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The Lisbon Treaty and the European Court of Justice (Court of Justice of the European Union)

Abstract

The ECJ role as constitutional court has become increasingly important since 1985. Given its central role as the guardian of the entire European law, the ECJ has built the so-called "European constitution". As reconstructed impressively by Joseph Weiler and others, judicial constitution-building extended to the structural constitution (i.e. the relationship of European and national law including the famous doctrines of direct effect, supremacy and state liability), the substantive constitution (composed of the free trade provisions converted into basic market freedoms by the Court, competition law, and the protection of human rights invented by the Court), and the institutional constitution (setting forth the competencies and the rules of interaction of the various European institutions). A new phase of judicial activism has begun in the European Court of Justice, a phase focused on the protection of fundamental rights. The European Charter of Fundamental Rights, as well as the Lisbon Treaty has strengthened the position of the Court of Justice. This paper will elaborate the crucial changes contented in the Lisbon Treaty concerning the ECJ and also the new role of the Court in the procedure of the preliminary ruling.

Key words: Judicial system of the EU, European Court of Justice, Court of First Instance, Lisbon (Reform) Treaty, Constitutional Court, Constitutional Nature.

1. Basic remarks on the European Court of Justice

The European Court of Justice is an institution of the European Union which played a crucial part in the interpreting the Treaty basis of the Community.

For the first time, the Court was established in 1951 by the Treaty of Paris for the European Coal and Steel Community, as to adjudicate controversies arising within and among Members of the Community. It was established with seven judges, considered as an ideal number to allow for representation and an unequal number in case of a tie.

Six years later, in 1957, after the Treaties of Rome established the EEC and EURATOM, the European Court of Justice is vested with the authority and jurisdiction to adjudicate and rule on matters involving all three international communities. Actually, it became an institution when the Treaties of Rome established the EEC and EURATOM.

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Although all of the three communities were separated, under the Convention of 25 March 1957 they shared some common institutions like Parliamentary Assembly and the Court. In this way the Court of the ECSC became the Court of Justice of the European Communities.[1]

So, the fundamental authority of the ECJ derives from the Treaty Establishing the European Community (EC Treaty). It should be noted that the Maastricht Treaty introduced Article 171, currently Article 228 EC which have strengthened the Court's jurisdiction as it provided it with the power to impose financial penalties on Member States which fail to comply with a previous Court's judgment.

Basically, at Maastricht, Member States agreed to be subjected to penalty payments which would be paid by the taxpayers[2].

The Treaty of Amsterdam replaced the Convention from 1957. The Treaty outlined the Court as an official and separate institution with clear powers and responsibilities. It was already established as the official court of the communities in 1988.

At the Treaty of Nice 2000, EU Member States agreed to overhaul the workings of the ECJ and its junior institution, the European Court of First Instance (CFI). One reason for this option was the prospect of EU enlargement and another was the expansion of the Court's jurisdiction into new areas.

The Nice Treaty reforms therefore aim to increase the speed at which cases are heard and processed. Every day, the ECJ resolves disputes that would otherwise provoke major disagreements between or within Member States. The Nice Summit actually affirmed the position of the ECJ as the highest constitutional court in Europe.

On the whole, these instances of judicial governance have met the acceptance of the Member States and the legal community. In the case of human rights protection, this judicial governance produced a more or less common standard, reflecting common historical and cultural heritage and achievements such as the ECHR.

Since January 2007, the Court of Justice is made of 27 judges and 8 Advocates General. The Judges and Advocates General are appointed by common accord of the governments of the Member States and hold office for a renewable term of six years. Each Member State of the EU has the power to nominate one judge.

Today, the Court of Justice of the EC, usually called the European Court of Justice (ECJ) is the highest court in the European Union which has an ultimate say on matters of EU law in order to ensure equal application across the various EU Member States.

