



Panel: Law in the Domestic Courts of Other Nations

Kurt Riechenberg

Summary

The European Court of Justice

The three main function of the Court are to

- control compliance with EU law by the States,
- provide for judicial review of any legal action taken by any EU institution,
- ensure the uniform application of EU law in all States.

Avenues of jurisdiction

Article 230 of the Treaty* establishes an avenue for actions to "annul" acts of EU institutions. Actions may be brought by the States or an institution "on ground of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or any rule of law relating to its application, or misuse of power." Private parties may bring action (to the Court of First Instance) if a legal act is directed at them or is "of direct and individual concern." Under Article 232 of the Treaty, EU institutions and States may bring an action against an institution for failure to act.

Articles 226 and 227 of the Treaty authorize suits against States for "infringing" their EU obligations. The State is required to take the necessary measures to comply with the judgment. If the State does not comply, the Court may go so far as to impose a lump sum or penalty payment (Article 228 of the Treaty).

* The European Community Treaty, or Treaty of Rome. Signed in 1957, it remains the primary source of European Union law. As the founding document of the European Community, it provides the the overarching framework and process for EU development.

The most original feature of the avenues of jurisdiction to the Court is the "preliminary reference procedure" from State courts. Article 234 of the Treaty provides:

"The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of its Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community [...];

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 of Justice to give a ruling thereon.

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 of Justice."

The dispute before the national judge can be a vertical dispute in which a natural or legal person is suing administrative authorities of the State. The dispute before the national court can just as well be a horizontal dispute between two private parties.

In such a situation the national judge has essentially two possibilities:

1. The national judge might feel comfortable with the rules of European law and decide the case in light of the applicable mix of national and European law. If

one of the parties is not satisfied with the outcome, an appeal might claim, in particular, that European law was incorrectly applied.

2. If the national judge is not sure how European law has to be understood and in which way it may affect the right and obligations of the parties to the dispute, the relevant questions might be referred to the Court of Justice for a preliminary ruling.

Organization of the Court

The number of Judges equals the number of States, currently 25 (27 as from 2007). They are appointed "by common accord" of the States which means that each State controls one appointment. They serve for six years with the possibility of reappointment.

The Court is assisted by a type of judicial officer with no counterpart in the U.S. legal system, the Advocate-General. They give their opinion on most of the cases after considering written and oral arguments.

The Judges elect their President every three years in a secret vote. The President appoints the reporting judge for each case. The President alone decides as to how requests for interim measures should be dealt with.

There are four possible Court formations:

A case raising an important new issue of principle or having major political significance will be heard by the full plenary Court of all judges. A case raising no new point of legal importance or involving the interpretation of highly technical EU rules will be sent to a chamber of three judges. Between those two extremes, the choice lies between the "Grand Chamber" of 13 judges or a chamber of five judges.

Language regime

Before the Court, any of the 20 (22 as from 2007) official languages can be used. The plaintiffs as the referring national judge determine the choice of language.

A unique feature of the Court is that it is the only international judicial body that works only in one language as far as internal proceedings and discussions are concerned. This language is French. This means that all written pleadings and other incoming documents are translated only into French and all internal documents are circulated in that language. The Court's judgment is first drafted, discussed and approved in French. Only afterwards, the judgment is translated into the other official languages of the European Union.