

Basics of European Union Law

Fundamenta Fontium Iuris Internationalis
A szegedi nemzetközi jogi iskola tankönyvei



Source:
Ali Gutiérrez Romero: Europe Day poster – pattern design

Készült
a Szegedi Tudományegyetem
Állam- és Jogtudományi Kara
Nemzetközi Jogi és Európa-jogi Tanszékén

Tanszékvezető:
Blutman László
egyetemi tanár

Basics of European Union Law

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(eds.)

Iurisperitus Kiadó
Szeged, 2017

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Sorozatszerkesztő:
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Műszaki szerkesztő:
Kovács Ildikó

Felelős kiadó:
Balogh Elemér
dékán

Készült az Innovariant Kft.-ben
Felelős vezető: Drágán György

ISSN 2560-063X
ISBN 978-615-5411-60-1

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6. The judicial system of the European Union (Szilvia Váradi)

Learning goals:

After reading this chapter, you will be able to:

1. Distinguish the judicial system of the EU from the system of other international organizations.
2. Distinguish the two distinct courts (Court of Justice and General Court) that exercise the judicial functions of the European Union.
3. Get a clear overview on the competences and the main procedures of the CJEU.
4. Understand the key function of the CJEU in the definition of the EU law, and understand its innovative case-law.

The Court of Justice of the European Union (CJEU) is the judicial institution of the European Union and of the European Atomic Energy Community (Euratom). The history of the Court of Justice reflects the history of the European Union, and it is closely linked to the European politics during the same period of time. To include a permanent court with a purely legal competence in a political construction such as European Coal and Steel Community (ECSC) founded in 1952, and later the broader European Economic Community (EEC) founded by the Treaty of Rome in 1957, was a natural result of centuries of institutional thinking in the West.⁹⁷

Defining the Court

The founding of the Court of Justice connected with the idea of creating a new European spirit in politics, law and justice, supported by the great vision that conflicts in future Europe should not be caused by war or subject to political and economic struggles but should be solved by common institutions using legal means or negotiation in an atmosphere of collaboration between former enemies. The history of the Court of Justice and of the law developed by the Court combines elements well known in the European legal history with something groundbreaking, and in that way the Court has added a new dimension to our traditional concept of what a court is.

Every country has its own jurisdictional system, which usually regulated by legislation. A court is an institution that the government of the country sets up

⁹⁷ TAMM 2013, 10.

to settle disputes through a legal process. People come to court to resolve their disagreements. The court is a body of persons having judicial authority to hear and resolve disputes in civil, criminal, ecclesiastical, or military cases. The word court, which originally meant simply an enclosed place, also denotes the chamber, hall, building, or other place where judicial proceedings are held. The court is a place where trials and other legal cases happen; it decides what really happened and what should be done about it. Courts also provide a peaceful way to decide private disputes that people cannot resolve themselves.⁹⁸

The tasks of the courts:

- Decision making – they have the power to make the final decision of disputes,
- Interpretation of law – advisory opinions for the lower courts.

The Court of Justice of the European Union has functions similar to those of a national supreme court or constitutional court. It is not a national court, nor an international court. It is a supranational court, which actually belongs to an abstract idea of Europe⁹⁹ and naturally to the European Union.

Institutional system of the Court of Justice of the European Union

The Court of Justice of the European Union consists of two courts, their seat is in Luxembourg¹⁰⁰.

Textbox: 6.1 Article 19 of the Treaty on European Union

1. 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 (...)

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

- (a) rule on actions brought by a Member State, an institution or a natural or legal person;

⁹⁸ Encyclopaedia Britannica.

⁹⁹ Tamm 2013, 14.

¹⁰⁰ The official website of the Court of Justice of the European Union.

- (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;
- (c) rule in other cases provided for in the Treaties.

The European Court of Justice was created in 1952. It is formally the so-called *Court of Justice*. The Court of Justice is composed of 28 judges, one judge per member state (28 judges) and 11 Advocates General.