The Court is assisted by a lower court, the Court of First Instance, established in 1989, dealing with certain issues with aim to relieve the ECJ from an increasing caseload. The CFI actually serves as a court of original jurisdiction for certain categories of cases[3] for which the ECJ

[1] See: Muňoz, Susana (2007), Composition of the Court of Justice, the Court of First Instance of the European Communities and of the Civil Service Tribunal, Europa (web portal), retrieved on 2007-08-27.

[2] For more details, see: Margarida Vasconcelos (2008), "Whose Court of Justice? The European Supreme Court", The European Journal: In Focus, January.

[3] The CFI has original jurisdiction in cases involving the following issues:

- Reviewing the legality of acts adopted jointly by the European Parliament and the Council of Ministers, any acts of the Council of Ministers, any acts of the European

had original jurisdiction before the CFI was established. The ECJ has appellate jurisdiction in those cases over which the CFI has original jurisdiction.

We have to mention that also two other courts deal with other responsibilities: the Civil Service Tribunal established in 2005 has a jurisdiction to deal with disputes between the EU and the European civil service and centralized EU court which is dealing with the patent law of the EU.

The Lisbon Treaty 2007 establishes a division of competences between the Union and the Member States. It defines which areas will be within the exclusive competence of the Union and which are shared between the Union and the Member States. Obviously, the ECJ will have a major role in the interpreting and deciding on the competence boundaries and it will do so with the objective of the uniform application and effectiveness of EU law.

Moreover, the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty specifically provides the Court with jurisdiction to hear actions for judicial review on grounds of infringement of the principle of subsidiarity.[4]

In the Article 8 of the Protocol No. 2 concerning the application of the principles of subsidiarity and proportionality is stipulated that "The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 230 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it. In accordance with the rules laid down in the said Article, the Committee of the Regions may

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Commission and any act of the European Parliament intended to legally affect third parties;
- In a case asserted by a Member State or a EU organ where the EC Treaty is violated and none of the European Commission, European Parliament or Council of Ministers take action against such violation;
- Actions by individuals and legal entities to contest decisions or regulations that affect them personally and actions by individuals and legal entities for the failure of an EU organ to address to any such individual or legal entity a binding act;
- Disputes between the EU and its civil servants;
- Actions by individuals or legal entities for damages from acts committed by the EU or its civil servants and
- Actions by individuals and legal entities for judgment pursuant to an arbitration clause contained in a contract with the EU. See: Nicholas G. Karambelas (2003), "Fundamentals of the European Union (EU) Court System", Washington Lawyer Magazine, Vol. 18 No. 4, December.

[4] Previous experience shows us that the ECJ does not upend Community action on the ground that it does not comply with Article 5, principle of subsidiarity. For instance, in the case of the Working time directive (C-84-94 United Kingdom of Great Britain and Northern Ireland v. Council of the EU) the UK argued that directive 93/104/EC infringed upon the principle of subsidiarity but the action for annulment was dismissed. Hence, the Lisbon Treaty will strengthen the political role that the ECJ has been developing for itself. So, the judicial process will become even more politicized. As the House of Lords has pointed out in its report concerning the Constitution "but if the Court is the ultimate arbiter on the extent of the Union's competence it follows that the Court also has the final say in defining the extent of Member States' powers. It is this side of the coin which some find unacceptable from a political and in some cases constitutional standpoint". See: Margarida Vasconcelos (2008), "Whose Court of Justice? The European Supreme Court", The European Journal: In Focus, January.

also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted".[5]

As it is quite familiar, the Lisbon Treaty abolishes the pillar structure.

Therefore there is no corresponding provision to Article 46 TEU which limits the ECJ jurisdiction regarding third pillar matters (police and judicial cooperation).

On the other hand, the Lisbon Treaty brings judicial cooperation in criminal law and police cooperation within the general framework of judicial control as applied to other areas of EU law. The ECJ will have full jurisdiction, not merely the power to give preliminary rulings.

2. The Lisbon Treaty and the Organisation of the Judicial Institutions in the EU

The Lisbon Treaty does not change the current judicial structure but uses new names for the judicial institutions.

