

The Court of Justice

composition, jurisdiction
and case law

Administrative issues

- Attendance is compulsory
- Speech:
 - Last 2 lessons
 - 5 minutes length
 - Important judgment of the ECJ (<5 yrs)

European judiciary system

1. The Court of Justice of the European Communities
 2. The Court of First Instance
 3. The Civil Service Tribunal
 4. (National courts)
- Community law enforcement

Court of Justice – its main functions

1. Enforcement of the Community law (mostly against MS) and settlement of disputes (mostly between MS and the EC or between the EC institutions)
2. acting as a constitutional court
3. Ensuring the uniform interpretation and application of the EC law

The Court of Justice

- *Art. 220: the Court of Justice ... shall ensure that in the interpretation and application of this Treaty the law is observed.*
- May act as a civil, constitutional or administrative court

The composition of the ECJ

- Luxembourg
- 27 J + 8 AG
- 6 yrs term, renewable, no retirement age
- Staggered system of appointment (13/14 and 4/4)
- conditions:
 - Independence
 - Qualification or recognized competence
- President of the Court
- The Registrar

ECJ – chambers, etc.

- 3 - 5 - 13 - plenary session
- Judge-Rapporteur

Independence of judges

- Oath
- Ban on side jobs
- Full secrecy of deliberations
- No concurring or dissenting judgments

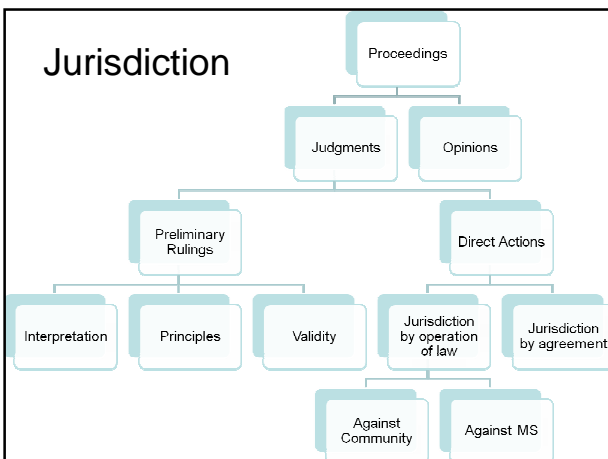
Advocates General

- 8 AG
- Opinion on the case (2nd opinion which is delivered first)
- Function?

The Court of First Instance

- established in 1989
- „less important“ cases
- 27 judges
- Chambers – 5, 3, 1

Jurisdiction



Preliminary reference by a national court

- Interpretation of the EC Law...
- the EC Treaty = a framework treaty → the “content” is often missing
- Example:
 - Art. 28 - measures of equivalent effect as quantitative restrictions,
 - Art. 82 - dominant position
- Solution:
 - secondary legislation
 - Specification by binding interpretation

ECJ = Lawmaker ???

- Theory of separation of powers
- Montesquieu: *a judge in an unconscious being, just the mouth of laws.*
- ECJ – does not have a power to create laws it only interprets them! (and it is the duty of the Court to interpret the Community law in the way that makes it fully effective)

Conclusion (1)

- Gaps must be filled
 - By political institutions or
 - By the ECJ as the interpreter of the Treaty (Art. 220)
- Prevailing method of interpretation?
- *Effet utile* = the effectiveness of the EC law
- Limits?

Conclusion (2)

- ECJ – has no competence for creating new rules
- Interpretation concerns:
 - specification of general rules
 - gaps filling
 - principles of application
 - identification of basic principles
- National courts perspective
 - Obligation to apply the EC law correctly – what is correct?