The judges and Advocates General are appointed by common accord of the governments of the member states after consultation of a panel responsible for giving an opinion on prospective candidates' suitability to perform the duties concerned. They are appointed for a term of office of six years, which is renewable. They are chosen from individuals whose independence is beyond doubt, and who possess the qualifications required for appointment to the highest judicial offices in their respective countries, or who have recognised competences. The judges must remain connected with member states' societies, mainly for functional reasons – EU law and national laws are deeply interconnected and the impact of the CJEU's jurisprudence depends on its relations with national courts. The judges must be independent from political parties or any other interests, in particular from those of their national governments. Doubts about the judge's independence weaken their authority and legitimacy.

The judges of the Court of Justice elect a President and a Vice-President from themselves for a renewable term of three years, so this choice is not controlled by the member states. The President directs the work of the Court and presides at hearings and deliberations of the full Court or the Grand Chamber. The Vice-President assists the President in the exercise of his duties and takes his place when necessary.

The Advocates General assist the Court. They are responsible for presenting a reasoned submission, a so-called *opinion* in the cases assigned to them, with complete impartiality and independence. She or he acts as a legal representative of the public interest, not as one of the parties. These opinions are adopted before the judgement to allow the Court sufficient time to consider them. They often provide a more detailed analysis of the context and the argument, which is considered in the judgement of the Court. However, they are not legally binding for the Court, although these advisory opinions are followed in about 80% of the cases.¹⁰¹ The Advocates General have the same status and receive the same salary as the judges. There are eleven of them.¹⁰² The terms of judges and Advocates General can be

¹⁰¹ CHALMERS et al. 2014, 159.

¹⁰² Each of the larger member states has managed to have one of their nationals performing the functions of Advocates General. At present the following member states have permanent Advocates

renewed without any limitation; they usually hold office for two terms, which also helps in ensuring the continuity of the institution.¹⁰³

The Registrar is the institution's secretary general, and manages its departments under the authority of the President of the Court. The judges supported by legal assistants.

An important change in the judicial architecture of the Court was the creation of the Court of First Instance as part of the Court of Justice of the European Communities in 1988. Since 2009, this court is called officially as the *General Court*. It was established in order to lighten the case load of the Court of Justice. The General Court is made up of at least one judge from each member state (45 judges were in office on 8 June 2017), and at the end of this reform process (by September 2019) the General Court will be composed of 56 judges (two from each EU member states). The judges are appointed by common accord of the governments of the member states after consultation of a panel responsible for giving an opinion on the candidates' suitability to perform the duties of a judge. Their term of office is six years, and it is renewable.

They appoint their President for a period of three years from themselves. The judges perform their duties in a totally impartial and independent manner.

Unlike the Court of Justice, the General Court does not have permanent Advocates General. The founding provisions, the so-called *Statute* of the Court of Justice of the European Union allows for the General Court to be assisted by Advocates General, but it has not been the case so far. Instead, each judge at the General Court is allowed to perform this function in difficult cases, which happens very rarely.¹⁰⁴ They appoint a Registrar for a term of office of six years. The General Court has its own Registry, but uses the administrative and linguistic services of the institution for its requirements.

A third court, the *Civil Service Tribunal*,¹⁰⁵ which was created in 2005, ceased to operate on 1 September 2016 after its jurisdiction was transferred to the General Court in the context of the reform of the European Union's judicial structure. 7 judges were elected. In December 2015, the Council together with the Parliament adopted a reform of the General Court in order to tackle the challenge of increasing caseload. It was decided to merge the Civil Service Tribunal with the General Court in September 2016.¹⁰⁶

General: France, Germany, Italy, Poland, Spain and the United Kingdom. The remaining posts are rotate between the other member states.

¹⁰³ SAURUGGER – TERPAN 2017, 49.

¹⁰⁴ SAURUGGER – TERPAN 2017, 47.

¹⁰⁵ The tribunal is a body established to settle certain types of dispute; this is a special court or group of people who are officially chosen, especially by the government, to examine (legal) problems of a particular type; e.g. an international war crimes tribunal, industrial tribunal, labour tribunal.

¹⁰⁶ SAURUGGER – TERPAN 2017, 43-44.

