PROTEUS HANDBOOK

Notes for the guidance of participants in written and oral proceedings
before the PROTEUS - Moot Court

May 2013

Website: http:/www.proteus.uni.koeln.de

What is a Moot Court about?

A moot court is a simulated court trial, in which teams of students prepare papers with respect to a problem of European Studies and present their arguments within oral proceedings. The team with the best written and oral statements regarding correct analysis and argumentation as well as presentation and style (i.e. persuasiveness) in pleading wins. One can thus say that a Moot Court is a kind of a simulation game under the specific requirement of rather formalized proceedings before a jury and confinement to arguments that, although they might be political, should contain a legal core.

The objects of a Moot Court are to promote awareness of European Studies, to promote expertise in the practise of European law and to provide practical experience in preparing papers and arguing. The aim will be to learn how to face a problem, work on it as a team, research, discuss, argue, present papers, and then plead before a bench of other students in the field. By learning how to organize their work, to work as a team, respecting all points of view, and challenging themselves to act professionally and seriously, one team will win the competition.

In this context you are forced to exercise your general knowledge and understanding of EU law and principles. You should demonstrate and practise your ability in correct analysis and argumentation; i.e. clarity of argument, complete and correct recognition and weighting of problems. After all, an eloquent use of English language is demanded.

Mixed teams from each University prepare submissions setting out arguments. The written submissions are sent to a panel of judges made up of students, who will during the second stage act as Judges of the Moot Court in the competition.

A. General points

1. Introduction

Two factors distinguish proceedings before this Moot Court from those before the European Court of Justice. Firstly, even though proceedings before the Moot Court are based on the genuine Treaties, the Protocol on the Statute of the Court and its Rules of Procedure, the Moot Court is in a position to make exceptions from some of the before mentioned rules. Exceptions will be established by the students playing the judges, obeying the following guideline.
Secondly, proceedings before the Court are subject to a fictional case, which is characterised by established points of facts and the absence of the need for hearing evidence.

Accordingly, this guide is designed to explain to Counsel and Judges the purpose of proceedings before the Court, as well it should give an idea to the court's role.

This guide should therefore be seen as a working tool intended to enable Counsel to present their written and oral pleadings in the form which the Moot Court considers most fitting.

2. Teams

The teams will take up the role of the bench of judges, the Advocate General and the Counsel and representatives of different involved parties. Each team shall present its line of argumentation to the bench before negotiations will be entered. Finally, after the Advocate General has presented his final opinion, a judgment by the Court will be pronounced.

3. The various stages of proceedings before the Moot Court

Proceedings before the Court comprise a written phase followed by an oral.

The oral procedure includes the presentation of oral argument at the hearing and the Advocate General's Opinion, which is delivered in open court.

The active participation of Counsel for parties to the proceedings concludes with the hearing at which oral argument is presented. The possibility of the procedure being reopened for exceptional reasons is excluded.

4. Use of languages

The official language of the Moot Court is English.

B. The written procedure

1. The purpose of the written procedure

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 arguments of the parties and the forms of order sought.

2. The conduct of the written procedure

Each litigant may submit only one set of pleadings.

3. The lodgement of pleadings

All pleadings must be sent to the Court by e-mail.

For that purpose, the following requirements must be complied with:

a) the text must be in a commonly-used font (such as Times New Roman, Courier or Arial), in at least 12 pt in the body of the text and at least 10 pt in the footnotes, with one-and-a-half line spacing and upper, lower, left and right margins of at least 2,5 cm;

b) the pages of the pleading must be numbered consecutively.

c) The following information must appear on the first page of the pleading: the title of the pleading (application, defence, response, reply, rejoinder, application for leave to intervene, statement in intervention, observations on the statement in intervention, objection of inadmissibility, etc.).

d) the names of the applicant (appellant) and defendant (respondent); the name of the party on whose behalf the pleading is lodged; The signature of the agent acting for the party concerned must appear at the end of the pleading.

3. Length of Pleadings

It is the Court's experience that, save in exceptional circumstances, effective pleadings need not exceed 10 pages.

4. Respite for the sets of pleadings

All written pleadings shall be submitted to the Bench **on June, 10 2013**.

5. 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. The Court should be able, on a single reading, to apprehend the essential matters of fact and law.

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 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.
– 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.

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.

b. Citations

Teams 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 ...)"

C. Oral procedure

1. The purpose of the oral procedure

In all cases (both direct actions and preliminary rulings) the purpose of the oral procedure is:

– to answer the questions put by the Court;
– to recall, if necessary, by way of a highly condensed summary, the positions taken by the parties, with emphasis on the essential submissions in support of which written argument has been presented;
– 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 explain and expound the more complex points and those which are more difficult to grasp, and to highlight the most important points.

The oral procedure must, however, be seen as supplementing the written procedure and should involve no repetition of what has already been stated in writing.

The speaker may use notes, but he is encouraged not to read from a prepared text.

3. Conduct of the oral procedure

The Judge-Rapporteur outlines the relevant facts of the case and the main legal problems in brief.
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.
The Members of the Court frequently interrupt Counsel when they are speaking in order to clarify points which appear to them to be of particular relevance.

4. Time allowed for addressing the Court

As a general rule, the period initially allowed to each main party is limited to a maximum of 15 minutes. This limitation applies only to oral argument properly so called and does not include the time taken to reply to questions put by Members of the Court.

Exceptions to this rule may be allowed by the Court in order to put the parties on an equal footing.

An extension of speaking time shall in no case exceed 5 minutes beyond the total time allocated for the presentation.

The President of the Court hearing the case will seek to ensure observance of the principles set out above, as regards both the purpose of the oral procedure, that is to say the actual content of the oral submissions, and the time allowed for addressing the Court.

5. Useful phrases and Practical advice

a. Addressing the Court

You should address the Bench politely, and in the following manner:

When starting a pleading, say: "Mr. / Madam President, honoured Members of the Court, dear colleagues…"

When talking directly with one Judge: "Your Lordship….".

You should always refer to your opponents with respect, and in the following manner:

"My learned colleague" / "My learned Friend"

"The honourable representative of the Applicant / Defendant / Commission"

"His excellency the Advocate General / the honoured Advocate General"

b. Please avoid the following mistakes:

According to European tradition, you should never address a judge as "your honour". That is only an acceptable treatment in the U.S.A.

Do not interrupt a Judge while he or she is speaking.

c. Bench

The President will open the session and lead the further procedure:

"I open the 1st session in the case…. The applicant is…. the defendant is … ."

d. Applicant

After request from the Bench ("I give the floor to the applicant (...)") the first counsel for the applicant enters the speaker´s desk. Counsel for the applicant: "Mr./Mrs. President, Your Lordship, my name is xxx. If it may please the Court, I will plead on behalf of xxx. My co-counsel(s) is/ are xxx".

6. Dress

Participants are required to appear formally dressed before the Court.

D. Scoring criteria

1. Scoring criteria for the written memorials

a) correct legal analysis and argumentation; i.e. clarity of argument, complete and correct
b) recognition and weighting of problems, correct application of the relevant rules and legal principles
c) presentation and style, i.e. persuasiveness (logic, structure, citations, thoroughness, style)
d) delayed submission of the written pleading may result in a loss of points
e) exceeding the stipulated length may result in a loss of points

2. Scoring criteria for the oral pleadings

a) correct legal analysis and application of the relevant law (general knowledge and understanding of EC law and its principles)
b) presentation and style, i.e. persuasiveness (logic, structure, citations, thoroughness, style)
c) eloquent use of the language
d) no unsportsmanlike behaviour