

Notes

The Charter of Fundamental Rights of the European Union - The role of the Court of Justice in the Jurisdiction of Fundamental Rights

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The original text of the Treaties establishing the three European communities did not include any reference to the protection of fundamental rights. The original EU law was intended to be more of a "bill of powers" than a "bill of rights". It was understood that, that wasn't the subject of the founding treaties of communities, they were on the one hand, on the constitutions of Member States and on the other as part of the attributions of the Council of Europe.

However, the process of European integration led to the creation of a supranational legal structure, well beyond what was foreseen in the Treaties that would eventually end in the generation of a potential conflict with the national Constitutional Rights, regarding the need to seek mechanisms that would allow for the interpenetration of the different legal systems. Originally designed as sectoral and related only to the economic and trading areas, it acquired over time, a much broader scope than the envisioned by its founders. Throughout this process, the legal issue has always been fundamental, because the institution of a Common Market (original aim of the European Economic Community in 1957) assumed not only "negative" steps of regional integration, such as the abolition of tariff and nontariff customs barriers to trade within the EEC, but also "positive" steps, such as the elaboration of a common body of law in areas such as labour, consumer and environment protection, among others. On the other hand, European integration has always had a strong legal component, since it has been "rule oriented" from the beginning, *ie*, based on procedures that occur within legal parameters, which restricted, significantly, the use of purely political mechanisms in the mutual relations of Member States.



Under the legal and institutional perspective, the one characteristic of the integration process that has always been more surprising, was no doubt, the supranationality that also indicates a *sui generis* political situation, in which sovereign states agree to the imposition of decisions taken by the organization, even when they do not match their own interests. The integration dynamics and the progress of the founding treaties expanded considerably the transfer of competences, from the states in favor of the Union. Currently the EU has competence in areas that extend from agriculture, steel, atomic energy, competition, labor policy, social, fiscal, economic and monetary policy, trade and development, research and technology, education, transport, culture, and environment, to the provisions on foreign policy, security and defense policy, as well as immigration and asylum policies. Thus, the powers and duties of EU cover almost all sectors of State action, expanding, largely beyond the limits of a purely sectoral or economic integration, including to the sensitive area of fundamental rights.

From an early age, the need to create an effective system of protection of fundamental rights at Community level in which the development of a catalog of fundamental rights would be an essential part, was found, however this catalog was absent from the founding Treaties.

The Single European Act (SEA), which was the first major change of the founding treaties, revised the Treaty of Rome with the aim of relaunching European integration and the completion of the internal market. It has changed the operating rules of the European institutions and extended Community competence, on research and development, the environment and common foreign policy, furthermore it was inscribed in the preamble of the act, and for the first time, a generic formula Bill of Rights:

"Determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the member states , in the convention for the protection of human rights and fundamental freedoms and the european social charter , notably freedom , equality and social justice"¹

Nevertheless, it was between advances and retreats, that only the Maastricht Treaty that would implement a protection more or less effective of fundamental rights within the Union, modeled on the then Article F, paragraph 2, which now bind the European Union in respect of *"The Union shall respect fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, as general principles of Community law"*.

Moreover, the prediction of a status of Union citizenship, recognized to all citizens of the Member States and involving the ownership of certain rights, including political rights (Articles 17 to 22 of the Treaty on European Community) was a catalog of major changes that were extended in its scope, by the Treaties of Amsterdam and Nice, but failed the objective of providing the communities with an European catalog of fundamental rights.

¹ Preamble to the Single European Act.



However, the preparation of a catalog of fundamental rights was only decided at the European Council in Cologne, on 3 and 4 June 1999, whose specificities were set out in Annex IV to the Presidency conclusions of the said paper, from where we highlight the following passage:

"... at the present stage of the Union's development, to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens.

The European Council believes that this Charter should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law. The Charter should also include the fundamental rights that pertain only to the Union's citizens. In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), insofar as they do not merely establish objectives for action by the Union."

