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COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

Annual report
2008



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Foreword

For the Court of Justice, 2008 was a symbolic year: it took possession of its new complex of buildings. The Court now has a centralised infrastructure commensurate with its own expansion, the continuously increasing volume of litigation before it, the introduction of new procedures and the recent enlargements of the European Union; an optimal situation even in the era of electronic communication.

The historical importance of the inauguration of the Court's new complex of buildings, an occasion marked by the presence of distinguished guests, should not push other events of the past year into the background. The implementation of the new urgent preliminary ruling procedure was equally important, enabling the Court to deal within a very short time frame with the first cases, falling within the scope of the area of freedom, security and justice, to which the procedure was applied.

The past year will also be remembered for the efficiency and unflagging rate of the performance of the institution's judicial tasks. In this connection, the overall decrease in the duration of proceedings may be noted, the decrease being very significant especially in preliminary ruling proceedings, while the Court of First Instance had one of the most productive years in its history.

Finally, in the past year a total of 1 332 cases were brought before the three courts comprising the Court of Justice; the figure is the highest in the institution's history for the second year in succession and demonstrates the constant increase in the amount of Community litigation.

The Annual Report provides its readers with an account of changes affecting the three courts comprising the institution, namely the Court of Justice, the Court of First Instance and the Civil Service Tribunal, and of the most important aspects of their work. Separate statistics for each court supplement and illustrate the analysis of the past year's judicial activity.



V. Skouris
President of the Court of Justice

Finally, the Court held with regard to the sanctions appropriate for the employment discrimination at issue that Article 15 of Directive 2000/43 requires that rules on sanctions applicable to breaches of national provisions adopted in order to transpose that directive must be effective, proportionate and dissuasive, even where there is no identifiable victim.

Equal treatment from the point of view of the prohibition of age discrimination formed the subject matter of Case C-427/06 *Bartsch* (judgment of 23 September 2008). The Court held in that case that the application, which the courts of Member States must ensure, of the prohibition under Community law of discrimination on the ground of age is not mandatory where the allegedly discriminatory treatment contains no connecting link with Community law. No such link arises either from Article 13 EC, or, in the case of an occupational pension scheme excluding the right to a pension of a spouse more than 15 years younger than the deceased former employee, from Directive 2000/78⁽³⁾ before the time limit allowed to the Member State concerned for its transposition has expired.

In Case C-164/07 *Wood* (judgment of 5 June 2008), a question was referred to the Court for a preliminary ruling on the compatibility with Community law, in the light of the general principle of non-discrimination on grounds of nationality, of French legislation which has the effect of excluding from the grant of compensation awarded by the Fonds de garantie des victimes des actes de terrorisme et d'autres infractions (Guarantee Fund for the Victims of Acts of Terrorism and Other Crimes), on the sole ground of his nationality, a citizen of the European Community who is residing in France and is the father of a child having French nationality who died in consequence of a crime which was not committed on the territory of that State. The Court held that Community law precludes such legislation.

As regards the general principles of Community law and observance of those principles by national authorities when implementing Community law, Case C-455/06 *Heemskerk and Schaap* (judgment of 25 November 2008), concerning export refunds and the protection of cattle during transport, allowed the Court to adjudicate on the national rule of *reformatio in pejus*. The Court decided that Community law does not require national courts to apply, of their own motion, a provision of Community law where such application would lead them to deny the principle, enshrined in the relevant national law, of the prohibition of *reformatio in pejus*. Such an obligation would not only be contrary to the principles of respect for the rights of the defence, legal certainty and protection of legitimate expectations, which underlie the prohibition, but would expose an individual who brought an action against an act adversely affecting him to the risk that such an action would place him in a less favourable position than he would have been in, had he not brought that action.

There are a number of judgments of particular interest in relation to proceedings before the Community judicature. One of these concerns the very jurisdiction of the Community judicature.

In Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* (judgment of 3 September 2008), although the Court upheld the judgments of the Court of First Instance under appeal (in Case T-315/01 *Kadi v Council and Com-*

(3) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

This case concerned unjust enrichment. The Court held that, according to the principles common to the laws of the Member States, a person who has suffered a loss which increases the wealth of another person without there being any legal basis for that enrichment has the right, as a general rule, to restitution from the person enriched, up to the amount of the loss. Legal redress for undue enrichment, as provided for in the majority of national legal systems, is not necessarily conditional upon unlawfulness or fault with regard to the defendant's conduct. On the other hand, it is essential that there be no valid legal basis for the enrichment. Given that unjust enrichment is a source of non-contractual obligation common to the legal systems of the Member States, the Community cannot be dispensed from the application to itself of the same principles where a natural or legal person alleges that the Community has been unjustly enriched to the detriment of that person.

The Court added that actions for unjust enrichment do not fall under the rules governing non-contractual liability in the strict sense, which, to be invoked, require a number of conditions to be satisfied, relating to the unlawfulness of the conduct imputed to the Community, the fact of the damage alleged and the existence of a causal link between that conduct and the damage complained of. They differ from actions brought under those rules in that they do not require proof of unlawful conduct — indeed, of any form of conduct at all — on the part of the defendant, but merely proof of enrichment of the defendant for which there is no valid legal basis and of impoverishment of the applicant which is linked to that enrichment. However, despite those characteristics, the possibility of bringing an action for unjust enrichment against the Community cannot be denied to a person solely on the ground that the EC Treaty does not make express provision for a means of pursuing that type of action. If Article 235 EC and the second paragraph of Article 288 EC were to be construed as excluding that possibility, the result would be contrary to the principle of effective judicial protection laid down in the case-law of the Court and confirmed in Article 47 of the Charter of Fundamental Rights of the European Union.

Joined Cases C-120/06 P and C-121/06 P *FIAMM and FIAMM Technologies v Council and Commission* (judgment of 9 September 2008) are worthy of particular note in relation precisely to that area of actions for non-contractual liability. They concern the problem of Community liability for a legislative measure. The Dispute Settlement Body (DSB) of the World Trade Organisation (WTO) ruled that the Community regime governing the import of bananas was incompatible with WTO agreements and authorised the United States of America to impose an increased customs duty on certain Community imports. Six companies established in the European Union sought compensation from the Commission and the Council for the damage suffered by them in consequence of the application of American retaliatory measures to their exports to the United States.

The Court observed that the Community does not incur liability on account of a legislative measure which involves choices of economic policy unless a sufficiently serious breach of a superior rule of law for the protection of individuals, and conferring rights on them, has occurred. It also noted that, while the principle of liability of the Community in the case of an unlawful act of the institutions constitutes an expression of the general principle familiar to the legal systems of the Member States that an unlawful act gives rise to an obligation to make good the damage caused, no such convergence of the legal systems of the Member States has been established as regards the existence of a principle of liability in the case of a lawful act of the public authorities, in particular where such an act is of a legislative nature. The Court concluded

No 1347/2000⁽⁸⁾, to be dealt with under the urgent procedure pursuant to Article 104b of the Rules of Procedure of the Court of Justice is justified if it is based on a need to act urgently. Such is the case where any delay would be very unfavourable to the relationship between the child and the parent with whom the child does not live and the damage to that relationship could be irreparable. According to the Court, that need is apparent both from recital 17 in the preamble to the regulation, which refers to the return without delay of a child who has been removed or retained, and from Article 11(3) of the regulation, which sets a deadline of six weeks for the court to which an application for return is made to issue its judgment. The Court of Justice made clear that the need to protect the child against any possible harm and the need to ensure a fair balance between the interests of the child and those of the parents are also capable of justifying recourse to the urgent preliminary ruling procedure.

So far as concerns the principles in accordance with which cases are referred to the Court for the purposes of obtaining a preliminary ruling, the Court had occasion in Case C-210/06 *Cartesio* (judgment of 16 December 2008) to address the issue of the power of a national appellate court to vary the decision of a lower court making a reference for a preliminary ruling. The Court held in that regard that, where rules of national law apply which relate to the right of appeal against a decision making a reference for a preliminary ruling, and under those rules the main proceedings remain pending before the referring court in their entirety, the order for reference alone being the subject of a limited appeal, the second paragraph of Article 234 EC is to be interpreted as meaning that the jurisdiction conferred by that provision of the Treaty on any national court or tribunal to make a reference to the Court for a preliminary ruling cannot be called into question by the application of those rules, where they permit the appellate court to vary the order for reference, to set aside the reference and to order the referring court to resume the domestic law proceedings. It is true that Article 234 EC does not preclude decisions which are made by a court or tribunal of a Member State against whose decisions there is a judicial remedy under national law and by which questions are referred to the Court for a preliminary ruling from remaining subject to the remedies normally available under national law. Nevertheless, the outcome of such an appeal cannot limit the jurisdiction conferred by Article 234 EC on that court to make a reference to the Court if it considers that a case pending before it raises questions on the interpretation of provisions of Community law necessitating a ruling by the Court.

The effects of Community law on national legal systems have also been clarified.

In Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel* [2008] ECR I-69, the Court held that, while it is true that a directive cannot of itself impose obligations on an individual, it cannot be precluded, in principle, that the provisions of a directive may be applicable by means of an express reference in a regulation to its provisions, provided that general principles of law and, in particular, the principle of legal certainty are observed.

In Case C-2/06 *Kempter* [2008] ECR I-411, the Court was called upon to determine the question whether the review and amendment of a final administrative decision in order to take account

⁽⁸⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004 (OJ 2004 L 367, p. 1).

of the interpretation of the relevant Community law carried out in the meantime by the Court of Justice is subject to the requirement that the party concerned relied on Community law when contesting the administrative decision before the national courts. The Court found that there was no such requirement.

Thus, it held that, while Community law does not require that administrative bodies be placed under an obligation, in principle, to reopen an administrative decision which has become final, specific circumstances may nevertheless be capable, by virtue of the principle of cooperation arising from Article 10 EC, of requiring such a body to review an administrative decision that has become final in order to take account of the interpretation of a relevant provision of Community law given subsequently by the Court. The condition — which is among those capable of providing the basis for such an obligation of review — that the judgment of the court of final instance by virtue of which the contested administrative decision became final was, in the light of a subsequent decision of the Court, based on a misinterpretation of Community law which was adopted without a question being referred to the Court for a preliminary ruling, cannot be interpreted as requiring the parties to have raised before the national court the point of Community law in question. It is sufficient in that regard if either the point of Community law the interpretation of which proved to be incorrect in light of a subsequent judgment of the Court was considered by the national court ruling at final instance or it could have been raised by the latter of its own motion. While Community law does not require national courts to raise of their own motion a plea alleging infringement of Community provisions where examination of that plea would oblige them to go beyond the ambit of the dispute as defined by the parties, they are obliged to raise of their own motion points of law based on binding Community rules where, under national law, they must or may do so in relation to a binding rule of national law.

While that possibility of applying for the review and withdrawal of a final administrative decision that is contrary to Community law is not subject to any limit in time, the Member States nevertheless remain free to set reasonable time limits for seeking remedies, in a manner consistent with the Community principles of effectiveness and equivalence.

Proceedings relating to public access to documents of the institutions show no signs of abating. In Joined Cases C-39/05 P and C-52/05 P *Sweden and Turco v Council* (judgment of 1 July 2008), the Court clarified the examination to be carried out by the Council before it responds to a request for disclosure of a document.

The Community regulation regarding public access to documents ⁽⁹⁾ provides that any citizen of the Union, and any person residing in a Member State, has a right of access to documents of the institutions. It lays down exceptions to that general principle, including where disclosure of a document would undermine the protection of court proceedings and legal advice, unless there is an overriding public interest in its disclosure.

As regards, specifically, the exception relating to legal advice, the institution which is asked to disclose a document must satisfy itself that the document does indeed relate to legal advice and, if so, it must decide which parts of it are actually concerned and may, therefore, be

⁽⁹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

European citizenship

In several cases the Court examined national provisions that can improperly limit the free movement of citizens of the Union.

Case C-353/06 *Grunkin and Paul* (judgment of 14 October 2008) concerned the recognition of the surname of a child of German nationality who was born and living in Denmark and registered at birth with a double-barrelled surname composed of the surnames of both the father and mother. The child's parents applied for the double-barrelled name to be entered in the family register held in Germany, and were refused on the ground that surnames of German citizens are governed by German law, which does not allow a child to bear a double-barrelled surname. The Court found that, although the rules governing a person's surname are matters coming within the competence of the Member States, the latter must nonetheless, when exercising that competence, comply with Community law. The Court explained that having to use a surname, in the Member State of which the person concerned is a national, that is different from that conferred and registered in the Member State of birth and residence is liable to hamper the free movement of citizens of the Union. A discrepancy in surnames in various German and Danish documents is liable to cause serious inconvenience for the person concerned at both professional and private levels. Since the restrictive German provisions had not been properly justified, the Court held that the right of European citizens to move and reside freely within the territory of the Member States precluded the legislation at issue.

Next, Case C-127/08 *Metock and Others* (judgment of 25 July 2008) and Case C-33/07 *Jipa* (judgment of 10 July 2008) concern the interpretation of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ⁽¹²⁾.

In *Metock and Others*, the Court held that Directive 2004/38 precludes legislation of a Member State which makes a national of a non-member country who is the spouse of a Union citizen residing in that Member State but not possessing its nationality subject to a condition that he must have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the provisions of that directive. As regards family members of a Union citizen, no provision of the directive makes its application subject to that condition; the Court took the view that it was necessary to reconsider the conclusion reached in its judgment in *Akrich* ⁽¹³⁾, which made the ability to benefit from the rights to enter and reside provided for by Regulation No 1612/68 ⁽¹⁴⁾ subject to such a condition. The inability of a Union citizen to be accompanied or joined by his family in the host Member State would be such as to discourage him from exercising his right of entry into and residence in that Member State. The Court also stated that a non-Community spouse of a Union citizen who accompanies or joins that citizen may benefit from Directive 2004/38, irrespective of when and where

⁽¹²⁾ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004 L 158, p. 77, and corrigendum, OJ 2004 L 229, p. 35).

⁽¹³⁾ Case C-109/01 *Akrich* [2003] ECR I-9607.

⁽¹⁴⁾ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), amended by Directive 2004/38/EC.

considered that both the wish to ensure that there is a connection between the society of the Member State concerned and the recipient of a benefit and the necessity to verify that the recipient continues to satisfy the conditions for the grant of that benefit constitute objective considerations of public interest which are capable of justifying that restriction. However, the fact that a person is a national of the Member State granting the benefit concerned and, moreover, has lived in that State for more than 20 years may be sufficient to establish such a connection. In those circumstances, the requirement of residence throughout the period of payment of the benefit must be held to be disproportionate. Furthermore, there are other means of verifying that the recipient continues to satisfy the conditions for the grant of the benefit, which, although less restrictive, are just as effective.

Free movement of goods

In the field of the free movement of goods, the Court delivered a number of judgments concerning the compatibility with Community legislation of national provisions amounting to measures having equivalent effect to quantitative restrictions.

First of all, in Case C-244/06 *Dynamic Medien* [2008] ECR I-505, the Court turned its attention to German rules prohibiting the sale and transfer by mail order of image storage media which have not been examined and classified by a competent national authority or by a national voluntary self-regulatory body for the purposes of protecting young persons and which do not bear a label from that authority or body indicating the age from which those image storage media may be viewed. The Court held that such rules do not constitute a selling arrangement which is capable of hindering, directly or indirectly, actually or potentially intra-Community trade, but a measure having equivalent effect to quantitative restrictions within the meaning of Article 28 EC and are, in principle, incompatible with the obligations arising from that provision. According to the Court, such rules may, however, be justified by the objective of protecting children, insofar as the rules are proportionate to that objective, as will be the case where they do not preclude all forms of marketing of unchecked image storage media and it is permissible to import and sell such image storage media to adults, while ensuring that children do not have access to them. It could be otherwise only if it appears that the examining, classifying and labelling procedure established by those rules is not easily accessible or cannot be completed within a reasonable period or that the decision of refusal cannot be open to challenge before the courts.

Next, in Case C-141/07 *Commission v Germany* (judgment of 11 September 2008), the Court was faced with German legislation concerning the requirements which external pharmacies had to meet if they were to be eligible to supply medicinal products to hospitals situated in Germany, requirements which, in practice, necessitated a degree of geographical proximity between the pharmacy supplying the medicinal products and the hospital. The Court held that, while such provisions must be regarded as concerning selling arrangements, since they do not concern the characteristics of the medicinal products, but concern solely the arrangements permitting their sale, they are nevertheless liable to hinder intra-Community trade and, therefore, constitute a measure having equivalent effect to a quantitative restriction on imports prohibited, in principle, by Article 28 EC. According to the Court, they are justified, however, on grounds of the protection of public health. Such legislation can achieve the objective of ensuring that the supply of products to hospitals of the Member State concerned is reliable

Finally, regarding the State's obligation to proceed against conduct infringing the PDO, the Court stated that the mere right to rely on the provisions of a regulation before the national courts does not release the Member States from their duty to take the national measures which may be needed to ensure its full application, and found that the legal system in question in this case provided the instruments capable of guaranteeing the protection of the interests both of the producers and of the consumers. However, a Member State is under no obligation to take on its own initiative the measures necessary to penalise, on its territory, infringements of PDOs from another Member State. The inspection structures whose task it is to ensure compliance with the PDO are those of the Member State from which the PDO comes and do not therefore fall within the inspection authorities of the State in question.

Free movement of persons, services and capital

In relation to the freedom of establishment, Case C-210/06 *Cartesio* (judgment of 16 December 2008) gave the Court an opportunity to clarify its case-law concerning the right of companies to move their company seat within the Union. The question referred to the Court for a preliminary ruling concerned the compatibility with Articles 43 EC and 48 EC of Hungarian legislation under which a company incorporated under national law may not transfer its seat to another Member State whilst retaining its status as a company governed by the law of the Member State of incorporation. The Court replied that, as Community law now stands, those articles do not preclude such legislation. In accordance with Article 48 EC, in the absence of a uniform Community law definition of the companies which may enjoy the right of establishment on the basis of a single connecting factor determining the national law applicable to a company, the question whether Article 43 EC applies to a company which seeks to rely on the fundamental freedom enshrined in that article is a preliminary matter which, as Community law now stands, can only be resolved by the applicable national law. In consequence, according to the Court, the question whether the company is faced with a restriction on the freedom of establishment, within the meaning of Article 43 EC, can arise only if it has been established, in the light of the conditions laid down in Article 48 EC, that the company actually has a right to that freedom. Thus a Member State has the power to define both the connecting factor required of a company if it is to be regarded as incorporated under the law of that Member State and, as such, capable of enjoying the right of establishment, and that required if the company is to be able subsequently to maintain that status. That power includes the possibility for that Member State not to permit a company governed by its law to retain that status if the company intends to reorganise itself in another Member State by moving its seat to the territory of the latter, thereby breaking the connecting factor required under the national law of the Member State of incorporation.

Also in relation to the freedom of establishment, and equally noteworthy, Case C-414/06 *Lidl Belgium* (judgment of 15 May 2008) was initiated by a reference for a preliminary ruling concerning the compatibility with Article 43 EC of the German tax regime under which a resident company may not deduct losses relating to a non-resident permanent establishment belonging to it. The Court first made clear that the scope of application of Article 43 EC extends to the creation and the outright ownership by a natural or legal person established in a Member State of a permanent establishment not having a separate legal personality situated in another Member State, as well as to a company's activity in another Member State through a permanent establishment, as defined in a relevant double taxation convention, which constitutes, under

The second is Case C-346/06 *Rüffert* (judgment of 3 April 2008), in which the Court turned its attention to the question whether the freedom to provide services precludes legislation of a Member State under which the contractor for a public works contract must agree in writing to pay its employees at least the wage provided for in the collective agreement in force and to impose that obligation on its transnational sub-contractors posting workers to that Member State, subject to payment of a contractual penalty in the event of non-compliance with that obligation. The Court held that, while a Member State may, pursuant to the provisions of Directive 96/71 concerning the posting of workers in the framework of the provision of services⁽¹⁹⁾, impose minimum rates of pay on undertakings established in other Member States in the framework of the transnational provision of services, it is not entitled to impose on those undertakings a rate of pay — even if it exceeds the rate of pay applicable pursuant to law — provided for by a collective agreement which is in force at the place where the services concerned are performed and which has not been declared to be of general application, by requiring, by a measure of a legislative nature, the contracting authority to designate as contractors for public works contracts only contractors which, when submitting their tenders, agree in writing to pay their employees, in return for performance of the services concerned, at least the wage provided for in the collective agreement. Such legislation constitutes a restriction on the freedom to provide services laid down under Article 49 EC insofar as it may impose on service providers established in another Member State where minimum rates of pay are lower an additional economic burden that may prohibit, impede or render less attractive the provision of their services in the host Member State.

Finally, in Case C-319/06 *Commission v Luxembourg* (judgment of 19 June 2008), the Court held that the first indent of Article 3(10) of Directive 96/71 concerning the posting of workers in the framework of the provision of services constitutes a derogation from the principle that the matters with respect to which the host Member State may apply its legislation to undertakings which post workers to its territory are set out in an exhaustive list in the first subparagraph of Article 3(1). The possibility, under the first indent of Article 3(10), for the host Member State to apply to those undertakings, in a non-discriminatory manner, terms and conditions of employment on matters other than those referred to in the first subparagraph of Article 3(1) of the directive, provided that public policy provisions are involved, constitutes an exception to the system put in place by that directive as well as a derogation from the fundamental principle of freedom to provide services, and must be interpreted strictly. Consequently, the Court held that, by declaring, first, measures resulting, in particular, from collective agreements which have been declared universally applicable and, second, measures transposing Directive 96/71 which require the undertakings concerned (i) to post only staff linked to the undertaking by a written contract of employment or another document deemed analogous thereto under Directive 91/533⁽²⁰⁾ and (ii) to comply with national rules on part-time and fixed-term work, to be mandatory provisions falling under national public policy, a Member State has failed to fulfil its obligations under the first indent of Article 3(10) of Directive 96/71. The Court also found that a Member State which, first, requires undertakings whose registered office is outside its national territory and which posts workers there to deposit, before the start of the posting, with an ad

⁽¹⁹⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

⁽²⁰⁾ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32).

hoc agent residing in that State, the documents necessary for monitoring compliance with their obligations under national law and to leave them there for an indeterminate period after the provision of services has ceased and, second, sets out in rules of national law establishing a prior notification procedure when workers are posted conditions relating to access to the basic information necessary for monitoring purposes by the competent national authorities with insufficient clarity to ensure legal certainty for undertakings wishing to post workers to the territory of that Member State, has failed to fulfil its obligations under Article 49 EC.

With regard to the freedom of establishment and the freedom to provide services, Case C-347/06 *ASM Brescia* (judgment of 17 July 2008) relates to Italian legislation adopted in respect of the early cessation, at the end of a transitional period, of concessions for the distribution of natural gas granted without a competitive tendering procedure as envisaged by Directive 2003/55 concerning common rules for the internal market in natural gas and repealing Directive 98/30⁽²¹⁾. The questions referred to the Court for a preliminary ruling related, more specifically, to the compatibility of the extension, on certain conditions, of the length of the transitional period in question with Directive 98/30 and with Articles 43 EC, 49 EC and 86(1) EC. The Court held that neither Directive 2003/55 nor Articles 43 EC, 49 EC and 86(1) EC preclude such national legislation, provided that, as regards compatibility with the articles of the EC Treaty referred to, such an extension can be regarded as being necessary to enable the contracting parties to untie their contractual relations on acceptable terms both from the point of view of the requirements of the public service and from the economic point of view. Regarding that last point, the Court considered that, while the Italian legislation establishes a difference in treatment amounting to indirect discrimination on the basis of nationality, that difference in treatment may nevertheless be justified by the necessity of complying with the principle of legal certainty which requires, particularly, that rules of law be clear, precise and predictable in their effects. According to the Court, that principle not only permits but also requires that the termination of such a concession be coupled with a transitional period which enables the contracting parties to untie their contractual relations on acceptable terms both from the point of view of the requirements of the public service and from the economic point of view.

So far as concerns the free movement of capital, attention is drawn to Case C-43/07 *Arens-Sikken* (judgment of 11 September 2008) concerning national rules on the assessment of inheritance duties and transfer duties payable in respect of immovable property situated in a Member State, which, for the assessment of those duties, made no provision for the deductibility of overendowment debts resulting from a testamentary parental partition *inter vivos* where the person whose estate was being administered was residing, at the time of death, not in that State but in another Member State. The Court held that the Treaty provisions on the free movement of capital preclude such rules insofar as the rules apply a progressive rate of taxation and insofar as the combination of (i) the failure to take into account such debts and (ii) that progressive rate could result in a greater tax burden for heirs who are not in a position to rely on such deductibility. The Court thus rejected the argument that the difference in treatment established concerned situations which were not objectively comparable, since, except in relation to the deduction of debts, the legislation in question treated the inheritances of residents and non-residents in the same way for the purposes of taxing their inheritance. The Court also stated that, in the absence of a convention on the prevention of double taxation, the Member

⁽²¹⁾ Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57).

State in which the immovable property is situated cannot, in order to justify a restriction on the free movement of capital arising from its rules, rely on the existence of a possibility, beyond its control, of a tax credit being granted by the Member State in which the deceased was residing at the time of death, which could, wholly or partly, offset the loss incurred by that person's heirs as a result of the fact that, for the purposes of assessing transfer duties, no account is taken in the Member State in which that property is situated of overendowment debts resulting from a testamentary parental partition *inter vivos*.

In Case C-282/07 *Truck Center* (judgment of 22 December 2008), the Court responded to a request for interpretation of the Treaty provisions relating to the free movement of capital in the light of Belgian corporation tax legislation. Under that legislation, interest paid by a resident company to a recipient company resident in another Member State was subject to a retention at source (withholding tax), whereas interest paid to a resident recipient company was exempt from that retention. The Court held that the Treaty provisions relating to the freedom of establishment and the free movement of capital do not preclude such tax legislation. After recalling that, in relation to direct taxes, the situations of residents and non-residents are, as a rule, not comparable, the Court found that the difference in treatment at issue, consisting in the application of different taxation arrangements to those companies established in Belgium and to those established in another Member State, relates to situations which are not objectively comparable. According to the Court, the position of the Belgian State, the types of taxation of interest, which rest on separate legal bases, and the situations in which the companies receiving interest find themselves with regard to recovery of the tax differ according to whether the companies receiving the interest are resident or not. The Court also held that the difference in treatment resulting from the legislation at issue does not necessarily procure an advantage for resident recipient companies because, first, those companies are obliged to make advance payments of corporation tax and, second, the amount of withholding tax deducted from the interest paid to a non-resident company is significantly lower than the corporation tax charged on the income of resident companies which receive interest. In those circumstances, the difference in treatment thereby created does not constitute a restriction of the freedom of establishment or of the free movement of capital.

In relation to the free movement of workers, the Court ruled on the recognition of diplomas obtained following education and training provided within the framework of 'homologation agreements'.

In Case C-274/05 *Commission v Greece* (judgment of 23 October 2008), the Commission complained that the Hellenic Republic was failing to recognise diplomas awarded by the competent authorities of other Member States following education and training provided within the framework of agreements pursuant to which education and training provided by a private body in Greece is homologated by those authorities, and that it was entrusting to the Council Responsible for Recognising Professional Equivalence of Higher Education Qualifications power to verify whether the conditions necessary for the award of diplomas were fulfilled and the nature of the establishment in which the holder received his education and training. In the

light of the provisions of Directive 89/48⁽²²⁾, as amended by Directive 2001/19⁽²³⁾, the Court held, first, that it follows from the first subparagraph of Article 1(a) of that directive that the expression 'mainly in the Community' covers both education and training received entirely in the Member State which awarded the formal qualification in question and that received partly or wholly in another Member State. Second, although the method of recognition of higher education diplomas as laid down by that directive does not lead to automatic and unconditional recognition of the diplomas and professional qualifications concerned, particularly as regards the possibility provided for under Article 4 of the directive for the Member States to impose compensatory measures, the Court held that the choice of the type of compensatory measures is a matter for the applicant for recognition of the diploma, not only so far as concerns the professions which require knowledge of national law, but also in respect of all the other professions covered by various specific provisions. Third, the Court confirmed that, under Article 8(1) of the directive, it is for the authorities awarding diplomas alone to verify, in the light of the rules applicable in their professional education and training systems, whether the conditions necessary for their award are fulfilled and the nature of the establishment in which the holder received his education and training. By contrast, the host Member State cannot examine the basis on which the diplomas have been awarded. Finally, the Court held that, under Article 3 of the directive, the host Member State must allow, in the public sector, the reclassification in a higher grade of persons recruited at a level lower than that to which they would have been entitled if their diplomas had been recognised by the competent authority.

In addition, the Court developed its case-law in relation to social security for migrant workers in two cases concerning the interpretation of Regulation No 1408/71⁽²⁴⁾. Case C-212/06 *Gouvernement de la Communauté française and Gouvernement wallon* (judgment of 1 April 2008) concerned a care insurance scheme implemented by the Flemish Government of the Kingdom of Belgium in the Dutch-speaking region and in the bilingual region of Brussels-Capital. That scheme provided, subject to certain conditions and up to a maximum amount, for an insurance fund to take responsibility for the paying of certain costs occasioned by a state of dependence for health reasons. Affiliation to the scheme was open only to persons resident in the two regions referred to and to persons working in the territory of those regions and residing in a Member State other than Belgium. Persons who, although working in the Dutch-speaking region or in the bilingual region of Brussels-Capital, were living in another part of Belgium were thus excluded from the scheme. After confirming that the benefits provided under a scheme such as the care insurance scheme in question fall within the scope *ratione materiae* of Regulation No 1408/71, the Court observed that Articles 39 EC and 43 EC militate against any national measure which, even though applicable without discrimination on grounds of nationality, is

(22) Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16).

(23) Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor (OJ 2001 L 206, p. 1).

(24) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416).

capable of hindering or rendering less attractive the exercise by Community nationals of the fundamental freedoms guaranteed by the Treaty. Therefore, on a proper construction of Articles 39 EC and 43 EC, legislation of a federated entity of a Member State, such as that governing a care insurance scheme, limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme to persons either residing in the territory coming within that entity's competence or pursuing an activity in that territory but residing in another Member State is contrary to those provisions, insofar as such limitation affects nationals of other Member States or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community.

Article 13(2)(a) of Regulation No 1408/71, as amended by Regulation No 647/2005⁽²⁵⁾, provides that a person employed in the territory of one Member State is to be subject to the legislation of that State even if he resides in the territory of another Member State. In Case C-352/06 *Bosmann* (judgment of 20 May 2008), the Court considered the situation of a worker who found herself ineligible for child benefits in her Member State of residence because she took up employment in another Member State. The Court stated that Article 13(2)(a) must be interpreted in the light of Article 42 EC which aims to facilitate freedom of movement for workers and entails, in particular, that migrant workers must not lose their right to social security benefits or have the amount of those benefits reduced because they have exercised the right to freedom of movement conferred on them by the Treaty. The Court concluded from this that the Member State of residence cannot be deprived of the right to grant child benefit to those resident within its territory and that Article 13(2)(a) of the regulation does not preclude a migrant worker, who is subject to the social security scheme of the Member State of employment, from receiving, pursuant to the national legislation of the Member State of residence, child benefit in the latter State. It is for the national court to determine whether the circumstances of the case are relevant for the purposes of deciding whether the worker satisfies the requirements for the grant of such child benefit pursuant to the legislation of the Member State in question.

Transport

There are four particularly noteworthy cases relating to transport.

With regard to road transport, the Court stated in Joined Cases C-329/06 and C-343/06 *Wiedemann and Funk* (judgment of 28 May 2008), concerning a refusal to recognise driving licences obtained in the Czech Republic after the administrative withdrawal of the drivers' German driving licences for consumption of drugs or alcohol, that Directive 91/439 on driving licences⁽²⁶⁾ is to be interpreted as preventing one Member State from refusing to recognise in its territory the validity of a driving licence subsequently issued by another Member State, so long as the

⁽²⁵⁾ Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 2005 L 117, p. 1).

⁽²⁶⁾ Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1).

on maintenance of an aircraft cannot in itself suffice to establish that that carrier has taken 'all reasonable measures' within the meaning of that provision and, therefore, to relieve the carrier of its obligation to pay compensation provided for by Articles 5(1)(c) and 7(1) of the regulation. Since not all extraordinary circumstances therefore confer exemption but simply those which could not have been avoided even if all reasonable measures had been taken, the onus is on the party seeking to rely on them to establish that they could not have been avoided by measures appropriate to the situation unless it had made intolerable sacrifices in the light of the capacities of its undertaking.

With regard to maritime transport, the Court stated in Case C-308/06 *The International Association of Independent Tanker Owners and Others* (judgment of 3 June 2008) that Article 4 of Directive 2005/35 on ship-source pollution⁽²⁸⁾, read in conjunction with Article 8 of that directive, which obliges Member States to punish ship-source discharges of polluting substances if committed 'with intent, recklessly or by serious negligence', without, however, defining those concepts, does not infringe the general principle of legal certainty insofar as it requires the Member States to punish ship-source discharges of polluting substances committed by 'serious negligence'. Those various concepts, in particular that of 'serious negligence', correspond to tests for the incurring of liability which are to apply to an indeterminate number of situations that it is impossible to envisage in advance and not to specific conduct capable of being set out in detail in a legislative measure of Community or of national law. Moreover, those concepts are fully integrated into, and used in, the Member States' respective legal systems. 'Serious negligence' within the meaning of Article 4 of Directive 2005/35 must be understood as entailing an unintentional act or omission by which the person responsible commits a patent breach of the duty of care which he should have and could have complied with in view of his attributes, knowledge, abilities and individual situation. Lastly, in accordance with Article 249 EC, Directive 2005/35 must be transposed by each of the Member States into national law. Thus, the actual definition of the infringements referred to in Article 4 of that directive and the applicable penalties are those which result from the rules laid down by the Member States.

Competition rules

With regard to competition rules applicable to undertakings, there are four judgments to which particular attention should be given.

As regards the concepts of undertaking and economic activity, the Court held in Case C-49/07 *MOTOE* (judgment of 1 July 2008) that a legal person whose activities consist in organising sports competitions and in entering, in that connection, into sponsorship, advertising and insurance contracts which are designed to exploit those competitions commercially and constitute a source of income for that entity must be classified as an undertaking for the purposes of Community competition law. That classification is not affected by the fact that such an undertaking does not seek to make a profit. Nor is it affected by the fact that it has the power to give its consent to applications for authorisation to organise events submitted to the authorities, since the participation of that entity in the decision-making process of the authorities must be distinguished from the economic activities it engages in, such as the organisation and com-

(28) Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ 2005 L 255, p. 11).

does not constitute an abuse. It considered, first of all, that a pharmaceuticals company occupying a dominant position cannot rely on the fact that parallel exports of medicinal products from a Member State where the prices are low to other Member States in which the prices are higher will be of only minimal benefit to the final consumer. In fact, such exports constitute an alternative source of supply, which necessarily brings some benefits to the final consumer. The Court then stated that the fact that prices of medicinal products are subject to State regulation does not prevent the refusal being abusive either. It pointed out, however, that a company in a dominant position can take steps that are reasonable and in proportion to the need to protect its own commercial interests. Consequently, in order to appraise whether the refusal by a pharmaceuticals company occupying a dominant position to supply wholesalers involved in parallel exports constitutes a reasonable and proportionate measure in relation to the threat that those exports represent to its legitimate commercial interests, it must be ascertained whether the orders of the wholesalers are out of the ordinary in the light of both the previous business relations between the company and the wholesalers concerned and the size of the orders in relation to the requirements of the market in the Member State concerned. The Court stated that it is for the national court to ascertain whether the orders are 'ordinary' in the light of both those criteria.

