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# The Court of Justice of the European Union

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# Significance of the Court of Justice

- “It can, and frequently is, argued that the Court has emerged as the most dynamic and purposeful of all Community and Union institutions in the furtherance of the idea of European integration”

(Ian Ward, *A Critical Introduction to European Law*)

# Article 267 TFEU

- Reference for a Preliminary Ruling from national courts or tribunals
- The preliminary ruling procedure is arguably the central nexus between European Union law and the national legal systems. It is central to the diffusion of EU law throughout the Member States and plays a critical role in ensuring that legal certainty operates in the application of Community law by national courts.

# Increasing Number of References

1961 – 1 Reference

1971 – 37 References

1981 – 108 References

1991 - 186 References

2001 – 237 References

2011 – 423 References

# Causes of Increase

- Evolving Membership of the European Union
- Increasing areas of competence
- More awareness amongst practitioners

# Future Issues for CJEU

- Is a system of *docket control* inevitable at CJEU level or can it be operated under a revised doctrine of *acte clair* ?
- Can the Court only determine the outer limits of its composition, jurisdiction and operation after full and final enlargement of the EU?

## Member State fear of EU law?

- “It is, however, blind ignorance that has really made the system tick. The sheer weight of referrals to the overwhelmed Court has been a testament to the sheer incomprehensibility of so much Community law”

(Ward)

# Issues?

- Increasing delays
- Linguistic pressures
- Significant changes to composition of Court
- Quality of judgments



# Case C-338/95 **Wiener S.I. GmbH v Hauptzollamt Emmerich**

## **Question referred by the Bundesfinanzhof**

*does the term 'nightdresses' within the meaning of tariff subheading 60.04 B IV b 2 bb of the 1985 Common Customs Tariff (2) is to be interpreted as covering exclusively 'other' under garments which, in view of their characteristics, are clearly intended only to be worn as night wear, or whether that term is to be interpreted as also covering products which, on the basis of their appearance, are intended mainly, but not exclusively, to be worn in bed?*

# Doctrine of *Acte Clair*

- The correct application of Community law may be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved. Before it comes to the conclusion that such is the case, the national court or tribunal must be convinced that the matter is equally obvious to the courts of the other Member States and to the Court of Justice. Only if those conditions are satisfied may the national court or tribunal refrain from submitting the question to the [ECJ] and take upon itself the responsibility for resolving it (CILFIT)

# *Cilfit*

- *17 HOWEVER , THE EXISTENCE OF SUCH A POSSIBILITY MUST BE ASSESSED ON THE BASIS OF THE CHARACTERISTIC FEATURES OF COMMUNITY LAW AND THE PARTICULAR DIFFICULTIES TO WHICH ITS INTERPRETATION GIVES RISE .*
- *18 TO BEGIN WITH , IT MUST BE BORNE IN MIND THAT COMMUNITY LEGISLATION IS DRAFTED IN SEVERAL LANGUAGES AND THAT THE DIFFERENT LANGUAGE VERSIONS ARE ALL EQUALLY AUTHENTIC . AN INTERPRETATION OF A PROVISION OF COMMUNITY LAW THUS INVOLVES A*

# *Cilfit*

- *19 IT MUST ALSO BE BORNE IN MIND , EVEN WHERE THE DIFFERENT LANGUAGE VERSIONS ARE ENTIRELY IN ACCORD WITH ONE ANOTHER , THAT COMMUNITY LAW USES TERMINOLOGY WHICH IS PECULIAR TO IT . FURTHERMORE , IT MUST BE EMPHASIZED THAT LEGAL CONCEPTS DO NOT NECESSARILY HAVE THE SAME MEANING IN COMMUNITY LAW AND IN THE LAW OF THE VARIOUS MEMBER STATES .*
- *20 FINALLY , EVERY PROVISION OF COMMUNITY LAW MUST BE PLACED IN ITS CONTEXT AND INTERPRETED IN THE LIGHT OF THE PROVISIONS OF COMMUNITY LAW AS A WHOLE , REGARD BEING HAD TO THE OBJECTIVES THEREOF AND TO ITS STATE OF EVOLUTION AT*

Can the rules set down  
in *Cilfit* be applied in a  
Union of 23 official  
languages ?

# Language Divergence

- Which language version(s) of a judgment of the ECJ should be considered by a judge of the High Court in Dublin?
- English ?
- French ?
- Czech ?
- All of them ?

# Effects of continuing enlargement on the Court

- 27 judges
- Multiplicity of Chambers
- Judges coming from more divergent backgrounds.
- Diverging jurisprudence? – citizenship?

# Future Issues for CJEU

- Formation of Court in a further enlarged EU
- Jurisdiction of Court ?
- Is the transfer of Art 267 TFEU functions in whole or in part to the General Court either necessary or desirable ?
- Can the Court reduce the number of working languages without diluting the core principle of legal certainty