

APPEAL COMMITTEE

**PETITIONS FOR LEAVE TO APPEAL:
REASONS FOR THE REFUSAL OF LEAVE**

REPORT

Ordered to be printed 3 April 2003

LONDON

THIRTY-EIGHTH REPORT

from the Appeal Committee

3 APRIL 2003

ORDERED TO REPORT

1. Petitions for leave to appeal are usually referred to an Appeal Committee of three Lords of Appeal for consideration under Standing Order 87(2)(b):

... Appeal Committees ... shall consider any Petition or application for leave to appeal that may be referred to them and any matter relating thereto, or to causes depending, or formerly depending, in this House, and shall report thereon to the House.

2. Civil practice direction 4.5 at present reads:

If a petition is admissible, the Appeal Committee will consider whether leave to appeal should be given. Leave is granted to petitions which raise an arguable point of law of general public importance which ought to be considered by the House at that time, bearing in mind that the cause will have already been the subject of judicial decision. A petition which, in the opinion of the Appeal Committee, does not raise such a point will be refused on those grounds. The Appeal Committee do not give reasons for their decisions.

3. The question the Appeal Committee are asked to report on is whether leave to appeal should be granted. The House gives its approval formally.

4. Reflecting direction 4.5, Appeal Committees have not given express reasons when they report to the House on petitions for leave to appeal other than where the vacation of an order of the House is required.

5. Article 234 of the Treaty establishing the European Communities provides:

1. 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.

2. 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.

3. 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.

6. Having regard to Article 234(3), as interpreted in the light of the decision of the Court of Justice of the European Communities in *Criminal proceedings against Lyckeskog* (Case C-99/00) and, in particular, the importance of ensuring proper transparency regarding compliance of the House with that provision, we have taken the opportunity to amend our procedure in order to provide for giving express reasons when leave to appeal is to be refused.

7. When the Appeal Committee report to the House that leave to appeal should be refused in a case where the petition includes a contention that a question of Community law is involved, the Committee will give reasons for their decision not to grant leave to appeal and these reasons will reflect the decision of the Court of Justice in *CILFIT v. Ministry of Health* (Case C-283/81) which laid down the categories of case where the Court of Justice considered that no reference should be made to it. Under this procedure the Appeal Committee will both identify the category relevant to the particular issue before it and, briefly, the reason why the issue in question falls within that category. This will make transparent the basis upon which, as at present, the Committee have decided not to order a reference. Such a refusal is the end of domestic judicial remedies.

8. So as not to discriminate between petitions which raise a question of Community law and those which do not, the Appeal Committee will briefly indicate their reasons for refusing any petition for leave to appeal.

9. If leave to appeal is refused after an oral hearing, the Appeal Committee will announce their decision in the usual way, as now, and briefly indicate their reasons.

10. The Appeal Committee may report that a reference to the Court of Justice is required before they can determine whether to grant leave to appeal. In such circumstances, the Committee will invite the House to make the reference to the Court of Justice and to stay proceedings on the petition until the answer is received.

RECOMMENDATION

11. We recommend that the following amendments be made to the practice directions applicable to civil and criminal appeals to achieve this change in practice:

Civil direction 4.5 (and criminal direction 5.5): in the last sentence, leave out from “do” to end and insert “will give brief reasons for refusing leave to appeal¹ but do not otherwise give reasons for their decisions.”

Civil direction 32 (and criminal direction 31): insert new directions before direction 32.2:

32.1A When the House refuses leave to appeal on a petition which includes a contention that a question of Community law is involved, the House will give reasons for its decision not to grant leave to appeal. These reasons will reflect the decision of the Court of Justice in *CILFIT v. Ministry of Health* (Case C-283/81) which laid down the categories of case where the Court of Justice considered that no reference should be made to it, namely (a) where the question raised is irrelevant; (b) where the Community provision in question has already been interpreted by the Court of Justice; (c) where the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case; and (d) where the correct application of Community law is so obvious as to leave no scope for any reasonable doubt.

32.1B The House may order a reference to the Court of Justice before determining whether to grant leave to appeal. In such circumstances proceedings on the petition for leave to appeal will be stayed until the answer is received. Insofar as appropriate the directions below will apply.

APPENDIX

Membership of the Committee:

Bingham of Cornhill, L. (*Chairman*)
Nicholls of Birkenhead, L.
Steyn, L.
Hoffmann, L.
Hope of Craighead, L.
Hutton, L.
Saville of Newdigate, L.
Hobhouse of Woodborough, L.
Millett, L.
Scott of Foscote, L.
Rodger of Earlsferry, L.
Walker of Gestingthorpe, L.

¹ See also directions 32.1A and B for practice where a point of European Community law is raised on a petition.