
STUDENTS FORUM

The European Court of Justice

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1. Short Historical Background

The idea of creating a court of justice was conceived within the framework of the European Coal and Steel Community. The court's purpose was to secure the efficient operation of the existing European institutions (European Council, European Commission, European Parliament) at a supranational level and contribute to the process of establishing closer relations between the Member States and of further integration. The court of Justice, entrusted with this important task was first established in Luxembourg in 1952 within the framework of the Community. Later on, when in 1958 the European Economic Community and European Atomic Energy Community were established under the Rome Convention, the idea arose of merging the European Coal and Steel Community and the above subjects of law and creating a common judicial body for them. As a result, the Court of Justice of the European Communities was created in October 1958. The court was assigned the responsibility to administer justice throughout the European Communities, and to assist the Member States in the interpretation and efficient application of the Treaties establishing European Communities (EC Treaty).

2. Composition of the Court

The Court of Justice of the European Communities comprises fifteen judges and eight advocates general. The judges are appointed by common accord of the governments of the Member States and hold office for a renewable term of six years. The criteria for the selection of judges are rather strict and are provided for directly by the EC Treaty. Judges should possess qualifications required in their respective countries for the appointment to the highest judicial offices or be legal advisors of recognised competence. Lawyers with an academic degree may also be nominated to hold the office of a judge.

Despite stringent requirements of law that judges and advocates general could be of any nationality, they are actually appointed to their offices according to a different procedure. Each Member State (total fifteen) nominates one national judge, while the five largest Member States – the United Kingdom, Italy, Germany, France and Spain nominate the advocates general. Three remaining offices of advocates general are held in rotation by the representatives of relatively small Member States

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according to a pre-established succession order. The disadvantage of this procedure is that despite judges' high professionalism, no one is entitled to be reappointed after the expiration of a six-year term, except when a Member State enjoys the right of appointment of a judge or an advocate general according to the rotation principle. Should the Court of Justice so request, the Council may increase the number of judges and advocates general, for instance in the case of acceptance of a new Member State.

The composition of the Court of Justice is renewed every three years. The judges select one of their number to be President of the Court for a renewable term of three years by an absolute majority. The President directs the work of the Court, appoints and presides at hearings and deliberations, appoints a judge-rapporteur, and carries out administrative duties assigned to him by Court Statute. Currently the office of the President of the Court of Justice of the European Communities is held by *Gil Carlos Rodriguez Iglesias* (Spain).

The qualification requirements and procedures for designating the advocates general are similar to those of judges. They do not participate in the examination of cases with judges. The treaty establishing the European Union states that advocates general are completely impartial and independent in their activities and make reasoned submissions on cases brought before the court. For each case the First Advocate General appoints one advocate general for a term of one year. The advocate general may not be the representative of the Member State, which is a party to the case proceedings in the Court of Justice. At the end of oral proceedings, the advocate general delivers his oral report to the court. He gives his opinion, analyses the facts and all the legal aspects of the case in detail, and proposes his solution to the problem. Then the judges deliberate in private, where the advocates general are not admitted. Though the opinion of an advocate general is not binding, judges often take account of them when delivering a judgement. The judgments of the court and the opinions of the advocates general are published in the Reports of Cases. The advocates general may have recourse to them. The Court of Justice appoints a registrar for a term of six years. He also acts as a secretary-general of the Court of Justice.

The Court of Justice of the European Union has four chambers composed of three judges and two chambers composed of five judges. Each chamber has its president. The president of the chamber of three judges is elected for a term of one year, while the president of the chamber of five judges – for a term of three years. The judges of the Court of Justice of the European Communities, except for the President of the Court, in turn become the presidents of the chambers as well.

3. Jurisdiction of the Court of Justice

The Court of Justice of the European Communities administers jurisdiction over a number of categories of cases. The Court:

- Considers disputes arising between the bodies (institutions) of the European Union concerning the legality of the legislative procedures of the Community;

- Reviews the compatibility of Commission administrative acts and actions of public officials of Member States with the Community law;
- Deliberates on labour disputes, concerning the free movement of employees within the boundaries of the European Union, the issues of their social security and equality of men and women in labour relations;
- Reviews the legality of penalties imposed by the European Commission;
- Makes decisions on damages, related with the interpretation of the Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters;
- Accepts for consideration arbitration disputes in accordance with Articles 238e and 239e of the EC Treaty in the case of absence of arbitration agreement or an arbitration clause between the parties.