The ECJ is called Court of Justice of the European Union, the Court of First Instance is called General Court, and the panels are named specialised courts.[6] Those specialised courts will be established by the European Parliament and the Council in the ordinary legislative procedure.[7]

The ECJ is the highest court of the EU and is based in Luxemburg.

It has the ultimate say on matters of EU law in order to ensure its equal application across all EU member states. The President of the ECJ is elected from and by the judges for a term of three years which is renewable. He presides over hearings and deliberations of the full Court or the Grand Chamber, directing both judicial business and administration.

The ECJ sits in Chambers consisting of three or five judges. On request by a member-state or an EU institution, the decision falls to a Grand Chamber composed of 13 judges. In certain cases enumerated in the Statute of the ECJ it decides in plenary session.
Decisions are reached with simple majority.

The Advocates-General are full members of the Court and their most important task is to prepare written opinion on the case before the ECJ reaches its decision. However they need not be involved in every case before the ECJ, so the Statute of the ECJ provides in which cases they are involved. This opinion does not bind the ECJ, although in most cases it is followed by the ECJ.

The procedure for the ECJ is regulated in the Treaties, in the Statute of the ECJ and in its rules of procedure, which it has given itself according to Art 223 EC.

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[5] See: The Treaty of Lisbon: Implementing the Institutional Innovations, Joint Study CEPS, EGMONT and EPC, November, 2007: 94-95.
[6] Reform Treaty, Art 19 TEU.
[7] Art 257 1TFEU.

The composition and organisation of the CFI is similar to the ECJ.

One difference is that it consists of at least one judge per Member-State, so there could be more judges than member-states. The CFI also sits in chambers.

The competencies of the CFI comprise, for instance:

- actions for annulment (against acts of the EC institutions);
- actions for failure to act (against inaction by the EC institutions);
- actions for damages (for the reparation of damage caused by unlawful conduct on the part of a EC institution).

The Lisbon Treaty contains similar organisational rules (Art 256 TFEU and Protocol on Organisation and function of the European R. L. R. Court of Justice (Court of Justice of the European Union, No. 3).

If we take a look at the competencies conferred on the ECJ we see that there are very different actions. As already mentioned before, in some of these cases the competence, for instance, decisions has been transferred to the CFI (General Court) or the EU Civil Service Tribunal, so the ECJ only acts as an appeals court. The Lisbon Treaty is not changing those competencies.

The most important competencies of the ECJ can be summarised as follows:

- Actions for failure to fulfil obligations. This means that the ECJ can determine whether a Member State fulfils its obligations under Community law (Art 226, 227 EC). Furthermore, it has been consistently held that the national courts whose task is to apply the provisions of Community law in areas within their jurisdiction must ensure that those rules take full effect and must protect the rights which they confer on individuals.[8]

The full effectiveness of Community rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain redress when their rights are infringed by a breach of Community law for which a Member State can be held responsible.

- Actions for annulment. By an action for annulment, the applicant seeks the annulment of a measure (regulation, directive or decision) adopted by an EC, institution because it violates the EC Treaty.

- Actions for failure to act allow the review of a failure to act on the part of an EC institution.

- Application for compensation based on non-contractual liability.

- Appeals and Reviews. Against judgments and orders of the CFI appeals may be brought before the ECJ, but only on points of law. If the appeal is well founded, the ECJ sets aside the judgment of the CFI. Decisions of the CFI on appeals against decisions of the EU Civil Service Tribunal can only in exceptional circumstances be reviewed by the ECJ.

- Preliminary decisions.

[8] Case 106/77 *Amministrazione delle Finanz e dello Stato v Simmenthal* [1978] ECR 629, paragraph 16, and Case C□213/89 Factortame [1990] ECR I2433, paragraph 19.

