

RESEARCH ARTICLE:

Fundamental points on the evolution of the jurisdictional institution of the European Union

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ABSTRACT

The importance of the European Union Justice Court(CJUE) is fundamental, possible lack of this institution would create confusion in the correct interpretation and application of Union Law. CJUE formulated principles and set out guidelines which both the Union institutions and the Member States had taken into account in order to remove and correct any existing gaps in Union law¹.

In the present paper we propose to emphasize the Union competence of CJUE, but also the importance that its jurisprudence represents for the European Union states.

KEYWORDS: *CJUE, legislation, competence, jurisprudence.*

¹Petrescu, O. 2010. PhD *Thesis*, p.12.

1.Introduction

Law in the sense of justice should be tailored ideally to the reality we live in.

In the social relations between individuals, we are constantly relating to the concept of justice, and in order to achieve it and to guarantee the human rights, institutions have been created at both the national and international levels. As far as the European Union (EU) is concerned, we will see below what is the institution to which the treaties have entrusted the mission to watch over the correct interpretation and the application of the law.

Since the entry into force of the Treaty of Lisbon, on 1 December 2009, the European Union has had legal personality² and has taken over the abilities previously granted upon the European Community. Therefore, the Community law has become the European Union law and has also included all the provisions previously adopted under the Treaty on the European Union, in the prior version of the Treaty of Lisbon. Since its establishment in 1952, the role of the Court of Justice of the European Union (CJEU), originally called The Court of Justice of the European Communities (CJCE) has been to ensure that EU legislation is interpreted and applied in the same way across all EU countries and to ensure that EU countries and institutions are subject to European law. To fulfil this role, the CJEU controls the legality of EU institutions' acts, checks and ensures that Member States fulfil their obligations derived from the treaties and, at the request of the national courts, interprets the Union law. In art. 267 TFEU, the Treaty of Lisbon explicitly states that the CJEU rules on (...) the interpretation of treaties, the validity and interpretation of acts adopted by the institutions, bodies, offices and agencies of the Union³.

²https://curia.europa.eu/jcms/jcms/Jo2_7024/ro/

³TFUE, Part VI, Titlul I, art. 206.

Therefore, the CJEU represents the legal authority of the European Union and, in collaboration with the courts of the Member States, ensures the uniform application and interpretation of the Union law. The Court of Justice of the European Union, located in Luxembourg, consisted by 1 September 2016 of three courts:

1. The Court of Justice,
- 2.The General Court (created in 1988) and
3. The Specialized Tribunals (Civil Service Tribunal⁴, created in 2004).

The new legal realities and the growing number of actions with which the CJEU has been noticed imposed the need for the establishment of other courts, as in the case of the Civil Service Tribunal. The latter's mission was to settle disputes between the European Union and its agents (its civil services) - in areas involving civil servants, intellectual property, European patents, without losing, nevertheless, the Court of Justice of its role as "a supreme court, supplier of a unique interpretation, but on the contrary, having more time to focus on more important issues"⁵.

In 2015, taking into account the increase in litigation and the excessive length of cases being settled before the General Court of the European Union, the Union legislature decided to gradually increase the number of judges at the General Court of the European Union up to 56 and to integrate the Civil Service Tribunal's abilities into the General Court. Thus, the Civil Service Tribunal was dissolved on 1 September 2016.

2.Overview on the composition and jurisdiction of the CJEU

⁴The only Specialized Tribunal was the European Union Civil Service Tribunal, established by the Decision of 2 November 2004, 2004/752/CE, CEEA, DO L 333, 09.11.2004.

⁵Gyula, F. 2006. *Community Institutional Law, Second Edition*, Cluj-Napoca, Romania: Sfera Juridica Publishing House, p.234.

2.1. Composition of the Court:

The Treaty of Lisbon sets the structure of the Court and reiterates the composition and structures⁶.

The Primary law refers to judges, advocates-general and secretaries. Art. 165 of the Treaty Establishing the European Community (TCE), art. 32 of the Treaty Establishing the European Coal and Steel Community (TCECA) and art. 137 of the Treaty Establishing the European Atomic Energy Community (TCEEA) stated that the Court's institution consists of 15 judges⁷. The Court of Justice currently consists of 28 judges and 11 advocates-general. The judges and advocates-general are not appointed by the Council, but by mutual agreement between the Governments of the Member States, after the consultation of a committee whose role is to issue a notice on the capacity of the candidates to perform that functions.

