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Πρωτοδικείο των Ευρωπαϊκών Κοινοτήτων
Court of First Instance of the European Communities
Tribunal de première instance des Communautés européennes
Cúirt Chéadchéime na gComhphobal Eorpach
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CONTRIBUTION OF THE COURT OF FIRST INSTANCE

FOR THE PURPOSES OF THE

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I – DEVELOPMENT OF THE COMMUNITY COURTS

Since it was set up in 1989, the role and jurisdiction of the Court of First Instance have been progressively extended. Under Council Decisions 93/350 of 8 June 1993[1] and 94/149 of 7 March 1994[2], it has acquired general jurisdiction to hear and determine at first instance all direct actions brought by natural and legal persons; in addition, it has received jurisdiction in completely new areas under Regulation No 4064/89 on the control of concentrations between undertakings[3], under Regulation No 40/94 on the Community trade mark[4] and under Regulation No 2100/94 on Community plant variety rights[5]. The Treaty on European Union has paved the way for an acceleration of that process with the amended version of Article 168a, which makes it possible to give jurisdiction to the Court of First Instance to hear and determine all actions, whether brought by natural or legal persons or by institutions or Member States, with the exception of questions referred for a preliminary ruling under Article 177. Finally, jurisdiction to hear and determine actions brought by natural and legal persons relating to the European Central Bank, and disputes involving its staff, has already been conferred on the Court of First Instance by the abovementioned Council Decisions.

The jurisdiction of the Court of First Instance is thus much wider now than when it was set up as a Community court. Further extension can, moreover, be envisaged on the basis of the present version of Article 168a and is likely to be implemented progressively, particularly in fields where one and the same measure may be challenged simultaneously before the Court of Justice and before the Court of First Instance, depending on the standing of the applicant. That situation leads to problems of coordination between the two Courts, particularly in the fields of State aids and anti-dumping measures, which could be resolved by giving the Court of First Instance jurisdiction to hear and determine all actions of those types, regardless of the standing of the applicant.

The extension of the jurisdiction of the Court of First Instance, coupled with a constant progression in the amount of traditional litigation, has led to a very considerable increase in the number of cases brought each year before the Court of First Instance, with a more than fourfold increase since 1990. Concurrently, over

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1 – OJ 1993 L 144, p. 21.

2 – OJ 1994 L 66, p. 29.

3 – OJ 1989 L 395, p. 1.

4 – OJ 1994 L 11, p. 1.

5 – OJ 1994 L 227, p. 1.

the same period, the numbers of cases decided by the Court of First Instance and pending before it have increased to a very considerable extent.

That trend towards an appreciable increase in the number of cases brought before the Court of First Instance is set to become even more pronounced in the future. As a result, a growing proportion of Community litigation will fall to be dealt with by the Court of First Instance and the number of cases to be decided by it will exceed, as it has already exceeded, the number brought before the Court of Justice.

Moreover, the volume of litigation on Community trade marks alone, the effects of which will very soon be felt with some 100 cases expected to be brought by the second half of 1996, will grow sharply, to exceed 400 cases a year, from 1997 onwards. Other more or less similar areas of litigation, such as plant variety rights or industrial designs, will be added in the near future.

Independently of the new jurisdiction conferred on the Court of First Instance, a considerable increase can be seen in the volume of cases already falling within its jurisdiction, particularly those which require close examination of complex facts as, for example, in the fields of competition proceedings, State aids and anti-dumping measures. That increase is no doubt simply a consequence, at least in part, of the establishment of a two-tier system within the Community judicature and the resulting improvement in the conditions under which cases are dealt with.

II – MEASURES TO ENSURE THE PROPER ADMINISTRATION OF JUSTICE

In order to respond to that situation, it is essential that measures be taken to ensure that the Community courts can operate properly in a rapidly changing context. If they were not, the Court of First Instance would soon no longer be able to ensure the proper administration of justice in the best possible manner and to perform the task for which it was set up, namely to improve judicial protection for individuals and to alleviate the case-load of the Court of Justice. In the absence of any such measures, the increased volume of Community litigation would result in a lengthening of proceedings under conditions likely to jeopardize the protection of individuals.

To that end, the Court of First Instance has already taken a number of steps to adapt its internal operational arrangements in order, *inter alia*, to rationalize the number, structure, organization and working methods of its chambers and to shorten the time taken for oral procedures and the length of judgments. In addition, with the approval of the Council, it has amended its Rules of Procedure to allow an increasing number of cases to be dealt with by a chamber of three judges. Further measures simplifying the procedure before the Court of First

Instance, with a particular view to streamlining, simplifying and clarifying the way in which cases are prepared for hearing, will shortly be submitted to the Council.

The Court of First Instance is aware that it is not only judicial procedure whose efficiency has an impact on the protection of individuals. It is particularly attentive to certain ideas which are aimed at improving the Community decision-making process in certain fields at an earlier stage and which could prevent litigation arising and thus reduce the number of cases brought.

Nevertheless, it must be acknowledged that the operational imperatives of the Court of First Instance are such that it will not be possible to cope with the increase in volume of Community litigation solely by recourse to such modifications, which are bound to remain limited in scope, and that its role as court of general jurisdiction at first instance will necessarily affect not only its operating methods but also its structure and composition.

The debate which has opened up in recent years in that regard has engendered a number of ideas on which the Court of First Instance feels it should make its views known to the Intergovernmental Conference.

In the first place, the Court of First Instance feels that some of those ideas – in particular the establishment of new courts on a regional or specialized subject-matter basis – are unlikely to provide a solution to the problems faced and should not, therefore, be retained.

With regard to the creation of 'regional courts', this Court has already expressed its conclusion that, at the present stage in the Community's development, such a solution would be of no relevance or interest and would be extremely costly.[6] That assessment is still valid, particularly since a juxtaposition of several parallel courts would be likely to jeopardize the unity and consistency of Community case-law and would necessarily entail a considerable increase in the cost of the administration of justice.

As regards the idea of setting up specialized courts, the Court of First Instance would point out that such a solution, which would entail considerable administrative and budgetary costs and does not really seem compatible with the concept of a Community judicature of general jurisdiction, does not appear desirable since it might jeopardize the unity not merely of that judicature but of its case-law. The same reservation would not, however, apply to the setting up, if necessary, of specialized chambers within the Court of First Instance.

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6 – 'Reflections on the Future Development of the Community Judicial System', a document drawn up by the Court of First Instance in December 1990 to report on its views to the Intergovernmental Conference whose deliberations were to lead to the Treaty on European Union.

The Court of First Instance wishes, on the other hand, to draw the attention of the Intergovernmental Conference to a number of options which might be envisaged as a solution to the problems arising out of the increasing volume of Community litigation and which might be implemented either as alternatives or concurrently.

First, there are a number of measures which would be more especially suitable for implementation in specific areas which give rise to a large volume of litigation but do not generally require decisions on particularly complex or important questions of law. These include the appointment of assistant rapporteurs, the hearing of cases by a single judge and the specialization of chambers.

The appointment of assistant rapporteurs, which would require no more than an amendment to the Statute of the Court of Justice, would have the advantage of leaving responsibility for deciding the case with the judges while at the same time allowing research and drafting tasks to be carried out, under the responsibility of the court, by an expert of proven competence whose status would be transparent and who would be appointed in the light of his or her particular qualifications and specialization in a specific field. The presence of such an expert would be apparent in the course of proceedings, which would be an obvious safeguard for the parties, and he or she could be present during the Court's deliberations, which would offer a considerable advantage over the assistance provided by the judges' traditional associates, such as legal secretaries.

The introduction of the possibility of having cases dealt with by a single judge in certain fields would offer considerable advantages in terms of the Court's productivity and procedural efficiency. It would be possible to draw on the experience of similar systems in the courts of many of the Member States. It must of course be stressed that if a single judge were to sit alone in certain types of case, it would have to be possible for that judge to propose that the case be referred to a chamber if he or she considered that it was of particular importance. Alternatively, such a solution might be restricted to cases which a chamber, after an initial examination, decided did not present any particular difficulty. Recourse to a single judge might indeed be particularly effective if it were combined with the use of assistant rapporteurs in certain areas of technical specialization, especially where the judicial phase is preceded by a compulsory pre-litigation procedure in which individuals' interests receive appropriate protection. That solution could be achieved simply by an amendment to the Decision of 24 October 1988 establishing the Court of First Instance.

In the same context, mention may be made of the gains in productivity which could be expected from the setting up of specialized chambers for litigation of a repetitive kind. Setting up such chambers would make it possible to reap the advantages of specialization in certain series of actions, should the need be felt at a future stage, without thereby incurring the disadvantages which would necessarily

ensue for the Community judicial system from the establishment of independent specialist courts or the appointment of specialist judges to the Community courts of general jurisdiction. A specialization of chambers falls within the scope of the Court's internal organization and can be implemented on the basis of the existing rules.

The Court of First Instance considers, however, that all those measures will not be sufficient to enable it to cope with the increasing number of actions with which it will be faced. Without at present putting forward any specific proposals in that regard, the Court of First Instance wishes, therefore, to draw the attention of the Intergovernmental Conference to the fact that an increase in the number of judges will inevitably have to be envisaged. In that regard, account must be taken of the fact that the Court of First Instance sits almost exclusively in chambers composed of three or five judges, so that an increase in its overall membership would not give rise to any operational difficulties. An increase in the number of judges would make it possible to form a greater number of chambers and deal with a greater number of cases, and constitutes the most effective way of dealing with the increase in litigation. Again, such an increase could be achieved simply by an amendment to the Decision of 24 October 1988.

