

## Lesson 5 – How the European Union’s action on justice affects

### 1. Introduction.

Currently the European Union has assumed competences<sup>1</sup> on several economic and social fields, exclusively in some cases and in others, shared with the Member States, or as a support for them.

As a consequence, it is obliged to guarantee the defence of the measures it is adopting in the development of these competences, through the own system of normative production that we have already studied.

This function is entrusted to the Court of Justice of the European Union (CJEU), which ensures that the approved rules are respected both by the EU Institutions and by the Member States, controlling, in addition, that the legislations approved by them guarantee all rights recognized to the citizens.

Although the Treaties do not establish the value that should be given to the judgments of the Court, they have a great authority, and must be respected by national legislators and judges. If we add to this the need for the application of all the regulations, it can be said that the jurisprudence of the CJEU constitutes an essential source of Community Law, and this is what the Court itself has stated.<sup>2</sup>

The way in which these sentences are issued and the consequences they have on the daily life of citizens will be studied in this subject, with the following scheme:

1. Introduction
2. Structure and functions of the Court of Justice of the European Union.
3. Citizens and the Court of Justice of the European Union.
  - 3.1. Access of the citizens to the CJEU.
  - 3.2. Application at the CJEU.
  - 3.3. Conditions for Access to the TJUE.
4. Declarations of the CJEU.
  - 4.1 Fundamental principles established by the jurisprudence.
  - 4.3. Some outstanding recent cases

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<sup>1</sup> Here you can find further information about [the division of responsibilities in the EU.](#)

<sup>2</sup> In its [judgment of 14 July 1988 \(Case 207/87\).](#)

## 2. Structure and functions of the Court of Justice of the European Union.

As we have already seen in the Lesson 3, the CJEU consists of three bodies, the Court of Justice, the General Court and the Civil Service Tribunal, which exercise their functions through various appeals (preliminary rulings, infringement proceedings, cancellation remedies, remedies by omission and actions for damages).

The basic function of the CJEU, which encompasses all the others, is to ensure that EU legislation is interpreted and applied in the same way in each of the Member Countries, so that it is always identical for all parties and in all the circumstances.

It also intervenes, as would a Constitutional Court, in the delimitation of conflicts between Community institutions or between those institutions and the Member States (and even between Member States), since it has the power to control that member countries and European institutions comply with the legislation of the EU.

The infractions that the Member States commit may generate indemnification obligations. Furthermore, in the event that a judgment declaring a non-compliance is not executed, the Court is empowered to impose a coercive fine or payment of a lump sum on the Member State. The Court of Justice also cooperates with the national courts, which are responsible for applying Community law in the first instance.

## 3. Citizens and the Court of Justice of the European Union.

The Law of the Union affects citizens very closely in their various activities because, although this is not normally known, many rules of National law have their origin in it.

For this reason, it is very important to guarantee that everyone can request effective protection if the rights granted by this regulation are violated, especially if the person who does it is their own State.

### 3.1. Access of the citizens to the CJEU.

All citizens can access the Court of Justice or the General Court through two mechanisms: indirect and direct:

- Indirectly, by means of the preliminary ruling question. When a national court notices that EU law may be involved in the case it is dealing with, it may - and in some cases - suspend the proceedings and raise this issue, requesting the Court of Justice to interpret or examine the validity of a Union standard and its compatibility with the national that should apply.
- Directly, by challenging before the General Court a decision taken by an institution, a body or an organism of the Union. For this, it must be addressed to him, or that the act in question affects him directly and individually.
- On the other hand, a citizen can not bring an action against another person (physical or legal) or against a Member State before the Court of Justice or the General Court.

### 3.2. Application at the CJEU.

The procedure before the Court of Justice is inspired by the procedure before the national courts. Whatever the nature of the matter, a similar procedure is followed, although there are variations between direct appeals and preliminary questions:

- When the cases are presented in the registry they are assigned a judge and in the case of the Court of Justice, also an Advocate General.
- After that, the written phase begins, in which all the parties involved present written statements and the judge assigned to the case, drafts a report summarizing these statements and the legal basis of the case. On the basis of this report, the Advocate General assigned draws his conclusions, in view of which the judge drafts a draft judgment that is presented to the other members of the Tribunal for examination.
- Most of the time follows a second oral phase, the public hearing, before cameras of three or five judges or exceptionally before the full Court, depending on the importance or complexity of the case. You can also act before a large room of 15 judges in the CJ or before a single judge in the GC. At the hearing, the parties' lawyers present their reasons to the judges and the Advocate General, who can ask him questions. The Advocate General then sets out his conclusions, after which the judges deliberate and sentence.