They remain, however, independent of the Member States and the common institutions. Their mandate is of six years and can be renewed, and during it they cannot exercise other public and administrative functions and may not undertake private activities. They are immovable and immune in relation to the decisions taken in performing the judge functions respectively those of advocate-general. They are elected from personalities who offer all guarantees of independence and who meet the conditions required for the exercise, in their countries, of the highest jurisdictional functions or whose jurisdiction is recognized.

The Court may judge in plenary session in the Grand Chamber (fifteen judges) or in Chambers of five or three judges. The Court meets in plenary session

in the special cases prescribed by the Statute of the Court (among other things, when ruling on the dismissal of the Ombudsman or when dismissing, on its own initiative order, an European Commissioner who has failed to fulfil its obligations) and when it considers that a case is of exceptional importance. The Court shall meet in the Grand Chamber at the request of a Member State or an institution which is party to the proceedings, as well as in particularly complex or important cases. Other cases are settled in Chambers of five or three judges. The presidents of the Chambers of five judges are elected for three years and those of the Chambers of three judges for one year.

2.2 Jurisdiction of the Court:

In order to complete its task, the Court has been given clearly defined jurisdiction, which it performs during the preliminary ruling procedure and in various categories of action such as: action for failure to fulfil obligations, action for annulment, action for failure to act, appeal.

The Court has: general, territorial, material and personal jurisdiction

The Court shall rule in accordance with the treaties⁸:

- (a) on actions brought by a Member State, by an institution or by natural or juridical persons;
- (b) on a preliminary basis, at the request of the national courts, on the interpretation of Union law or on the validity of acts adopted by the institutions;
- (c) in the other cases provided in the treaties.

The Court's activity mainly consists in:

⁶TUE, Title III, art. 19.

⁷Initially it consisted of 7, then 9 (with the accession of Denmark, Great Britain and Ireland in 1973), 11, (with the accession of Greece (in 1981) and 13 (with the accession of Spain and Portugal in 1986). Number 15 was established in 1995, with the accession of Finland, Sweden and Austria.

⁸Bărbulescu, I. Gh. 2015. *NEW EUROPE, European identity and model*, Bucharest, Romania: POLIROM Publishing House, p.187.

- *The interpretation of legislation* (preliminary ruling) –the national courts of EU countries have the obligation to ensure the proper application of the European legislation, but they do not always properly interpret the legal provisions. To the extent that the national court has doubts regarding the interpretation or validity of an EU legal act, it may request the opinion of the Court of Justice.

- *The compliance with legislation* (actions for failure to fulfil obligations or infringement procedures) - this type of actions is brought against national governments that fail to fulfil their obligations under European legislation. These actions may be initiated by the European Commission or by another country in the EU. If is proved the guilty of the country concerned, it is required to remedy the situation immediately. Otherwise, a second action may be brought against it, which may lead to the imposition of a fine.

- *The annulment of EU legal acts* (actions for annulment) - if a Member State, the EU Council, the Commission or (under certain conditions) the European Parliament considers that a particular EU legal act violates the fundamental rights or treaties of the Union, it may ask the Court of Justice to cancel that act. This action is also at the disposal of natural persons if the act directly aims them.

- *The ensuring of an action by the EU* (actions for failure to act) – the Parliament, the Council and the Commission have the obligation to adopt certain decisions in certain situations. If they don't do so, the Governments of the Member States, the other EU institutions and (under certain conditions) the natural persons or companies may submit a complaint before the Court.

- *The penalties for EU institutions* (actions for damages) - any person or company that has been affected by an action or a lack of action by the EU institutions or their employees may bring

proceedings against them through the Court.

3. Case Law of the CJEU

3.1 Contribution of the Case Law of the CJEU in complying with the fundamental rights

Regarding the case law of the Court, we believe that this is a permanent opportunity to enrich the EU law. In practice, the Court of Justice interprets and observes not only the application of the primary law, but also of the secondary law and its own case-law. Alongside the Court, the Commission also fulfil tasks in the correct application of EU law, which is why it is considered the guarantor of the treaties.

It is worth mentioning the importance of the CJEU's function of ruling on the interpretation or validity of Community, respectively Union law provisions, namely linked to the fact that the permanent cooperation of the Court of Justice with the national courts allows the assurance of the uniform application of the Union law and the formation of a coherent case-law⁹.

The legal basis of the fundamental rights at the European Union level has long referred to the reference the Treaties make to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Consequently, the CJEU case-law had a special role to play in respecting human rights. Since the entry into force of the Treaty of Lisbon, the Charter of Fundamental Rights of the Union, which has achieved a binding legal force, has broadened this legal basis. In fact, one of the achievements of EU law is to guarantee the fundamental rights. About these, the European Treaties did not contain any written catalogue for a remarkable period. Subsequently, the treaties began to refer to fundamental

⁹Boulouis, V.J. 1984. *Droit institutionnel des Communautés européennes*, Paris, France: Monchestrien; Pelecha Zozaya, F. 1999. *Tratados e Instituciones*, Madrid, Spain: CISS

rights, as they result from the common constitutional traditions of the Member States, as General principles of Community law.

The Treaty regarding European Union (TEU), in art.2 states that "the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, as well as on the respect for human rights, including the rights of persons belonging to minorities." The Court of Justice emphasized a long time ago the need to respect the fundamental rights of each person. His important case law sets the protection rules based on a series of sources of law, such as:

- the provisions of the treaties, including the EU Charter of Fundamental Rights;
 - the international conventions to which the treaties refer to- in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Geneva Convention of 1951 relating to the Status of Refugees;
 - fundamental rights deriving from the common constitutional traditions of the Member States
 - the international legal instruments to which the Member States are party, as well as those to which EU is a member.
- As a controller, the CJEU examines not only the compatibility of the legislation adopted by EU on the fundamental rights, but also the compatibility of the measures taken at a national level by the Member States to enforce EU legislation or to comply with EU law.

3.2. Fundamental points of the Case Law of the CJEU

The European Court of Justice has decided, in accordance with the European Community Treaty that it is self-evident that the Member State which causes damage or harm to persons of private law by the violation of Community law must be

liable for the damage caused and must compensate them for the harm suffered.

The Court of Justice has perfected the concept of state liability, based in particular on the principles on which the EU could be made accountable for legal acts on the basis of Art. 288 of the CE Treaty, and held that Community law confers the right to compensation if three conditions are fulfilled:

- The violated legislation must confer rights of private individuals;
- Secondly, the violation must be bad enough and
- Thirdly, there must be a direct causal link between the violation of the State's obligation and the harm suffered by the damaged party.

At the same time, the case law of the Court of Justice in the field of State responsibility has also developed to a large extent in the reference for a preliminary ruling. (Article 267 TFEU).

With regard to the Romanian State, in order to avoid being held responsible before the CJEU for the potential damage caused to individuals or for serious violations of the Community law provisions, the courts of justice of any rank in Romania must apply the Community law, with full competences in this respect. Art. 148 of the Constitution of Romania¹⁰ entitled "*Integrarea în Uniunea Europeană*" states that:

(1)Romania's accession to the constituent treaties of the European Union, with the aim of transferring certain powers to the community institutions, as well as that of exercising in common with the other Member States of the abilities stipulated in these treaties, shall be carried out by the law adopted in the joint session of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators.

¹⁰6th Edition, updated at 15 March 2012, Bucharest, Romania: Hamangiu Press.

(2) As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act.

(3) The provisions of paragraphs (1) and (2) shall also apply, accordingly, for the accession to the acts revising the constituent treaties of the European Union.

(4) The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that the obligations resulting from the accession act and the provisions of paragraph (2) are implemented.

With regard to the case-law, in the Von Colson¹¹ case, the CJCE first pointed to the importance of the national court in the interpretation and application of the Community law by directly identifying the jurisdictional court as the State entity that must give efficiency to Community normative acts. The CJCE maintained its favourable approach for national courts - in the sense that they should apply the Community law. The next step was to highlight the mandatory nature of the Community law, including in cases where the "horizontal" effect applies, between persons of private law¹². A problem that was posed was whether the obligation of the national courts concerned only the national legislation transposing directives or to all legislation. In Pfeiffer¹³ case, CJCE stated (point 118) that the obligation for interpretation applies to the entire national legal system.

¹¹See Case 14/83, Von Colson și Kamann -v- Land Nordrhein-Westfalen, ECR 1984, p.1891.

¹²See Case C-106/89, Marleasing -v- Comercial Internacional de Alimentación, ECR 1990, p. I-4135.

¹³See Cases C-397-401/01, Pfeiffer și alții, ECR 2004, p. I-8835.

Other reference points with special effect on the international legal order consist in the following case law¹⁴:

(a) *Van Gend & Loos v. Netherlands Fiscal Administration Case*, no.26/26, 1963.

State of facts: Van Gend en Loss, a Dutch importing company, was required to pay customs duties on the imported goods from the German State, according to a law adopted after the creation of the CEE. The importers notify the Dutch courts of the unlawfulness of the imposing of these duties, since the existence of a customs duty violates the TCEE provisions.

The applicable law: Art. 25 (ex 12) TCEE - prohibition of the imposition of new customs duties, as well as the increase of the amount of those already existing.

