

European Union Law

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Judicial protection in the EU

Lesson No 22

The judicial enforcement of EU law

THE JUDICIAL FUNCTIONS IN THE UNION'S LEGAL SYSTEM

Four different situations ...

- 1) Paul discovers that all his assets have been frozen in accordance with the provisions of an EU regulation because he is considered a suspected terrorist
- 2) Google Inc. has been fined by the European Commission for breach of the prohibition on abuse of dominant position under Art 102 TFEU; it has also been ordered to stop and cease the allegedly anticompetitive conducts
- 3) Caffè Milani s.p.a., who has suffered a reduction in the volume of sales, feels that this is due to the tortious Google's conduct, whose search engine favoured the products of Caffè Milani's competitors
- 4) Pedro's car exploded causing him a serious personal injury; he considers the manufacturer, Seat, liable for the damage, allegedly due to a defect in the product

... four different claims

- Paul claims for the annulment of the Council Regulation
- Google Inc. claims for the annulment of the Commission decision (ascertaining that it breached Art 102 TFEU) or, in the alternative, for the annulment or reduction of the fine imposed
- Caffè Milani s.p.a. claims full compensation for the harm Google Inc. caused to it by infringement of Art 102 TFEU
- Pedro claims for damages against Seat

... one common denominator: EU law

- 1) The Council regulation is allegedly null and void because it violates Paul's fundamental rights as protected by EU law
- 2) The Commission decision is allegedly null and void because the European Commission erred in interpreting and applying the relevant substantive and/or procedural EU rules
- 3) The right to full compensation for anticompetitive damages directly derives from Art 102 TFEU (see also Directive 2014/104/EU on antitrust damages actions)
- 4) It is Directive 85/374/EEC of 25 July 1985 on liability for defective products that confers on Pedro a right to full compensation from Seat

**WHICH COURT(S) HAS(VE)
JURISDICTION TO HEAR THE CASE?**

Bear in mind that ...

Judicial enforcement (of EU law), i.e. to solve disputes in accordance with EU law, entails

- a) On the one hand, to ensure effective enforcement of EU law (objective side)
- b) On the other hand, to ensure effective protection of subjective rights that EU law directly confers – or is aimed at conferring – on individuals (subjective side)

| Enforcement of EU law | Protection of EU subjective rights |
|---------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| 1) EU norms (general principles & Charter) on fundamental rights | 1) Paul's fundamental rights → may be relied on against the Council |
| 2) Substantive and/or procedural EU competition rules | 2) Google's (substantive and/or procedural) rights → may be relied on against the Commission |
| 3) Art 102 TFUE (prohibition on abuse of dominant position in the market) | 3) Caffè Milani's right to full compensation from Google for harm caused by breach of Art 102 TFUE |
| 4) Directive 85/374/EEC on product liability | 4) Pedro's right to compensation from Seat for harm caused by the defective car |

| Which court(s) has(ve) jurisdiction? |
|---------------------------------------------------------------------------------------------------|
| 1) Paul vs Council → Action for annulment of the Regulation under Art 263 TFEU → General Court |
| 2) Google vs Commission → Action for annulment of the Decision under Art 263 TFEU → General Court |
| 3) Caffè Milani vs Google → Damages claim → National court with jurisdiction |
| 4) Pedro vs Seat → Damages claim → National court with jurisdiction |

A decentralised system of judicial enforcement

- Art 19(1) TEU: *“The Court of Justice of the European Union ... shall ensure that in the interpretation and application of the Treaties the law is observed”*.
- But it is not the only one to interpret and apply EU law → principle of conferral: the Court *“shall act within the limits of the powers conferred on it in the Treaties”* – Art 13(2) TEU
- Art 19(1) TEU: *“Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law”*

The EU’s Judicial Architecture

The European Court System

Historical perspective

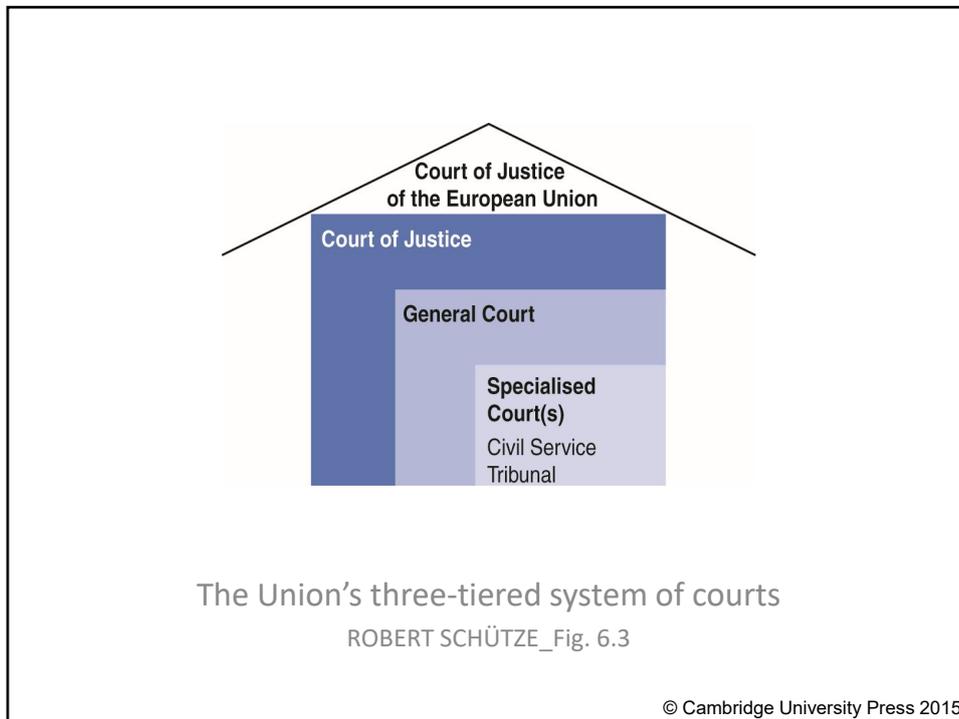
- At the beginning, the judicial branch of the EEC consisted of a single court → the **Court of Justice** of the European Communities (ECJ)
- 1988: a second court, with jurisdiction to hear and determine at first instance, was created → the **Court of First Instance**
- Nice Treaty (2001): new Art 225a EC (now Art 257 TFEU) → Council may establish judicial panels → **Civil Service Tribunal**: established in 2004, it ceased to operate on 1 September 2016 → its jurisdiction has now been transferred to the General Court

