

Tribunal of the European Union

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Abstract

The scientific paper is structured to highlight the issues that define the need to establish the Tribunal. Thus, the second instance of the Court of Justice or the General Court was created under the workload of the Court had become incompatible with the requirements of the proper administration of justice. Utility setting is highlighted Court and proven in the paper, by analyzing the composition, organization, functioning and jurisdiction of the Court. EU Court is the first step towards diversifying the EU jurisdiction. This has entailed the redistribution of previous skills held by the Court of Justice of the European Union by the Court, while safeguarding its power of review.

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JEL Classification: K33, K40

1. Introduction

Court of First Instance (CFI)³ is the first step towards diversifying the jurisdiction of the Community/Union, redistributing previous powers held by the Court for the benefit of other EU jurisdictions, provided, well understood, the protection of Supreme Court⁴ review.

Article 168A EC and 32 *quinto* ECSC introduced by the SEA fully realized diversification requirements of Community jurisdiction. These articles authorize the Council, acting unanimously after consulting the Court on the request of the Commission and the European Parliament to establish the Court of Justice jurisdiction assigned to examine at first instance certain categories of disputes subject to appeal before the ECJ limited to issues under the conditions fixed by statute.

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³ See for details Ioana Nely Militaru, the Court of First Instance, *European Law Review* no.2/2003, Rosetti Publishing House, Bucharest, 2003, pp. 90-103, see also Ioana Nely Militaru, *EU Law*, second edition, Legal Publishing House, Bucharest, 2011, p. 261, to see Dragos Marian Radulescu, *European Union*, Pro University Publishing House, 2012, p. 59. See and Cruceru Anca Popescu, Gabriela Eurgenia Seuciu Viorel Ban, „The role of Economical Concentrations in the Contemporary Competitive Equation”, *International Journal of Advances in Management and Economics*, India, September-October 2012, Vol I, no. 5, p 95-98, and Anca Popescu Cruceru Sorina, *Economic-Legal in competitive economic*, Economic Publishing House, 2006, p. 44.

⁴ See Mark Guy Isaac et Blanquet, *Droit communautaire generally* 8 ed., Dalloz, Paris, 2001, p 256.

ICC was established by decision of the Council of 24 October 1988⁵ provided that the workload of the Court had become incompatible with the requirements of the proper administration of justice⁶. However, the establishment of the CFI did not end agglomeration of cases the Court was confronted⁷.

Undoubtedly solutions consisted not only in multiplying the Community⁸ courts, but this is where the Treaty of Nice finds its originality.

2. Need to establish the Tribunal⁹

Increasing the number of cases attributed not only the Court but the Court has led the authors of the Nice Treaty provide for the possibility to create judicial panels to analyze specific disputes in the first instance (art. 225 bis TEC). A statement attached to the top of the Treaty stipulates that one of these rooms can be competent jurisdiction in the first instance to resolve disputes between the Community and its officials, also shares intellectual property is clearly according to some authors, another area particularly suitable for the creation of these new structures¹⁰.

The Treaty of Nice, the ICC becomes a more important Community judicial system, the Court Associate future mission essential¹¹ "to enforce the law in the interpretation and application of the Treaty"¹² and thus stop being a

⁵ JOCE no. L319/1 din 25 november 1988.

⁶ From 1957 until 1987 the number of cases brought before the Court of Justice has increased from 130 to 395, and the cases pending at 31 December of each year increased from 318-527, and the time resolution was on average 9 to 22 months for direct actions and actions prejudicial/preliminary 6 months to 18 months.