Table 6.1 *The changing structure of the Court of Justice*

Dates	Structure
1952-58	Court of Justice of the European Coal and Steel Community
1958-88	Court of Justice of the European Communities
1988-2004	Court of Justice of the European Communities – including a Court of First Instance (attached to the Court of Justice)
2004-09	Court of Justice of the European Communities – including a Court of First Instance (attached to the Court of Justice) – including a Civil Service Tribunal (attached to the Court of First Instance)
2009-2016	Court of Justice of the European Union, composed of: – the Court of Justice – the General Court (formerly the Court of First Instance) – the Civil Service Tribunal
2016	Court of Justice of the European Union, composed of: - the Court of Justice - the General Court (formerly the Court of First Instance)

Source: own compilation

Another European court, the *Unified Patent Court*, should be created, provided that the 2013 agreement¹⁰⁷ ratified by 25 member states¹⁰⁸. It will not be part of the CJEU and will be subject to the same obligations under EU law as any national courts in the member states, and will thus be obliged to make preliminary references. The Unified Patent Court (UPC) will be a court common to the Contracting member states and thus part of their judicial system. It will have exclusive competence in respect of European patents and European patents with unitary effect.¹⁰⁹

¹⁰⁷ Agreement on a Unified Patent Court, Official Journal of the European Union 2013/C 175/01.

¹⁰⁸ Spain, Croatia and Poland are not contracting parties.

¹⁰⁹ The UPC will come into existence and start its operations immediately after the UPC Agreement enters into force. The Agreement will enter into force on the first day of the fourth month after the fulfilment of the following two requirements (whichever is the latest): 1. The deposit of the thirteenth instrument of ratification, including Germany, the United Kingdom and France (the three Contracting member states in which the highest number of European patents had effect in 2012). 2. The date of entry into force of the amendments to Regulation (EU) No 1215/2012 (Brussels I Regulation) concerning its relationship with the Agreement. The date for the entry into operation of the UPC has been not published, yet.

The role of the Court of Justice of the European Union

In the European Union the courts are extremely important. A feature of EU law is that there is a joint responsibility between national courts and the Union courts for the interpretation and maintenance of EU law. The Court of Justice has an exclusive responsibility to declare EU measures invalid and to provide authoritative explanations of EU law across Union, whilst the national courts have a monopoly over the adjudication of disputes.¹¹⁰

Those who drafted the founding provisions of the Court did well in not being too liberal in permitting individuals in general to bring cases directly before the Court. As a result private parties have no direct access to the Court of Justice, nor can they appeal decisions of the national courts to the Court of Justice. The role of the parties is confined to generating the dispute before the national court, which triggers the reference and submitting observations to the Court of Justice.¹¹¹ So the Court of Justice maintains a function as a supreme interpreter of what European Union law is.

The roles of the Court of Justice are the following:

- to ensure that “the law is observed” “in the interpretation and application” of the Treaties (efficient emergence of the European Law – the “effet utile” principle);
- to ensure uniform application and interpretation of EU law in every EU country in cooperation with the courts and tribunals of the member states;
- to review the legality of the acts of the institutions of the European Union;
- to ensure that the member states comply with obligations under the Treaties (so that they act in accordance with the EU rules);
- to interpret European Union law at the request of the national courts and tribunals;
- to provide judicial legal protection for private persons.

The procedure of the Courts in general

The Court of Justice does not have general jurisdictional power. The power connected to the procedures and every procedure has its own rules. *Parties* to the Courts can be: the member states; institutions of the EU (and body, office or agency of the European Union) and natural or legal persons.

For settling a dispute, Court of Justice sits as either a full court, or more commonly in *Chambers*, or in a *Grand Chamber* (with more judges) in accordance with the rules laid down in the Statute of the CJEU.

¹¹⁰ CHALMERS et al. 2014, 164.

¹¹¹ CHALMERS et al. 2014, 165.

A full court (28 judges) is used in particular cases prescribed by the Statute of the Court, these are the following: (1.) to dismiss the European ombudsman; (2.) compulsory retirement of a member of the European Commission or deprivation of his or her pension rights or other benefits; (3.) removal from office of a member of the Court of Auditors or suspension/withdrawal of his or her pension or other benefits; (4.) after hearing the Advocate-General, the Court of Justice may consider that the case brought before has exceptional importance. In practice, the application of a full court is extremely rare.¹¹²

The Grand Chamber of 15 judges shall be used upon request by a member state or an institution (which is a party to the proceedings), and in particularly complex or important cases. Other cases are heard by Chambers of three or five judges. (The judges should elect a President of the Chamber from themselves. The Presidents of the Chambers of five judges are elected for three years, and those of the Chambers of three judges for one year.)¹¹³

The General Court sits in Chambers of five or three judges or with a single judge. The Presidents of the Chambers of five judges are elected from their judges for a period of three years. The Grand Chamber (15 judges) justified by the legal complexity or importance of the case. Most cases are heard by Chambers of three judges.¹¹⁴

The cases are processed in two stages, written stage and oral stage (public hearing).