The solution and principles developed by the CJCE:

1) In the international law, CEE creates a new legal order under which the states have limited their rights in the well-established areas, not just the states which are legal subjects, but also individuals: natural and legal persons in that state. Practically, the principle which is stated is that the CE's objective is to create a common market, whose function is to directly concern the CE's concerned parties. CEE created a new legal order in the international law, on behalf of which the states limited their rights in certain well-defined areas, the legal subjects being not only the states but also the individuals: natural and legal persons in that state. Therefore, the principle stated is that the CE's objective is to create a common market, whose functioning directly concerns the CE's concerned parties (natural and legal persons).

2) Art. 25 (ex 12) TCEE produces direct effect in the link between the national law and the Member States, creating a series of individual rights which

¹⁴In presenting these cases we used the following: Jordan Gheorghe Bărbulescu, op.cit., pp.187-190.

are the responsibility of the Member States to protect them.

Assessment: What does this case establish? The treaty is recognized as being a "new legal order", not only with regard to the sovereign states that signed and ratified the treaty, but also at the internationally level. The new legal order enjoys priority in relation to the internal legal order. Thus, the community rule creates both rights and obligations which can be invoked directly by the individuals, before the national courts. The conditions mentioned by the CJCE so that a provision can have applicability and direct effect shall be as follows:

- to be clear;
- to be unconditional;
- may not require the adoption of a national law based on it.

The fundamental law of Romania, in the revised version, stipulates, as mentioned before, in art. 148, par. 2 that in this context of the accession, "the provisions of the constituent treaties of the European Union , as well as the other mandatory community regulations, shall take precedence over opposite provisions of the national laws, in compliance with the provisions of the accession act."

(b) *Costa v. ENEL, no. 6/64, 1964;*

State of facts: Ente Nazionale Energia Elettrica (ENEL) was set up by the Italian Government through the Law of 1962 of the nationalisation of the electricity industry. Costa refused to pay the electricity bill, as nationalization contradicts the Italian Constitution and certain provisions of the Treaty.

The applicable law: The Treaty establishing the European Community. General principles of the Community law.

The solution and principles developed by the CJCE: An unilateral act, from the Member State, incompatible with the community law cannot prevail in relation to a community act.

Assessment: By means of this case, it is stated that the TCE is an integral part of the legal system of the Member States and must be applied by their courts.

4. Conclusions

It is noted from the previous lines that with some of the changes which occurred at the European level through the Treaty of Lisbon, the jurisdictional institution at EU level is *the Court of Justice of the European Union*. This institution currently includes the Court of Justice and the General Court. As for the abolition of the Civil Service Tribunal, we are to observe whether this leads to the best solution that the Court may have at its disposal, in carrying out promptly the procedures incumbent on it.

It should be borne in mind that the CJEU has the obligation to interpret the Union law, rather than to apply it. The latter obligation lies with the Member States, the CJEU having the role of overseeing the application of the Union's rules. In other words, the EU and the Member States' courts of justice work together to ensure a correct and uniform application and interpretation.

With regard to the case-law, it can be said that if the case-law decision is issued by the Court of Justice of the European Union on the interpretation of the European Community law, this decision is mandatory even if it contradicts an internal law of the State under whose jurisdiction it would have been born or carried out the judicial conflict.

The Court of Justice of the EU should not be confused with the European Court of Human Rights (CEDO). CEDO is not an EU court, but it has been created within the Council of Europe through the European Convention for the Protection of Human Rights, in order to ensure respect for the rights and freedoms guaranteed in this convention. Also, CJEU should not be

confused with the International Court of Justice, which is an international court, the main jurisdictional body of the United Nations Organization.

REFERENCES

1. Bărbulescu, I. Gh. 2015, *NEW EUROPE, European identity and model*, Bucharest, Romania: Polirom Press.
2. Boulouis, J. 1984. *Droit institutionel des Communautés européennes*, Paris, France: Monchestrien.
3. CJCE, Case 14/83, Von Colson și Kamann -v- Land Nordrhein-Westfalen, ECR 1984.
4. CJCE, Case C-106/89, Marleasing -v- Comercial Internacional de Alimentación, ECR 1990, p. I-4135.
5. CJCE, Cases C-397-401/01, Pfeiffer și alții, ECR 2004, p.I-8835.
6. Gyula, F. 2006. *Community institutional law*, 2nd Edition, Cluj-Napoca, Romania: Sfera Juridică Press.
7. Pelecha Zozaya, F. 1999. *Tratados e Instituciones*, Madrid, Spain : CISS.
8. Petrescu, O. 2010. *PhD Thesis*, Bucharest, Romania.
9. Treaty on the Functioning of the European Union.
10. Treaty on the European Union.

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