All procedures before the ECJ consist of a written stage and usually an oral stage in open court. However, there are some differences between references for preliminary rulings and direct actions. A special problem arises from the fact that there is not one common language for proceedings before the ECJ. Direct actions can be brought in any of the 23 official languages of the EU.[9]

Once the written procedure is closed, the parties are asked to state whether and why they wish a hearing to be held.

The ECJ decides, after having read the report of the Judge-Rapporteur and having heard the views of the Advocate-General, whether preparatory inquiries are needed, what type of formation the case should be assigned to, and whether a hearing should be held.

If there is a hearing, the case is argued publicly. After the hearing, the Advocate-General delivers his opinion before the ECJ in open court. In cases where the ECJ holds that they do not raise new question of law, the ECJ can decide to give judgment without an opinion.

Apart form this usual procedure there are some special procedures. If a request for a preliminary ruling concerns a question on which the ECJ has already ruled or if there is no reasonable doubt on how to solve the question or where the solution may be deduced from existing case-law, the ECJ may give its decision by reasoned order, citing in particular a previous judgment relating to that question or the relevant case-law.

In expedited procedure the ECJ can give its rulings quickly in very urgent cases by reducing time-limits and omitting certain steps during the procedure. Such a procedure can also be used for references for preliminary rulings. Actions before the ECJ do not have automatic suspensive effect.

However, through applications for interim measures the parties may seek suspension of the operation of measures or other interim orders necessary to prevent serious and irreparable damage.

The EU judicial system suffered significant changes with the Lisbon Treaty. The provisions that refer to the Court of Justice and the Court of First Instance are partly moved and now could be found in the Title 3 of the EU Treaty, i.e. in the part titled: “Provisions for the EU bodies”.

The Lisbon Treaty significantly altered the ECJ competences with regard to the issues that were previously regulated in the first and second pillar. The changes foreseen with the Lisbon Treaty refer to the organization of the court, as well as to the proceedings led in front of the EU courts.

Also, significant changes have been done in the part of initiating separate proceedings on lawsuits for annulment of acts, in proceedings for sanctioning of the EU Member States in case of non-fulfillment of obligations coming from the Treaty, as well as in the proceedings for granting preliminary ruling, i.e. so—called preliminary procedure.

[9] In procedures concerning preliminary rulings, the language used in the procedure is that of the national court which made the reference to the ECJ. Oral proceedings at hearings are interpreted simultaneously. The deliberations of the judges are held in French without interpreters.

Since the Lisbon Treaty abandoned the three EU pillars, this influenced on the increased ECJ competences, because, in accordance to the provisions, this court had no competence in the second pillar, and quite limited competences in the third pillar.

The increased ECJ competence in the part of the police and judicial cooperation comes as a result of the fact that the former Chapter 6 of the EU Treaty becomes part of the Chapter 4 of the current Treaty on the Functioning of the EU.

Now, the ECJ gains competences to examine the legality of the acts adopted in the fields of justice and home affairs. With the new Treaty, the ECJ become EU Court of Justice, while the First Instance Court gained the title General Court.

The Reform Treaty foresees that the European Parliament and the Council could, with their decisions, in accordance with the regular legislative procedure, establish specialized courts, based on a proposal of the Court of Justice, and in previous consultation with the European Commission.

The Treaty also foresees certain changes that refer to the procedure led in front of the ECJ and the General Court. In accordance with the Article 19 from the Treaty on the Functioning of the Union, the ECJ will have the following competences:

The most important competencies of the ECJ can be summarised as follows:

- *Actions for failure to full obligations*. This means that the ECJ can determine whether a Member State fulfils its obligations under Community law (Art 226, 227 EC). Furthermore, it has been consistently held that the national courts whose task is to apply the provisions of Community law in areas within their jurisdiction must ensure that those rules take full effect and must protect the rights which they confer on individuals.[10]

The full effectiveness of Community rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain redress when their rights are infringed by a breach of Community law for which a Member State can be held responsible.