At the *written stage*, the parties give written statements to the Court and observations can also be submitted by national authorities, EU institutions and sometimes private individuals. Each case is assigned to one judge (the so-called *judge-rapporteur*) and one Advocate General. All of the documents are summarised by the judge-rapporteur and then discussed at the Court's general meeting, which decides: how many judges will deal with the case (3, 5, 15 judges or the full court, depending on the importance and complexity of the case), and whether a hearing (oral stage) needs to be held, or an official opinion from the Advocate General is necessary.¹¹⁵

In all proceedings, once the written procedure is closed, the parties may state within three weeks, whether and why they wish a *public hearing* to be held. After reading the proposal of the judge-rapporteur and hearing the views of the Advocate General, the Court decides whether any preparatory inquiries are needed, what type of formation the case should be assigned to, or a hearing should be held for oral argument, for which the President will fix the date.

¹¹² Article 16, Statute of the Court of Justice of the European Union.

¹¹³ Article 16, Statute of the Court of Justice of the European Union.

¹¹⁴ Article 50. Statute of the Court of Justice of the European Union.

¹¹⁵ Rules of Procedure of the Court of Justice of 25 September 2012.

Lawyers from both sides present their case to the judges and Advocate General, who may ask any questions from them. If the Court decided that an opinion of the Advocate General was necessary, it is given some weeks after the hearing. He or she analyses in detail the legal aspects of the case. The judges then deliberate and give their verdict (judgement).

The General Court procedure is similar, except that most cases are heard by three judges and there is no Advocate General.¹¹⁶

Court of Justice of the European Union as a multilingual institution

As each member state has its own language and specific legal system, the Court of Justice of the European Union is a multilingual institution. Its language arrangements have no equivalent in any other court in the world; since each of the official languages of the European Union can be the language of a case (in general other international courts use only two or three languages e.g. French and English).

The Court is required to observe the principle of multilingualism in full, because of the need to communicate with the parties in the language of the proceedings and to ensure that its case-law is disseminated throughout the member states. There are 24 official languages.¹¹⁷

In direct actions, the language used in the application (which may be one of the 24 official languages of the European Union) will, in principle, be the *language of the case*, that is to say the language in which the proceedings will be conducted. In appeals, the language of the case is that of the judgment or order of the General Court which is under appeal. With references for preliminary rulings, the language of the case is that of the national court which made the reference to the Court of Justice. Oral proceedings at hearings are interpreted simultaneously, as required, into various official languages of the European Union.¹¹⁸

English will remain an official language of the EU after the Brexit,¹¹⁹ because it is used as a bridge between two other languages (e.g. Hungarian and Gaelic).¹²⁰ The French language was from the beginning and still is the working language of the Court in its internal deliberations.

¹¹⁶ Rules of Procedure of the Court of Justice of 25 September 2012.

¹¹⁷ Art. 36-42. In Rules of Procedure of the Court of Justice of 25 September 2012.

¹¹⁸ The official website of the Court of Justice of the European Union.

¹¹⁹ It is a word that has become used as a shorthand way of saying the United Kingdom leaving the EU merging the words Britain and exit to get Brexit. A referendum was held on 23 June 2016, to decide whether the UK should leave or remain in the European Union. Leave won by 51.9% to 48.1%. The referendum turnout was 71.8%, with more than 30 million people voting.

¹²⁰ EU languages: Statement on behalf of the European Commission Representation in Ireland. 27 June 2016.

