

European Legislation

Lecture Title: The Court of Justice of the European Union & Sources of EU Law



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Diploma in Law (Malta)

The Court of Justice of the European Union

- One of the seven institutions of the EU
- Article 19(1) TEU establishes that 'The Court of Justice of the European Union shall include:
 - the Court of Justice (superior court);
 - the General Court (lower court); and
 - Specialised courts or tribunals



Main elements

- Role: to ensure EU law is interpreted and applied the same in every EU country and to ensure that MSs and EU institutions abide by EU law.
 - Court of Justice: 1 judge from each EU country, plus 11 advocates general
 - General Court: 56 judges
- Established in: 1952 Location: Luxembourg



The CJEU

- Deemed as the main source of legal principles which govern the way the Union functions
- Governed by the TEU and TFEU and the 'Statute of the Court of Justice of the European Union'
- Not to be confused with the 'European Court of Human Rights'
- Each court has its own Rules of Procedure



Composition of the CJEU

- Article 19 TEU – One judge from each Member State
- Art. 252 TFEU – Eleven Advocates General and may be increased by the Council acting unanimously
- Appointed by common accord of the government of Member States – a suitability report is issued by a panel of retired judges
- Six year term, may be renewed
- Appointment of Judge Rapporteur to manage the case and draft the final judgment



Advocates General

- Not a lawyer to the parties, not a judge BUT enjoys equal status to that of a Judge.
- Each case will have one judge rapporteur and one Advocate General
- Gives his personal opinion on the decision that the Court should reach
- Delivered in open court
- Not a binding opinion



Registrar

- Appointed for six year renewable term
- Filing of documentation, distribution, notification process
- Responsible of the administration



Chambers

- May sit in Full Court – 27 members – specific instances
- May sit in 'Grand Chamber' – 15 members
- May sit in smaller chambers of 3 to 5 judges
- Depends on the rules laid down By the Statute of the Court



Formation

- It sits as a full Court when the case is regarded as exceptionally important (e.g. proceedings to remove the European Ombudsman or a Commissioner) or at the request of a MS or institution;
- BUT the great majority of cases are heard by chambers of three or five judges.
- The COJ is particularly empowered:
 - 1.to deliver preliminary rulings to national courts under Article 267.
 - 2.to hear review cases from General Court judgments.



Language

- Applicant chooses the language
- May be held in any of the official languages
- Where the defendant is a Member State – the official language of the Member State is adopted
- French is the working language



Procedure

- Written Proceedings
- Preliminary report
- Measures of organisation and measures of inquiry
- Oral Hearing
- Advocate General's opinion
- Judgment



Methods of Interpretation

- Literal Interpretation – natural, plain meaning of the text of the legislation
- Historical Interpretation – the background for the legislation and the intention of the legislator
- Contextual Interpretation – Context a provision within the general scheme of the whole legislation
- Teleological Interpretation – Aims and objectives of the Union



Jurisdiction of the CJEU (in general)

- Article 19 TEU and Articles 251-281 TFEU deal with the jurisdiction of the Court of Justice of the EU.
- Article 19(3) deals with the jurisdiction of the Court:
 - The Court of Justice of the European Union shall, in accordance with the Treaties:
 - rule on actions brought by a Member State, an institution or a natural or legal person;
 - 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;
 - rule in other cases provided for in the Treaties.



Jurisdiction

- References for Preliminary Rulings (Art. 267 TFEU);
- Actions for Failure to Fulfill Treaty Obligations (Art. 258, 259 TFEU);
- Actions for Annulment (direct actions) (Art. 263 TFEU);
- Actions for Failure to Act (Art. 265 TFEU);
- Appeals
- Reviews



Preliminary rulings

- The Court of Justice is empowered to deliver preliminary rulings upon a reference by a national court.
- What are References for preliminary rulings?
 1. A national court may require guidance in interpreting and applying EU law;
 2. Therefore, it makes a reference to the COJ for guidance;
 3. The COJ delivers its preliminary ruling on the questions asked by the national court.
 4. This is a process of cooperation between the COJ and national courts BUT the ruling is binding on the national court.
 5. Recently, it is being acknowledged that the COJ is in fact above the national courts in EU law matters.