The judgments of the Court are decided by a majority and delivered at a public hearing. The dissenting votes are not explained.

### 3.3. Conditions for Access to the TJUE.

So that everyone can have access to European justice:

- The procedure before the CJEU is free. There is no need to pay fees or procedural costs in any of its three bodies, although the advocates' fees do. But if a party lacks sufficient means to face all or part of these expenses, it can request the benefit of free justice, accompanying the documents that prove this lack.

- The language of the procedure can be chosen among the twenty-four official languages of the Union. The applicant chooses it, unless he demands a Member State - or a natural or legal person from a Member State - in which there is only one official language. In the preliminary ruling, the language of the proceedings is that of the national court which brings the matter before the Court of Justice.

For better knowledge, judgments are then published in all the official languages of the EU. Access to all judgments of the CJEU is made through the website of the Court itself.

## 4. Declarations of the CJEU.

In its years of operation the CJEU has issued thousands of sentences, which have been defining the real content of EU law.

### 4.1 Fundamental principles established by the jurisprudence.

As for Law of the EU itself, it should be noted that the Court of Justice has established in its jurisprudence:

- The principle of the direct effect of Community law in the Member States, which allows European citizens to invoke Community rules directly before their national courts.
- The principle of primacy of Community law, based on the specific nature of the Community legal order, which obliges it to be applied uniformly in all the Member States.<sup>3</sup>
- The principle of liability of a Member State towards individuals for damages suffered as a result of a breach by that State of Community law, which allows them to claim compensation from the State which infringes a Community rule.<sup>4</sup>

<sup>3</sup> [Costa Judgment 15 July of 1964.](#)

<sup>4</sup> [Francovich Judgment 19 November of 1991.](#)

## 4.2. The Court of Justice in the live of the European citizen.

The Judgments of the CJEU, especially those pronounced on a preliminary basis; clearly have important consequences in the daily life of European citizens. Some of them, in the most important areas of Community law, are cited below as an example.

- **Free movement.** The four basic freedoms of circulation of people, goods, services and capital, now strongly consolidated, were shaping their content thanks to the protection of the CJEU. For example, the effect of different judgments that recognized the primacy of the free movement of workers over the regulations of football federations is well known, eliminating many of the existing limits for the hiring of foreign soccer players.<sup>5</sup>

At the present time, in the face of the economic crisis, the CJEU is backing slightly in the defence of these freedoms, with pronouncements such as the one that confirmed the possibility of a Member State denying non-contributory social assistance benefits to the citizens of another one.<sup>6</sup>

- **Equal treatment.** The Court of Justice has long recognized the need for wage equalization, establishing that the principle of equal pay for men and women workers for the same work has a direct effect.<sup>7</sup> It has also contributed to the protection of women against dismissal linked to motherhood.<sup>8</sup> And even recently it has based on this inequality a Judgment in which it recognizes a cleaner who worked for hours every other day, the right to receive the unemployment benefit corresponding to the totality of the time in which she was working, and not only to the effective days in which he did it, understanding that it is a basically feminine profession, although he specifically adds that the solution is applicable to all part-time workers of the vertical type, regardless of whether they are men or women.<sup>9</sup>
- **Workers' rights.** The CJEU has recognized basic rights such as enjoying annual paid holidays and postponing them for years if there is uncertainty about their remuneration, or that of temporary workers to receive compensation for termination of their contract.<sup>10</sup>
- **Fundamental Rights.** The CJEU, by declaring that fundamental rights are part of the general principles of law whose respect guarantees, has contributed to raising the levels of protection of these rights. One of those currently being studied is the right to privacy, with pronouncements such as the one that regulates the "right to be

<sup>5</sup> Judgments [Bosman 15 December of 1995](#), [Deutscher Handballbund 3 Mayo of 2003](#), and [Simutenkov 12 April of 2005](#).

<sup>6</sup> [Judgment 15 September of 2015 \(Case C-67/14\)](#).

<sup>7</sup> [Defrenne Judgment 8 April of 1976](#).

<sup>8</sup> [Brown Judgment 30 June of 1998](#).

<sup>9</sup> [Judgment 9 November of 2017 \(Case C98/15\)](#).

