

Direct actions before the General Court

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Types of direct actions

- **Action for annulment (Art 263 TFEU)**



most
common!

- (alleged) unlawful binding acts of Union institutions, bodies, offices or agencies (e.g. decision imposing a fine)

- **Action for failure to act (Art 265 TFEU)**

- (alleged) unlawful inaction of Union institutions, bodies, offices or agencies (e.g. failure to adopt an act)

- **Action for damages (Art 268 and art 340(2)(3) TFEU)**

- non-contractual liability of the Union for damages caused by its institutions or servants

Focus of this
presentation

- **Staff cases (Art 270 TFEU)**

- Dispute between the Union and its civil servants

- **Action pursuant to arbitration clause (Art 272 TFEU)**

- Disputes arising from contracts concluded by the Union

Applicable rules

- Statute of the Court of Justice of the European Union (“**Statute**”)
- Rules of Procedure of the General Court (“**RP**”)
- Practice rules for the implementation of the Rules of Procedure of the General Court (“**PRIRP**”)
- Rules of Procedure of the Court of Justice (“**RP CJ**”)
- and others

(available at: https://curia.europa.eu/jcms/jcms/Jo2_7040/en/)

Action for annulment (1)

- **Challengeable acts**
 - Act of an Union institution, body, office or agency
 - Binding and intended to produce legal effects
 - Depends on substance and not on formal requirements (also measures not foreseen in Art 288 TFEU can be challenged)
 - Not challengeable:
 - Mere preparatory acts
 - Confirmatory acts

Action for annulment (2)

- **Applicants**

- I. **Privileged applicants** (Art 263(2) TFEU):

- Member States
 - European Parliament
 - Council
 - Commission

- II. **Semi-privileged applicants** (Art 263(3) TFEU) – only for the purpose of protecting their prerogatives:

- Court of Auditors
 - European Central Bank
 - Committee of the Regions

Action for annulment (3)

III. Natural and legal persons (Art 263(4) TFEU) only if

1) Addressees of the contested act

2) **Directly and individually concerned**

- Direct concern: the contested act directly affects the applicant's legal situation and its implementation is purely automatic without the application of other (national) intermediate rules
- Individual concern: the contested act affects the applicant by virtue of certain attributes specific to him or by reason of circumstances in which he is differentiated from all other persons and by virtue of these factor distinguishes him individually just as in the case of the person addressed by the contested act (Case 25/62, *Plaumann*)
→ **very restrictive!**

Action for annulment (4)

3) Regulatory act of direct concern not entailing implementing measures

- Regulatory act: all non-legislative acts of general application (Case C-583/11, *Inuit*)
- Direct concern: see before
- Implementing measures:
 - Irrespective of whether adopted by the Union or the Member States
 - If regulatory act entails implementing measures, those measures must be challenged
 - If regulatory act does not entail implementing measures, an action of annulment ensures that individuals do not have to break the law in order to have access to a court
 - Necessity of implementing measures is assessed by reference to the position of the applicant

Action for annulment (5)

- **Legal interest:**

- Requirement for natural and legal persons
- Applicant must have a vested and present interest in the annulment of the challenged act → annulment must produce an advantage for the applicant
- May disappear in the course of the proceedings → decision by order

Action for annulment (6)

- **Causes for annulment (Art 263(2) TFEU):**
 - Lack of competence (e.g. legal basis)
 - Infringement of an essential procedural requirement (e.g. right of participation, right to be heard, absence of a statement of reasons)
 - Infringement of the Treaties or of any rule of law relating to their application
 - Misuse of powers

Action for annulment (7)

- **Time limit:**
 - Two months of
 - **notification** of the challenged decision to the applicant; or
 - the **publication** of the decision **in the Official Journal of the European Union** +14 days pursuant to Art 59 RP; or
 - in the absence thereof, of the day on which it came to the **knowledge** of the applicant

Action for failure to act

- **Subject of the action:** inaction despite duty to adopt a binding act having legal effects
- **Applicants:**
 - Privileged applicants: Member States and Union institutions (Art 265(1) TFEU)
 - Non-privileged applicants: natural and legal persons (Art 265(3) TFEU) which would have been addressees of the act or directly and individually concerned (similar concept as for actions for annulment)
- **Admissible only if**
 - Institution, body, office or agency concerned has been called upon to act and
 - has not defined its position within two months (Art 265(3) TFEU)
- Action may be brought within a further **period of two months** (Art 265(3) TFEU)
- **Consequence:** declaratory judgment (Art 266(1) TFEU)