- *Actions for annulment.* By an action for annulment, the applicant seeks the annulment of a measure (regulation, directive or decision) adopted by an EC Institution because it violates the EC Treaty.

- *Actions for failure to act* allow the review of a failure to act on the part of an EC
institution.

- *Application for compensation based on non-contractual liability*.

- *Appeals and Reviews*. Against judgments and orders of the CFI, appeals may be brought before the ECJ, but only on points of law. If the appeal is well founded, the ECJ sets aside the judgment of the CFI. Decisions of the CFI on appeals against decisions of the EU Civil Service Tribunal can only in exceptional circumstances be reviewed by the ECJ.

[10] Case 106/77 *Amministrazione delle Finanz e dello Stato v Simmenthal* [1978] ECR 629, paragraph 16, and Case C□213/89 Factortame [1990] ECR I2433, paragraph 19.

- *Preliminary decisions.*

- to decide on lawsuits filed from the EU Member States, the bodies, physical or legal entities;

- to enact decisions on preliminary questions based on a request of the courts or tribunals of the EU Member States with regard to the interpretation of the *acquis communitaire*, or the legality of the acts adopted by the EU bodies; and

- to decide on other aspects foreseen with the Treaty.

Also, the Lisbon Treaty for the first time defines the authority of the ECJ to act on precise legal protection.

The concrete legal protection is realized through a lawsuit for annulment of acts, which is partially altered with the Lisbon Treaty. The changes refer to the following: the scope of bodies whose acts are subject to judicial review by the ECJ. Namely, the Court of Justice "controls the legislative acts, the act of the Council, of the Commission, the European Central Bank, except recommendations and opinions, as well as the acts of the European Parliament and the European Council, which produce legal actions against third parties."

The European Council is put on the ECJ control list, which means that a decision passed jointly by the representatives of all 27 EU Member States is still subject of legal control by the ECJ. This is a huge step ahead, because the decisions of the European Council are no longer untouchable.

The Lisbon Treaty adds a list of EU bodies, offices and agencies, whose acts are also put under the control of the ECJ, because of the increased scope of activities, as well as due to their increased number.

The ECJ is for the first time authorized to decide on lawsuits from the Committee of Regions, filed to protect its competences, as well as on lawsuits form the Court of Auditors and the European Central Bank. In practice, this means that the Committee of the Regions could file a lawsuit, unless some of the EU bodies failed to consult this body on matters under its scope of competences. Also, the physical and legal entities could more easily request assessment for the legality of the administrative acts and which acts produce legal acts for themselves.

Also, Article 228 defines the competences of the Court to pronounce fines if a certain EU Member State fail to act in accordance with a decision passed by the ECJ in a timeframe defined by the EC. With regard to the preliminary rulings, the ECJ could adopt a decision on the matters concerning the interpretation of the Reform Treaty, interpretation and validity of acts adopted by the EU bodies, European Central Bank, and the statutes of the bodies founded by the acts of the Council.

The national courts have a discretionary right to decide on whether to file a request for opinion to the court or not, while for the courts against whose decision there is no legal remedy, the assessment of their decisions by the ECJ is obligatory. The application of the Article 234 from the EC Treaty is also foreseen with the Article 68 from the same Treaty. The Article 234 is applied on Chapter 4 "Visas, Asylum, Emigration and other policies that refer to the freedom of movement", when the interpretation of the acts of the EC bodies is launched in a proceeding in front of a national court and when the decision of the court is not subject to legal remedy in the national legislation.

Article 35 from the EU Treaty foresees that the ECJ passes preliminary decisions on the validity and the interpretation of the framework decisions and general decisions, for interpreting conventions adopted in accordance with the Chapter "Provisions for Police and Judicial cooperation in the criminal cases," as well as on the validity and interpretation of the regulations according to which these conventions are applied.