Judgement

The judges deliberate on the basis of a draft judgment drawn up by the "judge-rapporteur". Each judge of the formation concerned may propose changes. Decisions of the Court of Justice are taken by majority, and no record is made public of any dissenting opinions. Only the judges are present during the oral deliberations in the course of which the judgment is adopted. Judgments are pronounced in open court. Judgments and the Opinions of the Advocate General are available on the CURIA internet site¹²¹ on the day they are delivered. They are, in most cases, subsequently published in the European Court Reports.¹²²

There are no court fees for proceedings before the Court of Justice. On the other hand, the Court does not meet the fees and expenses of the lawyer entitled to practice before a court of a member state by whom the parties must be represented. A party, unable to meet all or part of the costs of the proceedings without having to instruct a lawyer, may apply for legal aid. The application must be accompanied by all necessary evidences establishing that party's lack of means.

Table 6.2 The Court in figures

<i>Members</i>	229 Members since 1952: – 141 Members, Court of Justice – 90 Members, General Court (since 1989) – 15 Members, Civil Service Tribunal (2005 - 2016)
	Court of Justice: – 28 Judges – 11 Advocates General – 1 Registrar
	General Court: – 44 Judges – 1 Registrar
<i>Linguistic services</i>	985 posts = 45 % of the institution's staff: – 602 lawyer linguists, 74 interpreters – 24 official languages of the Union – 552 language combinations – 1 160 000 pages translated + interpretation provided for 650 hearings and meetings annually

¹²¹ The official website of the CJEU.

¹²² Art. 86-92. In Rules of Procedure of the Court of Justice of 25 September 2012.

<i>Staff</i>	5 582 Civil Servants and temporary agents since 1952: – 2 168 posts = 1 304 women and 864 men (civil servants, temporary and contract agents) – 60 % women – average age: 47 years
<i>Library</i>	240 000 volumes: – 10 km of volumes on the shelves – 24 official languages of the Union and certain third country languages
<i>Cases</i>	33 764 judgments and orders delivered since 1952: – Court of Justice, roughly 20 244 – General Court, roughly 11 971 (since 1989) – Civil Service Tribunal, 1 549 (2005 - 2016)
	Court of Justice: – 692 Cases introduced – 704 Cases closed
	General Court: – 974 Cases introduced – 755 Cases closed
<i>Visitors</i>	426 384 visitors since 1968: – 675 groups of visitors/year – 15 349 people
<i>Budget</i>	EUR 399,34 Million for 2017

Source: Official website of the Curia. Figures as of 31/12/2016

Jurisdiction of the Court of Justice of the European Union

As we mentioned above, the CJEU does not have general jurisdictional power. The power connected to the procedures and every procedure has its own rules, so the main cases can be the following:

- interpreting the law (preliminary rulings)
- enforcing the law (infringement proceedings)
- annulling EU legal acts (actions for annulment)
- ensuring the EU takes action (actions for failure to act)
- sanctioning EU institutions (actions for damages)
- disputes between the EU and its staff
- actions relating to intellectual property
- arbitration

The Court of Justice deals mainly with requests for preliminary rulings and direct actions, which mainly seek:

- a declaration that a member state has failed to fulfil its obligations under EU law “actions for failure to fulfil obligations or infringement proceedings”
- annulment of an EU act “action for annulment”
- the lawfulness of the failure of the institutions, bodies, offices or agencies of the EU “actions for failure to act”
- appeals, against decisions made by the General Court, a remedy enabling the Court of Justice to set aside the decision of the General Court. (The decisions of the General Court may, within two months, be subject to an appeal before the Court of Justice, limited to points of law)
- requests for an opinion on the compatibility with the Treaties of an agreement which the European Union envisages concluding with a non-member State or an international organization. The request may be submitted by a member state or by a European institution (Parliament, Council or Commission).

The General Court deals mainly with direct actions:

- actions brought by natural or legal persons against acts of the institutions, bodies, offices or agencies of the EU (which are addressed to them or are of direct and individual concern to them) “action for annulment”
- actions brought by natural or legal persons against a failure to act on the part of the institutions, bodies, offices or agencies of the EU “actions for failure to act”
- actions brought by the member states against the Commission or the Council relating to acts adopted in the field of e.g. State aid, trade protection measures;
- actions seeking compensation for damage caused by the institutions or the bodies, offices or agencies of the European Union or their staff “actions for damages”
- disputes between the EU and its staff “cases of the civil service”
- actions relating to intellectual property
- actions based on contracts made by the European Union which expressly give jurisdiction to the General Court “arbitration”
- appeals, limited to points of law, against the decisions of the former Civil Service Tribunal.