The aim was to highlight and to give visibility, to the rights of citizens and for citizens, through a catalog of fundamental rights endowed with normative primacy, legally binding and directly applicable, not intended, however, to change the Community competence in human rights. The contents of the future bill of rights should reflect the European and communitarian *acquis* on fundamental rights and should contain three broad categories of rights:

- The *personal rights and freedoms*, as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional traditions common to the Member States.
- The *inherent rights of EU citizens*, the rights associated to the status of Union citizenship and therefore reserved for the citizens of the Member States (as provided for in the Treaty establishing the European Community).
- The *rights of economic and social nature* as they were enshrined in the European Social Charter and the Community Charter of Fundamental Social Rights of Workers.

On the other hand, the draft of the Charter would be participated by the main EU institutions and would count on the contribution of national parliaments.

From a first analysis of the draft catalog of fundamental rights, we can immediately draw two conclusions: that the Charter was not designed with the aim of expanding the competences of the Union and that the European Council of Cologne made it very clear that the issue of assigning a binding dimension to the Charter would be postponed without a specific deadline: *"... It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties..."*



The Charter was only assumed a purely political commitment.

The 15 and 16 October the same year, in Tampere, the statement of the Council of Cologne was implemented and it was decided to set up a convention for drafting the Charter designed in Cologne, this convention, for the first time, joined in a direct process, the contribution of the representatives of national governments and parliaments for the development of EU law. Having met for the first time in December of that same year and approved a final draft on 2 October 2000 in Nice.

The drafting process of fundamental rights in the form of a Charter was developed by representatives of national governments, the European Commission and members of European and national parliaments. Chaired by Roman Herzog, former president of the RFA and of the German Constitutional Court, this process introduces an innovation, since it witnessed the participation of national parliaments and national governments, strengthening, therefore, the level of decision making, visibility and legitimacy of the catalog of fundamental rights, as well as the expression of several European sensibilities.

The Tampere European Council established the principle of publicity of debates and of documents submitted, therefore all documents of the presidency of the Convention, as well as the contributions of all participants and other groups are available on the Internet. The Convention completed its work and presented the draft Charter in its final version on the second of October 2000 in order to enable the European Council to discuss the text in the course of the informal summit on 13 and 14 October 2000, in Biarritz having obtained assent. Similarly, the European Parliament also spoke favorably about the text, on November 14, 2000 and December 7, the same year, so the Charter of Fundamental Rights was proclaimed by the three institutions.

The Charter derives from the existence of a collection of rules on the protection of fundamental rights, both in terms of the Member States and their constitutional traditions, which embodies the general principles of Community law, either at the international level, with the new paradigm of sovereignty based on the need to share responsibility in the protection of these rights. It also intends to shape the rights of European citizenship in particular the Community Charter of Fundamental Social Rights of Workers and the European Social Charter, thus giving formal recognition to the vast European Court of Justice rulings on Fundamental Rights. It becomes a Community legal instrument, enjoying from its protection and support and going beyond the member state reality.

The main functions assigned to the Charter are general functions as an instrument that legitimizes the Union's political action and the co respective and legal security as well as to provide the necessary visibility and proximity of citizens to the above mentioned *acquis*.

We can still identify as specific objectives; the Charter as a mechanism for monitoring and regulating the exercise of Community competence, and this does not mean increasing the powers of the Union, but rather the way in which they should be exercised; The formal vinculation to the European Convention of Human Rights and its submission to the Court of Justice, as well as clarification of the compatibility between the Charter and the national constitutions, does not require changes in national constitutional law, but rather arises as a criterion of interpretation; As a criterion for guidance on the Union's relations and there maining international community,



particularly in relation to the common foreign and security policy, on the relations with third countries and more specifically in relations with the states of the enlargement; Finally, the Charter guarantees the protection of existing rights in the Convention and thus generates a match and the integration of these rights in the Union *acquis*.

Despite its solemn proclamation of the European Council in Nice in 2000, the Charter has retained its non legally binding character until 2007, when the Lisbon Treaty has conferred binding legal force recognizing its legal value at the treaties level.