<sup>10</sup> [Judgment 14 September of 2016 \(Case C-596/14\)](#).

forgotten" in Google<sup>11</sup> or the one that prohibits examining sexual orientation to grant political asylum.<sup>12</sup>

It has also ruled that, before executing a European arrest warrant, it must be examined whether the conditions of imprisonment prevailing in the issuing Member State suffer from systemic or generalized deficiencies that affect certain groups of people or certain detention centres, in case there are reasons serious and well-founded to believe that the person subject to the order issued will run a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter of Human Rights of the European Union.<sup>13</sup>

- **European Citizenship.** According to CJEU, European citizenship corresponds to all nationals of the Member States. The CJEU has confirmed that this implies the right of residence in the territory of another Member State and has defined the conditions for its acquisition. Thus, on the one hand, it has understood that a Member State can not limit the effects of the attribution of the nationality of another Member State, even when this has been achieved precisely in order to obtain a residence permit in that third State.<sup>14</sup> On the other hand, he has understood that the length of stay in prison can not be computed in order to understand the residence achieved.<sup>15</sup>

#### 4.3. Some outstanding recent cases.

- **Vaccine safety.** The anti-vaccines movement has believed to find support in a judgment of the CJEU, concerning a French patient who, after being vaccinated against hepatitis B, contracted multiple sclerosis, which resulted in his death, and therefore filed a complaint against the pharmaceutical company Sanofi Pasteur, accusing it of being its vaccine the cause of the disease.

The European Directive for Liability of defective products requires demonstrating the existence of 'the damage, the defect and the causal relationship between the defect and the damage', but the plaintiff and his family only provided circumstantial evidence, such as his previous health and the coincidence of the development of the disease with the dose of memory of the vaccine.

That is why the French Court of Cassation asked the CJEU for a preliminary ruling on whether these facts could be accepted as sufficient for this demonstration, despite the fact that the medical investigation did not establish a relationship between vaccination and the appearance of the disease.

<sup>11</sup> [Judgment 13 Mayo of 2014 \(Case C-131/12\).](#)

<sup>12</sup> [Judgment 25 January of 2018 \(Case C-473/16\).](#)

<sup>13</sup> [Judgment 5 April of 2016 \(Joined cases C-404/15 y C-659/15\).](#)

<sup>14</sup> [Zhu and Chen Judgment 19 October of 2004.](#)

<sup>15</sup> Judgments 16 January of 2014, cases [C-400/12](#) and [C-378/12](#).

The CJEU decided that,<sup>16</sup> in the absence of medical evidence in one way or another, it is the national judge who, in the exercise of his or her freedom of assessment, must decide whether the factual evidence is sufficient to demonstrate the existence of a defect in the product -in this case, the vaccine- and the causal link between this defect and the harm suffered by the consumer.

- **The UBER dispute.** At the end of 2017 the Court of Justice of the EU has ruled<sup>17</sup> a pressing issue that faced the professional association Élite Taxi (Barcelona) against the company UBER Systems Spain, SL, in which up to 7 Member States were registered, including Spain, to solve the problem raised by taxi drivers and UBER operators.

Briefly, UBER is a US company that in the big cities provides, through a mobile application, a service by which the application puts the transport applicant in contact with the nearest non-professional driver, so that this is done with his vehicle own a paid trip.

In this situation, taxi drivers understood that UBER should be subject to the same legal conditions that apply to their profession, since it is an activity similar to their own, arguing that if these were less restrictive, the situation could be assimilated to an unfair competitive practice.

For its part, the defendant company argued that it was a mere intelligent mediation communication system (a kind of electronic market), which excluded the accusations made by the opposing party of infringing the right of fair competition.

The CJEU, firmly concluding in favour of the applicant, considers that the UBER is, for the purposes of EU law, an activity classifiable as a service in the field of transport, insofar as its application is creating an offer of urban transport services. Therefore, it established that national governments will be able to regulate UBER's situation, just as it is done with taxi companies, which are subject to licenses and other legal aspects for many years.

## ADITIONAL DOCUMENTS

Websites:

- [The Court of Justice of the European Union.](#)
- Website of the European Commission where you can follow [visits to the CJEU.](#)

<sup>16</sup> [Judgment of 21 June 2017 \(Case number 621/15\).](#)

<sup>17</sup> [CJEU Judgment of 20 December 2017 \(Case number 434-15\).](#)

Videos:

- [Backstage: Court of Justice of the EU.](#)
- [Court of Justice: cutting through legal fog.](#)
- [How it works: Luxembourg, the European capital of justice.](#)
- [How It Works: Guardian of the treaties.](#)
- [Why does the Court of Justice of the EU Exist?](#)
- [How the Court works – the basics.](#)
- [How the Court protects citizens' rights – Bringing a case to the ECJ](#)
- [What has the Court of Justice done for me?](#)
- [Uber: Unfair competition or a new transport model?](#)
- [Ruling of the Court of Justice of the EU in the case Asociación Profesional Elite Taxi \(C-434/15\) on Freedom to provide services.](#)