

Powers Of The Court Of Justice Of The European Union

Aslanova Shahla Sakhavat

Master student of Baku State University,
Department of Private International law and European law

Key words: European Union, Court of Justice, judicial powers, competences, policy-making, proceedings, annulment procedure, preliminary ruling

ABSTRACT:

In this article the main guidelines and activity spheres of the Court of Justice of the European Union are described. The judicial powers and existing factual influence of the Court will be analyzed on the basis of shifting legal opinions. European Court of Justice is one of the main institutions of the European Union which maintains the competences aimed at ensuring effective interpretation and application of the Union law. Through the historical development of the European Union, the Court has also gained some more powers within which its indirect participation in policy and lawmaking can be noticed.

Açar sözlər: Avropa Birliyi, Avropa Birliyi Ədalət Məhkəməsi, məhkəmə hakimiyyəti, məhkəmənin səlahiyyətləri, məhkəmə icraatı, siyasətin formalaşması, ləğvətmə prosesi, ilkin qərar

XÜLASƏ:

Bu məqalədə Avropa Ədalət Məhkəməsinin fəaliyyətini tənzimləyən normalara əsasən məhkəməyə verilmiş səlahiyyətlər araşdırılmışdır. Mövcud vəziyyətdə Avropa Ədalət Məhkəməsinin Avropa İttifaqında qanunun formalaşmasında rolu analiz edilmiş və tarixi inkişaf ərzində əldə edilmiş əlavə mühüm güc və təsir sahələri təhlil edilmişdir. Avropa Ədalət Məhkəməsi Avropa İttifaqının əsas institutlarından

biri olaraq, hüququn düzgün, səmərəli şərh və tətbiq edilməsini təmin edir. İttifaqın tarixi inkişafı ərzində Avropa Ədalət Məhkəməsinin ədalət mühakiməsini həyata keçirməklə yanaşı siyasət və hüququn formalaşmasında iştirakı da nəzərə çarpmağa başlayır.

Ключевые слова: Европейский Союз, Суд Европейского Союза, судебные власти, знания, формулирование политики, слушания, процедура аннулирования, предварительное постановление

РЕЗЮМЕ:

В этой статье описаны главные рекомендации и сферы деятельности Суда Европейского союза. Судебные власти и существующее фактическое влияние Суда будут проанализированы на основе изменения суждений. Европейский суд - одно из главных учреждений Европейского союза, который поддерживает знания, нацеленные на обеспечение действительной, эффективной интерпретации и применения закона Союза. Посредством исторического развития Европейского союза Суд также получил все еще некоторые полномочия, в которых может быть замечено его косвенное участие в политике и законодательстве.

When we start to deeply analyze the existence and nature of the European Union, it is among the first opinions coming into mind: what is the exact character of this Union? EU is not in the ordinary state example, nor in an original organization or federation types. Here the expressing wording is about its supranational nature, of its own kind. That's why the

strict example of separation of powers can not be well founded in this regard. In the Court example, it is somehow more evident that the Court of Justice of the European Union (CJEU) implements the judicial functions within the EU. From the first side, it is an initially true statement. Although the role played by CJEU is not as simple as this. The guiding regulations let the Court ensure the same and valid interpretation and application of EU law. (7) Even when we start to define the nature of the Union, we meet the CJEU decision dated back to 1963, well-known Van Genden Loos case and further cases including Costa v. ENEL of 1964. Via these landmark judgements the Court stated the famous direct effect doctrine in the European Union and supremacy of the Union law. For sure they were not the only and historical examples, followed by Simmenthal, Factortame, Foto-Frost, influencing Kadi cases, CJEU continues to stress upon new policies and their implementation, while involving the member states to closely cooperate for this basic purpose.

