

# Court of Justice of the EU

*Introduction to EU Law*

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# CJEU – its main functions

1. **Enforcement** of the Union law (mostly against MS) and **settlement of disputes** (between MS and the EU or between the EU institutions)
2. **Constitutional review** of EU acts
3. Ensuring the uniform **interpretation** and application of the EU law

*What does it not do:*

1. Not an appellate body (does not review decisions of national courts)
2. Solve disputes between individuals and MS
3. Solve disputes between individuals

- **Article 19 (1) TEU**

*The Court of Justice of the European Union shall include the **Court of Justice**, the **General Court** and **specialised courts**. It shall ensure that in the interpretation and application of the Treaties the law is observed.*

***Member States** shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.*

# European judiciary system [dichotomy of EU law enforcement]

## **The Court of Justice of the EU (CJEU)**

1. The Court of Justice (ECJ)
2. General Court (formerly the Court of First Instance)
3. ~~The Civil Service Tribunal~~ (does not exist anymore)

## National courts of each MS

- General (lower) courts
- Supreme courts
- Constitutional courts

# The composition of the ECJ

- Article 19 (2) TEU:

*The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General. The General Court shall include at least one judge per Member State.*

- 27 judges + 11 AG
- 6 yrs term, renewable, no retirement age
- Staggered system of appointment (14/14 and 5/6)
- conditions:
  - Independence
  - Qualification or recognized competence
- President of the Court
- Seated in Luxembourg

# Court of Justice – decision making process

- 3 - 5 – Grand Chamber (15) - plenary session
- Judge-Rapporteur

# Independence of judges

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

# General Court

- \* 1989
- 2 judges from each MS (54)
- no permanent AG
  
- Its jurisdiction?
  - Generally: where an individual is involved (exceptional cases!)
  
- Examples:
  - Actions brought by **natural or legal persons** against acts of the EU institutions,
  - Including judicial remedy against the decision of the Commission in competition matters
  - After 2016, labour disputes (Civil Service Tribunal)
  - the Member States against the Council relating to acts adopted in the field of *State aid*, *'dumping'* and acts by which it exercises *implementing powers*;
  - **seeking compensation for damage** caused by the institutions of EU;
  - based on contracts made by EU which expressly give jurisdiction to the General Court;
  - relating to **EU trade marks**;



# Advocates General

- 11 AG by the ECJ
- Opinion on the case (2nd opinion which is delivered first 😊 )
- Function?

# Types of proceedings before Court of Justice

- References for preliminary rulings
- Enforcement procedure
- Actions for annulment
- Actions for failure to act
- Action for failure to fulfill obligations

# Preliminary reference (Art. 267 TFEU)

- WHY ? (what is the idea)?
- WHAT is the subject of the proceedings ?
- WHO may submit the reference ?
- On what grounds?
- Is there an OBLIGATIONS to make such a reference in certain cases ?

## *What is the idea ? (Why?)*

- EU law is in most cases enforced by national courts
- uniformity
  - In application
  - Interpretation !
- The CJEU does not work as an appellate body
- Cooperation between national courts and the ECJ

# What is subject of the preliminary reference/ CJ`s ruling ?

- **Art. 267 SFEU (ex. 234 TEC , 177 EECT), para. 1**
- The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:
  - (a) the **interpretation** of the **Treaties**;
  - (b) the **validity** and **interpretation** of **acts of the institutions**, bodies, offices or agencies of the Union
- Mainly interpretation
- Validity of acts (secondary law)

# Who may submit the reference?

- „*any court or tribunal of a Member State*“
- **Criteria** (*61/65 Vaassen-Göbbles*)
  - Established by the law
  - Permanent basis
  - Compulsory jurisdiction
  - Inter partes procedure (dispute)
  - Application of rules of law
  - Independent
- **Nordsee** (102/81): arbitral tribunals

# On what grounds?

- Art. 267 (2) TFEU

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

- full discretion of that national court
- a party to a dispute may not directly invoke the preliminary reference
- If an EU provision shall be applied to the case + the court is not sure how to interpret it
- Always the question of validity of an EU act
- Must be necessary for it to deliver the decision
- No hypothetical questions

# Is there an obligation to submit the reference?

- Art. 267 (2) TFEU
  - “.... the court or tribunal may request ....“
- Art. 267 (3) TFEU
  - Where any such question is raised in a case pending before a court or tribunal of a Member State **against whose decisions there is no judicial remedy under national law**, that court or tribunal shall bring the matter before the Court.
  - No judicial remedy available
    - Abstract vs concrete theory
    - Example: small claims
    - [§ 202, para. 2 Czech Civil Procedure Act]
- State liability – Köbler case



# An exception ?

- Da Costa (28-30/62), CILFIT (283/81)

1. The reference is not relevant for the conclusion of the case

1. **Acte éclairé**

- ECJ has already dealt with this question

2. **Acte clair**

- The interpretation is clear and obvious (*no scope for any reasonable doubt*)