Finally, worthy of particular note is Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala* (judgment of 10 July 2008), in which the Court set aside the judgment of the Court of First Instance in Case T-464/04 *Impala v Commission* [2006] ECR II-2289 and examined in considerable detail standards of proof and the scope of judicial review in relation to concentrations. First of all, the Court held that there is no general presumption that a notified concentration is compatible with the common market and that decisions approving concentrations are not subject to different standards of proof from those applicable to decisions prohibiting concentrations. Secondly, the Court pointed out that the Commission may, in its decision, depart from the provisional findings in the statement of objections. While the Court of First Instance may therefore verify the correctness, completeness and reliability of the factual material which underpinned the decision in the light of the statement of objections, it must not treat the conclusions set out in that statement as established. Thirdly, the Court stated that the notifying parties cannot be criticised for not putting forward certain information until their reply to the statement of objections and that such information is not subject to more demanding standards of proof than those imposed in relation to the arguments of third parties or other information provided by the notifying undertakings. Moreover, the Court held that when the Commission examines in its decision the arguments submitted in response to the statement of objections, it may depart from the provisional findings in that statement without making a request for information or undertaking any additional market investigations. Fourthly, the Court set out the legal criteria applying to a collective dominant position arising from tacit coordination and held that the assessment of those criteria, including the transparency of the market concerned, should not be undertaken in an isolated and abstract manner, but should be carried out using the mechanism of a hypothetical tacit coordination as a basis. Finally, the Court held that a Commission decision approving a concentration can be annulled on the basis that it is inadequately reasoned.

With regard to State aid, two judgments merit particular attention. One of these concerns the concept of State aid, in particular the condition that the measure be selective, and the other regards the problem of aid that is unlawful but compatible with the common market.

In Case C-412/04 *Commission v Italy* [2008] ECR I-619, the Court held that a Member State which makes mixed works, supply and service contracts and supply or service contracts which include ancillary works, if the works represent more than 50 % of the total value of the relevant contract, subject to the national rules on public works contracts, fails to fulfil its obligations under Directives 92/50⁽³³⁾, 93/36⁽³⁴⁾ and 93/37⁽³⁵⁾. Where a contract contains both elements relating to a public works contract and elements relating to another type of contract, it is the main purpose of the contract that determines which Community directive on public procurement is to be applied. The assessment must be made in the light of the essential obligations which predominate and which, as such, characterise the transaction, as opposed to those which are only ancillary or supplementary in nature and are required by the very purpose of the contract; the value of the various matters covered by the contract is, in that regard, just one criterion among others to be taken into account for the purposes of the assessment. The Court also held that if an agreement concluded between a private person who is the owner of development land and the municipal authority satisfies the criteria for the definition of a 'public works contract' within the meaning of Article 1(a) of Directive 93/37, the estimated value which must in principle be taken into account in order to ascertain whether the threshold set by the directive is attained and whether, therefore, the award of the contract must comply with the rules on advertising laid down therein may be calculated solely by reference to the total value of the various works, by adding together the value of the various lots. The only permitted exceptions to the application of Directives 92/50 and 93/38⁽³⁶⁾ are those which are exhaustively and expressly mentioned therein.

In another case involving the same parties (judgment of 8 April 2008 in Case C-337/05 *Commission v Italy*), the question to be determined was whether a Member State can award directly to an undertaking, without complying with the procedures provided for by Directive 93/36⁽³⁷⁾, contracts for the purchase of helicopters to meet the requirements of several military and civilian corps. The Court found, first of all, that such a procedure cannot be justified by the existence of an 'in-house' relationship if a private undertaking has a shareholding, even a minority holding, in the capital of the company which produces the helicopters, in which the contracting authority in question is also a shareholder, as the undertaking's shareholding precludes the authority from exercising over that company a control similar to that which it exercises over its own departments.

Moreover, as regards reliance on the legitimate requirements of national interest foreseen in Article 296 EC and Article 2(1)(b) of Directive 93/36 on the ground that such helicopters are dual-use items, the Court pointed out that any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected

⁽³³⁾ Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).

⁽³⁴⁾ Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1).

⁽³⁵⁾ Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).

⁽³⁶⁾ Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84).

⁽³⁷⁾ See footnote 34.

In Case C-239/07 *Sabatauskas and Others* (judgment of 9 October 2008), concerning the internal market in electricity, the Court held that Article 20 of Directive 2003/54⁽⁴⁴⁾ is to be interpreted as defining the Member States' obligations only in respect of the access and not the connection of third parties to the electricity transmission and distribution systems and as not laying down that the system of network access that the Member States are required to establish must allow an eligible customer to choose, at his discretion, the type of system to which he wishes to connect. That provision does not preclude national legislation which lays down that an eligible customer's equipment may be connected to a transmission system only where the distribution system operator refuses, on account of established technical or operating requirements, to connect to its system the equipment of the eligible customer which is on the territory included in its licence. It is, however, for the national courts to verify that the implementation and application of that access system is carried out in accordance with criteria which are objective and do not discriminate between the users of the transmission and distribution systems.

With regard to the protection of personal data, of particular note is Case C-524/06 *Huber* (judgment of 16 December 2008), concerning the German system for processing personal data relating to Union citizens who are not German nationals, under which the data relating to such foreign nationals is to be processed and stored in a special register containing a wider range of information than that relating to German nationals, which is kept in district registers. When asked whether such a system is compatible with Article 7(e) of Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽⁴⁵⁾, the Court held that such a system, having as its object the provision of support to the national authorities responsible for the application of the legislation relating to the right of residence, does not satisfy the requirement of necessity laid down by that provision, interpreted in the light of the prohibition of any discrimination on grounds of nationality, unless it contains only the data which are necessary for the application by those authorities of that legislation and its centralised nature enables that legislation to be more effectively applied as regards the right of residence of Union citizens who are not nationals of that Member State. It is for the national courts to ascertain whether that is the case. The storage and processing of personal data containing individualised personal information in such a register for statistical purposes cannot, on any basis, be considered to be necessary within the meaning of Article 7(e) of Directive 95/46. Moreover, the Court considered that Article 12(1) EC precludes the putting in place by a Member State, for the purpose of fighting crime, of such a system for processing personal data that is specific to Union citizens who are not nationals of that Member State, since the situation of the nationals of a Member State, as regards the objective of fighting crime, is not different from that of Union citizens who are not nationals of that Member State and are resident in its territory.

In Case C-275/06 *Promusicae* [2008] ECR I-271, the Court held that Community law does not require the Member States to lay down an obligation to communicate personal data in order to ensure effective protection of copyright in the context of civil proceedings. In a situation in

⁽⁴⁴⁾ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37).

⁽⁴⁵⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

which a non-profit-making organisation of producers and publishers of musical and audiovisual recordings brings proceedings seeking an order that a provider of Internet access services disclose to the organisation the identities and addresses of certain subscribers, so as to enable civil proceedings to be brought for infringement of copyright, neither the directives relating to the information society and the protection of intellectual property, especially copyright⁽⁴⁶⁾, nor those relating to the protection of personal data⁽⁴⁷⁾ require the Member States to lay down an obligation to communicate personal data in order to ensure effective protection of copyright in the context of civil proceedings. The agreement on trade-related aspects of intellectual property rights (TRIPs Agreement) does not contain provisions which require those directives to be interpreted as compelling the Member States to lay down such an obligation. However, the Court pointed out that Community law requires that, when transposing those directives, the Member States take care to rely on an interpretation of them which allows a fair balance to be struck between the various fundamental rights protected by the Community legal order. When implementing the measures transposing those directives, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with those directives but also make sure that they do not rely on an interpretation of them which would be in conflict with fundamental rights or with the other general principles of Community law, such as the principle of proportionality.

In two cases, the Court was called upon to consider Directive 2000/35 on combating late payment in commercial transactions⁽⁴⁸⁾.

In Case C-306/06 *01051 Telecom* (judgment of 3 April 2008), involving a dispute concerning payment of default interest claimed following alleged late payment of invoices, the Court held that Article 3(1)(c)(ii) of that directive is to be interpreted as meaning that it requires, in order that a payment by bank transfer may avoid or put an end to the application of interest for late payment, that the sum due be credited to the account of the creditor within the period for payment.

In Case C-265/07 *Caffaro* (judgment of 11 September 2008), the Court held that that directive is to be interpreted as not precluding a national provision pursuant to which a creditor in possession of an enforceable title in respect of an unchallenged claim against a public authority as remuneration for a commercial transaction cannot proceed to forced execution against the public authority before a period of 120 days has elapsed since service of the enforceable title on the authority. As regards the recovery procedures for unchallenged claims, the directive

⁽⁴⁶⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (OJ 2000 L 178, p. 1), Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) and Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

⁽⁴⁷⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ 2002 L 201, p. 37).

⁽⁴⁸⁾ Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35).

Trade marks

With regard to the case-law on trade marks, two cases dealing with the possibility under Articles 5(1)(b) and 6(1)(b) of Directive 89/104⁽⁵¹⁾ for the proprietor of a trade mark to prevent the use of a sign that is similar to his mark merit particular attention.

In Case C-533/06 *O₂ Holdings and O₂ (UK)* (judgment of 12 June 2008), O₂, the proprietor of two United Kingdom trade marks consisting of a static picture of bubbles, used that image to promote its services both as a static and a moving image. In an advertisement comparing its services with those of O₂, Hutchison 3G used moving black-and-white bubble imagery. In infringement proceedings brought by O₂, which were dismissed by the High Court at first instance, the Court of Appeal asked, in essence, whether the proprietor of a trade mark is entitled to prevent the use of a sign which is identical with, or similar to, his mark in a comparative advertisement. Pointing out, first of all, the conditions laid down in Article 3a of Directive 84/450⁽⁵²⁾, as amended by Directive 97/55⁽⁵³⁾, under which the proprietor of a trade mark is permitted to prevent such use, the Court ruled that Article 5(1)(b) of Directive 89/104 is to be interpreted as meaning that the proprietor of a registered trade mark is not entitled to prevent the use by a third party, in a comparative advertisement, of a sign similar to that mark in relation to goods or services identical with, or similar to, those for which that mark was registered where such use does not give rise to a likelihood of confusion on the part of the public, and that is so irrespective of whether the comparative advertisement satisfies all the conditions under which such advertising is permitted.

In Case C-102/07 *adidas and adidas Benelux* (judgment of 10 April 2008), adidas AG, the proprietor of figurative trade marks composed of three vertical, parallel stripes of equal width which are featured on the sides of sports and leisure garments in a colour which contrasts with the basic colour of those garments, objected to the companies Marca Mode, C & A, H & M and Vindex using a similar sign composed of two stripes. Those companies relied on the requirement of availability to use those stripes without adidas' permission. Following a reference from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), the Court found that the requirement of availability cannot in any circumstances constitute an independent restriction of the effects of the trade mark in addition to those expressly provided for in Article 6(1)(b) of Directive 89/104. However, the proprietor of a mark cannot prevent the fair use by third parties of descriptive indications. In order for a third party to be able to plead the limitations of the effects of a trade mark in that trade marks directive and rely on the requirement of availability, the indication used by it must relate to one of the characteristics of the goods.

⁽⁵¹⁾ First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

⁽⁵²⁾ Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17).

⁽⁵³⁾ Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ 1997 L 290, p. 18).

Social policy

Among the Court's judgments given in the field of social policy, attention should be focused on a number of cases that deal with the implementation of the principle of equal treatment and with provisions designed to protect workers, as well as a case dealing with institutional issues which are of particular interest.

First of all, the Court developed its case-law on the interpretation of Directive 2007/78 on equal treatment in employment and occupation ⁽⁵⁴⁾ in the context of two references for preliminary rulings. In Case C-303/06 *Coleman* (judgment of 17 July 2008), the Court stated that the principle of equal treatment enshrined in that directive applies not to a particular category of person but by reference to the grounds of discrimination mentioned in Article 1 thereof and the prohibition of direct discrimination is not therefore limited only to people who are themselves disabled. Accordingly, where an employer treats an employee who is not himself disabled less favourably than another employee in a comparable situation and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2 of that directive. Any other interpretation is liable to deprive the directive of an important element of its effectiveness and to reduce the protection which it is intended to guarantee. The same reasoning applies with regard to harassment, since it is deemed to be a form of discrimination within the meaning of the directive. The prohibition of harassment cannot therefore be limited only to persons who are themselves disabled but extends to persons who are subject to conduct amounting to harassment related to the disability of their child.

In Case C-267/06 *Maruko* (judgment of 1 April 2008), the Court held that a survivor's benefit granted under an occupational pension scheme managed by a pension fund for a particular category of workers falls within the scope of Directive 2000/78. Such a benefit must be classified as 'pay' within the meaning of Article 141 EC on account of the fact, in particular, that it is derived from the employment relationship of the deceased person. Moreover, Articles 1 and 2 of that directive preclude legislation under which, after the death of his life partner, the surviving partner does not receive a survivor's benefit equivalent to that granted to a surviving spouse, even though, under national law, life partnership places persons of the same sex in a situation comparable to that of spouses so far as concerns that survivor's benefit. According to the Court, the refusal to grant life partners a survivor's benefit constitutes direct discrimination on grounds of sexual orientation. It is for the national court to determine whether a surviving life partner is in a situation comparable to that of a spouse who is entitled to the survivor's benefit provided for under the occupational pension scheme managed by the pension fund concerned.

The Court also developed its case-law in the field of protection of pregnant women and equal treatment of men and women in Case C-506/06 *Mayr* [2008] ECR I-1017, concerning a woman who had undergone *in vitro* fertilisation treatment. The judgment stated that Directive

⁽⁵⁴⁾ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

92/85⁽⁵⁵⁾, which provides, *inter alia*, for the protection of female workers against dismissal, must be interpreted as not extending to a female worker who is undergoing *in vitro* fertilisation treatment where, on the date she is given notice of her dismissal, her ova have already been fertilised by her partner's sperm cells, so that *in vitro* fertilised ova exist, but they have not yet been transferred into her uterus. The protection established by Article 10 of Directive 92/85 cannot, for reasons connected with the principle of legal certainty, given the period of time for which fertilised ova may potentially be conserved, be extended to such a worker. On the other hand, the Court stated that Directive 76/207 on the implementation of the principle of equal treatment for men and women⁽⁵⁶⁾ precludes the dismissal of a female worker who is at an advanced stage of *in vitro* fertilisation treatment, that is, between the follicular puncture and the immediate transfer of the *in vitro* fertilised ova into her uterus, where it is established that the dismissal is essentially based on the fact that the woman has undergone such treatment. Since such medical treatment directly affects only women, the dismissal of a female worker essentially because she is undergoing that important stage of *in vitro* fertilisation treatment constitutes direct discrimination on grounds of sex.

Case C-396/07 *Juuri* (judgment of 27 November 2008) enabled the Court to clarify the effect of Articles 3 and 4 of Directive 2001/23 concerning employees' rights in the event of transfers of undertakings⁽⁵⁷⁾. Article 4(2) of that directive provides that, where a contract of employment is terminated as a result of a substantial change in working conditions due to a transfer of the undertaking, the employer is to be regarded as responsible for the termination. The Court held that, in the absence of any failure on the part of the transferee employer to fulfil its obligations under that directive, the Member States are not required by that provision to guarantee the employee a right to financial compensation, for which the transferee employer is liable, in accordance with the same conditions as the right upon which an employee can rely where the contract of employment or the employment relationship is unlawfully terminated by his employer. However, in such a case, the national court is required, in a case within its jurisdiction, to ensure that, at the very least, the transferee employer bears the consequences that the applicable national law attaches to termination by an employer of the contract of employment or the employment relationship, such as the payment of the salary and other benefits relating to the notice period. Moreover, the Court stated that Article 3(3) of Directive 2001/23, which provides that, following the transfer, the transferee is to continue to observe the terms and conditions agreed in a collective agreement until the date of termination or expiry of the collective agreement, does not require the transferee to ensure that the working conditions are observed after that date, even though that date coincides with the date on which the undertaking was transferred.

⁽⁵⁵⁾ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (OJ 1992 L 348, p. 1).

⁽⁵⁶⁾ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40).

⁽⁵⁷⁾ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

However, such hydrocarbons spilled following a shipwreck, mixed with water and sediment and drifting along the coast of a Member State until being washed up on that coast, are to be regarded as substances which the holder did not intend to produce and which he discards, albeit involuntarily, while they are being transported, so that they must be classified as waste within the meaning of the waste framework directive. Also, for the purpose of determining who had to bear the cost of the Municipality of Mesquer's disposal of the waste, the Court held, first, that the owner of a ship carrying hydrocarbons, being in possession of them immediately before they become waste, may be regarded as having produced the waste and on that basis be categorised as a 'holder' within the meaning of that directive and, second, that the seller of the hydrocarbons and charterer of the ship carrying them has 'produced' waste if the national court finds that that seller–charterer contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he failed to take measures to prevent such an incident, such as measures concerning the choice of ship. Finally, the Court held that if the cost of disposing of the waste is not borne or cannot be borne by the International Oil Pollution Compensation Fund and, in accordance with the limitations and/or exemptions of liability laid down, the national law of a Member State, including the law derived from international agreements, prevents that cost from being borne by the shipowner and the charterer, even though they are regarded as holders, such a national law then has to make provision for the cost of disposing of the waste to be borne by the producer of the product from which the waste thus spread came. By virtue of the 'polluter pays' principle, however, such a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck will occur.

The scope of Directive 85/337⁽⁵⁹⁾, as amended by Directive 97/11⁽⁶⁰⁾, was clarified in two cases relating to its interpretation.