Why Preliminary Rulings?

- To ensure the effective and uniform application of EU legislation;
- To prevent divergent interpretations of EU law by national courts;



Effects of Preliminary Rulings

- The COJ's ruling is not merely an opinion, but takes the form of a judgment or reasoned order;
- The national court is bound by the ruling of the COJ.
- Other national courts with similar cases are likewise bound by this ruling/ judgment (multilateral effect of the Court's ruling).
- Several important principles of EU law have been laid down by preliminary rulings (e.g. direct effect, state liability, supremacy of EU law)



Preliminary reference made by the Maltese Courts

- Malta Dental Technologists Association and John Salomone Reynaud v Superintendent tas-Saħħa Pubblika and Kunsill tal- Professjonijiet Kumplimentari għall-Medicina, Case C-125/16
- Main focus: interpretation of the Directive on the mutual recognition of qualifications.
- C-71/12 – Vodafone Malta and Mobisle Communications (Const. Court)



ii. Actions for failure to fulfill Treaty Obligations (Art 258 and 259)

- Infringement procedures
- Has a Member State violated its obligations under EU law?
- Commission vs Malta (Case C-557/15) – action against Malta on the conservation of wild birds
- May impose a fixed or periodic financial penalty if found guilty



Actions for Annulment (Art. 263 TFEU)

- Referred to as a judicial review action
- Annulment of a regulation, directive or a decision adopted by the Union



Actions for failure to act (Art 265 TFEU)

- Against institutions and not Member States
- The Court is empowered to determine if the institutions, bodies, offices or agencies of the EU have failed to act under EU law where the Treaties obliges them to act.



Reviews

- Reviews are delivered in exceptional circumstances.
- The COJ reviews appeals lodged before the General Court from decisions of the Civil Service Tribunal (akin to a second appeal)



Appeals

- COJ hears Appeals on points of law only against judgments of the General Court.
To be lodged within two months and limited to questions of law such as:
 - Lack of competence of the GC;
 - A breach of procedure which adversely affects the the interests of the appellant;
 - Infringement of Union law by the GC itself
- If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court.



General Court

- Previously known as the Court of First Instance
- Chambers of three or five judges (about 75% of cases are heard by chambers of three judges)
- May also sit as a Grand Chamber (15 judges when the complexity of the case demands it (Art. 50 of the Statute))
- Article 256(1) TFEU – provides for the jurisdiction of the General Court
- 54 judges



Main heads of jurisdiction of the General Court

- i. Direction actions brought by natural or legal persons against:
 - Acts of the institutions
 - Regulatory acts
 - Failure to act by the institutions
- Actions by Member States against the Commission
- Actions by Member States against the Council relating to acts in the field of State Aid, dumping etc
- Actions seeking compensation for damages caused by the institutions of the EU
- Actions based on contracts made by the EU and which expressly give jurisdiction to the GC
- Actions relating to Union Trade marks
- Appeals from the Civil Service Tribunal (points of law)



Specialised Courts

- Article 257 TFEU – European Parliament and the Council to establish ‘Specialised Courts’
- Ad hoc courts
- EU Civil Service Tribunal – only specialised court
- Determines disputes between the EU and its civil servants (recruitment, careers, social security etc)
- Composed of seven judges or three judges





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Part II: Sources of EU Law



Written Sources

- Primary Sources
 - Founding Treaties – Treaty of Paris, Maastricht Treaty
 - Amending Treaties
 - Accession Treaties
 - Annexes, Declarations and Protocol

Secondary Sources

- Regulations
- Directives
- Decisions
- International Agreements
- Recommendations and Opinions



Unwritten Sources

- Decisions of the CJEU
- General principles of EU Law
- General principles of International Law



The EU Treaties

- Primary sources – all other sources of EU law are subordinate – where incompatible they will be disregarded
- Treaty on the EU
General principles
- Treaty on the Functioning of the EU
More detailed
- Principle of conferral – the Union shall act only within the limits of the competences conferred upon it by the Treaties to attain the objectives set out therein



The EU Treaties

- Sets out the objectives of the Union
- Establish the Union's institutional framework
- Sets out the Union policies



What about Protocols annexed to the Treaties? Do they have same force as the Treaties themselves?