Main types of the cases of the Court of Justice of the EU

Preliminary rulings

The national courts may, and sometimes must, refer to the Court of Justice and ask it to clarify a point concerning the interpretation of the EU law, so that they

may ascertain, for example, whether their national legislation complies with that law. A reference for a preliminary ruling may also seek the review of the validity of an act of the EU law.

The function of this proceeding is to ensure the effective and uniform application of European Union legislation and to prevent divergent interpretations. The national court stays (suspends) the proceedings before it and asks the Court of Justice to clarify a point concerning the interpretation of the EU law, which gives a ruling on the interpretation or the validity of the provisions in question. When the matter has been clarified by the decision of the Court of Justice, the national court is then in a position to settle the dispute before it.

The reply of the Court of Justice is not merely an opinion, but takes the form of a judgment or reasoned order. But it is not the Court of Justice, who decides the case itself. The national court to which it is addressed is, in deciding the dispute before it, bound by the interpretation given. The Court's judgment likewise binds other national courts before which the same problem is raised.

The importance of the preliminary rulings is that some of the main principles of EU law were defined by the Court in these cases. Although there is no strict rule of precedent, the practice of *jurisprudence constant* means that the Court usually relies on its own case law; the case law reversal is rare.

The so-called *Urgent Preliminary Ruling Procedure* ('PPU') enables the Court to give its rulings quickly in very urgent cases by reducing the time-limits as far as possible and giving such cases absolute priority. In cases calling for a response within a very short time (e.g. in relation to asylum, border control, child abduction and so forth), this PPU may be used.

Infringement proceedings

These actions enable the Court of Justice to determine whether a member state has fulfilled its obligations under the European Union law. The action may be brought by the Commission – as, in practice, is usually the case – or by a member state. In the first stage of the procedure, the Commission sends the member state a letter of formal notice inviting it to submit its observations within two months. This exchange of views is not normally publicised. Where the observations submitted by the member state fail to persuade the Commission to change its point of view or where the member state fails to respond to the request, the Commission may issue a reasoned opinion, allowing the member state an additional two-month period within which to comply. At this stage the Commission issues a press release informing the EU's citizens of the purpose of the procedure.

If that procedure does not result in the member state terminating the failure, the second stage could begin by the Commission; an action for infringement of EU law may be brought before the Court of Justice. If the Court finds that an obligation has not been fulfilled, the State must bring the failure to an end without delay. If,

after a further action is brought by the Commission, the Court of Justice finds that the member state concerned has not complied with its judgment, it may impose on it a fixed or periodic financial penalty. Finally, when the member state does not comply with the judgment finding that it has failed to fulfil its obligations, a second action, known as an action for *twofold failure* to fulfil obligations, may result in the Court imposing a financial penalty on it – pecuniary penalty.¹²³

Actions for annulment

By an action for annulment, the applicant seeks the annulment of a measure (in particular a regulation, directive or decision) adopted by an institution, body, office or agency of the European Union. The Court of Justice has exclusive jurisdiction over actions brought by a member state against the European Parliament and/or against the Council (apart from Council measures in respect of State aid, dumping and implementing powers) or brought by one European Union institution against another.

The General Court has jurisdiction, at first instance, in all other actions of this type and particularly in actions brought by individuals (natural or legal persons; against an act addressed to them or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them). The result of this process is finding the invalidity of a measure, which is legally binding for all national courts of the member states. If the Court accepts the action, it declares the act to be void.¹²⁴

Actions for failure to act

These actions enable the lawfulness of the failure of the institutions, bodies, offices or agencies of the European Union to act to be reviewed. This allows parties to challenge omissions by EU institutions where these are under a duty to act. Such an action may be brought only after the institution concerned has been called on to act. Where the failure to act is held to be unlawful, it is for the institution concerned to put an end to the failure by appropriate measures within two months.¹²⁵

The jurisdiction to hear actions for failure to act is shared between the Court of Justice and the General Court according to the same criteria as for actions for annulment. E.g. the Commission is not under duty to institute infringement

¹²³ E.g. Case C584/14 European Commission v. Hellenic Republic: The judgement of the Court ordered the Hellenic Republic to pay the European Commission, into the 'European Union own resources' account, a penalty payment of EUR 30 000 for each day of delay in adopting the measures necessary to comply with the judgment of 10 September 2009 in Commission v Greece and ordered the Hellenic Republic to pay the European Commission a lump sum of EUR 10 million (lump sum – average amount), ECLI:EU:C:2016:636.