Moreover, in this area, the Lisbon Treaty, which entered into force in December 2009, already provided for the accession to the Convention and the Commission is provided with a mandate to this effect, so the Stockholm Programme, adopted by the European Council of 11 December 2009, also provided for the Union's rapid accession to the European Convention of Human Rights, thus consolidating the legal framework for protection of fundamental rights in the EU *acquis*

The multiannual Stockholm program (in force between 2010 and 2014) has for its mission to deepen the progress made within the Area of Freedom, Security, and Justice and to focus on the interests and needs related to citizenship. The challenge is to achieve a balance between the need to ensure respect for fundamental rights and freedoms of the individual and the need to ensure security in Europe. On the other hand, the Stockholm Programme provides that the European Union should join as soon as possible to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Commission presented a draft decision of the Council of the European Union towards the authorization to negotiate the agreement on Union accession to the Convention.²

The status of the European Charter of Fundamental Rights, only recently, with the entry into force of the Lisbon Treaty, became clear within the Community legal order, strictly speaking, in March 2010.

Behind, it was left a long experience, based on the Court of Justice rulings on the enforcement of fundamental rights.

In fact, the scope of the treaties essentially economic, even alienating the issue of protection of fundamental rights, allowed under the rules of conformation of economic freedoms, for the rights, protected by the Community legal order, to have an effect on EU citizens. Although indirect and instrumentally, these rights have been regulated and assumed a key role in the *acquis* communitarian, the right to non discrimination on grounds of nationality, the right to free movement and access to the exercise a profession or economic activity in the territory of a member State, the freedom of establishment, as well as some economic and social rights such as equal pay between men and women.

In the absence of a declaration of rights, it fell on the Community Judge, based on a case by case assessment, the definition of a community model of protection of fundamental rights.

It is therefore important to examine the role of the Court of Justice of the European Union in the jurisdiction of the fundamental rights that anticipated the consecration of

² Reflection document of the Court of Justice of the European Union on certain aspects of EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.



these rights as a genuine Community policy, as the result of binding nature given by the Treaty of Lisbon to the Charter.

The evolution of its jurisprudence illustrates the contribution of the Court of Justice to create a legal space with respect to citizens by protecting the rights that EU law gives them in different aspects of their daily lives. Thus, by holding that respect for fundamental rights as an integral part of the general principles of law, also contributed considerably to increasing levels of protection of those rights

The European Court of Justice includes the General Court and specialized courts, it falls on the ECJ, composed of these three jurisdictions, the main task of assessing the legality of Union acts and ensure full compliance with the Treaties as well as ensure the interpretation and uniform application of Union law.

The ECJ over the years has been creating, through its case law, the obligation of legislators, public administrations and national courts to fully implement EU law within their respective spheres and courts to protect the rights of European citizens. This law consolidated the principle of primacy of Community law and the direct effect of EU law.

The normative deepening of the integration process, closely related to the assertion of the primacy and direct effect, as the basic criteria of coordination between Community law and national laws, inculcated in most of the Community rules the characteristic of immediacy. The primacy and direct effect of Community rules gives the particular right to enforce them at the expense of the national rule.

However, as direct recipient of the Community legal command, the individual might be affected in its capacity as holder of the rights recognized by the national constitution or by applicable international conventions, particularly with regard to fundamental rights.

As a result, the Court was faced with a dilemma, to abdicate of the primacy whenever the binding force of Fundamental Rights was in question, or not to abdicate on the absolute and unconditional nature of the requirement of the primacy. From the analysis of the European Court of Justice jurisprudence, we can say that, at first, it has opted for an agnostic view, regardless of how relevant were the fundamental rights in its constitutional or international nature, the Community courts did not recognized them as parameters of assessment of validity of Community acts.

The Court held that it should ensure the enforcement of the primacy and the elimination of any exceptions that might weaken, even if it has to sacrifice fundamental constitutional rights or international rules on human rights, not allowing the individual invocation of the constitution or of international instruments to oppose the application of a Community act potentially restrictive of Fundamental Rights. Thus, the Court rejected the independent supervision of Fundamental Rights.