Firstly, we can look through the main guidelines based on which the activity of the ECJ is regulated. The Court exists since the establishment of the initial roots of the modern Union, when the Court of the European Coal and Steel Community, in 1952 it came to existence. The basic competences are thus mentioned in the primary sources of the Union, namely, the Treaty on the European Union (TEU) and the Treaty on Functioning of the European Union (TFEU) to this day. The Statute of the Court of Justice of the European Union as a protocol is included to the consolidated version. This is a document regulating daily activities of the Court. The TEU states the Court of Justice of the European Union as one of the Union institutions in the Article 13. In this primary act, the Article 19 is devoted to the Court, where we can come across the main surveyed part of this research.

According to TEU, the structure of the Court, is composed of Court of Justice, General Court (Court of First Instance) and specialized courts. (2) Actually, this configuration is the cause of calling the Court as an institution of united courts with the name of Court of Justice of the European Union (CJEU). In general, this Court is usually referred in writings, like European Court of Justice (ECJ). So,

currently the CJEU is divided into two courts. From 2004 to 2016 September, the Civil Service Tribunal was also a part of this structural unity, jurisdiction of which is now included to the General Court as a result of the judicial reform in the EU. (6) Division of the activity spheres of these two courts are like following: Court of Justice acts as the highest instance, it handles cases brought before it within the procedure of preliminary rulings, certain cases for annulling acts which is believed to violate treaties or fundamental rights, and appeal cases. (7) It can not be deemed as the Court of Justice is for the appeal from national courts. The most common procedures before the Court of Justice are the following:

- Preliminary ruling procedure;
- Infringement proceedings;
- Annulment proceedings, and
- Proceedings for failure to act. (4)

General Court handles the cases for the annulment procedure brought by individuals, companies, sometimes EU governments. (7) Elaborating Article 256 of the TFEU where the work of the General Court is described, the following seem as the procedures before this instance: direct actions brought by natural or legal persons against acts of the institutions, bodies, offices or agencies of the European Union (which are addressed to them or are of direct and individual concern to them) and against regulatory acts (which concern them directly and which do not entail implementing measures) or against a failure to act on the part of those institutions, bodies, offices or agencies; for example, a case brought by a company against a Commission decision imposing a fine on that company; actions brought by the Member States against the Commission; actions brought by 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; actions seeking compensation for damage caused by the institutions of the European Union or their staff; actions based on contracts made by the European Union which expressly give jurisdiction to the General Court; actions relating to Community trademarks; actions brought against decisions of the Community Plant Variety Office or of the European Chemicals Agency. (4) As seen from this wide range of the procedural actions, the main case load concern the first instance

court as well.

The procedural character of the case hearing is similar at being conducted in oral and written stages, where the difference is about the number of judges selected per case. The cases heard in Court of Justice are handled by one assigned judge, who is called judge-rapporteur, and one Advocate –General. Different on the General Court case hearing, there are mainly three judges that hear cases, and no Advocate-General participates here. There are one judge from each member country in the Court of Justice, also 11 Advocates general, whereas the number of the members in General Court is for now 47, which is planned to be increased to 56, for the purpose of being two judges from each member country. (7)

Looking through the Article 19 of the TEU, clearly defined competences of the CJEU show the actions ECJ is entitled to review. It reads as follows:

- 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. (2)

Generally dividing the judicial powers in the Union, in the jurisprudence following differentiations of the powers before the Court are drawn:

- The power to annul legislative or executive acts;
- The power to remedy public wrongs through governmental liability;
- The power to adjudicate legal disputes between parties. (8)

When these powers are briefly concluded, the explanation can be so:

The power of judicial review is the founding stone of the Union as it is based on the “rule of law”. The next one, named as remedial power is about liability of Union for illegal action. The last power about adjudicating between parties is differentiated as direct and indirect actions. Direct action starts directly in ECJ, indirect action starts in national court and involves ECJ only in an indirect way. All the issues about judicial powers are regulated in the TFEU and Statute of CJEU. (8)

Now the powers of the ECJ can be analyzed in shadow of each of the proceedings before the Court. The basis for answer to the questions, including who against whom on which basis can claim, can be found in the TFEU. Let’s analyze the competences of Court within these actions.

1) Infringement procedure, the aim of which is about enforcing European Union law is stated in the Article 258 of the TFEU:

“If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.” (3)

So this action is against the Member State when the “guardian of Treaties”- European Commission has any such consideration. Here the action should be well founded, there are to be enough grounds to believe failing of the state to fulfill obligation of complying with EU law. Within the consistent breaching treatment, the Member State can create basis for a fine.(7)

2) Action for annulment, is aimed at preventing EU acts which violate EU Treaties. This is one of the basic and strong competences of the Court. Through this procedure the judiciary can influence, or even disturb the existing legal acts. This is a ground enlarging the powers of the ECJ. Annuling procedure is mentioned in the Article 263 of the TFEU, where the subjects, grounds, time limit are expressed. These questions are step-by-step explained in an easy way by Schütze. On the wording of the mentioned article of the TFEU, the action for annulment may be brought against:

- all legal acts;
- acts adopted by the Council, Commission, European Central Bank, European Parliament and European Council where these acts are intended to produce legal effects vis-à-vis third parties;
- acts adopted by European bodies, offices or organisations where these acts are intended to produce legal effects vis-à-vis third parties;
- measures adopted by the Board of Governors or the Board of Directors of the European Investment Bank (under certain conditions of

Article 271).

In addition, Article 263 of the Treaty on the Functioning of the EU excludes recommendations and opinions from the scope of the CJEU's jurisdiction. It means that the non-binding acts are not subject to judicial review.

In the Paragraph 2 the question of, "why there can be judicial review of the Union act?", is answered. Once an action for annulment has been referred to the Court of Justice, it shall assess whether the act conforms to EU law. It may then annul the act based on the grounds of:

Lack of competence; infringement of an essential procedural requirement; infringement of the Treaties or of any rule of law relating to their application; or misuse of powers. (8)

The next question is about who may ask for judicial review. Article 263 of the TFEU distinguishes several categories of plaintiffs. There are preferential plaintiffs including Member States, the Commission, the European Parliament and the Council. These plaintiffs are 'preferential' in the sense that they may bring an action for annulment before the CJEU without having to demonstrate any interest in taking action. Individuals may also refer an action to the CJEU as non-preferential plaintiffs. In contrast to preferential plaintiffs, they must demonstrate an interest in taking action in order to request the annulment of a European act. Thus, the contested act must be addressed to the plaintiff or must concern him or her directly and individually.

There are additional subjects who are able to apply on the certainly defined grounds with specific actions. The Court of Auditors, the European Central Bank and the Committee of the Regions may bring actions against European acts which, in their view, undermine their prerogatives. In addition, the Board of Directors of the European Investment Bank may contest measures adopted by the Board of Governors of the Bank. Lastly, the Treaty of Lisbon has created a new type of action: national parliaments and the Committee of the Regions may henceforth bring actions for annulment against acts which they consider to be contrary to the principle of subsidiarity. Finally, when question is answered, as: Plaintiffs have a period of two months in which to bring an action for annulment. (8)

3) Action for failure to act, in stated in the Article 265 of the TFEU. It is aimed at ensuring that EU takes action in the example of Union institutions making decisions. The Treaty requires the European Parliament, the Council and the Commission to make certain decisions under certain circumstances. If they fail to do so, the Member States, the other EU institutions and (under certain conditions) individuals or companies can lodge a complaint with the Court so as to have this violation officially recorded. (4)

4) Action for damages, is about sanctioning EU institutions for their action or inaction which

has resulted in damage to physical or legal persons. (7) This action procedure is stated in the Article 268 of the TFEU. It is for returning the amount of the damage as compensation.

5) Preliminary rulings procedure, being among the most used tools before the Court has its special nature. The aim for employing this type of proceedings is about ensuring the proper interpretation and application of the Union law in the member states of EU. Preliminary references are not appeals, they are discretionary acts of member states seeking help for interpretation. This procedure is open to all Member States' national judges. Under this procedure from Article 267 of the TFEU; 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. (3)

Preliminary ruling procedure is one of the two types of indirect review of the Court. The other one is the plea of illegality concerned in Article 277 of the TFEU. When the Court gives preliminary ruling in response to asking, the preliminary ruling will be binding. They are not binding on parties of national dispute, but on the national court that applied. It is binding not only on the national court on whose initiative the reference for a preliminary ruling was made, but also on all of the national courts of the Member States (de facto). It will be effective from time of ruling (ex munc). (8)

Through the years followed by introducing indirect review and namely, preliminary rulings, the situation has changed. Indirect ju-

dicial review has become favoured option of the Court. The reasons why the Court has preferred indirect review under Article 267 over direct review under Article 263 of TFEU are:

-Indirect challenge can be brought against any Union act-even those of non-binding nature.

-Indirect challenge can be brought on any grounds-even other than mentioned in Article 263.

-They can be launched by anyone-without regard to 'direct and individual concern'.

-They can be brought almost any time- without limit of two months.(8)

The transformation of the preliminary ruling system extended the obligations of member states, the precision of EU law and the use of third parties in solving disputes, thus significant legalization of EU law. (1) This type of proceedings stands firmly in emphasizing legal principles or doctrines for Member states all over the Union. Binding legal source is the case law included in both preliminary rulings and other judgements, for there is no sense in referring to ECJ every question of interpretation of EU law, when the question raised has already been answered in a ruling given in other procedure.(5) This will ease the work of the Court, as the preliminary rulings bind the other member states too. Through preliminary rulings we have witnessed the landmark decisions of the Court, including the ones mentioned, that has enormous influence in the relations occurring among all the subjects. They have formulated the law and different policy areas in the Union, also strengthen the existing guidelines.

So, the main actions before Court are mentioned above. Whereas these cases concern implications of the compliance and application of the principles by the Court, the principles of conferral, subsidiarity and proportionality are also strong bases. The tests in review of the cases help to define the objectivity and, thus let it correctly apply the Union law. The Court acts in judicial sphere, but has gained importance in defining policy guidelines or influencing to the law making. This issue is now debated more among lawyers, while interpretation of Union law falls solely within its powers. As a conclusion, evidently, the Court of the Union can not be simple a court or alike national constitutional courts, while it leads the judicial,

political development and helps enhancement of EU law.

REFERENCES:

1. Alter, K.J. (2009), *The European Court's political powers*, p.187, Oxford University Press,

<https://books.google.az/books?id=b-Z4SHDIaRGMc&pg=PA187&dq=C-JEU+role+EU++law+creation&hl=en&sa=X-&ved=0ahUKEwiR2eHw9YLYAhUpCZoKH-blaCCYQ6AEIOjAE#v=onepage&q=C-JEU%20role%20EU%20%20law%20creation&f=false>

Last visited: 05.02.2018

2. Consolidated version of the Treaty on European Union,

<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>

Last visited: 05.02.2018

3. Consolidated version of the Treaty on Functioning of the European Union,

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

Last visited: 05.02.2018

4. Information Guide on Court of Justice of the European Union, 2013, Cardiff University,

http://aei.pitt.edu/74891/1/Court_of_Justice.pdf - Last visited: 05.02.2018

5. Mikelson, G. (2013), *The binding force of the case law of the Court of Justice of the European Union*, p.480, Riga,

<https://www.mruni.eu/upload/iblock/3ef/JUR-13-20-2-06.pdf> - Last visited: 05.02.2018

6. Official website of CJEU,

https://curia.europa.eu/jcms/jcms/Jo2_6999/en/ - Last visited 05.02.2018

7. Official website of EU,

https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en - Last visited: 05.02.2018

8. Schütze, R. (2012), *European Constitutional Law* (pp. 258-302), Cambridge: Cambridge University Press