While in Case C-142/07 *Ecologistas en Acción-CODA* (judgment of 25 July 2008) the association *Ecologistas en Acción-CODA* challenged the assessment carried out by the city council of Madrid of the environmental effects of projects for refurbishment and improvement of the Madrid urban ring road on the basis that Directive 85/337 as amended had been infringed, in Case C-2/07 *Abraham and Others* [2008] ECR I-1197 individuals who lived near Liège–Bierset Airport complained of noise pollution resulting from the restructuring of that former military airport in an action before the Belgian Court of Cassation concerning liability. In both cases the question arose as to whether the concept of projects as referred to in that directive could encompass projects for the modification, refurbishment, improvement and extension of the infrastructure in question. In *Ecologistas en Acción-CODA*, the Court ruled that the directive as amended must be interpreted providing for environmental impact assessment of refurbishment and improvement projects for urban roads, either where they are projects covered by point 7(b) or (c) of Annex I to the directive — that is to say, inter alia, the 'construction of motorways and express roads' — or where they are projects covered by point 10(e) of Annex II or the first indent of point 13 of Annex II, which are likely, by virtue of their nature, size or location and, if appropriate, having regard to their interaction with other projects, to have significant effects on the environment. The Court stated that a project for refurbishment of a road which would be

⁽⁵⁹⁾ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

⁽⁶⁰⁾ Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1977 L 73, p. 5).

equivalent, because of its size and the manner in which it is carried out, to construction may be regarded as a construction project for the purposes of Annex I and that it would be contrary to the very purpose of the directive as amended to allow any urban road project to fall outside its scope solely on the ground that the directive does not expressly mention among the projects listed in Annexes I and II those concerning that kind of road. In *Abraham and Others*, the Court ruled that point 12 of Annex II, read in conjunction with point 7 of Annex I, to Directive 85/337, in their original version, also encompasses works to modify the infrastructure of an existing airport, without extension of the runway, where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. It explained that it would be contrary to the very objective of that directive to exclude works to improve or extend the infrastructure of an existing airport from the scope of Annex II on the ground that Annex I covers the 'construction of airports' and not 'airports' as such.

In Case C-237/07 *Janecek* (judgment of 25 July 2008), the Court ruled that Article 7(3) of Directive 96/62 on ambient air quality assessment and management ⁽⁶¹⁾, as amended by Regulation No 1882/2003 ⁽⁶²⁾, must be interpreted as meaning that, where there is a risk that the limit values or alert thresholds may be exceeded, persons directly concerned must be in a position to require the competent national authorities to draw up an action plan, even though, under national law, those persons may have other courses of action available to them for requiring those authorities to take measures to combat atmospheric pollution. The Member States are obliged, subject to judicial review by the national courts, to take such measures — in the context of an action plan and in the short term — as are capable of reducing to a minimum the risk that the limit values or alert thresholds may be exceeded and of ensuring a gradual return to a level below those values or thresholds, taking into account the factual circumstances and all opposing interests.

Judicial cooperation in civil matters

In the field of judicial cooperation in civil matters, Case C-195/08 PPU *Rinau* (judgment of 11 July 2008) is to be noted in particular. This was the first case decided by the Court under the urgent preliminary ruling procedure, which entered into force on 1 March 2008. Application had been made to the Supreme Court of Lithuania for non-recognition in Lithuania of a decision made by a German court awarding custody of a child to her father, who was resident in Germany, and ordering the mother, who was resident in Lithuania, to return the child to the father. The Supreme Court was uncertain to what extent the enforceability of the German court's decision requiring the child's return, conferred on that decision by the certificate issued pursuant to Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement

⁽⁶¹⁾ Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55).

⁽⁶²⁾ Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ 2003 L 284, p. 1).

of judgments in matrimonial matters and the matters of parental responsibility⁽⁶³⁾, could be called into question on the ground that the Lithuanian courts had finally ordered that the child be returned to Germany. The Court of Justice held that, once a decision that a child not be returned has been taken and brought to the attention of the court of origin, it is irrelevant, for the purposes of issuing the certificate provided for in Article 42 of Regulation No 2201/2003, that that decision has been suspended, overturned, set aside or, in any event, has not become *res judicata* or has been replaced by a decision ordering return, insofar as the return of the child has not actually taken place. Since no doubt had been expressed as regards the authenticity of that certificate and since it was drawn up in accordance with the standard form set out in Annex IV to the regulation, opposition to the recognition of the decision ordering return was not permitted and it was for the requested court only to declare the enforceability of the certified decision and to allow the immediate return of the child. According to the Court, if the position were otherwise, there would be a risk that Regulation No 2201/2003 would be deprived of its useful effect, since the objective of the return of the child would remain subject to the condition that the redress procedures allowed under the domestic law of the Member State in which the child is wrongfully retained have been exhausted.

Police and judicial cooperation in criminal matters, and combating terrorism

In Case C-66/08 *Kozłowski* (judgment of 17 July 2008), relating to the execution of a European arrest warrant, the Court interpreted Article 4(6) of Framework Decision 2002/584⁽⁶⁴⁾, which permits the executing judicial authority to refuse to execute such a warrant where the requested person 'is staying in, or is a national or a resident of, the executing Member State' and that State undertakes to execute the sentence in accordance with its domestic law. The Court held that a requested person is 'resident' in the executing Member State when he has established his actual place of residence there. He is 'staying' there when, following a stable period of presence in the executing Member State, he has acquired connections with that State which are of a similar degree to those resulting from residence; it is for the executing judicial authority to determine whether there are such connections by making an overall assessment of various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and his family and economic connections. Since the objective of the framework decision is to put in place a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of criminal proceedings, based on the principle of mutual recognition — a surrender which the executing judicial authority can oppose only on one of the grounds for refusal provided for by the framework decision — the terms 'staying' and 'resident', which determine the scope of the framework decision, must be defined uniformly as they concern autonomous concepts of Union law. Therefore, in their national law transposing the framework decision, the Member States are not entitled to give those terms a broader meaning than that which derives from such a uniform interpretation.

⁽⁶³⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, as amended by Council Regulation (EC) No 2116/2004 of 2 December 2004 (OJ 2004 L 367, p. 1).

⁽⁶⁴⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

B — Composition of the Court of Justice



(Order of precedence as at 6 October 2008)

First row, from left to right:

L. Bay Larsen, President of Chamber; G. Arestis, President of Chamber; M. Poiares Maduro, First Advocate General; A. Rosas, President of Chamber; P. Jann, President of Chamber; V. Skouris, President of the Court; C. W. A. Timmermans, President of Chamber; K. Lenaerts, President of Chamber; A. Tizzano, President of Chamber; U. Löhmus, President of Chamber.

Second row, from left to right:

E. Juhász, Judge; J. Makarczyk, Judge; J. Kokott, Advocate General; J. N. Cunha Rodrigues, Judge; D. Ruiz-Jarabo Colomer, Advocate General; R. Silva de Lapuerta, Judge; K. Schiemann, Judge; P. Kūris, Judge; A. Borg Barthet, Judge.

Third row, from left to right:

P. Lindh, Judge; E. Sharpston, Advocate General; E. Levits, Judge; J. Malenovský, Judge; M. Ilešič, Judge; J. Klučka, Judge; A. Ó Caoimh, Judge; P. Mengozzi, Advocate General.

Fourth row, from left to right:

J.-J. Kasel, Judge; A. Arabadjiev, Judge; T. von Danwitz, Judge; J. Mazák, Advocate General; Y. Bot, Advocate General; J.-C. Bonichot, Judge; V. Trstenjak, Advocate General; C. Toader, Judge; R. Grass, Registrar.

1. Members of the Court of Justice

(in order of their entry into office)



Vassilios Skouris

Born 1948; graduated in law from the Free University, Berlin (1970); awarded doctorate in constitutional and administrative law at Hamburg University (1973); Assistant Professor at Hamburg University (1972–77); Professor of Public Law at Bielefeld University (1978); Professor of Public Law at the University of Thessaloniki (1982); Minister of Internal Affairs (in 1989 and 1996); Member of the Administrative Board of the University of Crete (1983–87); Director of the Centre for International and European Economic Law, Thessaloniki (1997–2005); President of the Greek Association for European Law (1992–94); Member of the Greek National Research Committee (1993–95); Member of the Higher Selection Board for Greek Civil Servants (1994–96); Member of the Academic Council of the Academy of European Law, Trier (from 1995); Member of the Administrative Board of the Greek National Judges' College (1995–96); Member of the Scientific Committee of the Ministry of Foreign Affairs (1997–99); President of the Greek Economic and Social Council in 1998; Judge at the Court of Justice since 8 June 1999; President of the Court of Justice since 7 October 2003.



Peter Jann

Born 1935; Doctor of Law of the University of Vienna (1957); appointed Judge and assigned to the Federal Ministry of Justice (1961); Judge in press matters at the Straf-Bezirksgericht, Vienna (1963–66); spokesman of the Federal Ministry of Justice (1966–70) and subsequently appointed to the international affairs department of that ministry; Adviser to the Justice Committee and spokesman at the Parliament (1973–78); appointed as Member of the Constitutional Court (1978); permanent Judge-Rapporteur at that court until the end of 1994; Judge at the Court of Justice since 19 January 1995.



Dámaso Ruiz-Jarabo Colomer

Born 1949; Judge; Member of the Consejo General del Poder Judicial (General Council of the Judiciary); Professor; Head of the Private Office of the President of the Consejo General del Poder Judicial; ad hoc Judge at the European Court of Human Rights; Judge at the Tribunal Supremo (Supreme Court) from 1996; Advocate General at the Court of Justice since 19 January 1995.



Romain Schintgen

Born 1939; university studies in the Faculties of Law and Economics at Montpellier and Paris; Doctor of Laws (1964); Lawyer (1964); Lawyer-advocate (1967); General Administrator at the Ministry of Labour and Social Security; Member (1978–89), then President (1988–89), of the Economic and Social Council; Director of the Société nationale de crédit et d'investissement and of the Société européenne des satellites (until 1989); Member (1993–95), then Chairman of the Board (1995–2004), of the International University Institute of Luxembourg; Lecturer at the University of Luxembourg; Government Representative on the European Social Fund Committee, the Advisory Committee on Freedom of Movement for Workers and the Administrative Board of the European Foundation for the Improvement of Living and Working Conditions (until 1989); Judge at the Court of First Instance from 25 September 1989 to 11 July 1996; Judge at the Court of Justice from 12 July 1996 to 14 January 2008.



Antonio Tizzano

Born 1940; Professor of European Union Law at La Sapienza University, Rome; Professor at the Istituto Universitario Orientale, Naples (1969–79), Federico II University, Naples (1979–92), the University of Catania (1969–77) and the University of Mogadishu (1967–72); Member of the Bar at the Italian Court of Cassation; Legal Adviser to the Permanent Representation of the Italian Republic to the European Communities (1984–92); member of the Italian delegation at the negotiations for the accession of the Kingdom of Spain and the Portuguese Republic to the European Communities, for the Single European Act and for the Treaty on European Union; author of numerous publications, including commentaries on the European Treaties and collections of European Union legal texts; founder and director since 1996 of the journal *Il Diritto dell'Unione Europea*; member of the managing or editorial board of a number of legal journals; rapporteur at numerous international congresses; conferences and courses at various international institutions, including The Hague Academy of International Law (1987); member of the independent group of experts appointed to examine the finances of the Commission of the European Communities (1999); Advocate General at the Court of Justice from 7 October 2000 to 3 May 2006; Judge at the Court of Justice since 4 May 2006.



José Narciso da Cunha Rodrigues

Born 1940; various offices within the judiciary (1964–77); Government assignments to carry out and coordinate studies on reform of the judicial system; Government Agent at the European Commission of Human Rights and the European Court of Human Rights (1980–84); Expert on the Human Rights Steering Committee of the Council of Europe (1980–85); Member of the Review Commission for the Criminal Code and the Code of Criminal Procedure; Principal State Counsel (1984–2000); Member of the Supervisory Committee of the European Union Anti-Fraud Office (OLAF) (1999–2000); Judge at the Court of Justice since 7 October 2000.



Christiaan Willem Anton Timmermans

Born 1941; Legal Secretary at the Court of Justice of the European Communities (1966–69); official of the European Commission (1969–77); Doctor of Laws (University of Leiden); Professor of European Law at the University of Groningen (1977–89); Deputy Justice at Arnhem Court of Appeal; various editorial positions; Deputy Director-General at the Legal Service of the European Commission (1989–2000); Professor of European Law at the University of Amsterdam; Judge at the Court of Justice since 7 October 2000.



Allan Rosas

Born 1948; Doctor of Laws (1977) of the University of Turku (Finland); Professor of Law at the University of Turku (1978–81) and at the Åbo Akademi University (Turku/Åbo) (1981–96); Director of the latter's Institute for Human Rights (1985–95); various international and national academic positions of responsibility and memberships of learned societies; coordinated several international and national research projects and programmes, including in the fields of EU law, international law, humanitarian and human rights law, constitutional law and comparative public administration; represented the Finnish Government as member of, or adviser to, Finnish delegations at various international conferences and meetings; expert functions in relation to Finnish legal life, including in governmental law commissions and committees of the Finnish Parliament, as well as the UN, Unesco, OSCE (CSCE) and the Council of Europe; from 1995 Principal Legal Adviser at the Legal Service of the European Commission, in charge of external relations; from March 2001, Deputy Director-General of the European Commission Legal Service; Judge at the Court of Justice since 17 January 2002.



Rosario Silva de Lapuerta

Born 1954; Bachelor of Laws (Universidad Complutense, Madrid); Abogado del Estado in Malaga; Abogado del Estado at the Legal Service of the Ministry of Transport, Tourism and Communication and, subsequently, at the Legal Service of the Ministry of Foreign Affairs; Head Abogado del Estado of the State Legal Service for Cases before the Court of Justice of the European Communities and Deputy Director-General of the Community and International Legal Assistance Department (Ministry of Justice); Member of the Commission think tank on the future of the Community judicial system; Head of the Spanish delegation in the 'Friends of the Presidency' Group with regard to the reform of the Community judicial system in the Treaty of Nice and of the Council ad hoc working party on the Court of Justice; Professor of Community law at the Diplomatic School, Madrid; Co-director of the journal *Noticias de la Unión Europea*; Judge at the Court of Justice since 7 October 2003.



Koen Lenaerts

Born 1954; lic. iuris, Ph.D. in Law (Katholieke Universiteit Leuven); Master of Laws, Master in Public Administration (Harvard University); Lecturer (1979–83), subsequently Professor of European Law, Katholieke Universiteit Leuven (since 1983); Legal Secretary at the Court of Justice (1984–85); Professor at the College of Europe, Bruges (1984–89); Member of the Brussels Bar (1986–89); Visiting Professor at the Harvard Law School (1989); Judge at the Court of First Instance of the European Communities from 25 September 1989 to 6 October 2003; Judge at the Court of Justice since 7 October 2003.



Juliane Kokott

Born 1957; Law studies (Universities of Bonn and Geneva); LLM (American University/Washington DC); Doctor of Laws (Heidelberg University, 1985; Harvard University, 1990); visiting professor at the University of California, Berkeley (1991); Professor of German and foreign public law, international law and European law at the Universities of Augsburg (1992), Heidelberg (1993) and Düsseldorf (1994); deputy judge for the Federal Government at the Court of Conciliation and Arbitration of the Organisation for Security and Cooperation in Europe (OSCE); Deputy Chairperson of the Federal Government's Advisory Council on Global Change (WBGU, 1996); Professor of International Law, International Business Law and European Law at the University of St Gallen (1999); Director of the Institute for European and International Business Law at the University of St Gallen (2000); Deputy Director of the Master of Business Law programme at the University of St Gallen (2001); Advocate General at the Court of Justice since 7 October 2003.



Luís Miguel Poiares Pessoa Maduro

Born 1967; degree in law (University of Lisbon, 1990); assistant lecturer (European University Institute, 1991); Doctor of Laws (European University Institute, Florence, 1996); visiting professor (London School of Economics; College of Europe, Natolin; Ortega y Gasset Institute, Madrid; Catholic University, Portugal; Institute of European Studies, Macao); Professor (Universidade Nova, Lisbon, 1997); Fulbright Visiting Research Fellow (Harvard University, 1998); co-director of the Academy of International Trade Law; co-editor (Hart Series on European Law and Integration, *European Law Journal*) and member of the editorial board of several law journals; Advocate General at the Court of Justice since 7 October 2003.



Konrad Hermann Theodor Schiemann

Born 1937; Law degrees at Cambridge University; Barrister 1964–80; Queen's Counsel 1980–86; Justice of the High Court of England and Wales 1986–95; Lord Justice of Appeal 1995–2003; Bencher from 1985 and Treasurer in 2003 of the Honourable Society of the Inner Temple; Judge at the Court of Justice since 8 January 2004.



Jerzy Makarczyk

Born 1938; Doctor of Laws (1966); Professor of Public International Law (1974); Senior Visiting Fellow at the University of Oxford (1985); Professor at the International Christian University, Tokyo (1988); author of several works on public international law, European Community law and human rights law; member of several learned societies in the field of international law, European law and human rights law; negotiator for the Polish Government for the withdrawal of Russian troops from Poland; Under-Secretary of State, then Secretary of State for Foreign Affairs (1989–92); Chairman of the Polish delegation to the General Assembly of the United Nations; Judge at the European Court of Human Rights (1992–2002); President of the Institut de droit international (2003); Adviser to the President of the Republic of Poland on foreign policy and human rights (2002–04); Judge at the Court of Justice since 11 May 2004.



Pranas Kūris

Born 1938; graduated in law from the University of Vilnius (1961); Doctorate in legal science, University of Moscow (1965); Doctor in legal science (Dr hab), University of Moscow (1973); Research Assistant at the Institut des hautes études internationales (Director: Professor C. Rousseau), University of Paris (1967–68); Member of the Lithuanian Academy of Sciences (1996); Doctor *honoris causa* of the Law University of Lithuania (2001); various teaching and administrative duties at the University of Vilnius (1961–90); Lecturer, Assistant Professor, Professor of Public International Law, Dean of the Faculty of Law; several governmental posts in the Lithuanian Diplomatic Service and Lithuanian Ministry of Justice; Minister for Justice (1990–91), Member of the State Council (1991), Ambassador of the Republic of Lithuania to Belgium, Luxembourg and the Netherlands (1992–94); Judge at the (former) European Court of Human Rights (June 1994 to November 1998); Judge at the Supreme Court of Lithuania and subsequently President of the Supreme Court (December 1994 to October 1998); Judge at the European Court of Human Rights (from November 1998); has participated in various international conferences; member of the delegation of the Republic of Lithuania for negotiations with the USSR (1990–92); author of numerous publications (approximately 200); Judge at the Court of Justice since 11 May 2004.