Action for damages

- **Subject of the action:** non-contractual liability of the Union for damages caused by its institutions or servants in the performance of their duties
- **Independent form of action**
- **Applicants:** any natural or legal person injured
- **Cumulative conditions:**
 - Unlawful act or conduct: sufficiently serious breach of a rule of law which is intended to confer rights to individuals (C-352/98 P, *Bergaderm*, 41, 42, 55, 62)
 - Areas of reduced or no discretion: mere infringement is sufficient
 - Otherwise: institution must have manifestly and gravely disregarded the limits of its discretion
 - Actual damage
 - Direct causal link between unlawful act or conduct and damage
- **Time-limit:** 5 years after occurrence of damage (Art 268 and 350 (2) (3) TFEU)

Introduction to proceedings (1)

- **Lodging of documents**

- All procedural documents must in principle be lodged and served by means of the electronic application e-Curia (Art 56a (1) RP)
- No court fees for proceedings before the General Court

- **Representation**

- A natural or legal person must be represented by a lawyer (Art 19 Statute)
- Lawyers must certify that they are authorised to practise before a court of a MS or EEA-State (Art 51 (2) RP)
- In the case of legal persons: lawyers must lodge an authority to act (Art 51 (3) RP)
- According to MS laws, university teacher can have the same rights as lawyers (Art 19 Statute)

Introduction to proceedings (2)

- **Content of the application** (Art 76 RP)
 - Name and address of the applicant
 - Particulars of the status and address of the applicant's representative
 - Name of the main party against whom the action is brought
 - Subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law
 - Forms of order sought by the applicant
 - Where appropriate: any evidence produced or offered
 - Contested act/request to act (Art 21, para 2, Statute)
 - Length: max 50 pages (PRIRP, § 105)

Introduction to proceedings (3)

- **Procedural time limits (1)**

- calculated in an uniform manner
- extension of ten days for distance (Art 60 RP)
- not further extendable if imposed by the Treaties
 - e.g. time limits for lodging of an action for annulment, failure to act or damages
- extendable if imposed by the Rules of Procedure
 - e.g. time limits for lodging the defence, reply or rejoinder

Introduction to proceedings (4)

- **Procedural time limits (2)**

- determination of the *dies ad quem* (final day on which time stops running)

- If the time limit ends on a **Saturday, Sunday or an official holiday: extended** until the end of the next working day (Art 58 (2) RP)
 - time limit expressed in weeks, months or years: ends with the expiry of whichever day in the last week, month or year is the **same day of the week, or falls on the same date** (if, that day does not occur in the month, the time limit shall end with the expiry of the last day of that month) (Art 58 (1) (b) RP; Judgment of 15 January 1987, Case C-152/85, *Misset*, paras 8-10)

Introduction to proceedings (5)

- **Omission of data vis-à-vis the public**

- Personal data (Art 66 RP)

- Omission of **full names of natural persons** or **any other personal data** of those natural persons mentioned in documents and information to which the public has access
 - Application by a party by a **separate document** or own motion of the Court

- Data other than personal data (Art 66a RP)

- Omission of data **other than personal data** of natural persons mentioned in documents and information to which the public has access
 - **Reasoned application** by a party by a **separate document** or own motion of the Court
 - If **legitimate reasons** keeping the information confidential

Most common procedural issues (1)

- Court is bound by the subject-matter of the case (e.g. Judgment of 3 May 2018, Case C-376/16 P, *European Dynamics*, para 33)
- Principle of *ne ultra petita*: scope of the annulment granted **may not go further than that sought by the applicant** (e.g. Judgment of 4 Feb 2016, Cases C-659/13 and C-34/14, *C & J Clark International*, para 181)
- Except *ex officio* grounds:
 - Lack of competence (e.g. Judgement of 24 Sept 2019, Case T-301/18, *Yanukovych*, para 65)
 - Infringement of essential procedural requirements (e.g.: absence of a statement of reasons) (e.g. Judgment of 6 Feb 2020, Case T-485/18, *Compañía de Tranvías de la Coruña*, para 21)

Most common procedural issues (2)

- New-pleas may not be introduced in the course of proceedings (Art 84, para 1, RP)
 - Thus, **plea put forward for the first time in the reply is inadmissible** (e.g. Judgment of 11 May 2017, Case T-115/15, *Deza*, paras 205-207)
 - Exception for pleas:
 - based on matters of law or fact which came to light during the proceedings
 - amplifying a plea previously put forward (e.g. Judgment of 28 February 2018, Case T-292/15, *Vakakis kai Synergates — Symvouloi gia Agrotiki Anaptixi AE Meleton*, para 50)

Most common procedural issues (3)

- Presentation of pleas: specific complaints as well as their legal and factual basis must be expressed in the application (e.g. Judgment of 17 Sept 2019, Cases T-129/07 and T-130/07, *Ireland*, para 79)
 - **the mere enumeration of pleas is not sufficient** (e.g. Judgment of 5 March 2019, Case T-450/17, *Eurosupport — Fineurop support*, para 32)
 - **unsupported arguments are inadmissible** (e.g. Judgment of 12 July 2018, Case T-444/14, *Furukawa Electric*, para 271)

