that reason, could not be set out in the pleadings;
- to answer the questions put by the Court.

35. In the case of references for a preliminary ruling the purpose of the hearing is also to allow the parties and other interested persons **to reply** to the arguments put forward by other participants in their written pleadings¹⁶.

36. Do not repeat what has already been stated in writing.

37. If a point is shared between parties, they should, wherever possible, avoid repeating points that have already been put forward at the same hearing.

38. Parties are allowed to argue orally before the ECJ as to how in their opinion the questions should be answered. In the context of a preliminary ruling procedure, the hearing provides the only opportunity for advocates to respond to the observations submitted by any other parties, Member States and Institutions. In addition, the hearing should be used to emphasise the most important aspects of your case and to answer questions asked by members of the Court.

39. When making oral submissions at the hearing, it is important to keep in mind that most Members of the Court are unlikely to speak the advocate's native language. Arguments may require simultaneous interpretation. So:

(a) speak slowly and clearly and

(b) ensure that the oral presentation is well sign-posted. "I now turn to the XYZ point";

(c) if using a prepared text don't speed through parts where you are reading out from your pleadings. The interpreters often struggle to keep up if you do.

(d) speak from notes and send your oral submissions to the interpreters in advance of the hearing as they will prepare for the hearing in advance. [fax to: +352 4303 3697 or email: interpret@curia.europa.eu]¹⁷.

40. At the hearing, members of the Court may intervene with questions during the oral presentations, or they may wait until the presentation has ended. At the end of the presentations, each party is afforded an opportunity to reply briefly to the arguments made by other parties.

41. The time allowed for the oral pleadings is however normally fairly short (typically you must not go beyond a maximum of 30 minutes – aim for 20-25). An interesting ceremony takes place before

¹⁶ As a rule, the hearing starts with oral argument from Counsel for the parties. This is followed by questions put to Counsel by the Members of the Court. The hearing concludes with brief responses from those Counsel who wish to make them (Notes for Guidance for Counsel, C3).

¹⁷ Counsel must therefore regard the interpreters as essential partners in presentation of their argument.

the start of the hearing in which the advocates are invited into the judges' chamber and asked how long they are likely to be¹⁸. Brevity is preferred, and a very strict approach to the time allocation should be observed. Thus a junior member of the legal team can ensure that the speaker keeps to time (e.g. by passing a note at predetermined intervals). It is also a good idea to have rehearsed the speech so that you know you can get through in the time available. The judges may ask questions at any point¹⁹. The court is very strict on adhering to time limits for presenting arguments. If there are several parties sharing a common position, it is useful to co-ordinate and divide arguments between the different advocates to make the most of the time allotted and to avoid repetition. The first advocate speaking should set out the different topics that will be taken by the other advocates.

Costs

42. On a preliminary ruling the court will state "Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable."

Urgent cases

43. Article 104(b) of the ECJ Rules of Procedure deals with urgent cases, in which a faster procedure is provided.

Further information

44. The web-site of the ECJ www.curia.europa.eu has guidance for advocates appearing in front of it. The English version is at http://curia.europa.eu/jcms/jcms/Jo2_7031/ called Advice for counsel appearing before the Court http://curia.europa.eu/jcms/jcms/Jo2_12354/conseils-aux-plaideurs.

45. The texts appearing there are the following:

- Extracts of Treaties
- Statute of the Court of Justice (1-3-2008)
- Special or additional jurisdiction
- Rules of Procedure of the Court of Justice (1-3-2009)
- Supplementary Rules (21-2-2006)
- Instructions to the Registrar of the Court of Justice (3-10-1986)
- Practice directions relating to direct actions and appeals
- Information note on references by national courts for preliminary rulings

¹⁸ The Notes for Guidance put it slightly differently: "Before the sitting commences, the Court invites Counsel to a brief private meeting in order to settle arrangements for the hearing. In some cases, at this stage, the Judge-Rapporteur or the Advocate General, or both, may indicate other matters which they would like to be developed in the oral observations." However this is generally about 5 minutes before the oral presentation starts, so the indication is of more limited value than it might be.

¹⁹ Rules of Procedure Article 57. The Judges and Advocates General are not required to use the language of the case. They are therefore at liberty to ask questions at the hearing in any of the official languages of the Communities even if it is not the language of the case. (see Notes for the Guidance of Counsel).

- SUPPLEMENT following the implementation of the urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice
- Jurisdiction of the Court of Justice to give preliminary rulings on police and judicial cooperation in criminal matters
- Notes for the guidance of Counsel

46. The guidance documents there state proceedings before the Court of Justice are governed by strict rules of law contained in the Treaties, the Protocol on the Statute of the Court and its Rules of Procedure. The Court is thus not in a position to make exceptions to them. Secondly, proceedings before the Court are subject to rules on the use of languages appropriate to a multilingual Community, a fact which influences the nature and purpose of both the written and the oral procedure.

DECLAN O'DEMPSEY

27 Novemeber 2009

Annex: Practical Advice from the Notes for Guidance of Counsel

14. Practical advice

a. The drafting and scheme of pleadings

There are no formal requirements applicable to pleadings (subject to compliance with rules laid down elsewhere); but they must be clear, concise and complete.

In view of the translation workload, in particular, and the time involved in translation, repetition must be avoided. The Court should be able, on a single reading, to apprehend the essential matters of fact and law.

Since in most cases pleadings will be read by the Judges and the Advocate General in a language other than that in which they are drafted, Counsel must always bear in mind that, if the meaning of a text is obscure in the original language, there is a risk that the translation will deepen the obscurity. That risk is aggravated by the fact that it is not always possible, in the transition from one language to another, to find a satisfactory, or even accurate, translation of the "legal jargon" which may be used before national courts. Counsel should also remember the strict rule concerning the introduction of fresh pleas in law (see B.1, B.6.c and B.8.a above); they are not entitled to "reserve", even conditionally, pleas or arguments for subsequent pleadings or the hearing.

Ideally, the structure of pleadings should be clear and logical and they should be divided into separate parts with titles and paragraph numbers. In addition to a summary of the pleas in law and arguments, a table of contents may be useful in complex cases.

The pattern of originating applications may be outlined as follows:

- Details of the type of dispute involved, and of the kind of decision sought: action for annulment, application for interim measures, and so on.
- A brief account of the relevant facts.
- All the pleas in law on which the application is based.
- The arguments in support of each plea in law. They must include relevant references to

the case law of the Court.

– The forms of order sought, based on the pleas in law and arguments.

In appeals, the forms of order sought are limited by Article 113 of the RP.

It is desirable for the defence and similar documents to follow closely the structure of the reasoning set out in the pleadings to which they constitute a response.

Written observations in preliminary rulings must set out:

- the relevant facts and the relevant provisions of national law,
- legal argument, including references to the case law of the Court,
- proposals for answers to be given by the Court to the questions submitted by the national court.

However, if the party concerned accepts the facts of the case as set out in the order for reference, he need merely say so.

b. Documents annexed to pleadings

It must be borne in mind that, pursuant to Article 37 of the RP, documents relied on by the parties must be annexed to pleadings. Unless there are exceptional circumstances and the parties consent, the Court will not take account of documents submitted outside the prescribed time limits or produced at the hearing.

Only relevant documents, on which the parties base their arguments, must be annexed to pleadings. Where documents are of some length, it is not only permissible, but indeed desirable, for the relevant extracts only to be annexed to the pleading and for a copy of the complete document to be lodged at the Registry.

Since annexes are not translated by the Court unless a Member of the Court so requests, the relevance of every document must be clearly indicated in the body of the pleading to which it is annexed.

The Court does not accept notes on which oral argument is to be based for inclusion in the file on the case (See C.4. below regarding the forwarding to the Interpretation Division of notes on which oral submissions are to be based.)

However, Counsel may in all cases send unofficial translations of pleadings and annexes, although, by virtue of Article 31 of the RP, such translations are not authentic.

c. Facts and evidence

The initial pleadings must indicate all evidence in support of each of the points of fact at issue. However, new evidence may be put forward subsequently (in contrast to the rule excluding new pleas in law), provided that adequate reasons are given to justify the delay. The various forms of evidence upon which parties may rely are set out in Article 45(2) of the RP.

d. Citations

Counsel are requested, when citing a judgment of the Court, to give full details, including the names of the parties or, at least, the name of the applicant. In addition, when citing a passage from a judgment of the Court or from an Opinion of an Advocate General, they are requested to specify the page number and the number of the paragraph in which the passage in question is to be found.

To facilitate its work, the Court suggests as an appropriate form of citation that used in the judgments of the Court, for example: "judgment in Case 152/85 Misset [1987] ECR 223, paragraph ..."