Endre Juhász

Born 1944; graduated in law from the University of Szeged, Hungary (1967); Hungarian Bar Entrance Examinations (1970); postgraduate studies in comparative law, University of Strasbourg, France (1969, 1970, 1971, 1972); Official in the Legal Department of the Ministry of Foreign Trade (1966–74), Director for Legislative Matters (1973–74); First Commercial Secretary at the Hungarian Embassy, Brussels, responsible for European Community issues (1974–79); Director at the Ministry of Foreign Trade (1979–83); First Commercial Secretary, then Commercial Counsellor to the Hungarian Embassy in Washington DC, USA (1983–89); Director-General at the Ministry of Trade and Ministry of International Economic Relations (1989–91); chief negotiator for the Association Agreement between the Republic of Hungary and the European Communities and their Member States (1990–91); Secretary-General of the Ministry of International Economic Relations, Head of the Office of European Affairs (1992); State Secretary at the Ministry of International Economic Relations (1993–94); State Secretary, President of the Office of European Affairs, Ministry of Industry and Trade (1994); Ambassador Extraordinary and Plenipotentiary, Chief of Mission of the Republic of Hungary to the European Union (January 1995 to May 2003); chief negotiator for the accession of the Republic of Hungary to the European Union (July 1998 to April 2003); Minister without portfolio for the coordination of matters of European integration (from May 2003); Judge at the Court of Justice since 11 May 2004.



George Arestis

Born 1945; graduated in law from the University of Athens (1968); MA in Comparative Politics and Government, University of Kent at Canterbury (1970); practice as a lawyer in Cyprus (1972–82); appointed District Court Judge (1982); promoted to the post of President of the District Court (1995); Administrative President of the District Court of Nicosia (1997–2003); Judge at the Supreme Court of Cyprus (2003); Judge at the Court of Justice since 11 May 2004.



Anthony Borg Barthet UOM

Born 1947; Doctorate in Law at the Royal University of Malta in 1973; entered the Maltese Civil Service as Notary to the Government in 1975; Counsel for the Republic in 1978, Senior Counsel for the Republic in 1979, Assistant Attorney General in 1988 and appointed Attorney General by the President of Malta in 1989; part-time lecturer in civil law at the University of Malta (1985–89); Member of the Council of the University of Malta (1998–2004); Member of the Commission for the Administration of Justice (1994–2004); Member of the Board of Governors of the Malta Arbitration Centre (1998–2004); Judge at the Court of Justice since 11 May 2004.



Marko Ilešič

Born 1947; Doctor of Law (University of Ljubljana); specialism in comparative law (Universities of Strasbourg and Coimbra); Member of the Bar; Judge at the Labour Court, Ljubljana (1975–86); President of the Sports Tribunal (1978–86); Arbitrator at the Arbitration Court of the Triglav Insurance Company (1990–98); Chairman of the Stock Exchange Appellate Chamber (from 1995); Arbitrator at the Stock Exchange Arbitration Court (from 1998); Arbitrator at the Chamber of Commerce of Yugoslavia (until 1991) and Slovenia (from 1991); Arbitrator at the International Chamber of Commerce in Paris; Judge on the Board of Appeals of UEFA (from 1988) and FIFA (from 2000); President of the Union of Slovenian Lawyers' Associations; Member of the International Law Association, of the International Maritime Committee and of several other international legal societies; Professor of Civil Law, Commercial Law and Private International Law; Dean of the Faculty of Law at the University of Ljubljana; author of numerous legal publications; Judge at the Court of Justice since 11 May 2004.



Egils Levits

Born 1955; graduated in law and in political science from the University of Hamburg; research assistant at the Faculty of Law, University of Kiel; Adviser to the Latvian Parliament on questions of international law, constitutional law and legislative reform; Ambassador of the Republic of Latvia to Germany and Switzerland (1992–93), Austria, Switzerland and Hungary (1994–95); Vice Prime Minister and Minister for Justice, acting Minister for Foreign Affairs (1993–94); Conciliator at the Court of Conciliation and Arbitration within the OSCE (from 1997); Member of the Permanent Court of Arbitration (from 2001); elected as Judge at the European Court of Human Rights in 1995, re-elected in 1998 and 2001; numerous publications in the spheres of constitutional and administrative law, law reform and European Community law; Judge at the Court of Justice since 11 May 2004.



Aindrias Ó Caoimh

Born 1950; Bachelor in Civil Law (National University of Ireland, University College Dublin, 1971); Barrister (King's Inns, 1972); Diploma in European Law (University College Dublin, 1977); Barrister (Bar of Ireland, 1972–99); Lecturer in European Law (King's Inns, Dublin); Senior Counsel (1994–99); Representative of the Government of Ireland on many occasions before the Court of Justice of the European Communities; Judge at the High Court (from 1999); Bencher of the Honourable Society of King's Inns (since 1999); Vice-President of the Irish Society of European Law; member of the International Law Association (Irish Branch); son of Judge Andreas O'Keefe (Aindrias Ó Caoimh), member of the Court of Justice 1974–85; Judge at the Court of Justice since 13 October 2004.



Lars Bay Larsen

Born 1953; awarded degrees in political science (1976) and law (1983) at the University of Copenhagen; Official at the Ministry of Justice (1983–85); Lecturer (1984–91), then Associate Professor (1991–96), in family law at the University of Copenhagen; Head of Section at the Advokatsamfund (Danish Bar Association) (1985–86); Head of Section (1986–91) at the Ministry of Justice; called to the Bar (1991); Head of Division (1991–95), Head of the Police Department (1995–99) and Head of the Law Department (2000–03) at the Ministry of Justice; Representative of the Kingdom of Denmark on the K-4 Committee (1995–2000), the Schengen Central Group (1996–98) and the Europol Management Board (1998–2000); Judge at the Højesteret (Supreme Court) (2003–06); Judge at the Court of Justice since 11 January 2006.



Eleanor Sharpston

Born 1955; studied economics, languages and law at King's College, Cambridge (1973–77); university teaching and research at Corpus Christi College, Oxford (1977–80); called to the Bar (Middle Temple, 1980); Barrister (1980–87 and 1990–2005); Legal Secretary in the Chambers of Advocate General, subsequently Judge, Sir Gordon Slynn (1987–90); Lecturer in EC and comparative law (Director of European Legal Studies) at University College London (1990–92); Lecturer in the Faculty of Law (1992–98), and subsequently Affiliated Lecturer (1998–2005), at the University of Cambridge; Fellow of King's College, Cambridge (since 1992); Senior Research Fellow at the Centre for European Legal Studies of the University of Cambridge (1998–2005); Queen's Counsel (1999); Bencher of Middle Temple (2005); Advocate General at the Court of Justice since 11 January 2006.



Paolo Mengozzi

Born 1938; Professor of International Law and holder of the Jean Monnet Chair of European Community law at the University of Bologna; Doctor *honoris causa* of the Carlos III University, Madrid; visiting professor at the Johns Hopkins University (Bologna Center), the Universities of St. Johns (New York), Georgetown, Paris II and Georgia (Athens) and the Institut universitaire international (Luxembourg); coordinator of the European Business Law Pallas Program of the University of Nijmegen; member of the consultative committee of the Commission of the European Communities on public procurement; Under-Secretary of State for Trade and Industry during the Italian tenure of the Presidency of the Council; member of the working group of the European Community on the World Trade Organisation (WTO) and director of the 1997 session of the research centre of The Hague Academy of International Law, devoted to the WTO; Judge at the Court of First Instance from 4 March 1998 to 3 May 2006; Advocate General at the Court of Justice since 4 May 2006.



Pernilla Lindh

Born 1945; Law graduate of the University of Lund; Legal Secretary and Judge at the District Court, Trollhättan (1971–74); Legal Secretary at the Court of Appeal, Stockholm (1974–75); Judge at the District Court, Stockholm (1975); Adviser on legal and administrative matters to the President of the Court of Appeal, Stockholm (1975–78); Special adviser at the Domstolverket (National Courts' Administration) (1977); Adviser in the office of the Chancellor of Justice (1979–80); Associate Judge at the Court of Appeal, Stockholm (1980–81); Legal Adviser at the Ministry of Trade (1981–82); Legal Adviser, and subsequently Director and Director-General for Legal Affairs, at the Ministry of Foreign Affairs (1982–95); Title of Ambassador in 1992; Vice-President at the Swedish Market Court; responsible for legal and institutional issues at the time of the EEA negotiations (Deputy Chairperson, then Chairperson, of the EFTA Group) and at the time of the negotiations for the accession of the Kingdom of Sweden to the European Union; Judge at the Court of First Instance from 18 January 1995 to 6 October 2006; Judge at the Court of Justice since 7 October 2006.



Yves Bot

Born 1947; Graduate of the Faculty of Law, Rouen; Doctor of Laws (University of Paris II, Panthéon-Assas); Lecturer at the Faculty of Law, Le Mans; Deputy Public Prosecutor, then Senior Deputy Public Prosecutor, at the Public Prosecutor's Office, Le Mans (1974–82); Public Prosecutor at the Regional Court, Dieppe (1982–84); Deputy Public Prosecutor at the Regional Court, Strasbourg (1984–86); Public Prosecutor at the Regional Court, Bastia (1986–88); Advocate General at the Court of Appeal, Caen (1988–91); Public Prosecutor at the Regional Court, Le Mans (1991–93); Special Adviser to the Minister for Justice (1993–95); Public Prosecutor at the Regional Court, Nanterre (1995–2002); Public Prosecutor at the Regional Court, Paris (2002–04); Principal State Prosecutor at the Court of Appeal, Paris (2004–06); Advocate General at the Court of Justice since 7 October 2006.



Ján Mazák

Born 1954; Doctor of Laws (Pavol Jozef Šafárik University, Košice, 1978); Professor of civil law (1994) and of Community law (2004); Head of the Community Law Institute at the Faculty of Law, Košice (2004); Judge at the Krajský súd (Regional Court), Košice (1980); Vice-President (1982) and President (1990) of the Mestský súd (City Court), Košice; Member of the Slovak Bar (1991); Legal Adviser at the Constitutional Court (1993–98); Deputy Minister for Justice (1998–2000); President of the Constitutional Court (2000–06); Member of the Venice Commission (2004); Advocate General at the Court of Justice since 7 October 2006.



Jean-Claude Bonichot

Born 1955; graduated in law at the University of Metz, degree from the Institut d'études politiques, Paris, former student at the École nationale d'administration; rapporteur (1982–85), commissaire du gouvernement (1985–87 and 1992–99), Judge (1999–2000), President of the Sixth Sub-Division of the Judicial Division (2000–06), at the Council of State; Legal Secretary at the Court of Justice (1987–91); Director of the Private Office of the Minister for Labour, Employment and Vocational Training, then Minister for the Civil Service and Modernisation of Administration (1991–92); Head of the Legal Mission of the Council of State at the National Health Insurance Fund for Employed Persons (2001–06); Lecturer at the University of Metz (1988–2000), then at the University of Paris I, Panthéon-Sorbonne (from 2000); author of numerous publications on administrative law, Community law and European human rights law; Founder and Chairman of the editorial committee of the *Bulletin de jurisprudence de droit de l'urbanisme*, co-founder and member of the editorial committee of the *Bulletin juridique des collectivités locales*; President of the Scientific Council of the Research Group on Institutions and Law governing Regional and Urban Planning and Habitats; Judge at the Court of Justice since 7 October 2006.



Thomas von Danwitz

Born 1962; studied at Bonn, Geneva and Paris; State examination in law (1986 and 1992); Doctor of Laws (University of Bonn, 1988); International diploma in public administration (École nationale d'administration, 1990); teaching authorisation (University of Bonn, 1996); Professor of German public law and European law (1996–2003), Dean of the Faculty of Law of the Ruhr University, Bochum (2000–01); Professor of German public law and European law (University of Cologne, 2003–06); Director of the Institute of Public Law and Administrative Science (2006); Visiting professor at the Fletcher School of Law and Diplomacy (2000), François Rabelais University, Tours (2001–06), and the University of Paris I, Panthéon-Sorbonne (2005–06); Judge at the Court of Justice since 7 October 2006.



Verica Trstenjak

Born 1962; Judicial service examination (1987); Doctor of Laws of the University of Ljubljana (1995); professor (since 1996) of theory of law and State (jurisprudence) and of private law; researcher; postgraduate study at the University of Zurich, the Institute of Comparative Law of the University of Vienna, the Max Planck Institute for Private International Law in Hamburg, the Free University of Amsterdam; visiting professor at the Universities of Vienna and Freiburg (Germany) and at the Bucerius School of Law in Hamburg; Head of the Legal Service (1994–96) and State Secretary in the Ministry of Science and Technology (1996–2000); Secretary-General of the Government (2000); Member of the Study Group on a European Civil Code since 2003; responsible for a Humboldt research project (Humboldt Foundation); publication of more than 100 legal articles and several books on European and private law; Prize of the Association of Slovene Lawyers 'Lawyer of the Year 2003'; Member of the editorial board of a number of legal periodicals; Secretary-General of the Association of Slovene Lawyers and member of a number of lawyers' associations, including the Gesellschaft für Rechtsvergleichung; Judge at the Court of First Instance from 7 July 2004 to 6 October 2006; Advocate General at the Court of Justice since 7 October 2006.



Alexander Arabadjiev

Born 1949; legal studies (St Kliment Ohridski University, Sofia); Judge at the District Court, Blagoevgrad (1975–83); Judge at the Regional Court, Blagoevgrad (1983–86); Judge at the Supreme Court (1986–91); Judge at the Constitutional Court (1991–2000); Member of the European Commission of Human Rights (1997–99); Member of the European Convention on the Future of Europe (2002–03); Member of the National Assembly (2001–06); Observer at the European Parliament; Judge at the Court of Justice since 12 January 2007.

4. Former Members of the Court of Justice

Massimo Pilotti, Judge (1952–58), President from 1952 to 1958
Petrus Josephus Servatius Serrarens, Judge (1952–58)
Otto Riese, Judge (1952–63)
Louis Delvaux, Judge (1952–67)
Jacques Rueff, Judge (1952–59 and 1960–62)
Charles Léon Hammes, Judge (1952–67), President from 1964 to 1967
Adrianus Van Kleffens, Judge (1952–58)
Maurice Lagrange, Advocate General (1952–64)
Karl Roemer, Advocate General (1953–73)
Rino Rossi, Judge (1958–64)
Andreas Matthias Donner, Judge (1958–79), President from 1958 to 1964
Nicola Catalano, Judge (1958–62)
Alberto Trabucchi, Judge (1962–72), then Advocate General (1973–76)
Robert Lecourt, Judge (1962–76), President from 1967 to 1976
Walter Strauss, Judge (1963–70)
Riccardo Monaco, Judge (1964–76)
Joseph Gand, Advocate General (1964–70)
Josse J. Mertens de Wilmars, Judge (1967–84), President from 1980 to 1984
Pierre Pescatore, Judge (1967–85)
Hans Kutscher, Judge (1970–80), President from 1976 to 1980
Alain Louis Dutheillet de Lamothe, Advocate General (1970–72)
Henri Mayras, Advocate General (1972–81)
Cearbhall O'Dalaigh, Judge (1973–74)
Max Sørensen, Judge (1973–79)
Alexander J. Mackenzie Stuart, Judge (1973–88), President from 1984 to 1988
Jean-Pierre Warner, Advocate General (1973–81)
Gerhard Reischl, Advocate General (1973–81)
Andreas O'Keefe, Judge (1975–85)
Francesco Capotorti, Judge (1976), then Advocate General (1976–82)
Giacinto Bosco, Judge (1976–88)
Adolphe Touffait, Judge (1976–82)
Thymen Koopmans, Judge (1979–90)
Ole Due, Judge (1979–94), President from 1988 to 1994
Ulrich Everling, Judge (1980–88)
Alexandros Chloros, Judge (1981–82)
Sir Gordon Slynn, Advocate General (1981–88), then Judge (1988–92)
Simone Rozès, Advocate General (1981–84)
Pieter VerLoren van Themaat, Advocate General (1981–86)
Fernand Grévisse, Judge (1981–82 and 1988–94)
Kai Bahlmann, Judge (1982–88)
G. Federico Mancini, Advocate General (1982–88), then Judge (1988–99)
Yves Galmot, Judge (1982–88)
Constantinos Kakouris, Judge (1983–97)
Carl Otto Lenz, Advocate General (1984–97)
Marco Darmon, Advocate General (1984–94)
René Joliet, Judge (1984–95)
Thomas Francis O'Higgins, Judge (1985–91)

Fernand Schockweiler, Judge (1985–96)
Jean Mischo, Advocate General (1986–91 and 1997–2003)
José Carlos De Carvalho Moithinho de Almeida, Judge (1986–2000)
José Luis Da Cruz Vilaça, Advocate General (1986–88)
Gil Carlos Rodríguez Iglesias, Judge (1986–2003), President from 1994 to 2003
Manuel Diez de Velasco, Judge (1988–94)
Manfred Zuleeg, Judge (1988–94)
Walter Van Gerven, Advocate General (1988–94)
Francis Geoffrey Jacobs, Advocate General (1988–2006)
Giuseppe Tesaurò, Advocate General (1988–98)
Paul Joan George Kapteyn, Judge (1990–2000)
Claus Christian Gulmann, Advocate General (1991–94), then Judge (1994–2006)
John L. Murray, Judge (1991–99)
David Alexander O'Gilvy Edward, Judge (1992–2004)
Antonio Mario La Pergola, Judge (1994 and 1999–2006), Advocate General (1995–99)
Georges Cosmas, Advocate General (1994–2000)
Jean-Pierre Puissochet, Judge (1994–2006)
Philippe Léger, Advocate General (1994–2006)
Günter Hirsch, Judge (1994–2000)
Michael Bendik Elmer, Advocate General (1994–97)
Hans Ragnemalm, Judge (1995–2000)
Leif Sevón, Judge (1995–2002)
Nial Fennelly, Advocate General (1995–2000)
Melchior Wathelet, Judge (1995–2003)
Krateros Ioannou, Judge (1997–99)
Siegbert Alber, Advocate General (1997–2003)
Antonio Saggio, Advocate General (1998–2000)
Fidelma O'Kelly Macken, Judge (1999–2004)
Ninon Colneric, Judge (2000–06)
Stig Von Bahr, Judge (2000–06)
Leendert A. Geelhoed, Advocate General (2000–06)
Christine Stix-Hackl, Advocate General (2000–06)