3. The Constitutional nature of the ECJ

It is difficult to deny that the ECJ has played crucial role in the process of "constitutionalisation" of the EU legal order. In guarding the specific nature of this legal order, the ECJ has been prone to underlining its autonomy especially in relation to other international or European regimes.[11]

The Nice reforms have profoundly changed the judicial architecture of the EU, in response to the new challenges of a larger, more diverse EU and the increasing complexity of the European economy. With the creation of a new tier of jurisdiction through the specialist panels, the Court of First Instance, now General Court, could be considered as a High Court dealing with the day-to-day business of European law. The ECJ will continue to hear appeals from the CFI but can now focus on its real strength: determining constitutional matters and serious issues of principle affecting the coherence of EU law.[12] Despite criticism from national politicians and other courts, the Nice Summit affirmed the ECJ as the highest constitutional court in Europe.

On the other side, the Lisbon Treaty, also, will strengthen the functioning of the ECJ as Supreme Court of the Union whose jurisdiction will be fundamentally constitutional in character. The ECJ had and will have a central role to play not only in relation to matters of economic nature but also in political issues like political governance, defining democracy at European level, and contributing through the process of judicial harmonization to the emergence of a European demos.

It is obviously that the Lisbon Treaty in continuum will strengthen the constitutional character of the ECJ. On this line are the current interpretations of the ECJ about the existing Treaties which are found to have constitutional nature. As noted by the ECJ, the founding Treaties are "basic constitutional charter" of the Union. What is also clear is that the ECJ use the interpretative techniques and tradeoffs that are quite typical of constitutional adjudication.

Therefore, there can be no doubt that the ECJ already carries out the constitutional tasks. But, there can be no doubt also that the ECJ will remain a supreme court in charge to rule the main constitutional issues and to safeguarding the consistency of EU law.

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[11] See: E.C.J. Opinion 1/91 on a draft agreement relating to the creation of the European Economic Area, 1991 ECR I-6079.

[12] See: Matthew Heim, Speeding up European Justice, Centre for European Reform, August/ September 2001-CER Bulletin, Issue 19:
available at: http://www.cer.org.uk/articles/n_19_heim.html.

The important question that is raised in the academic debate about the future position of the ECJ is whether the ECJ has to develop its broader role in the EU judicial system, or it has to specialize on the truly important questions with constitutional character.

Through this debate the two opinions are crystallizing in the context of limiting the ordinary jurisdiction of the ECJ to the so-called truly important questions.

Firstly, the ECJ would be spared from having to consider relatively non-problematic cases which do not require the time and attention of a supreme court for their resolution. The judges would have more time to balance the options available to them and to provide more detailed legal reasoning in their judgments and orders.

Secondly, it would allow the ECJ to hear cases before it in the grand or the plenary chamber and on a more regular basis than is the case today.[13]

So it can be concluded that in long term the ECJ should focus only on deciding the main constitutional issues and on safeguarding the consistency of EU law where necessary.

4. Conclusion

The Lisbon Treaty made significant challenges for the newly named Court of Justice of the European Union (ECJ). These changes include: the removal of the three pillar structure of the Treaty on the European Union, changes to the composition of the ECJ, the establishment of an advisory panel to review proposed nominations to the Union Courts, exclusions of competence of the Court by the Treaty on the Functioning of the European Union, the enlargement of the reference procedure from national courts, the Charter of Fundamental Rights, accession of the EU to the European Convention on the Protection of Human Rights and Fundamental Freedoms, changes to locus standi, and increases in the Courts' case load.

Generally speaking, the ECJ has jurisdiction in three main areas:

- first, the ECJ can hear actions brought against Member States to ensure that they comply with their obligations under the EU Treaties and under EU legislation, actions well known as “infringement proceedings”,
- second, like many constitutional courts, the ECJ has the power of “judicial review” of EU legislative and executive acts. The ECJ power of judicial review is actually seen as the ability of the Court to act when it has been called upon by the EU Treaty or a piece of secondary legislation, and,
- third, the ECJ has jurisdiction to give preliminary rulings on references by national courts.