- YES.
- In C-260/86, Commission vs Belgium, the Court held that the violation of the Protocol on the Privileges and Immunities by Belgium constituted a breach of EU primary law.



Secondary Sources

- Article 288 TFEU – “To exercise the Union’s competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions”
- Binding vs non-binding



Regulations

- Binding upon Member States
- Directly applicable
- Ensure legal uniformity
- Entry into force
- Implementing Legislation may still be opted to



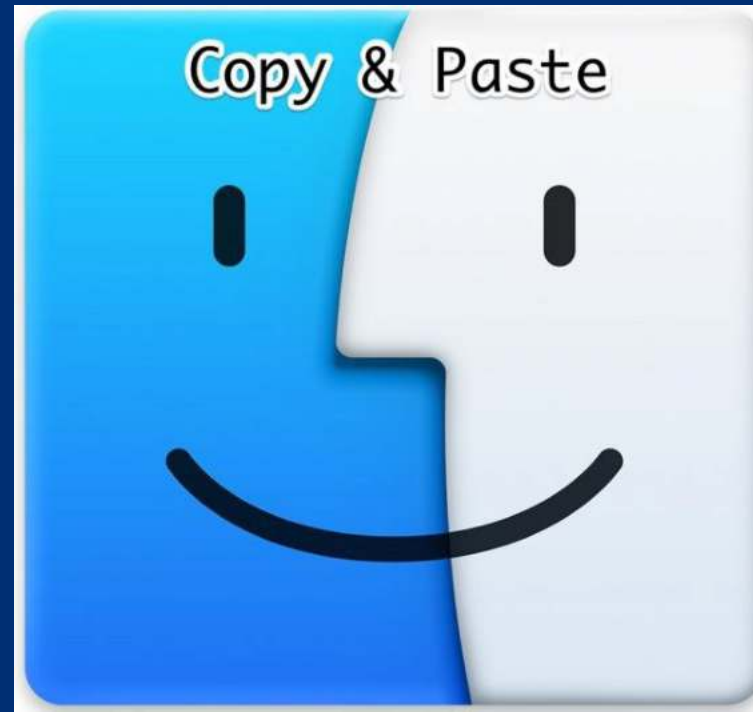
Directives

- May be directed against certain Member States
- Not directly applicable
- Sets out the result to be achieved but leave to the national authorities to choose form and methods



Does Member State need to copy the text of the Directive?

- Not necessary
- But best way to avoid disputes



What if Directive is not transposed within the prescribed time limit?

- Becomes directly applicable and directly effective
- Commission may bring an action against the MS
- Individual may sue State for damages



Regulations or directive?

- Discretion of proposing institutions BUT certain treaty provisions stipulate
- More flexibility vs less flexibility



Decisions

- Binding
- Effective upon notification



Recommendations and opinions

- No binding force
- May be referred to in order to substantiate
- Persuasive authority



International Agreements

- Multilateral treaties – Union party to such treaties
- Association Agreement – concluded by the Union with individual states
- Can be binding to a certain extent



Decisions of the CJEU

- Unwritten source
- Jurisprudence which fills in the lacunae created by the law
- Impossibility of the legislator to cater for every provision



Fundamental Rights

- Unwritten source of EU Law
- Suspension of a Member State
- Charter of Fundamental Rights of the EU – not of general application to national law
- The European Convention on Human Rights and Fundamental Freedoms



General Principles of Law

- Developed by the CJEU
 - Human Rights
 - Other general principles of law
- Why were they developed?
- Avoid denial of justice
- Fill gaps in EU law
- Strengthen coherence of EU law



Human rights

- Right to property
- Right to carry on an economic activity Right to an effective judicial remedy
- Protection of family life, home and family correspondence Freedom of expression
- Freedom of religion



Other General Principles of Law

- Proportionality
- Equality
- Legal certainty and non-retroactivity
- Legitimate expectation
- Natural Justice





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