Presidents

Massimo Pilotti (1952–58)
Andreas Matthias Donner (1958–64)
Charles Léon Hammes (1964–67)
Robert Lecourt (1967–76)
Hans Kutscher (1976–80)
Josse J. Mertens de Wilmars (1980–84)
Alexander John Mackenzie Stuart (1984–88)
Ole Due (1988–94)
Gil Carlos Rodríguez Iglésias (1994–2003)

C — Statistics concerning the judicial activity of the Court of Justice

General activity of the Court of Justice

1. New cases, completed cases, cases pending (2004–08)

New cases

2. Nature of proceedings (2004–08)
3. Direct actions — Type of action (2008)
4. Subject matter of the action (2008)
5. Actions for failure of a Member State to fulfil its obligations (2004–08)

Completed cases

6. Nature of proceedings (2004–08)
7. Judgments, orders, opinions (2008)
8. Bench hearing action (2004–08)
9. Subject matter of the action (2004–08)
10. Subject matter of the action (2008)
11. Judgments concerning failure of a Member State to fulfil its obligations: outcome (2008)
12. Duration of proceedings (2004–08)

Cases pending as at 31 December

13. Nature of proceedings (2004–08)
14. Bench hearing action (2008)

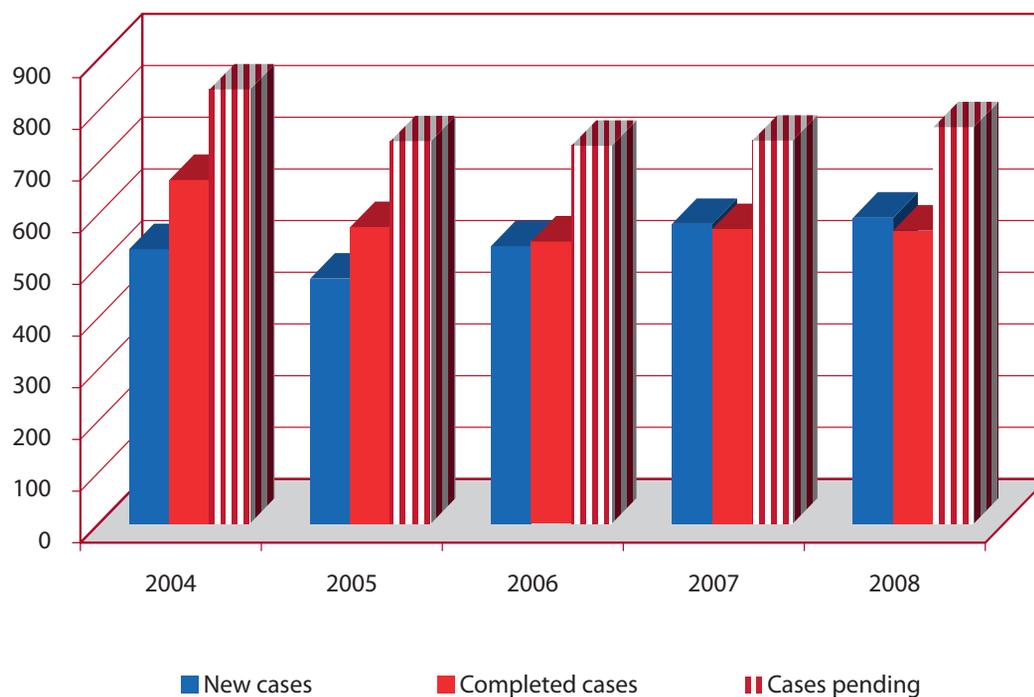
Miscellaneous

15. Expedited and accelerated procedures (2004–08)
16. Urgent preliminary ruling procedure (2008)
17. Proceedings for interim measures (2008)

General trend in the work of the Court (1952–2008)

18. New cases and judgments
19. New references for a preliminary ruling (by Member State per year)
20. New references for a preliminary ruling (by Member State and by court or tribunal)
21. New actions for failure of a Member State to fulfil its obligations

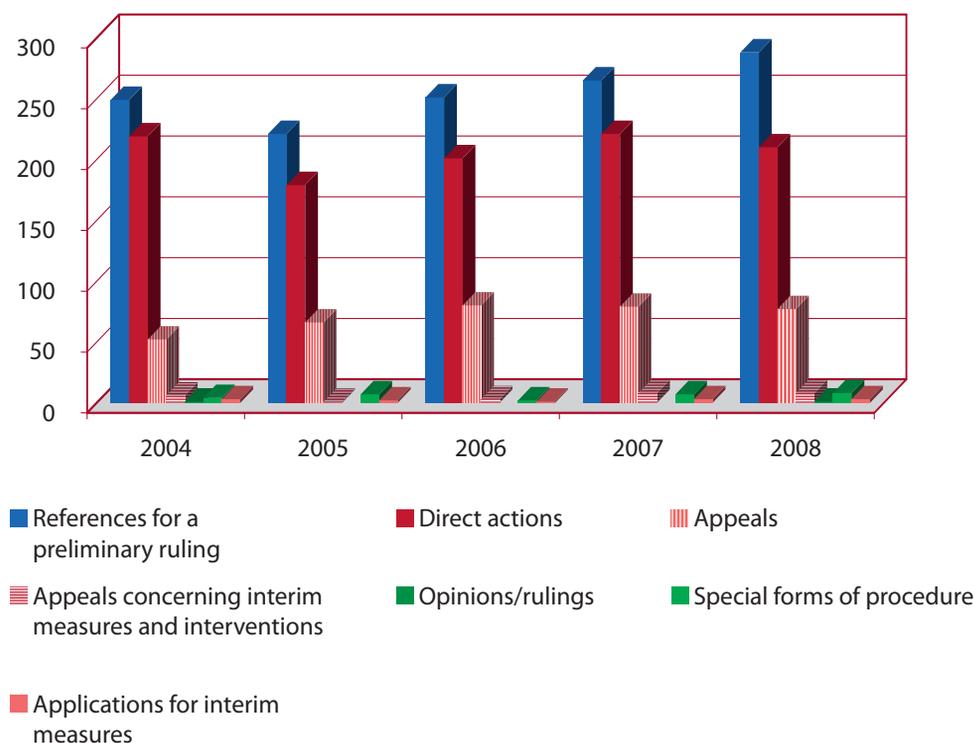
1. *General activity of the Court of Justice — New cases, completed cases, cases pending (2004–08) ⁽¹⁾*



	2004	2005	2006	2007	2008
New cases	531	474	537	580	592
Completed cases	665	574	546	570	567
Cases pending	840	740	731	741	767

⁽¹⁾ The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

2. New cases — Nature of proceedings (2004–08) ⁽¹⁾ ⁽²⁾

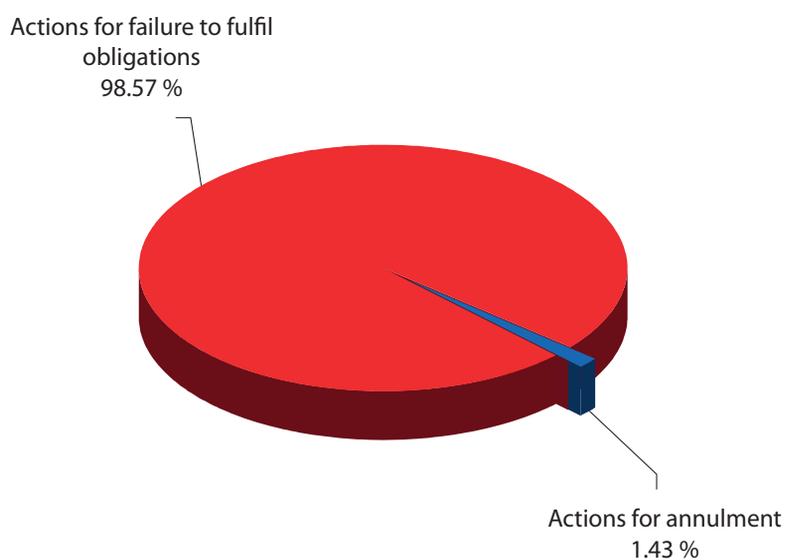


	2004	2005	2006	2007	2008
References for a preliminary ruling	249	221	251	265	288
Direct actions	219	179	201	221	210
Appeals	52	66	80	79	77
Appeals concerning interim measures and interventions	6	1	3	8	8
Opinions/rulings	1				1
Special forms of procedure	4	7	2	7	8
Total	531	474	537	580	592
Applications for interim measures	3	2	1	3	3

⁽¹⁾ The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

⁽²⁾ The following are considered to be 'special forms of procedure': taxation of costs (Article 74 of the Rules of Procedure); legal aid (Article 76 of the Rules of Procedure); application to set a judgment aside (Article 94 of the Rules of Procedure); third-party proceedings (Article 97 of the Rules of Procedure); interpretation of a judgment (Article 102 of the Rules of Procedure); revision of a judgment (Article 98 of the Rules of Procedure); rectification of a judgment (Article 66 of the Rules of Procedure); examination of a proposal by the First Advocate General to review a decision of the Court of First Instance (Article 62 of the Statute of the Court of Justice); attachment procedure (Protocol on Privileges and Immunities); cases concerning immunity (Protocol on Privileges and Immunities).

3. New cases — Direct actions — Type of action (2008) ⁽¹⁾



Actions for annulment	3
Actions for failure to act	
Actions for failure to fulfil obligations	207
Total	210

⁽¹⁾ The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

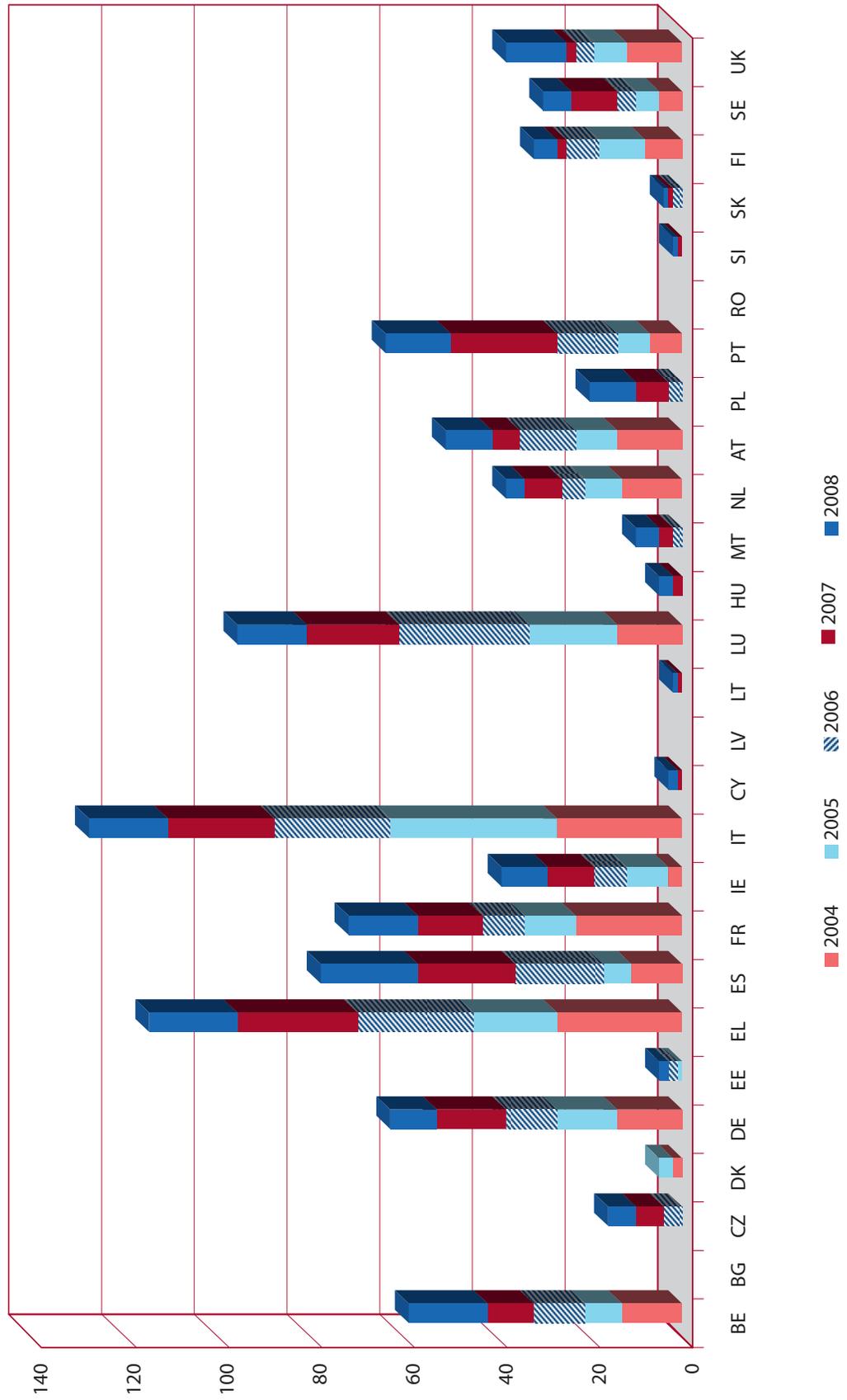
4. New cases ⁽¹⁾ — Subject matter of the action (2008) ⁽²⁾

	Direct actions	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	Total	Special forms of procedure
Agriculture	4	11			15	
Approximation of laws	15	10			25	
Area of freedom, security and justice	12	26			38	
Commercial policy		3	2		5	
Common Customs Tariff		12			12	
Common foreign and security policy		1	1		2	
Community own resources	3				3	
Company law	9	9	1		19	
Competition		3	7		10	
Customs union		8	1		9	
Economic and monetary policy	1				1	
Energy	4				4	
Environment and consumers	49	34	5	6	94	
European citizenship		6			6	
External relations	2	7			9	1
Fisheries policy	2	1			3	
Free movement of capital	3	9			12	
Free movement of goods	2	8			10	
Freedom of establishment	26	7			33	
Freedom of movement for persons	28	14			42	
Freedom to provide services	12	20			32	
Industrial policy	3	5			8	
Intellectual property	1	12	23		36	
Law governing the institutions	3	1	21	2	27	1
Principles of Community law		3	1		4	
Regional policy			2		2	
Rome Convention		1			1	
Social policy	5	26			31	
Social security for migrant workers		2			2	
State aid	1	6	4		11	
Taxation	14	35			49	
Transport	12	4			16	
EC Treaty	209	284	68	8	569	2
EU Treaty	1	4			5	
Procedure						7
Staff Regulations			9		9	
Others			9		9	7
OVERALL TOTAL	210	288	77	8	583	9

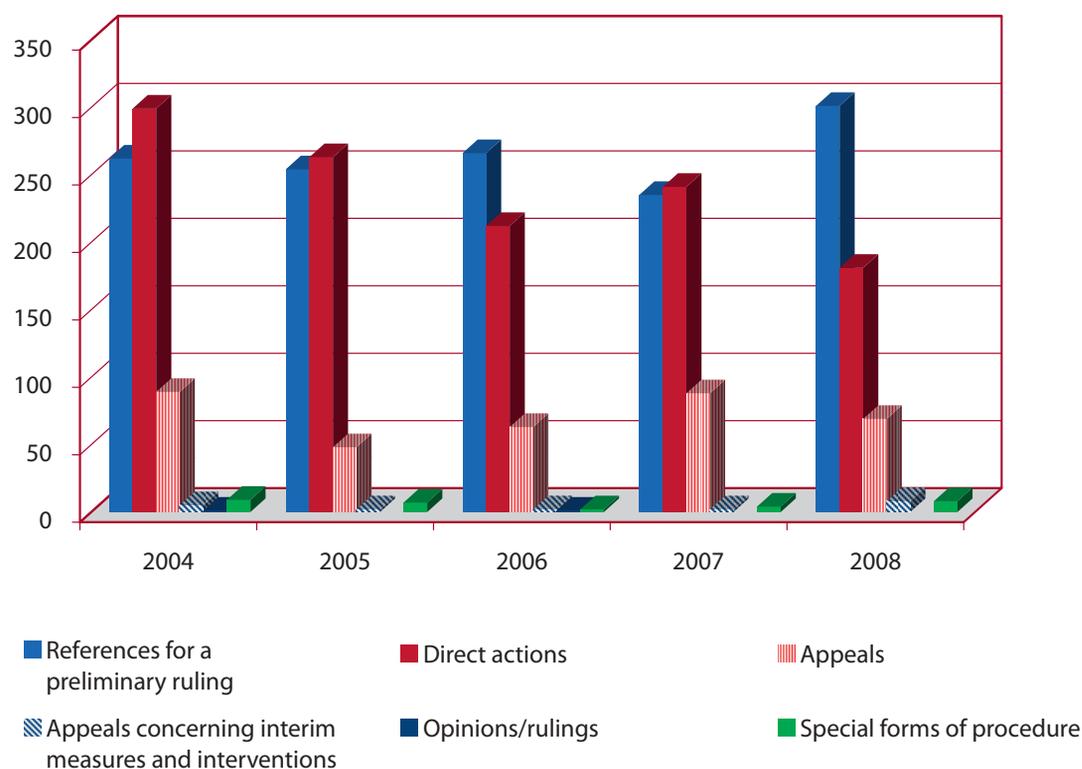
(1) Taking no account of applications for interim measures.