¹²⁴ CHALMERS et al. 2014, 464.

¹²⁵ CHALMERS et al. 2014, 424.

proceedings against a member state which violates the EU law. But, according to the case law of the General Court, is under an obligation to act upon a complaint regarding the violation of competition rules.

Actions for damages

The action for damages is one of the actions, which may be brought before the Court of Justice of the European Union. It enables individuals or member states who have suffered damage to obtain compensation on behalf of the institution or the bodies, offices or agencies of the European Union, or their staff that caused it.¹²⁶ So the purpose of the action for damages to enable compensation to be obtained for damage for which the Union is responsible. There are two types of actions:

- actions implicating the contractual liability of the EU where the latter is party to a contract;
- actions implicating the non-contractual liability of the EU due to damage caused by Union bodies or servants in the performance of their duties.

Contractual liability of the EU: the bodies and agents of the EU are able to conclude contracts, which give rise to liability on the part of the EU. However, the CJEU does not always have jurisdiction in disputes arising from these contracts. An action for damages can be brought before the CJEU, only if an arbitration clause provides so. In other words, the contract, to which the Union is a contractual party, must contain a clause providing the jurisdiction of the CJEU in the event of a dispute. In the absence of such a clause, the national courts will have jurisdiction in disputes arising from the contract.

Non-contractual liability of the EU: the EU must compensate for damage for which it is responsible. Such damage may, for example, be caused by a servant of the EU in the performance of their duties. It may also result from the legislative activities of the European institutions, such as the adoption of a regulation. The non-contractual liability of the European Union complies with uniform rules which have been developed by the case-law of the CJEU. Actions may be brought by individuals or member states who have suffered damage and wish to obtain compensation. The deadline for acting is five years from the date on which the damage occurred. The Court of Justice shall recognise the liability of the EU when three conditions are met:

- the claimant has suffered damage;
- the institutions of the EU or their agents have acted illegally under EU law;
- there is a direct causal link between the damage suffered by the claimant and the illegal act of the institutions of the EU or their agents.

¹²⁶ CHALMERS et al. 2014, 989.

An action for damages before the Court of Justice of the EU may be brought only where the liability of the Union is implicated. Individuals may also render member states liable in the case of damage caused by EU law being poorly applied. However, actions taken against member states must be brought before the national courts.

The General Court shall have jurisdiction to hear and determine at first instance actions brought by individuals. The Court of Justice shall have jurisdiction to hear and determine actions brought by the member states. It may also hear appeals brought against judgments given by the General Court at first instance. In the latter case, the Court of Justice shall rule only on questions of law and shall not re-examine the facts. The Court of Justice and the General Court may also rule on actions implicating the contractual liability of the Union. These actions are brought in accordance with the conditions provided for by the contracts to which the Union is a party.¹²⁷

Actions brought by officials

This process covers the disputes between the EU and its staff. The Civil Service Tribunal had jurisdiction to hear and determine at first instance European civil service disputes, which represented around 150 cases a year for a staff of approximately 40 000 individuals in all the institutions, bodies, offices and agencies of the European Union. Since 1 September 2016, the General Court has the jurisdiction to decide these cases. This kind of disputes concerned not only issues relating to employment relations as such (career development, recruitment, disciplinary measures, etc.), but also the rules on social security benefits (sickness, retirement, accidents at work, family allowances, etc.). It also had jurisdiction over disputes concerning particular staff, notably the staff of the Eurojust,¹²⁸ Europol,¹²⁹ the European Central Bank and the European External Action Service.¹³⁰

Appeals

Appeals (on points of law only) may be brought before the Court of Justice against judgments and orders of the General Court. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings permits so, the Court of Justice may itself decide the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.¹³¹

¹²⁷ CRAIG – DE BÚRCA 2015, 263.

¹²⁸ European Union's Judicial Cooperation Unit.