The EC Treaty envisages various types of actions, on the grounds of which the Court of Justice of the European Communities exercises its jurisdiction over the whole territory of the Community:

a) Action for failure to fulfil an obligation

The right to bring this type of action before the Court of Justice is vested with the European Commission and the Member States. The subject matter of this action is the non- or improper fulfilment of an obligation by a Member State, imposed on it by the EC Treaty.

b) Action for annulment

A Member State, the Council, the Commission and, in certain circumstances, the Parliament, may apply to the Court of Justice for the annulment of all or part of an item of Community legislation; individuals may also seek the annulment of a legal measure which is of direct and individual concern to them or if the disputed piece of legislation is directly applicable to them or their activities.

c) Action for failure of the institutions of the European Union to act

The Court of Justice is obliged to review to the extent that institutions of the European Union fulfil the imposed obligations, whether they participate in case proceedings pursuant to the EC Treaty.

d) Actions for damages

The subject matter of the action is the damage caused by the Community institutions or servants in the performance of their duties. In this case the Court reviews the issue of liability of the Community for consequences.

e) Appeals against preliminary rulings of the Court of Justice concerning cases referred to it by national courts.

As far as Community law enjoys supremacy over the national laws of Member States, if a specific issue of a case under the consideration of a national court falls within the competence of the European Community, the case should be referred to the Court of Justice of the European Communities for interpretation and for a preliminary ruling. The national courts deliver their judgements on the basis of the latter's decision. Naturally, due to differences in legal orders of the various countries, national courts interpret law in a different manner. Appeal proceedings become the standpoint for the employees of Court of Justice of the European Communities and national courts and secure the unification of the European Community law throughout the whole territory of the Community.

4. Case Proceedings

The court procedure differs according to the content of the cases under consideration. It sits in plenary session, consisting of eleven judges, when a Member State or a Community institution is a party to the proceedings, or in Full Court, consisting of fifteen judges, in particularly complex or important cases. The chambers hear less important cases.

As a rule, a case may be brought before the Court of Justice by a Member State, a Community institution (mainly by the European Commission); a natural or a legal person may apply to the Court only when they have a direct concern in the subject-matter of the case.

The language of the proceedings is one of the languages of the Community. The plaintiff generally chooses the language. When the defendant is a Member State or a legal or natural person having the nationality of a Member State, the language of the case will be the official language of that Member State. If the state has more than one official language, the applicant chooses whichever suits him best.

When a case is referred to the Court of Justice by a national court for the delivery of a preliminary ruling, the language of the national court, which referred the case to the Court, is used.

The procedure before the Court consists of two parts: written and oral:

a) Written proceedings

After receiving an action from the applicant, it is entered in the Court register. The registrar publishes a notice of the action and of the applicant's claims in the Official Journal of the European Communities. A judge-rapporteur and an advocate general, whose duty it is to follow closely the progress of the case, are then appointed. The application is forthwith served on the other party, who has one month within which to lodge a defence. The applicant may submit a reply, and the defendant a rejoinder, the time allowed being one month in each case. The time limits for lodging these documents must be strictly adhered to, unless an extension is specifically authorised by the President.

b) Oral proceedings

A judge-rapporteur supervises the consideration of every case in the Court of Justice. Upon hearing the preliminary report of the judge-rapporteur and the views of the advocate general, the Court decides whether the case should be dealt with by a chamber or by the full court. The President sets the date for public hearing. In a report for the hearing, the judge-rapporteur summarises the facts alleged and the arguments of the parties. The report is made public in the language of the case at the hearing. An advocate general may put any question he considers appropriate to the parties. Some weeks later, again in open court, the advocate general delivers his opinion to the court. The oral procedure ends.

The judgements of the Court of Justice are reached by a majority vote, by the judges alone, without the participation of translators. The judges give their opinions and the balloting starts. The first one to vote is the most recently appointed judge and then successively. All the judges sign the judgements, so it is impossible to identify whether they were delivered by a simple majority or unanimously. No dissenting opinion is given to the parties. The judge-rapporteur draws up a final text of a judgement. Judgments are given in open court.

The mechanism of enforcement of the Court of Justice judgements differs and depends on the subject matter of the dispute, and the content of the claim. Judgements delivered against a natural or a legal person are enforced directly by the national courts of the Member States, while the judgement on declaring null and void a legal act adopted by a Community institution automatically comes into force and is legally binding without any additional enforcement proceedings. When it comes to applying a sanction against a Member State for failure to comply with the judgement of the Court of Justice of the European Communities, the latter's judgement is subject to direct enforcement on the part of a Member State.