We can say that the Court violated the Treaty itself, in so far as the art. 19 TEU regards the court as the body *"to ensure the respect of law"*. Now, by historical legacy or under the current constitutional experience, the law embodies the proclamation and effective protection of fundamental rights.

This position of the Court undergoes a major change, with the ruling of 12 November 1969, delivered in the case *Stauder*, materializing shift from the "agnostic" phase to a



phase of active recognition of Fundamental Rights, "... *the fundamental human rights enshrined in the general principles of community law and protected by the court*"³.

The "*communitarisation*" of Fundamental Rights by reference to general principles of law, had been suggested by the Attorney General Lagrange in the case *Comptoirs*. On the other hand, we must stress that it is the Treaty itself, in art. 340º (EUT), that recognizes the general principles common to the laws of the Member States concerning extra-contractual liability.

In the sensitive area of Fundamental Rights the recourse to general principles of law as technical integration and empowerment tool of rights and freedoms enshrined in the national systems, would prove extremely fruitful. It is even an enhanced protection, since the general principles have primacy over secondary Community law and on the treaties themselves wherever basic rights inherent to the human dignity of a person, which by its ethical-legal force are not subject to exemption.

The Court of Justice jurisprudence has given an important contribution to the determination of a material notion of general principles of law inherent in the constitutional traditions of Member States and integrated into the structures and objectives of the Community *acquis*⁴.

The Court calls for himself, in collaboration with national courts, the protection of Fundamental Rights, initiating a third phase in the EU⁵ jurisprudence, characterized by the determination of material criteria of Fundamental Rights. The Common constitutional traditions, the constitutions of the Member States and the international instruments on human rights to which Member States have acceded or cooperated, form a wide range of normative revelation of Fundamental Rights that must be protected by Community Courts in cooperation with national courts. As general principles of law their binding force on the legal system does not depend on any common denominator, nor on the greater or lesser acceptance of the Member States to identify their criteria, but on their functional adequacy. Being an EU body of limited powers, according to the principle of jurisdiction by assignment, the interpretation of the scope of competences both explicit and implicit, regarding the protection of fundamental rights can only match this space of regulatory action.

The active recognition of fundamental rights has meant that we can find in the Court of Justice jurisprudence direct references to international law as a source of rights guaranteed by the Community Courts⁶. The first explicit mention of Charter of Human Rights emerged in the case *Rutili*⁷ by considering that the limits of the competence of the Member States regarding immigration policy, are the manifestation of a more general principle enshrined in Articles 8, 9, 10 and 11 of ECHR and Article 2 of Protocol No. 4.

In addition to the many explicit references and additional protocols to the ECHR, the ECJ recognized in a 1991 ruling that the ECHR "has a particular meaning" between the general principles of law whose protection is guaranteed by EU law.

³ Rulling, *Stauder*, Proc.29/69 of November 12, 1969, TJC Report 1969: 419.

⁴ Rulling, *Handelsgesellschaft Internationale*, Proc. 11/70 of 12 December 1970, Report of TJC1970:1125.

⁵ Rulling *Nold II*, Proc. 4 / 73 to May 14, 1974, TJC Report 1974: 491.

⁶ In the *Van Duyn* case (Proc. 41/74 of 4 December 1974 Report of the TJC: 1337) characterized the right of entry and residence of nationals in their own state as a principle of international law.

⁷ Rulling *Rutili*, Proc. 36/75 of 29 October 1974, Report of the TJC: 1219.



The imperative nature of human rights in EU law also legitimizes the power of the EU judge to, in cooperation with the national court, proceed to the supervision of legislative acts and regulations of the Member States.

Nevertheless, the Court confirmed its intention to limit the enforcement of the compatibility of national law with the ECHR provisions to those that run Community regulations or which provide exceptions to Community freedoms, and not to syndicate the compatibility with the ECHR of a national law that is located in the area of the national legislator.

The relevance of the protection of fundamental rights in the Court of Justice as part of the general principles of law, which are protected either by the Community judicature, or by the national court, may be understood as a form of material reception.

In fact, the provisions on Fundamental Rights were incorporated into the constitutional traditions of Member States and thus, in particular, the ECHR has been received and incorporated into EU law as part of the general principles of law. Thus, the EU Courts interpret and applies the fundamental rights of both national and conventional sources, according to the rules and criteria of EU law. The Community Court did not commit to a legal classification of fundamental rights in EU law, but in its jurisprudence on the relevance and meaning of Fundamental Rights, the court points to its material reception.

In a recent ruling on matters of competition concerning the right not to incriminate oneself, protected by the presumption of innocence under article 6, paragraph 2 of the ECHR, the Court concluded that "*has no jurisdiction to rule on the legality of an enquiry into competition law under the provisions of the ECHR, to the extent that these are not part of Community law as such*", stressing, however, that the Court has consistently held that "*fundamental rights are an integral part the general principles of law whose observance is ensured by the Community Courts.*" Different position would be adopted today because, under the Treaty of Lisbon, the ECHR became vinculative.

It is fair to say that the enactment of the Charter of Fundamental Rights of the European Union does not add powers to the EU competences on Fundamental Rights, nor has it revealed a new set of common values on which the Union is founded, but it gives a new legitimacy to the protection of these rights, solidarity of form, democratic legitimacy of the development, importance of codification and systematization and symbolism inherent in a catalog which aims to express the principles and rights it constitutes a fundamental pillar of a political community.

The jurisdictional *acquis* on the protection of fundamental rights in Europe whether perfect or not, constitutes itself as a first step, on the protection of fundamental rights of the European citizens and as a safeguard against violations of their legal rights by the authorities that hold the prerogatives of power.

However, its casuistic basis and legal uncertainty do not fit the defense of what is the deepest of human nature: human dignity and fundamental values.

In this regard, one must move towards a progressive deepening of an autonomous legal order, coherent and uniform, that does not infringe, if possible, state sovereignty, but that inevitably will end up restricting the freedom of state activity in areas that are increasingly large and extensive.



With the express consecration of Fundamental Rights, as a genuine Community policy, by making it binding, with the Treaty of Lisbon, the instances with political legitimacy and institutional competence took a step forward for the protection of Fundamental Rights.

On the other hand, the ECJ got released from a position of constraint, between the choice on the application of the Charter or the defense of European integration and resolves definitively the question of the legitimacy of the ECJ regarding the protection of these rights.

The Charter ceases to have a merely symbolic role and is set to fix the teleological principles inherent to the European Union, translating them into Fundamental Rights. With its binding nature, the Charter gives a qualitative leap, by stating that is not only intended to crystallize and articulate the rights but, in fact, to ensure adequate protection in the face of European public entities and powers.

The character of universality, found in this Letter shows that one of its objectives was the dissemination among Europeans of the knowledge necessary for them to demand and ensure an effective protection of their rights. In this sense, it provides an answer to need for dissemination and information of these rights to its recipients.

In short, the Charter approach and announces its catalog of fundamental rights to citizens, strengthening its legal security and certainty.

On the preamble of the Charter we can verify, the proclamation of EU common values (human dignity, freedom, equality, solidarity, ...), the statement of basic principles (the principle of democracy and the rule of law , principle of respect for fundamental human rights, the principle of subsidiarity, ...), the promotion of core values (respect for the diversity of cultures, traditions and identity of the people of Europe, balanced and sustained development of economy, social progress, evolution technological and scientific), the reaffirmation of compliance with the constitutional traditions of Member States, of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charter, as well as respect for the jurisprudence of the ECJ and the European Court of Human rights and submission to the superintendence of the ECJ and national courts of the Member States.

The Charter brings together a set of personal rights, such as civil and political rights of citizens enshrined in treaties, economic rights and social rights, applying, clearly, the principle of universality and indivisibility of rights. Concerning the structure, it does not make the distinction, previously established in European and international texts, including civil and political rights on one hand, and economic and social rights on the other, but opts for a list of all the rights and freedoms in accordance with some fundamentals essential to human dignity, fundamental freedoms, equality between people, solidarity, citizenship and justice. Being systematized around basic legal rights as those mentioned above.

Thus and for the first time, all the rights that were scattered through various legislations, such as national legislation and international conventions of the Council of Europe, the United Nations and the International Labour Organization, among others, were assembled in a single document.



Providing visibility and clarity to Fundamental Rights, the Charter helps to develop the concept of political union as well as to build a European area of freedom, security and justice.

For the future and regarding implementation of the Charter, it is important to give it credibility and invest in a wide dissemination of its contents, thus fulfilling one of the objectives of the project, to make it visible. On the other hand, the principles enshrined in the Charter shall serve as criteria guiding the development of EU policies and parameters for the activity of EU institutions.

We highlight some recent initiatives, which we reported as a breakthrough in the protection of Fundamental Rights and the application of the Charter; in September 2002 a network of independent experts on human rights was created, after an European Parliament recommendation. These same experts submitted their first report on the situation of Fundamental Rights in the European Union and its Member States on 31 March 2003. The report presents a synthesis of national reports produced by each of the experts and recommendations to the institutions and the Member States. The network was funded as a preparatory action⁸, with a limited duration to three years that cannot be renewed.

In February 2007, the European Union Agency for Fundamental Rights (FRA) was created⁹, based in Vienna, whose main purpose is to provide information, assist and provide competences to the EU and national institutions in the field of Fundamental Rights. The agency coordinates its activities by establishing a network of cooperation with civil society, exchanging information, sharing knowledge and ensuring close collaboration between agencies and other stakeholders. It also establishes institutional relations at the international, European and national levels, including the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the relevant community agencies, government organizations and public agencies, including the National Institutes of defense of human rights.

It aims to analyze of the main problems of each state, allowing the Union to increasingly act in accordance with the needs and interests of their members, looking for the effectiveness of their decisions and the consistent application of measures in the field of fundamental human rights.

In conclusion, the Charter adds legal certainty with regard to the protection of fundamental rights, to date this was only granted by the Court of Justice and Article 6 of the Treaty of the European Union..

For this reason, we cannot fail to highlight the role that the law played in the determination of the precise legal boundaries of the Charter and on the maturation of a system of protection of fundamental rights. This Court's role is and was so important that the Charter was to become mandatory by its interpretation as a source integrated in the general principles of Community law. In this sense, the letter was destined to be incorporated in the Treaties, sooner or later, which turned out to be implemented on the Lisbon Treaty.

⁸ In accordance with Article 49 of the Financial Regulation (Regulation 1.605/2002 Council)

⁹ By Regulation 168/2007 of 15 February establishing the Fundamental Rights Agency of the European Union



In a time where international relations are governed both by its complexity, the diversity of their stakeholders and are characterized by the existence of multiple legal systems that are intertwined, resulting in a dispersed and fragmented normative order, the adoption of the Charter of Fundamental Rights European acquires a special importance.

With its enforced application, the debate about its necessity is ended it is now clear that states, citizens and the magistrates should consider its content as a criterion for decision-making and implementation of all public policies.

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Appendix

The Court Of Justice of European Union

Stems from the December 10, 1952 with the establishment of the ECSC Court of Justice in Luxembourg. Through the Treaty of Paris in 1951, later adopted by the Treaties of Rome in 1957 was created the Court of Justice of European Communities, to ensure an accurate and uniform application of Community law by its Member States.

With the creation of the communities a new autonomous law was born, to regulate relations not only between member states, but also among its institutions, businesses and citizens themselves.

Since inception in 1952, the Court of Justice of the European Union carries with itself the jurisdictional administrative, international, constitutional, labor, civil, tax and customs functions, it is the jurisdiction responsible for the interpretation and application of Community law. The ECJ cooperates with the judicial authorities in the Member States to ensure uniform application of Community law, acting as interpreter ultimately responsible of Community law. As part of its contentious jurisdiction, whether or not resulting from the Treaties, it settles disputes between institutions and bodies of the EU, between Member States, between Member States and institutions, bodies or agencies of the EU and between individuals and Union institutions.

The Court is, therefore, the judicial authority of the European Union and its mission is to ensure "respect for the law in the interpretation and application" of the Treaties, in collaboration with the courts of member states.

The Court of Justice of the European Union, is composed of three courts: the Justice Court, the General Court (established in 1988) and the Civil Service Tribunal (established in 2004).

The Court of Justice is composed of 27 judges and 8 advocates-general. The Judges and Advocates General are appointed by common accord of the governments of the Member States, after consultation with a committee to advise on the suitability of the candidates proposed to perform the duties in question. Their terms are for six years, renewable. They are chosen from persons whose independence is beyond doubt and who possess the ability required for appointment in their respective countries, of high judicial office and have recognized competence.

The judges of the Court of Justice shall elect the president for a period of three years, renewable. The President directs the work of the Court and presides at hearings and deliberations of the major formations of the Court.

The General Advocates assist the Court. They are responsible to publicly present, with complete impartiality and independence, legal opinions, called "conclusions", in cases in which they were appointed.

The Court of Justice can function in Full Court, a Grand Chamber (thirteen judges) or in chambers of three or five judges.

The Full Court is responsible to assess particular situations envisaged by the Statute of the Court of Justice (including when to declare the resignation of the Ombudsman or compulsorily retire a Commissioner who has failed to fulfill the duties incumbent on him) and when considering that a specific cause as an exceptional importance.



It sits in a Grand Chamber when a Member State or an institution that is party to the proceedings so requests and processes are particularly complex or important.

The other cases are heard in chambers of three or five judges.

The General Court is composed of at least one judge per Member State (27 in 2007). Judges are appointed by common accord of the governments of the Member States, after consultation with a committee to advise on the suitability of candidates. Their terms are for six years, renewable. From among their number for a period of three years, the President of the Court appoints a Registrar for a term of six years.

Judges shall perform their duties with complete impartiality and independence. Contrary to the Court of Justice, the General Court has no permanent General Advocates. This function can, however, be exceptionally entrusted to a judge.

The General Court works in Chambers of five or three judges or, in some cases, a single judge. It can also sit as a Grand Chamber (thirteen judges) or in full court, when the legal complexity or importance of the case justifies it. Over 80% of the cases submitted to the General Court are heard by a Chamber of three judges.

The General Court has jurisdiction on: the actions brought by individuals or legal persons (institutions, companies, ...) against acts of the institutions and bodies of the European Union that are recipients or directly affected by the case, and against regulatory acts (directly affecting them respect and do not require implementing measures), or against a failure of these institutions and bodies. It is, for example, the action brought by a company against a Commission decision imposing a fine; actions brought by Member States against the Commission or, in actions brought by Member States against the Council in relation to acts adopted in the field of State aid, trade protection measures and the acts by which the Council exercises its competences.

The Civil Service Tribunal of the European Union is composed of seven judges appointed by the Council for a renewable period of six years, after a call for proposals and advice of a committee composed of persons chosen from among former members of the Court of Justice and the General Court and jurists of recognized competence.

When appointing judges, the Council must ensure that the composition of Civil Service Tribunal is balanced and based on the broadest possible geographical basis from among nationals of Member States and national legal systems.

The judges of Civil Service Tribunal shall designate among their number and for a renewable period of three years, its chairman.

The Tribunal meets in chambers of three judges. However, when the difficulty or the importance of questions of law warrant, a case may be referred to the Full Court. Moreover, in some cases and in the light of its Rules of Procedure, the Court may decide in sections of five judges or as a single judge. The judges shall appoint a secretary for a term of six years.

Regarding the litigation the Civil Service Tribunal is within the judicial institution of the Union, the specialized jurisdiction of litigation in the field of civil service of the European Union, previously exercised by the Court of Justice and, from its creation in 1989 by the Court of First Instance. It has jurisdiction to hear at first instance, disputes between the Communities and their servants pursuant to Article 270 EUFT. These disputes are related not only to issues relating to labour relations themselves (pay, career



development, recruitment, disciplinary action, etc, ...) but also on the social security system (illness, retirement, invalidity, accidents at work , family allowances, etc, ...). It also has jurisdiction for disputes between all bodies or agencies and their personnel, for which jurisdiction is conferred on the Court of Justice of the European Union (eg. disputes between Europol, the Office for Harmonisation in the Internal Market (OHIM) or European Investment Bank and their agents). On the other hand, has no jurisdiction to hear disputes between the administrations of their respective national agents.

Regarding the contentious mechanism, the default action is intended to monitor compliance by member states of their obligations under the law of the Union to the Court of Justice is preceded by a previous procedure initiated by the Commission that gives the member State the opportunity to respond to charges. If this does not lead the state to terminate the infringement the State may be brought before the Court on an action for breach of EU law.

This action may be brought by the Commission (it often the case) or by a Member State. If the Court declares the breach, the State concerned must terminate it without delay. If, after bringing a new action by the Commission, the Court finds that the Member State concerned has not complied with its ruling, it may order the payment of a lump sum or a penalty. However, in case of failure to notify measures transposing a directive to the Commission, the Court may, on proposal of the latter, apply a financial penalty on the Member State concerned, at the stage of the first ruling of non-compliance.

Another important mechanism is the action for annulment, through this type of application the applicant seeks the annulment of an act of an institution, of an organ or agency of the Union (including a regulation, directive, decision) because they are wounded with irregularities under EU law. Its main goal is to eliminate wounded legal acts from the EU. When it comes to judicial review of EU legality the Proceedings for failure to act allows for the control of the legality of the inaction of the institutions of an organ or a body of the Union. Proceedings for failure to act are legal proceedings brought before the Court of Justice of the European Union (CJEU). They enable the Court to control the inaction of a European Union (EU) institution, body, office or agency. This type of action may only be brought after a procedure of pre-litigation, and the institution concerned is urged to act. When the legality of the omission is declared, it is up to the institution concerned by the non-compliance to take appropriate measures to correct the omission.

Regarding the review of decisions they may be brought before the Court of Justice via appeal limited to the points of law, judgments and orders of the General Court. If the appeal is admissible and well founded, the Court of Justice annuls the decision of the General Court. If the process is able to be tried, the Court of Justice may decide the dispute definitively. Otherwise, it must refer the case to the General Court, which is bound by the decision given on the appeal.

Another review mechanism allows for the decisions of the General Court on appeals against decisions of the EU Civil Service Tribunal to can be exceptionally reviewed by the Court of Justice, in accordance with the Protocol on the Statute of the Court of Justice of the European.

Finally, the ECJ has advisory jurisdiction on the form of opinions on the compatibility of international treaties with EU law, art. 218 of the Treaty of Lisbon.



The Court of Justice, is also responsible for the development an action for judicial cooperation under the preliminary ruling, working in collaboration with all the courts of the Member States.

To ensure an effective and uniform application of Union law and avoid divergent interpretations, national courts can, and sometimes must, address the Court of Justice to request clarification on the interpretation of Union law, and allowing them to check the conformity of its laws. The preliminary ruling may also have intended to review the legality of an act of the Union.

The Court of Justice answers by reasoned rulling or decision and the recipient national court is bound by the given interpretation. The ruling of the Court of Justice is binding on other national courts to whom it may be submitted a similar problem.

It is also under the preliminary ruling procedure that any European citizen can ask for clarification of EU rules the concern him. In fact, although the preliminary ruling procedure can only be triggered by a national court, the parties already present in national courts, the member states and EU institutions can participate in the proceedings before the Court of Justice. That is the way in which some structural principles of EU law were from preliminary rulings, namely the development of the jurisprudence of the protection of the rights enshrined in the Charter of Human Rights.

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