(2) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

5. New cases — Actions for failure of a Member State to fulfil its obligations (2004–08) ⁽¹⁾ ⁽²⁾



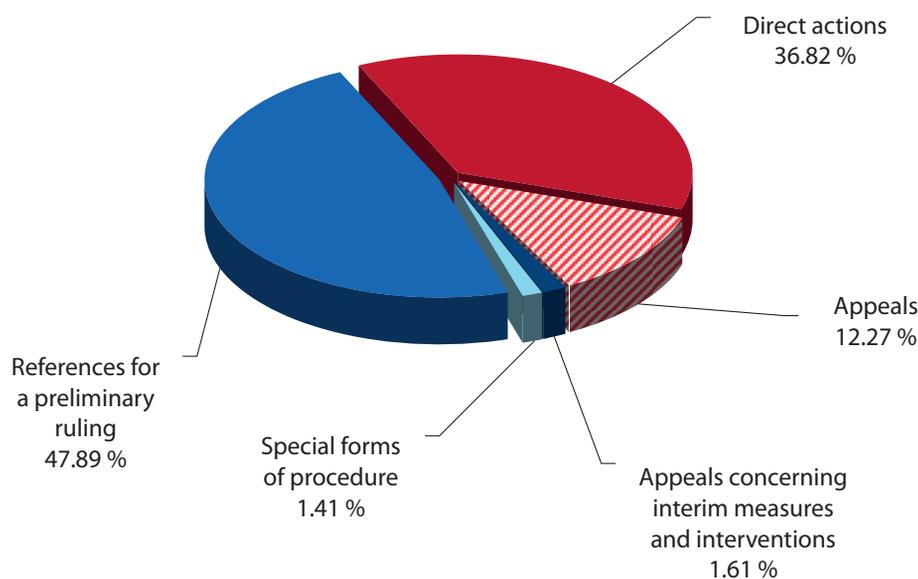
6. Completed cases — Nature of proceedings (2004–08) ⁽¹⁾



	2004	2005	2006	2007	2008
References for a preliminary ruling	262	254	266	235	301
Direct actions	299	263	212	241	181
Appeals	89	48	63	88	69
Appeals concerning interim measures and interventions	5	2	2	2	8
Opinions/rulings	1		1		
Special forms of procedure	9	7	2	4	8
Total	665	574	546	570	567

⁽¹⁾ The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

7. Completed cases — Judgments, orders, opinions (2008) ⁽¹⁾



	Judgments	Non-interlocutory orders ⁽²⁾	Interlocutory orders ⁽³⁾	Other orders ⁽⁴⁾	Opinions of the Court	Total
References for a preliminary ruling	186	30		22		238
Direct actions	108	2		70		180
Appeals	39	20		2		61
Appeals concerning interim measures and interventions			7	1		8
Special forms of procedure		5		2		7
Total	333	57	7	97		494

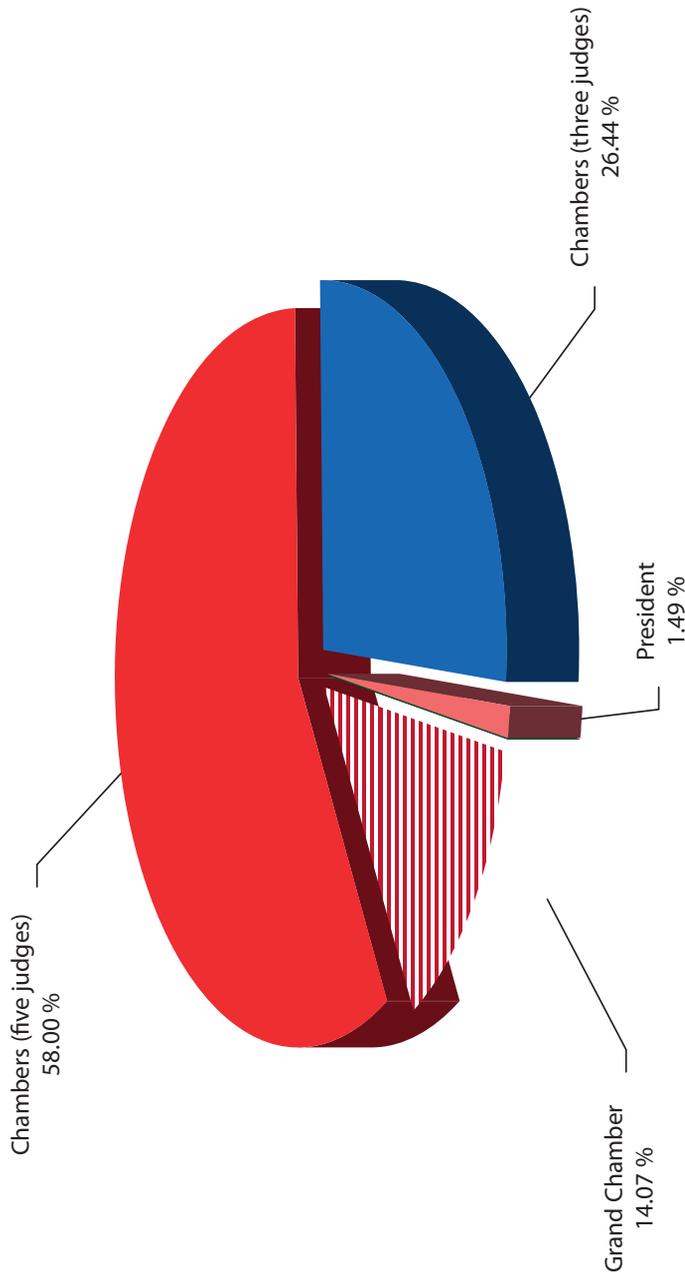
⁽¹⁾ The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

⁽²⁾ Orders terminating proceedings by judicial determination (inadmissibility, manifest inadmissibility and so forth).

⁽³⁾ Orders made following an application on the basis of Article 185 or 186 of the EC Treaty (now Articles 242 EC and 243 EC), Article 187 of the EC Treaty (now Article 244 EC) or the corresponding provisions of the EA and CS Treaties, or following an appeal against an order concerning interim measures or interventions.

⁽⁴⁾ Orders terminating the case by removal from the register, declaration that there is no need to give a decision or referral to the Court of First Instance.

8. Completed cases — Bench hearing action (2004–08) (1)



	2004			2005			2006			2007			2008		
	Judgments/ opinions	Orders (2)	Total												
Full Court	21		21	1		1	2		2						
Small plenary (3)	1		1												
Grand Chamber	31	1	32	59		59	55		55	51		51	66		66
Chambers (five judges)	257	18	275	245	5	250	265	13	278	242	10	252	259	13	272
Chambers (three judges)	113	61	174	103	51	154	67	41	108	104	48	152	65	59	124
President		6	6		2	2		1	1		2	2		7	7
Total	423	86	509	408	58	466	389	55	444	397	60	457	390	79	469

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

(2) Orders terminating proceedings by judicial determination (other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the Court of First Instance).

(3) Composition of the Court which existed before the entry into force of the Treaty of Nice.

9. Completed cases — Subject matter of the action (2004–08) ⁽¹⁾

	2004	2005	2006	2007	2008
Accession of new States	2	1		1	
Agriculture	60	63	30	23	54
Approximation of laws	33	41	19	22	21
Area of freedom, security and justice	2	5	9	17	5
Association of the Overseas Countries and Territories	1	2			
Brussels Convention	7	8	4	2	1
Commercial policy		4	1	1	1
Common Customs Tariff	4	7	7	10	5
Common foreign and security policy				4	2
Community own resources		2	6	3	
Company law	16	24	10	16	17
Competition	29	17	30	17	23
Customs union	12	9	9	12	8
Economic and monetary policy	2			1	1
Energy	1	3	6	4	4
Environment and consumers	67	44	40	50	43
European citizenship	1	2	4	2	6
External relations	9	8	11	9	8
Fisheries policy	6	11	7	6	6
Free movement of capital	4	5	4	13	9
Free movement of goods	17	11	8	14	12
Freedom of establishment	14	5	21	19	29
Freedom of movement for persons	17	17	20	19	27
Freedom to provide services	23	11	17	23	8
Industrial policy	11	11		11	12
Intellectual property	20	5	19	21	22
Justice and home affairs			2		1
Law governing the institutions	13	16	15	6	16
Principles of Community law	4	2	1	4	4
Privileges and immunities		1	1	1	2
Regional policy		5		7	1
Research, information, education and statistics					
Social policy	44	29	29	26	25
Social security for migrant workers	6	10	7	7	5
State aid	21	23	23	9	26
Taxation	28	34	55	44	38
Transport	11	16	9	6	4
EC Treaty	485	452	424	430	446
EU Treaty		3	3	4	6
CS Treaty	1	3		1	2
EA Treaty	2	1	4	1	
Privileges and immunities	1				
Procedure	8	1	2	3	5
Staff Regulations	12	6	9	17	11
Others	21	7	11	20	16
OVERALL TOTAL	509	466	442	456	470

(1) The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

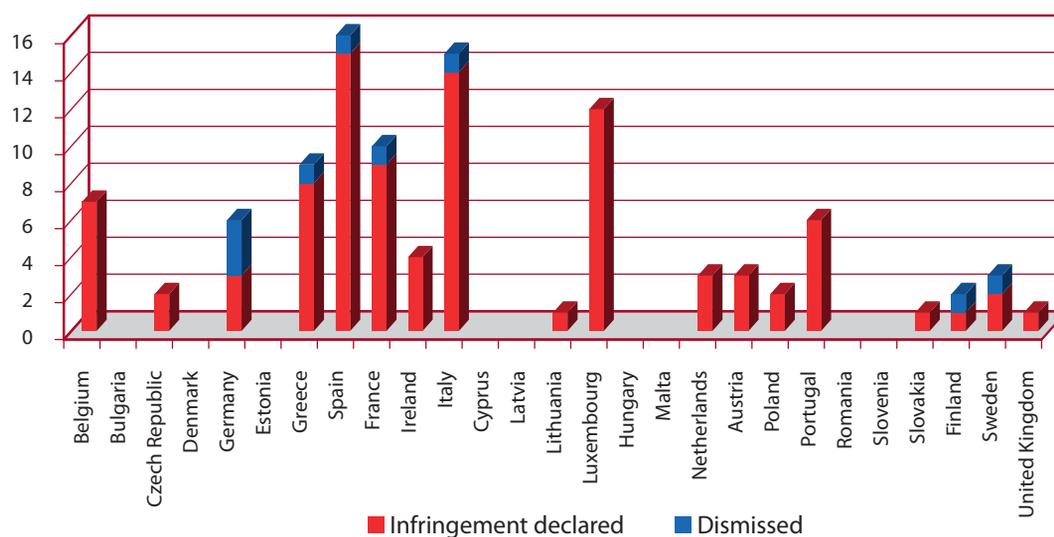
10. Completed cases — Subject matter of the action (2008) ⁽¹⁾

	Judgments/ opinions	Orders ⁽²⁾	Total
Agriculture	40	14	54
Approximation of laws	21		21
Area of freedom, security and justice	5		5
Brussels Convention	1		1
Commercial policy	1		1
Common Customs Tariff	4	1	5
Common foreign and security policy	2		2
Company law	16	1	17
Competition	21	2	23
Customs union	7	1	8
Economic and monetary policy		1	1
Energy	4		4
Environment and consumers	38	5	43
European citizenship	6		6
External relations	7	1	8
Fisheries policy	5	1	6
Free movement of capital	9		9
Free movement of goods	11	1	12
Freedom of establishment	24	5	29
Freedom of movement for persons	23	4	27
Freedom to provide services	7	1	8
Industrial policy	12		12
Intellectual property	14	8	22
Justice and home affairs	1		1
Law governing the institutions	7	9	16
Principles of Community law	4		4
Privileges and immunities	2		2
Regional policy		1	1
Social policy	18	7	25
Social security for migrant workers	5		5
State aid	23	3	26
Taxation	32	6	38
Transport	4		4
EC Treaty	374	72	446
EU Treaty	6		6
CS Treaty	2		2
Procedure		5	5
Staff Regulations	9	2	11
Others	9	7	16
OVERALL TOTAL	391	79	470

⁽¹⁾ The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

⁽²⁾ Orders terminating proceedings by judicial determination (other than those removing a case from the register, declaring that there is no need to give a decision or referring a case to the Court of First Instance).

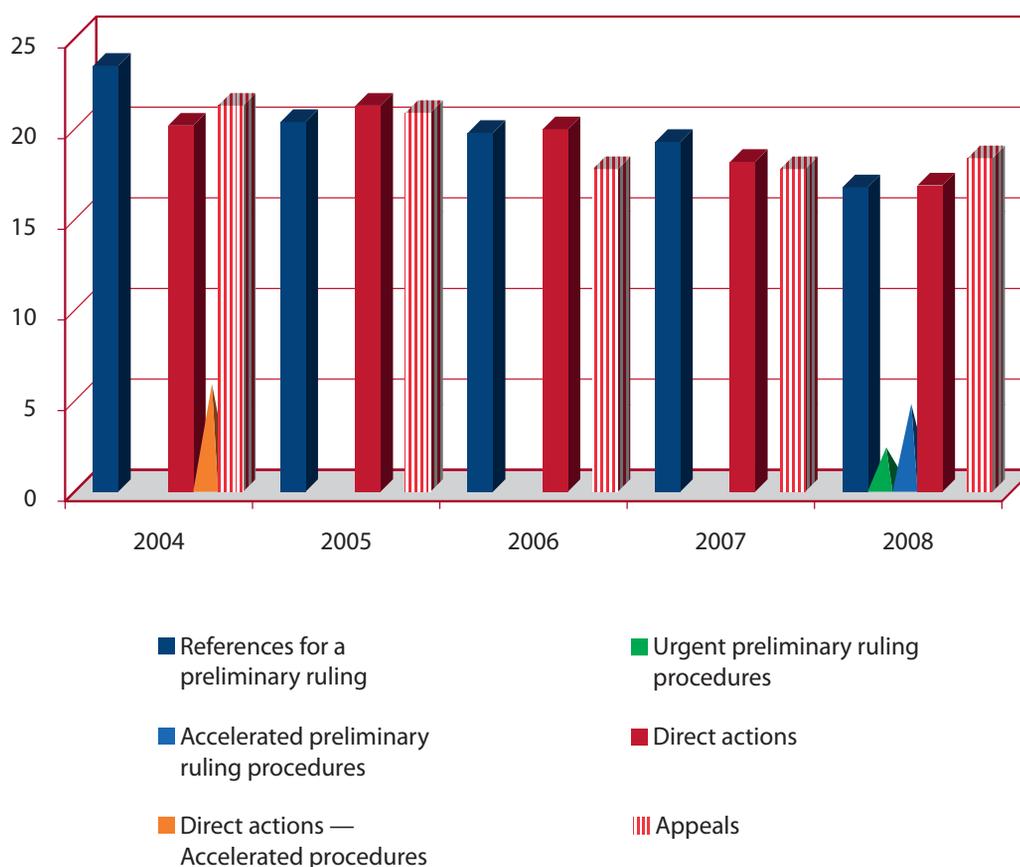
11. Completed cases — Judgments concerning failure of a Member State to fulfil its obligations: outcome (2008) ⁽¹⁾



	Infringement declared	Dismissed	Total
Belgium	7		7
Bulgaria			
Czech Republic	2		2
Denmark			
Germany	3	3	6
Estonia			
Greece	8	1	9
Spain	15	1	16
France	9	1	10
Ireland	4		4
Italy	14	1	15
Cyprus			
Latvia			
Lithuania	1		1
Luxembourg	12		12
Hungary			
Malta			
Netherlands	3		3
Austria	3		3
Poland	2		2
Portugal	6		6
Romania			
Slovenia			
Slovakia	1		1
Finland	1	1	2
Sweden	2	1	3
United Kingdom	1		1
Total	94	9	103

⁽¹⁾ The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

12. Completed cases — Duration of proceedings (2004–08) ⁽¹⁾ (decisions by way of judgments and orders) ⁽²⁾

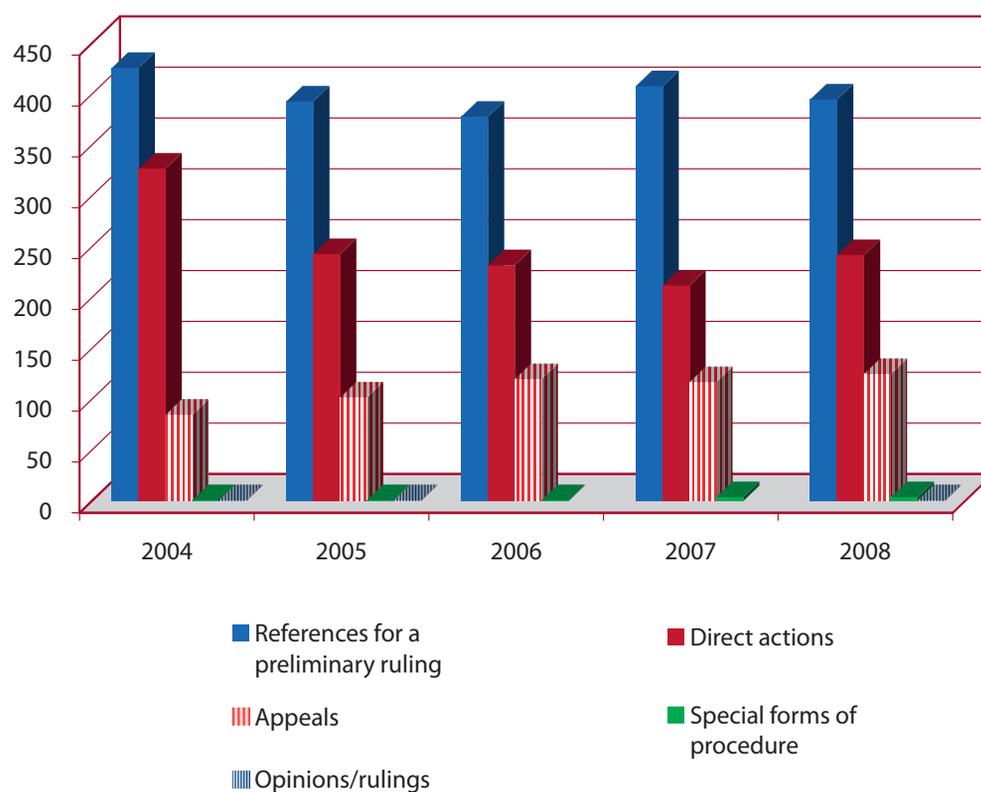


	2004	2005	2006	2007	2008
References for a preliminary ruling	23.5	20.4	19.8	19.3	16.8
Urgent preliminary ruling procedures					2.1
Accelerated preliminary ruling procedures					4.5
Direct actions	20.2	21.3	20	18.2	16.9
Direct actions — Accelerated procedures	5.6				
Appeals	21.3	20.9	17.8	17.8	18.4

⁽¹⁾ The following types of cases are excluded from the calculation of the duration of proceedings: cases involving an interlocutory judgment or a measure of inquiry; opinions and rulings on agreements; special forms of procedure (namely taxation of costs, legal aid, application to set a judgment aside, third-party proceedings, interpretation of a judgment, revision of a judgment, rectification of a judgment, attachment procedure, cases concerning immunity); cases terminated by an order removing the case from the register, declaring that there is no need to give a decision or referring or transferring the case to the Court of First Instance; proceedings for interim measures and appeals concerning interim measures and interventions. The duration of proceedings is expressed in months and tenths of months.