⁷ From 1957 until 1987 the number of cases brought before the Court of Justice has increased from 130 to 395, and the cases pending at 31 December of each year increased from 318-527, and the time resolution was on average 9 to 22 months for direct actions and actions prejudicial/preliminary 6 months to 18 months. Maastricht Treaty replaced by a new wording, Article 168a TEC and Articles 32 Quinto (TCECO) and 140 A (TEuratom). In 2000, despite the transfer of shares to the TPI number of cases brought before the Court amounted to 508, of cases pending at 31.12.2000-873, and the average duration of cases rose to 21, 5 months prejudicial actions/Preliminary and 24 months for direct actions. Add that in turn was notified TPI 387 cases and 31 December 2000, a cumulative total of 786 cases pending. The average length of the procedure (for ICC) increased from 23 4 1993-27 months, 5 months 2000. For excessive length of one of the processes (5 years 6 months) TPI was even criticized by the Court, making him responsible for violating the "principle of reasonable time" (basically stemming from art. 6 of the European Convention on Human Rights; see in this respect the ECJ 17 dec. 1988, *Baustahlgewerbe c/Commission*, aff. C-185/95 p. Rec. - 8485 and Guy Isaac, Marc Blanquet, p 258).

⁸ ECJ jurisdictionnel L'avenir du Systeme de l'Union Européenne, summary document presented to the Council of the European Union on 27 May 1999, Guy Isaac, Marc Blanquet, *op.cit.*, p. 258.

⁹ We use throughout the paper the name of the Court of First Instance, whenever we have reported in the previous period of the Lisbon Treaty.

¹⁰ See Guy Isaac, Marc Blanquet, *op. cit.* p 259.

¹¹ By changing art. 220 TEC by the Treaty of Nice, the Court of Justice and the CFI provides each within its jurisdiction, that in the interpretation and application of the Treaty, the right is respected.

¹² Article 220 TEC, protrivit Treaty of Nice.

subsidiary of the Court. The new Articles 224 and 225 TEC are applicable, the exceptions provided for in the Statute of the Court¹³.

The Treaty of Lisbon Court of First Instance will be hereinafter Court.

3. Composition, organization and functioning of the Court

Court comprises 28 judges¹⁴, at least one judge from each Member State (art. 19 par. 2 TEU).

Members of the Court, judges and advocates-general are elected from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office (conditions of art. 254 TFEU). The members of the Court shall be chosen from among persons who possess the qualifications required for the exercise of their countries, the highest judicial offices, or are legal consultants whose skills are recognized (art. 253 par. 2 TFEU). As members of the CJEU, members of the Tribunal are appointed by common accord of the governments of the Member States for a period of six years, after consultation of the Committee (provided by art. 255 TFEU). Every three years there shall be a partial replacement. Members who have completed their term of office may be reappointed. The number of judges of the Court shall be determined by the Statute of the ECJ. The Statute may provide for the General Court to be assisted by Advocates-General (Art. 254 TFEU). Members of the Court may be called upon to perform the task of Advocate-General.

Advocate General's role to present in public, with complete impartiality and independence, reasoned submissions on certain cases brought before the Court, to assist in its mission. Criteria for selection of cases, and procedures for designating the Advocates-General shall be determined by the rules of procedure of the Court. A Member called upon to perform the task of Advocate-General in a case may not take part in the judgment of the case.

Chairman of the Judges of the Court is appointed for a period of three years. President renewable mandate.

Judges, Advocates-General and Registrar shall reside at the seat of the Court of Justice.

Functional independence of the Court - is guaranteed by the existence of separate grafts in the management of which the Court shall appoint the Registrar, who shall set the status.

President of the Court and the President of the Court fixed by agreement means by which officials and other servants attached to the Court shall provide their services to ensure the functioning of the Court (library, research, translation, interpretation).

Court shall establish its Rules of Procedure in agreement with the Court of Justice. This regulation is subject to the approval of the Council acting. Court shall

¹³ See Guy Isaac, Marc Blanquet, *op. cit.*, p 275.

¹⁴ Article 48 of the Statute of the ECJ.

sit in chambers of three or five judges. The judges elect the Presidents of the Chambers.

Presidents of the chambers of five Judges shall be elected for three years. Their term of office may be renewed once.

Rules of Procedure composition of the chambers and the assignment of cases to them.

When the rules of procedure established, the Court may sit in plenary or single judge¹⁵.

General Court may sit in a Grand Chamber in cases and under the conditions laid down by regulation¹⁶.

