Interview with Pierre Pescatore: the principle of a collegiate system (Luxembourg, 12 November 2003)

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[Susana Muñoz] How did the principle of a collegiate system work in practice? Did you and the other members of the Court share a tradition of collegiate decision-taking?

[Pierre Pescatore] Yes, working on a collegiate basis came naturally to us. We started out as a College taking decisions by a majority, and the great problem for each Judge was to win over a majority for his views. We were talking a short time ago, I think, of the role of the Judge-Rapporteur, and it is he, in particular, who pays attention to the positions his colleagues take up, so that the collegiate principle has to be cultivated if it is to be effective within the College itself. There are bound to be disagreements and groups of Judges siding together and then regrouping. But it is a very open College. There have never been factions within the Court of Justice as, for example, within the United States Supreme Court. At the Supreme Court, you have the conservatives and the liberals, but they are clearly labelled and, to an extent, act in public, because they are able to issue dissenting opinions, whereas we are not. There are no dissenting opinions at the Court of Justice. That is all covered by the confidentiality of the deliberations, so that all the Judges have an interest in maintaining the best possible relationship with their colleagues. The other factor that contributes naturally to this is the personal relationship. We often dine together; we lunch together at the Court, and it is often said — and this is no exaggeration — that the Court has always been a kind of family. You know that, even within families, there may be tensions and undercurrents. But at the Court of Justice, these have never resulted in the formation of cliques, particularly of a lasting nature. To date, problems have always been tackled openly, and what matters to the Judges is that they should be able to win over their colleagues with good grace. I do not know what it is like now in the Court, which is much larger and has become a kind of mini-parliament. But, in my day, when we were seven, nine and then eleven — the number of Judges when I left — there was always a family atmosphere, and we understood each other. And we were conscious that we were working within what, it has to be said, became a vast laboratory of comparative law, particularly with every enlargement. At the Court, we became above all comparative lawyers and were thus able to take account of what was happening within the Member States. So there was this sense of family.

So much for the atmosphere of the comparative law experience. I should, however, explain one thing: what we learnt was not just the law of the other Member States, their legal systems, discussion methods and language, but also the deep-seated problems of countries very different from, say, France, Germany, Italy or Greece. In a case that might prove sensitive for a particular country, we let that country's Judge explain the domestic situation. There was a sort of guarantee that, when a judgment had to be delivered that would have greater repercussions in one Member State than in the others, the law and the legal situation in the country concerned would be set out in the deliberations. So it was not just a matter of securing a majority but of fundamentally understanding each other. And I believe that this is what gave the Court its cohesion, the fact that, gradually, the Judges were able to put themselves in each other's place. There is, after all, the common interest that is the interest of the whole.