The Union's judicial branch now

Art 19 TEU: A single judicial institution, the **Court of Justice of the European Union** (CJEU), which has a three-tiered system of courts:

- i) The Court of Justice
- ii) The General Court (as the Court of First Instance has now been renamed)
- iii) Specialised courts (as the judicial panels have now been renamed)

Art 257 TFEU (ex Art 225a EC) → "**specialised courts attached to the General Court**" may be established by the EP and the Council "*to hear and determine at first instance certain classes of action or proceeding brought in specific areas*" → but the recent judicial reform has dismantled the Civil Service Tribunal



Composition and structure

COURT OF JUSTICE

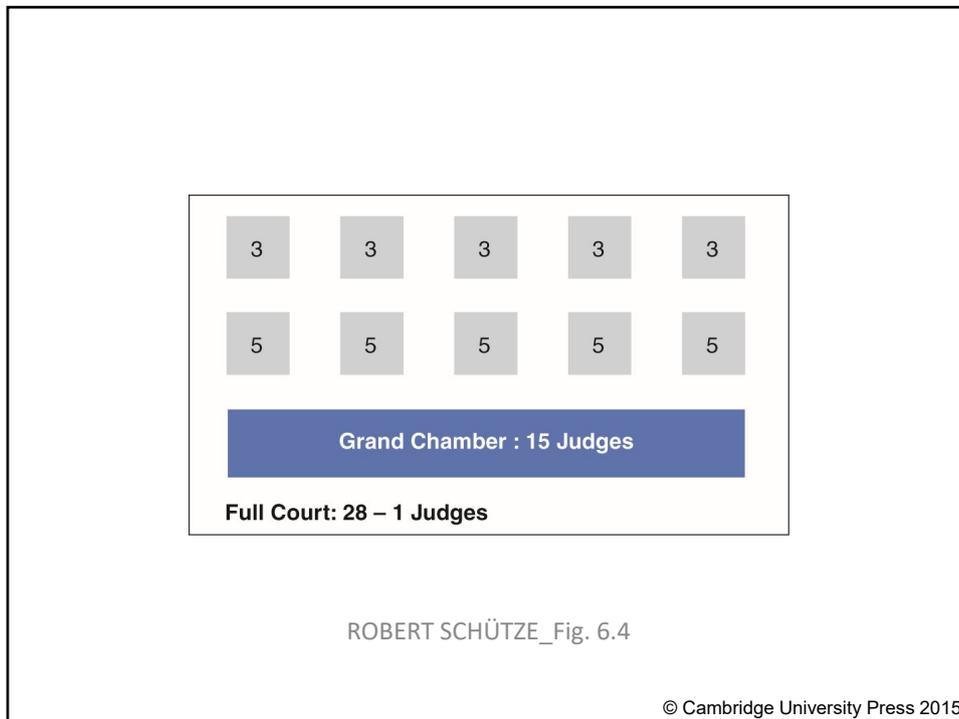
Composition

- The Court shall consist of one judge from each MS (Art 19.2 TEU), appointed by common accord of the governments of the MS (Art 253 TFEU), after consultation of an independent advisory panel (Art 255 TFEU) → judges are not representatives of their MS and must be completely independent
- The Court shall be assisted by Advocates-General (Arts 19.2 TEU and 252 TFEU), whose number is currently set at 11 → the AG acts like an *amicus curiae*, producing an 'opinion' on the proper way the case should be decided by the Court

Organisational structure

(Arts 251 TFEU and 16 Statute)

- The Court normally sits (and decides) in (10) 'chambers', consisting of 3 and 5 judges
- The Court sits in a 'Grand Chamber', consisting of 13 judges, "*when a MS or an institution of the Union that is party to the proceedings so requests*"
- The Court may also sit as a 'full Court' in very specific cases



Composition and structure

GENERAL COURT

Composition and structure

- The General Court shall include at least one judge per MS (Art 19.2 TEU), but the precise number shall be determined by the Statute
- The judges are appointed by common accord of the governments of the MS, after consultation of an independent advisory panel (Art 254 TFEU)
- The General Court generally sits in chambers of 3 or 5 judges

The number of judges of the General Court

Art 48 Statute

The General Court shall consist of:

- (a) 40 Judges as from 25 December 2015;
- (b) 47 Judges as from 1 September 2016;
- (c) two Judges per Member State as from 1 September 2019.

Art 50a Statute

1. The General Court shall exercise at first instance jurisdiction in disputes between the Union and its servants as referred to in Art 270 TFEU, including disputes between all institutions, bodies, offices or agencies, on the one hand, and their servants, on the other, in respect of which jurisdiction is conferred on the Court of Justice of the European Union.
2. At all stages of the procedure, including the time when the application is filed, the General Court may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement.