

СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA
SOUDNÍ DVŮR EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN UNION
EUROOPA LIIDU KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
COURT OF JUSTICE OF THE EUROPEAN UNION
COUR DE JUSTICE DE L'UNION EUROPÉENNE
CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH
SUD EUROPSKE UNIE
CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA



LUXEMBOURG

EIROPAS SAVIENĪBAS TIESA
EUROPOS SAJUNGOS TEISINGUMO TEISMAS
AZ EURÓPAI UNIÓ BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA
HOF VAN JUSTITIE VAN DE EUROPESE UNIE
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

Reasoning

1. *Main advantages*

The proposal which has just been outlined in broad terms constitutes a genuine 'reform', which is not merely a temporary solution to a limited number of problems of greater or lesser importance, but provides a structural and lasting response to the difficulties encountered.

In particular, it would make it possible

- to dispose of the same number of cases as the number of new cases brought, thus halting the increase in the number of pending cases;
- to take steps to clear the backlog of pending cases;
- to reduce the length of proceedings before the General Court, and thus also the risks of the European Union being held in breach of the reasonable time principle;
- to simplify the judicial framework of the European Union, and to promote the consistency of the case-law;
- to have greater flexibility in dealing with cases, since the General Court will be able, in the interests of the proper administration of justice, to assign a greater or lesser number of Judges to one or more Chambers, depending on changes in the caseload, or to make certain Chambers responsible for hearing and determining cases falling within certain subject areas;
- to solve the recurring problems linked to the appointment of additional Judges at the General Court and the appointment of Judges of the CST, as well as those arising from the failure to appoint Judges at the end of a term of office or in the temporary absence of a Member;
- to restore to the Court of Justice the power to rule on appeal in EU civil service matters, thus rendering superfluous both the review procedure (the

implementation of which has proved somewhat complex) and the office of temporary Judge at the CST.

2. *Lack of alternatives*

It is true that the TFEU provides for a number of options for dealing with an increase in the caseload of the Courts of the European Union, and that those options include the establishment of one or more specialised courts. However, owing to the circumstances mentioned above, and in view of some of the particular features of specialised courts, the Court of Justice considers that the establishment of such courts does not constitute a viable alternative.

There are a number of reasons for this:

- A court specialising in intellectual property matters would not, by itself, be capable of providing an adequate solution to the problems identified. While it is certainly true that intellectual property cases constitute, in numerical terms, a substantial proportion of the cases brought before the General Court, their transfer to a court specialising in that area would not solve the problem in the long term, as the resulting ‘relief’ would be quickly offset by the constant increase in the overall number of cases brought before the General Court. In addition, according to current statistics, one third of intellectual property cases would return to the General Court in the form of appeals against decisions of the specialised court.
- The establishment of a specialised intellectual property court could, at most, reduce the workload in the area in respect of which that court has jurisdiction to hear and determine disputes, and would therefore have no role to play as regards the introduction of more sustained relief, including in other areas, such as the freezing of funds or REACH, unless the intention were to establish other specialised courts in parallel.
- The establishment of new specialised courts increases the risks of the unity and consistency of EU law being affected, since there would always be two courts that might be seised of similar issues, one by way of the preliminary ruling procedure (Court of Justice), the other by way of an appeal (General Court), in addition to the problems linked to a likely increase in the number of reviews.
- Small courts are not flexible. If the number of cases increases substantially, the court is likely to be unable to cope with them; conversely, if the number of cases in the relevant area declines drastically, the Judges concerned would quickly risk having no duties to perform.

- Small courts have structural weaknesses linked to their method of appointment (difficulties associated with the appointment of their Judges) and the way in which they operate, since the absence of one or two Judges can paralyse the functioning of the court. While these weaknesses and, in particular, their full extent, may have been difficult to foresee at the outset, their present existence and persistence is such that it would be inadvisable to use the CST as a model for the establishment of other specialised courts. On the contrary, any changes to be made in the judicial system of the European Union should be made without resorting to elements which experience has shown – and continues to show – are inadequate for the purpose of contributing to the flexible and efficient functioning of the Courts of the European Union.

This conclusion is not affected by the fact that the establishment of one – or even several – other specialised courts could mitigate the ‘representation’ problem. Even though the number of posts would accordingly be higher and the Member States could perhaps more easily share the posts among themselves, that would not alter the fact that the Member States do not fully have control of the procedure for the appointment of Members of specialised courts. If the CST model is adopted in connection with the establishment of a new specialised court, the Judges’ posts thus created will be open to competition between those having an interest in applying for them. Next, a selection committee would have to examine the applications and draw up a list for submission to the Council. Therefore, even if the total number of posts available in the specialised courts were to be the same as the number of Member States, there would be no guarantee that the committee(s) would adjust their proposals in such a way that the Member States’ interest in all being ‘represented’ in the specialised courts would always be taken into account. Furthermore, it would be a very delicate matter in legal terms if those committees were required to rule out, of their own motion and automatically, all applications put forward by nationals of Member States already ‘represented’ in the composition of another specialised court. Lastly, it would be incompatible with the principle of non-discrimination enshrined in EU primary law for nationals of certain Member States not to be permitted to submit their applications for the position of Judge in a specialised court merely because a person of the same nationality is performing the duties of Judge in another specialised court of the European Union. It should be noted in that context that, while the Court of Justice is indeed called upon, in accordance with Article 3(1) of Annex I to the Statute of the Court of Justice, to ensure a balanced composition of the Civil Service Tribunal, that does not in any way mean that any application by a person having the same nationality as a person

already 'represented' in the CST is to be excluded from the selection procedure on that ground alone.

3. Specific aspects concerning the CST

Appointments to the CST have never been straightforward. Ever since the CST was established, there have been differences of opinion as to whether the committee(s) responsible for examining applications and submitting to the Council a list of suitable candidates should refrain from submitting their proposal in the form of a list presenting candidates in order of merit, in order to give the Council as much freedom as possible in taking its decision. Similarly, the question whether the rotation principle should be applied and, if so, to what extent, has given rise to strongly divergent views.

Instead of diminishing over the years, those difficulties have recently become even more acute, so much so that it is now impossible for the Council to make the appointments which primary law requires it to make.

4. The urgency of finding a solution in order to clear the General Court's backlog

As long ago as 2011, the Court of Justice highlighted the urgency of finding a solution in order to clear the General Court's backlog. Since then, as the figures set out above have shown, the situation has deteriorated even further, so that the urgency is now greater than ever. It is therefore essential that a solution be adopted which can be rapidly implemented and which is capable of producing its effects in the near future.

It is important to note in that regard that the implementation of the first stage (2015) does not require any amendment of the judicial framework of the European Union and could therefore proceed in very early course. By contrast, any establishment of a specialised court would, in accordance with Article 257 TFEU, require a legislative initiative on the part of the Court of Justice or the Commission. Given that the Court's current initiative does not relate to the establishment of a specialised court, it would still be necessary to draw up a proposal to that effect, to have it examined by the competent bodies and adopted by the two branches of the European Union's legislative authority. Furthermore, a committee would have to be given the task of examining applications for the posts of Judge of that court and submitting a list of suitable candidates to the Council. Within the Council, a consensus would have to be reached regarding the method of appointment of those Judges. In addition, before it could become fully operational, any such court would have to have a registry and

rules of procedure. It is therefore difficult to envisage all of this being accomplished within a timescale that will enable the General Court to achieve a genuine short-term reduction in the number of cases pending before it.

Ultimately, the measures necessary to implement the first stage should be taken quickly, on the basis of an appropriate policy orientation relating to the proposal as a whole. As regards the legislative procedure, this first stage is covered by the 2011 legislative initiative of the Court of Justice and would exhaust it. The detailed arrangements for the subsequent stages (2016, 2019) would then have to be discussed on the basis of a legislative initiative of the Court of Justice the object of which would be the reassignment to the General Court of first-instance cases relating to the EU civil service and the amendments to the Statute of the Court of Justice required in order for the CST to be reintegrated into the General Court. The final decision on those aspects would be taken in the context of the examination of that legislative initiative.

The costs of the present proposal are detailed in a document annexed hereto. It should be emphasised that the costs of the first stage will not reach those already envisaged in that regard under the 2011 legislative initiative, and which have, in principle, been approved by the legislative bodies of the European Union. The addition of 7 Judges to the General Court by the reintegration of the CST would, in a normal year, require additional appropriations of 2.4 million euro. The costs in respect of the third stage correspond, in terms of the amount per Judge's post (including Chamber and infrastructure costs), to the costs in respect of the first stage, that is to say, in a normal year, approximately one million euro per Judge's post (including Chamber and infrastructure costs).

Ultimately, the inevitable yet moderate costs generated by the doubling of the number of Judges of the General Court should be viewed having regard to the advantages of reform for litigants. The significant delays in the handling of direct actions brought before the General Court have serious repercussions for individuals and undertakings, and it is therefore the primary interest of litigants that makes reform essential.