Also, the Court exercises the review of human rights protection within the scope of the Community legal order only according to the

[13] For example, in the 1990, approximately 45% of the cases were judged by chambers and 55% by the ECJ sitting in plenary session, whereas in 2004 the plenary and the grand chamber ruled on only 12% of the cases. Five-judge chambers are thus becoming the usual formation for hearing cases brought before the ECJ, which is unsatisfactory if one remembers that all or at least a much larger number of national systems should in principle have their say when important questions are addressed. See: Bo Vesterdorf (2006), A Constitutional Court for the EU?, International Journal of Constitutional Law, Vol. 4, Issue 4, October: 607-617.

genuine Community standard. The Court does not apply the standard of human rights protection as it is guaranteed in any of the Member States, but as it is guaranteed in the Community law. This will become clear when the formula of general principles, the main source of the standard debate is replaced by the Charter. The Court is empowered to hear cases on all aspects of EU law not reserved to the General Court.

However, the ECJ will hear appeals from the General Court on matters of law in much the same way as the English appeals system works. Individuals are not able to bring a case to the Court of Justice directly. Instead, they must bring a case in their relevant national court which has the power to request a preliminary ruling on an interim reference to the ECJ under Article 234EC.

The purpose of this indirect method is to prevent the court from being overrun with cases that can be decided on a national level. This also allows the national courts to better structure judgments in line with the way European law has been enacted in their own countries.

The Court has the power to order a Member State found in breach of EC law to take action to remedy the breach, and can issue heavy fines if this does not happen. Fines can take the form of a fixed or recurring penalty, depending on the severity of the case.

As the Supreme (or Constitutional) Court of the European Union, the European Court of Justice has jurisdiction over the interpretation of both the Treaty Articles forming the basis of the EU and also the individual regulations and directives that make up the majority of European Community law. It may issue interim references on request from national courts, further shaping the law, and fine Member States that fail to comply with it.

Although protection of fundamental human rights is not exclusive under the jurisdiction of the ECJ, the Court must continue to be actively engaged in an on-going series of contacts and discussions with other national courts and their judges on human rights issues. Whether the ECJ and its jurisdiction will be elaborated as supreme or as constitutional court of the EU, it will not make a crucial difference.

The final remark is that the ECJ have elements of both courts seen through the position of this Court in the judicial system of the EU, and through its jurisdiction in the field of human rights protection.

LIST OF REFERENCES:

Journal articles
Printed journals:

1. Bo Vesterdorf (2006), A Constitutional Court for the EU?, International Journal of Constitutional Law, Vol. 4, Issue 4, October,

2. Margarida Vasconcelos (2008), "Whose Court of Justice? The European Supreme Court", The European Journal: In Focus, January,

3. Nicholas G. Karambelas (2003), "Fundamentals of the European Union (EU) Court System", Washington Lawyer Magazine, Vol. 18 No. 4, December,

Online editions of journals:

1. Matthew Heim, Speeding up European Justice, Centre for European Reform, August/ September 2001-CER Bulletin, Issue 19: available at: http://www.cer.org.uk/articles/n_19_heim.html.

2. Muňoz, Susana (2007), Composition of the Court of Justice, the Court of First Instance of the European Communities and of the Civil Service Tribunal, Europa (web portal), retrieved on 2007-08-27.

3. The Treaty of Lisbon: Implementing the Institutional Innovations, Joint Study CEPS, EGMONT and EPC, November, 2007

- http://curia.europa.eu/jcms/jcms/Jo2_6999/general-presentation
- http://news.bbc.co.uk/1/shared/spl/hi/europe/04/eu_institutions/html/court_of_justice.stm
- http://europa.eu/institutions/inst/justice/index_en.htm
- http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-12/cp090104en.pdfhttp://curia.europa.eu/jcms/upload/docs/application/pdf/2009-12/cp090104en.pdf
- http://www.consilium.europa.eu/showPage.aspx?id=1296&lang=en