Most common procedural issues (4)

- Supporting evidence:
 - has to be **offered in the application** (Art 85 (1) RP)
 - in the course of the proceedings only if justified/exceptionally (Art 85 (2) + (3) RP)
 - referral to the relevant document number in a schedule of annexed documents (Art 72 (3) RP)
 - **no unsubstantiated reference to annexes**
 - it is not for the Court to seek to identify the relevant pleas and arguments in the documents to which the parties refer (e.g. Judgment of 12 March 2019, Case T-463/18, *Novartis*, para 15)

Language difficulties in written and oral submissions

- Language of the case:
 - **Chosen by the applicant** (Art 45 RP)
 - 24 official EU languages (Art 44 RP)
 - Used for oral hearing and publication of judgment
- Problems:
 - Slowing down of decision making process by various correction and translation steps
 - Written submissions: **beware of need of translation!**
 - be clear and concise
 - avoid long and complicated sentences
 - don't use technical terms specific to a national legal system
 - avoid excessive use of passive voice and nouns
 - Oral submissions: **beware of need of simultaneous interpreting!**
 - speak clearly, slowly and in a well-structured manner
 - if possible, send notes to the Interpretation Directorate in advance

Standard procedure (1)

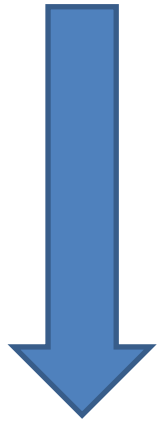
I. **Written part** (exchange of written pleadings)

- application
- defence (two months after notification of the application)
- reply/rejoinder (if not considered unnecessary)

II. **Internal reflections**

- Juge Rapporteur submits preliminary report
- If necessary: proposes measures of organisation of procedure and/or measures of inquiry
- Meeting of the competent chamber
 - First discussions about the case
 - Decisions:
 - upon the proposals of the Judge Rapporteur
 - opening of the oral part of the procedure
 - whether case needs to be referred to a chamber with a different number of Judges

Standard procedure (2)



III. Oral part (hearing)

IV. Draft judgment

V. Deliberations (secret)

VI. Delivery of the judgment

Appeals to the Court of Justice (1)

- Against decisions of the General Court
- Time limit: within two months of the notification (Art 56 Statute)
- Limited to points of law (Art 256 (1) TFEU; Art 58 Statute)
- Must seek to have set aside, in whole or in part, the decision of the General Court as set out in the operative part of that decision (Art 169 RP CJ)
- Language of the case is the language of the decision of the General Court
- Procedure before the Court of Justice consists also of a written and an oral part

Appeals to the Court of Justice (2)

- **Restrictions** if appealed decision of the GC concerns a **decision of an independent board of appeal** such as those of the European Union Intellectual Property Office (EUIPO), the Community Plant Variety Office (CPVO), the European Chemicals Agency (ECHA) or the European Union Aviation Safety Agency (EASA):
 - Request that the appeal be allowed to proceed must be annexed to the appeal (Art 170a (1) RP CJ)
 - Has to set out the issue raised by the appeal that is significant with respect to the unity, consistency or development of European Union law (Art 170a (1) RP CJ, Art 58a (3) Statute)
 - Decision on the request is taken by form of a reasoned order by a Chamber specially established for that purpose, presided over by the Vice-President of the Court (Art 170b (2) (3) RP CJ)

Appeals to the Court of Justice (3)

- **Request that appeal be allowed to proceed – content requirements (1):**
 - set out clearly and in detail the grounds on which the appeal is based
 - identify with equal clarity and detail the issue of law raised by each ground of appeal
 - specify whether that issue is significant with respect to the unity, consistency or development of EU law
 - set out the specific reasons why that issue is significant according to that criterion

Appeals to the Court of Justice (4)

- **Request that appeal be allowed to proceed – content requirements (2):**
 - Grounds of appeal:
 - specify the **provision of EU law** or the case-law that has been infringed
 - explain succinctly the **nature of the error of law** allegedly committed
 - indicate the **effect on the outcome of the judgment** under appeal
 - If infringement of case-law is invoked:
 - **where the alleged contradiction lies** by identifying
 - relevant paragraphs of the decision under appeal
 - relevant paragraphs of the ruling alleged to have been infringed
 - **concrete reasons why such a contradiction is significant** with respect to the unity, consistency or development of EU law

Special procedures

- Intervention (Art 142-145 RP)
- Urgent procedures:
 - Expedited procedure (Art 151-155 RP)
 - Suspension and interim measures (Art 156-161 RP)
- Disputes concerning the costs to be recovered (Art 170 RP)
- Proceedings relating to intellectual property rights (Art 171-191 RP)
- Other special forms of procedure (Art 162-169 RP)

Thank you for your attention!