Since all the above solutions can be implemented without any amendment to the Treaties, the Court of First Instance merely wishes to mention them at the present stage. It will submit, at the appropriate time, reasoned proposals through the channels and procedures provided.

III – JUDGES' TERMS OF OFFICE

Various proposals have been made in the past to amend the rules governing the appointment of the judges.

It is not for the Court of First Instance to put forward specific proposals in that regard, but the attention of the Intergovernmental Conference should be drawn to certain aspects of the problem which have not always been taken into consideration.

Continuity in the membership of the Court of First Instance is of fundamental importance for the proper administration of justice. The replacement of a judge inevitably entails not only disruption in the scheduling of proceedings but also the loss of considerable investment in terms of both the time and the effort required of each new judge to adapt to the specific nature of work in a Community court. It is therefore essential that the relevant provisions allow the judges to carry out their functions for a sufficient length of time.

At present, the rules provide for appointment for a normal term of six years, with a partial renewal of membership at fixed dates every three years and

replacement for the remainder of the predecessor's term if a judge leaves before the expiry of his or her term of office (Article 7 of the EC Statute of the Court of Justice). The effect of those provisions is that six years is the longest period for which an appointment can be made, subject, of course, to renewal. In addition, as a result of the system of fixed dates for renewals, some members of the Court of First Instance are appointed for a considerably shorter initial term – much too short in the light of the requirements of continuity in the work of the Court and the effort of adaptation demanded of the new judge.

The Court of First Instance feels that it would be helpful to amend those provisions so that every judge, regardless of his or her date of appointment, will always be appointed for a sufficient length of time.

The present system of renewable appointments does, however, appear the best suited to the specific requirements of the way in which the Court of First Instance operates. Renewal ensures the continuity in the exercise of the judicial function required by the nature of the litigation which the Court has to deal with.[7]

Finally, the Court of First Instance wishes to draw the attention of the Conference to the fact that any projected intervention by the Parliament in the procedure for appointing judges should be confined to the initial appointment, for the obvious reason that it cannot extend to a review of the manner in which judicial functions have actually been carried out. Any such intervention by the Parliament should be solely for the purpose of ascertaining whether the prospective nominees possess the qualifications required by the Treaty in order to exercise their functions.[8]

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7 – In this regard, the report of the Committee on Institutional Affairs of the European Parliament 'on the role of the Court of Justice in the development of the European Community's constitutional system', drawn up by Mr Willi Rothley and submitted on 13 July 1993, stresses that there is no need, for the moment, to change the way in which the members of the Court of First Instance are appointed (PE 155.441/fin.).

8 – In this regard, it should be borne in mind that the working document of the Committee on Institutional Affairs of the European Parliament on the 'composition and appointment of judicial organs and of the Court of Auditors', prepared by Mr Brendan Donnelly and submitted on 19 January 1995 (PE 211.536) likewise stresses that any new procedure ' should ensure that any parliamentary scrutiny avoids political considerations and concentrates entirely on verifying the qualifications required of office-holders in Articles 167 and 168a of the Treaty, namely that a nominee can demonstrate his or her independence and that they have held high judicial office or can otherwise show outstanding legal abilities.'

IV — APPROPRIATE REFERENCE TO THE COURT OF FIRST INSTANCE IN THE TREATY

The Treaty mentions the Court of First Instance only in Article 168a, with the words 'A Court of First Instance shall be attached to the Court of Justice ...', which derive ultimately from those of the Single European Act by which the Council was empowered to set up a new court. It must nevertheless be asked whether that formula can still be considered satisfactory today.

It seems contrary to the need for clarity and transparency in the provisions of the Treaty that Article 4, which lists all the institutions and organs of the Community, should make no reference to the Court of First Instance. The failure to mention the Court of First Instance, which is now an integral part of the Community's judicial system, constitutes all the more serious a lacuna in that, unlike the organs mentioned in Article 4(2), the Court exercises decision-making powers.

The Court of First Instance therefore wishes to point out to the Intergovernmental Conference that it might be desirable to make good that omission in the present version of the Treaty by inserting into Article 4 an appropriate reference to the Court of First Instance, thus making it clear that the Community's judicial system is a two-tier system. Such a result might be achieved, for example, by inserting a provision to the effect that, within the Court of Justice as an institution, a Court of First Instance assists that Court in carrying out the tasks assigned to it, within the limits of the powers conferred upon it by the Treaty. Such an amendment to Article 4 would in no way alter the present institutional structure as laid down by the Treaty.

In that context, a change in the name of the Court of First Instance might be envisaged, as some have proposed. The Court is well aware that the name 'Court of First Instance' does not correspond in reality to the role it plays within the Community judicial system. On the one hand, its decisions on questions of fact are final and, on the other hand, it hears and determines appeals against decisions taken by quasi-judicial authorities. At the present stage, however, the Court of First Instance will not put forward any proposal for a change in its name, which is now familiar in the relevant legal circles.