Treaty of Nice close to the organization of the Court of the Court, especially the new art. 224 TEC which admits ICC Statute to provide assistance by attorneys general and conditions of appointment of judges, appointment referred to the qualification required for the exercise of judicial functions¹⁷ treble. These are maintained by the Treaty of Lisbon (art. 19 par. 2 TEU and 254 TFEU). Specificity and expanding missions lead to a solution Court specifies the number of its judges in support of these conclusions come the provisions of art. 19 par. 2 TFEU, which states that "the Court shall include at least one judge per Member State".

ICC judges that the number of each Member State may be higher than that of the judges of the Court of Justice. Unless otherwise Statute of the ECJ, the TFEU relating to the Court of Justice shall apply to the Court.

4. Jurisdiction of the Court

In the preamble to Decision no. 88/24 oct. 1988 establishing the ICC in final paragraph stated substantive jurisdiction of the Court as a proficiency award¹⁸.

According to this decision, the Council, acting unanimously on request the Court of Justice and after consulting the European Parliament and the Commission has established classes of shares in the first instance within the competence of the Court :

1. Article 168a, as amended by SEA, authorize the transfer to the ICC of all actions brought by natural or legal persons. But in its decision of 24 October 1988¹⁹, the Council decided only transfer actions require long time to resolve²⁰ and which frequently require examination of complex facts. These actions are:

☞ Principally, the Court may resolve:

¹⁵ Article 50 phara. 2 of the Rules of Procedure (according to change the rules of procedure of 17 May 1999). See R. Munoz, „Le système pour regulate the juge d'a unique multiple problems to the ECJ encombrement l'et du TPI”, *RMC*, n 444, Janvi. 2001, p. 60.

¹⁶ Article 50 par. 2 of the Rules of Procedure.

¹⁷ See Guy Isaac, Marc Blanquet, *op. cit.*, p. 276.

¹⁸ See for details, O. Manolache *Treaty of Community law*, Ed V, Ed CH Beck, Bcuurești, 2006, p. 139.

¹⁹ JOCE n L 319/1 of 25.11.1988.

²⁰ See Guy Isaac, Marc Blanquet, *op. cit.*, p. 276.

- Disputes between the Communities and their servants²¹ and art. 152 TEU - called personal reasons, including liability action;

- Actions brought against an institution of the Community by natural or legal²² persons and the action²³ for failure on the implementation of competition rules applicable to undertakings.

☞ Basis and for obvious reasons of simplification, the Court may hear the application for damages, seeking compensation for damages caused by a Community institution by an act or omission subject to an action²⁴ for annulment or for failure introduced by the same applicant (Watching primary competence of the Tribunal).

2. In another decision of 8 June 1993²⁵, the Council transferred²⁶ the jurisdiction of the Court - which is equivalent to an extension of its jurisdiction - Action for annulment²⁷, for failure²⁸ and liability²⁹ brought by natural or legal persons under the provisions of three treaties including on the basis of an arbitration clause³⁰.

3. Based on art. 168A, as amended TEU became 225 TEC, the transfer can be expanded in the future to all other direct actions, EU those that are introduced by the Member States and the institutions, because the Treaty not only give preliminary Court reserves.

On this aspect you did not bring any change.

Nice Treaty, not only makes the ICC a genuine community of common law judge in the first instance for all direct actions, but extends its jurisdiction "to examine issues in specific preliminary determined by statute" (according to art. 234 TEC³¹ in conjunction with art. 225 TEC³²).

One can add that according to art. 225a para. 3 TEC decisions judicial panels may be subject to appeal limited to questions of law or the decision to set the camera to do so, an appeal bearing and matters of fact, the Court of First Instance.

TPI New powers under the Treaty of Nice, private and decisions of the Court of First Instance on questions referred. They may be, as provided by statute, an exceptional review by the Court, "where a serious risk likely to affect the unity

²¹ According to art. 236 TEC, now, art. 270 TFEU, ie, disputes between the Union and its agents.

²² According to art. 230 TEC, now, art. 263 TFEU.

²³ According to art. 232 TEC, now, art. 265 TFEU.

²⁴ According to art. 235 and 288 TEC, now, art. 268 and 340 TFEU.

²⁵ JOCE n L 144/21 of 16 June 1993 Decision Nr. 93/350 of 8 June 1993.

²⁶ JOCE n L 144/21 of 16 June 1993 Decision Nr. 93/350 of 8 June 1993. This transfer must have effect from 1 August 1993, except for proceedings against the Community trade defense measures (art. 74 TCECO, 113 TEC) for the March 15, 1994 was adopted by the Council by unanimity. This date was fixed by Decision no. 94/149 of 7 March 1994 amended Decision Nr. 93/350.

²⁷ Article 230 TEC, now, art. 263 TFEU.

²⁸ Article 232 TEC, currently 265 TFEU.

²⁹ Article 235 and 288 TEC, now, art. 268 and 340 TFEU.

³⁰ Article 238 TEC, currently 272 TFEU.

³¹ Currently art. 267 TFEU.

³² Currently art. 256 TFEU.

or consistency of Community law" (art. 225 par. 3 TEC). The appeal will be limited to points of law. Therefore can be invoked only for reasons of illegality: incompetence ICTY's failure to proceedings before damaging infringement of the appellants and the ICC. Also ICTY appellate court decisions on judicial panels (art. 225 TEC). Under the Lisbon Treaty the Court extensive powers remain as they were covered by the Treaty of Nice, with corresponding changes in the structure of the Union jurisdictional.

Courts have jurisdiction at first instance actions for annulment (art. 263 TFEU), failure (art. 265 TFEU), damages (art. 268 and 340 TFEU) those arising under an arbitration clause (art. 272 TFEU) and disputes between the Union and its servants (art. 270 TFEU), except those assigned to a specialized court set up under art. 257 TFEU and those reserved in the Statute of the Court. Article 1, Annex 1, of the Statute of the ECJ, assigned to a specialized court or Tribunal to determine at first instance:

- Disputes between the Union and its officials (according to art. 270 TFEU);

- Disputes between all bodies or agencies and their officials.

According to art. 51 para. 1 of the Statute of the ECJ, are reserved to the Court of Justice of the EU actions for annulment (art. 263 TFEU) and deficiency (art. 265 TFEU) when they are brought by a Member State against:

- a) an act or failure to act by the EP or the Council, or by those institutions acting jointly, except for:

- Decisions taken by the Council under Art. 108 para. 2 appear. 3 TFEU;
- Acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of art. 207 TFEU;

- Acts of the Council in exercising their powers in accordance with art. 291 para. 2 TFEU.

- b) an act or failure to act by the Commission under Art. 331 para. 1 TFEU.

Also, are reserved to the CJEU, the same actions above, when placed by an institution of the Union against an act or failure to act by the EP or the Council, both those institutions acting jointly, or the Commission, or brought by a institution of the Union against an act or failure to act by the European Central Bank (art. 51 par. 2 of the Statute of the ECJ).

The Court therefore has jurisdiction at first instance, the category of actions for annulment and for failure, those brought by natural and legal persons (category applicants privileged).

5. Conclusions

To reduce the burden of the Court of Justice of the Court of First Instance was created in 1988, called the Lisbon Treaty, the Court. If initially have undergone personal causes, while the Council transferred and other cases, for example those relating to competition, is those dumping³³.

Today the Court has jurisdiction to resolve all actions promoted by natural and legal persons (considered non-privileged applicants) that parties other than states and institutions, and Appeals Tribunal decisions. But the Court has jurisdiction to rule on a preliminary references, on these issues the Court retains exclusive jurisdiction. It is remarkable, however, that resolving these references for preliminary rulings delivery Treaty shall not preclude jurisdiction of the Court, but Member States submit these matters of interpretation, still the Court of Justice.

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9. Treaty of Lisbon, signed on 13 December 2009 entered into force on 1 December 2011 de amending the Treaty on European Union and Treaty establishing the European Community, the European Union called Operation Treaty.

³³ See Andrei Popescu, Ion Diaconu, *European and Euro-Atlantic Organizations*, Law Publishing House, Bucharest, 2009, p 242.