¹²⁹ European Union Agency for Law Enforcement Cooperation.

¹³⁰ KAPSIS 2013, 176-178.

¹³¹ CHALMERS et al. 2014, 161-162.

The Court of Justice in the legal order of the European Union

For the purpose of European construction, the member states (now 28) concluded treaties establishing first the European Communities, and then the European Union, with institutions which adopt legal rules in specific areas.

Through its case-law, the Court of Justice has identified an obligation on administrations and national courts to apply EU law in full within their sphere of competence and to protect the rights conferred on citizens by that law (direct application of EU law), and to disapply any conflicting national provision, whether prior or subsequent to the EU provision (primacy of EU law over national law).

The Court has also recognised the principle of the liability of member states for breaching the EU law which, first, plays an important part in consolidating the protection of the rights conferred on individuals by EU provisions and, secondly, may contribute to more diligent application of EU provisions by member states. Infringements committed by member states are thus likely to give rise to obligations to pay compensation, which may, in some cases, have serious repercussions on their public funds. Moreover, any breach of the EU law by a member state may be brought before the Court. When a judgment finding such an infringement is not complied with, the Court can order payment of a periodic penalty and/or a fixed sum. However, if measures transposing a directive are not notified to the Commission, it may propose that the Court impose a pecuniary penalty on a member state, once the initial judgment establishing a failure to fulfil obligations has been delivered.¹³²

The development of its case-law illustrates the Court's contribution to creating a legal environment for citizens by protecting the rights, which the European Union legislation confers on them in various areas of their daily life.

Fundamental principles established by case-law

In its case-law (starting with *Van Gend & Loos*¹³³ in 1963), the Court introduced the principle of the *direct effect* of Community law in the member states, which now enables European citizens to rely directly on rules of European Union law before their national courts.

In 1964, the *Costa*¹³⁴ judgment established the *primacy* of Community law over domestic law, basing it on the specific nature of the Community legal order, which is to be uniformly applied in all the member states.

¹³² Official website of the CJEU.

¹³³ Judgement of the Court, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration*, Case 26-62, 5 February 1963. ECLI:EU:C:1963:1.

¹³⁴ Judgment of the Court, *Flaminio Costa v E.N.E.L.*, Case 6-64, 15 July 1964. ECLI:EU:C:1964:66.

In 1991, in *Francovich*¹³⁵ judgement the Court developed another fundamental concept, the *liability* of a member state to individuals for damage caused to them by a breach of Community law by that State. Since 1991, European citizens have therefore been able to bring an action for damages against a State which infringes a Community rule.

Of the thousands of judgments given by the Court, the majority, particularly preliminary rulings, clearly *have important consequences for the daily life of European Union citizens*.

By holding that respect for *fundamental rights* is an integral part of the general principles of law it safeguards, the Court has made a considerable contribution to improving the standards of protection of those rights. In this respect, it looks to the constitutional traditions common to the member states and to international treaties on the protection of human rights, on which the member states have collaborated or which they have signed, in particular the European Convention on Human Rights. Following the entry into force of the Treaty of Lisbon, the Court will be able to apply and interpret the Charter of Fundamental Rights of the European Union of 7 December 2000, which is recognised under the Treaty of Lisbon as having the same legal value as the Treaties.¹³⁶

Summary

1. The Court of Justice of the EU is a judicial body composed of national judges appointed by the common accord of member state governments.
2. The CJEU interprets EU law to make sure it is applied in the same way in all EU countries, and is entitled – among others – to settle legal disputes between national governments and EU institutions.
3. CJEU has no general power to settle any disputes in the EU, despite there are exact case types with regulated parties and well defined procedures.
4. Individuals (natural and legal persons) can take action against action or inaction by an EU institution or its staff in the Court, in one of two ways: indirectly through national courts (which may decide to refer the case to the Court of Justice) or directly before the General Court – if a decision by an EU institution has affected her/him directly and individually.

¹³⁵ Judgment of the Court, *Andrea Francovich and Danila Bonifaci and others v Italian Republic*, Joined cases C-6/90 and C-9/90, 19 November 1991. ECLI:EU:C:1991:428.

¹³⁶ More information on fundamental rights and the Charter of Fundamental Rights of the European Union can be found in Chapter 2 and 4.