⁽²⁾ Other than orders terminating a case by removal from the register, declaration that there is no need to give a decision or referral to the Court of First Instance.

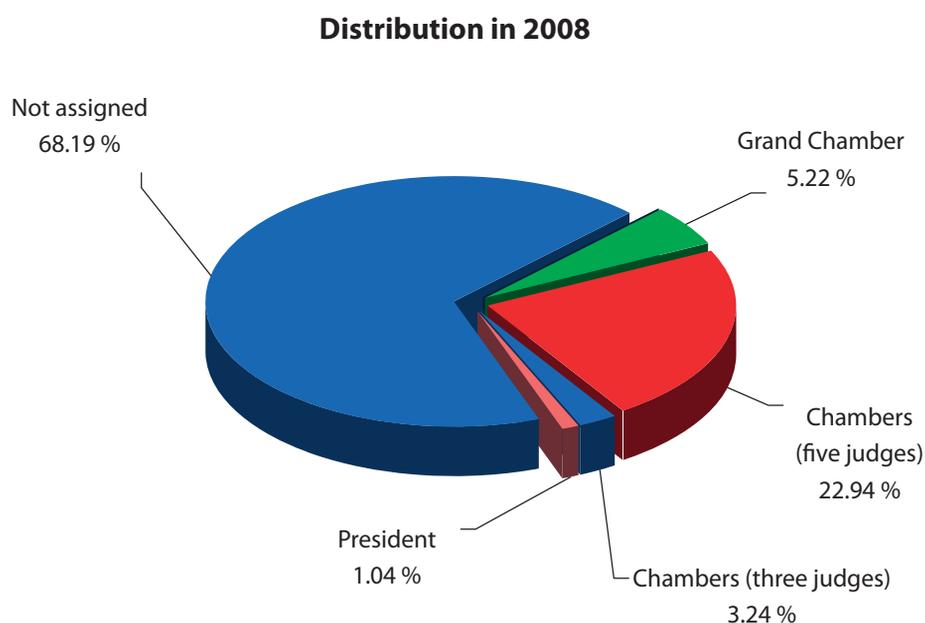
13. Cases pending as at 31 December — Nature of proceedings (2004–08) ⁽¹⁾



	2004	2005	2006	2007	2008
References for a preliminary ruling	426	393	378	408	395
Direct actions	327	243	232	212	242
Appeals	85	102	120	117	125
Special forms of procedure	1	1	1	4	4
Opinions/rulings	1	1			1
Total	840	740	731	741	767

⁽¹⁾ The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

14. Cases pending as at 31 December — Bench hearing action (2008) ⁽¹⁾



	2004	2005	2006	2007	2008
Not assigned	547	437	490	481	523
Full Court	2	2			
Small plenary ⁽²⁾					
Grand Chamber	56	60	44	59	40
Chambers (five judges)	177	212	171	170	177
Chambers (three judges)	57	29	26	24	19
President	1			7	8
Total	840	740	731	741	767

⁽¹⁾ The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the ground of similarity (one case number = one case).

⁽²⁾ Composition of the Court which existed before the entry into force of the Treaty of Nice.

15. *Miscellaneous* — Expedited and accelerated procedures (2004–08) ⁽¹⁾

	2004		2005		2006		2007		2008		Total
	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	Granted	Not granted	
Direct actions	1	2						1			4
References for a preliminary ruling		10		5		5		6	2	6	34
Appeals								1			1
Opinions of the Court		1									1
Total	1	13		5		5		8	2	6	40

⁽¹⁾ A case before the Court of Justice may be dealt with under such a procedure pursuant to the provisions of Articles 62a and 104a of the Rules of Procedure, as amended with effect from 1 July 2000.

17. *Miscellaneous* — Proceedings for interim measures (2008) ⁽¹⁾

	New applications for interim measures	New appeals concerning interim measures and interventions	Outcome		
			Dismissed	Granted	Removed from the register or no need to give a decision
Law governing the institutions			2		
Environment and consumers	1	6		1	1
Total EC Treaty	3	8	2	1	1
OVERALL TOTAL	3	8	2	1	1

⁽¹⁾ The figures given (net figures) represent the number of cases after joinder on the ground of similarity (a set of joined cases = one case).

18. General trend in the work of the Court (1952–2008) — New cases and judgments

Year	New cases ⁽¹⁾						Judgments ⁽²⁾
	Direct actions ⁽³⁾	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	Total	Application for interim measures	
1953	4				4		
1954	10				10		2
1955	9				9	2	4
1956	11				11	2	6
1957	19				19	2	4
1958	43				43		10
1959	47				47	5	13
1960	23				23	2	18
1961	25	1			26	1	11
1962	30	5			35	2	20
1963	99	6			105	7	17
1964	49	6			55	4	31
1965	55	7			62	4	52
1966	30	1			31	2	24
1967	14	23			37		24
1968	24	9			33	1	27
1969	60	17			77	2	30
1970	47	32			79		64
1971	59	37			96	1	60
1972	42	40			82	2	61
1973	131	61			192	6	80
1974	63	39			102	8	63
1975	62	69			131	5	78
1976	52	75			127	6	88
1977	74	84			158	6	100
1978	147	123			270	7	97
1979	1 218	106			1 324	6	138
1980	180	99			279	14	132
1981	214	108			322	17	128
1982	217	129			346	16	185
1983	199	98			297	11	151
1984	183	129			312	17	165
1985	294	139			433	23	211

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Year	New cases ⁽¹⁾						Judgments ⁽²⁾
	Direct actions ⁽³⁾	References for a preliminary ruling	Appeals	Appeals concerning interim measures and interventions	Total	Application for interim measures	
1986	238	91			329	23	174
1987	251	144			395	21	208
1988	193	179			372	17	238
1989	244	139			383	19	188
1990 ⁽⁴⁾	221	141	15	1	378	12	193
1991	142	186	13	1	342	9	204
1992	253	162	24	1	440	5	210
1993	265	204	17		486	13	203
1994	128	203	12	1	344	4	188
1995	109	251	46	2	408	3	172
1996	132	256	25	3	416	4	193
1997	169	239	30	5	443	1	242
1998	147	264	66	4	481	2	254
1999	214	255	68	4	541	4	235
2000	199	224	66	13	502	4	273
2001	187	237	72	7	503	6	244
2002	204	216	46	4	470	1	269
2003	278	210	63	5	556	7	308
2004	220	249	52	6	527	3	375
2005	179	221	66	1	467	2	362
2006	201	251	80	3	535	1	351
2007	221	265	79	8	573	3	379
2008	211	288	77	8	584	3	333
Total	8 340	6 318	917	77	15 652	348	7 890

⁽¹⁾ Gross figures; special forms of procedure are not included.

⁽²⁾ Net figures.

⁽³⁾ Including opinions of the Court.

⁽⁴⁾ The Court of First Instance began operating in 1989.

19. General trend in the work of the Court (1952–2008) — New references for a preliminary ruling (by Member State per year) ⁽¹⁾

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Benelux ⁽²⁾	Total	
1961																		1											1	
1962																		5												5
1963															1			5												6
1964										2							4													6
1965					4				2								1													7
1966																	1													1
1967	5				11			3							1		3												23	
1968	1				4			1	1								2												9	
1969	4				11			1							1														17	
1970	4				21			2	2								3												32	
1971	1				18			6	5						1		6												37	
1972	5				20			1	4								10												40	
1973	8				37			4	5						1		6												61	
1974	5				15			6	5								7									1			39	
1975	7			1	26			15	14						1		4									1			69	
1976	11				28			8	12								14									1			75	
1977	16			1	30			14	7								9									5			84	
1978	7			3	46			12	11								38									5			123	
1979	13			1	33			18	19						1		11									8			106	
1980	14			2	24			14	19								17									6			99	
1981	12			1	41			17	11						4		17									5			108	
1982	10			1	36			39	18								21									4			129	
1983	9			4	36			15	7								19									6			98	
																														>>>

	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Benelux ⁽²⁾	Total	
1984	13			2	38				34	1	10							22									9		129	
1985	13				40				45	2	11				6			14									8		139	
1986	13			4	18		2	1	19	4	5				1			16									8		91	
1987	15			5	32		17	1	36	2	5				3			19									9		144	
1988	30			4	34			1	38		28				2			26									16		179	
1989	13			2	47		2	2	28	1	10				1			18		1							14		139	
1990	17			5	34		2	6	21	4	25				4			9		2							12		141	
1991	19			2	54		3	5	29	2	36				2			17		3							14		186	
1992	16			3	62		1	5	15		22				1			18		1							18		162	
1993	22			7	57		5	7	22	1	24				1			43		3							12		204	
1994	19			4	44			13	36	2	46				1			13		1							24		203	
1995	14			8	51		10	10	43	3	58				2			19		2						6	20		251	
1996	30			4	66		4	6	24		70				2			10		6					3	4	21		256	
1997	19			7	46		2	9	10	1	50				3			24		35					6	7	18		239	
1998	12			7	49		5	55	16	3	39				2			21		16					2	6	24		264	
1999	13			3	49		3	4	17	2	43				4			23		56					4	5	22		255	
2000	15			3	47		3	5	12	2	50							12		31					5	4	26	1	224	
2001	10			5	53		4	4	15	1	40				2			14		57					3	4	21		237	
2002	18			8	59		7	3	8		37				4			12		31					7	5	14		216	
2003	18			3	43		4	8	9	2	45				4			28		15					4	4	22		210	
2004	24			4	50		18	8	21	1	48				1	2		28		12					4	5	22		249	
2005	21			1	4	51	11	10	17	2	18				2	3		36		15		1			4	11	12		221	
2006	17			3	77		14	17	24	1	34			1	1	4		20		12		2			1	5	2	10		251
2007	22			2	5	59	2	8	14	26	2	43			1	2		19		20		7	3	1	1	5	6	16		265
2008	24			1	6	71	2	9	17	12	1	39	1	3	4	6		34		25		4	1		4	7	14		288	
Total	579	1	7	122	1 672	4	134	211	755	51	978	1	3	5	64	17	719	333	14	64	1	2	56	76	448	1	6 318			

(1) Article 177 of the EC Treaty (now Article 234 EC), Article 35(1) EU, Article 41 CS, Article 150 EA, 1971 Protocol.

(2) Case C-265/00 Campina Melkunie.

20. General trend in the work of the Court (1952–2008) — New references for a preliminary ruling (by Member State and by court or tribunal)

			Total
Belgium	Cour constitutionnelle	71	
	Cour de cassation	12	
	Conseil d'État	43	
	Other courts or tribunals	453	579
Bulgaria	Софийски градски съд Търговско отделение	1	
	Other courts or tribunals		1
Czech Republic	Nejvyššího soudu		
	Nejvyšší správní soud	1	
	Ústavní soud		
	Other courts or tribunals	6	7
Denmark	Højesteret	22	
	Other courts or tribunals	100	122
Germany	Bundesgerichtshof	120	
	Bundesverwaltungsgericht	88	
	Bundesfinanzhof	250	
	Bundesarbeitsgericht	17	
	Bundessozialgericht	73	
	Staatsgerichtshof des Landes Hessen	1	
	Other courts or tribunals	1 123	1 672
Estonia	Riigikohus	1	
	Other courts or tribunals	3	4
Greece	Άρειος Πάγος	9	
	Συμβούλιο της Επικρατείας	31	
	Other courts or tribunals	94	134
Spain	Tribunal Supremo	22	
	Audiencia Nacional	1	
	Juzgado Central de lo Penal	7	
	Other courts or tribunals	181	211
France	Cour de cassation	83	
	Conseil d'État	42	
	Other courts or tribunals	630	755
Ireland	Supreme Court	17	
	High Court	15	
	Other courts or tribunals	19	51

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			Total
Italy	Corte suprema di Cassazione	101	
	Corte Costituzionale	1	
	Consiglio di Stato	62	
	Other courts or tribunals	814	978
Cyprus	Ανώτατο Δικαστήριο	1	
	Other courts or tribunals		1
Latvia	Augstākā tiesa	2	
	Satversmes tiesa		
	Other courts or tribunals	1	3
Lithuania	Konstitucinis Teismas	1	
	Lietuvos Aukščiausiasis Teismas	1	
	Lietuvos vyriausiasis administracinis Teismas	2	
	Other courts or tribunals	1	5
Luxembourg	Cour supérieure de justice	10	
	Cour de cassation	2	
	Conseil d'État	13	
	Cour administrative	7	
	Other courts or tribunals	32	64
Hungary	Legfelsőbb Bíróság	1	
	Fővárosi Ítéletábla	1	
	Szegedi Ítéletábla	1	
	Other courts or tribunals	14	17
Malta	Constitutional Court		
	Qorti ta' l- Appel		
	Other courts or tribunals		
Netherlands	Raad van State	59	
	Hoge Raad der Nederlanden	177	
	Centrale Raad van Beroep	46	
	College van Beroep voor het Bedrijfsleven	137	
	Tariefcommissie	34	
	Other courts or tribunals	266	719
Austria	Verfassungsgerichtshof	4	
	Oberster Gerichtshof	71	
	Oberster Patent- und Markensenat	3	
	Bundesvergabeamt	24	
	Verwaltungsgerichtshof	57	
	Vergabekontrollsenat	4	
	Other courts or tribunals	170	333

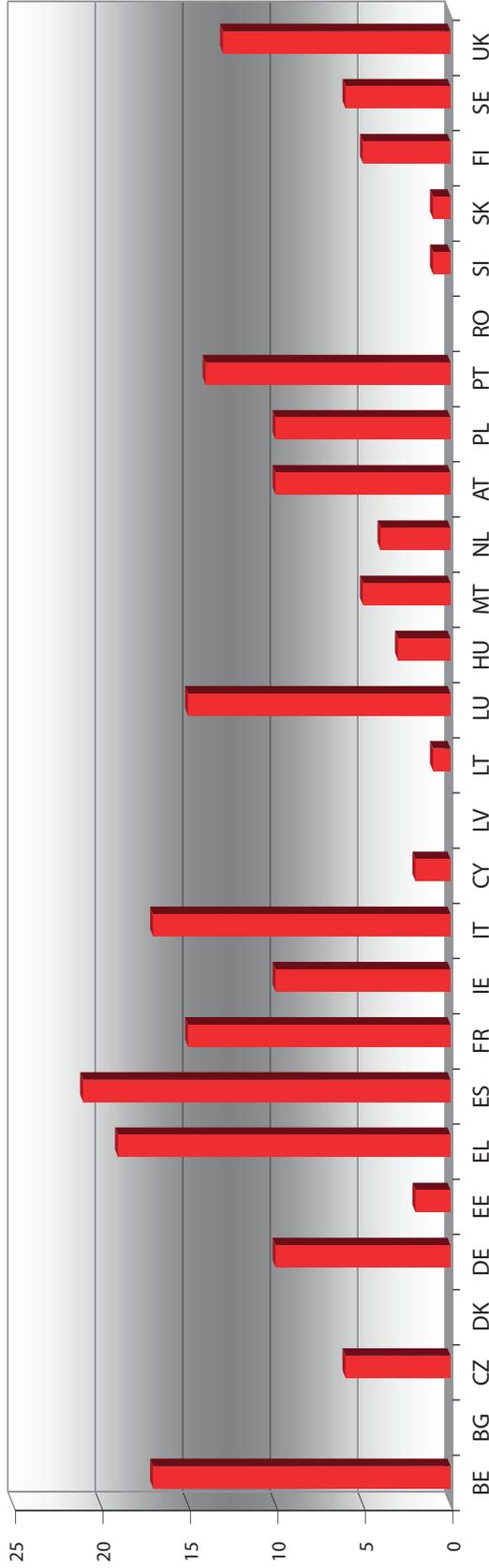
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			Total
Poland	Sąd Najwyższy		
	Naczelny Sąd Administracyjny	3	
	Trybunał Konstytucyjny		
	Other courts or tribunals	11	14
Portugal	Supremo Tribunal de Justiça	1	
	Supremo Tribunal Administrativo	36	
	Other courts or tribunals	27	64
Romania	Tribunal Dâmbovița	1	
	Other courts or tribunals		1
Slovenia	Vrhovno sodišče		
	Ustavno sodišče		
	Other courts or tribunals		
Slovakia	Ústavný Súd	1	
	Najvyšší súd		
	Other courts or tribunals	1	2
Finland	Korkein hallinto-oikeus	23	
	Korkein oikeus	10	
	Other courts or tribunals	23	56
Sweden	Högsta Domstolen	12	
	Marknadsdomstolen	4	
	Regeringsrätten	21	
	Other courts or tribunals	39	76
United Kingdom	House of Lords	38	
	Court of Appeal	45	
	Other courts or tribunals	365	448
Benelux	Cour de justice/Gerechtshof ⁽¹⁾	1	1
Total			6 318

⁽¹⁾ Case C-265/00 *Campina Melkunie*.

**21. General trend in the work of the Court (1952–2008) —
New actions for failure of a Member State to fulfil its obligations (1)**

2008



	BE	BG	CZ	DK	DE	EE	EL	ES	FR	IE	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
2008	17		6	10	2	19	21	15	10	17	2		1	15	3	5	4	10	10	10	14		1	1	5	6	13	207
1952–2008	340		16	34	253	5	353	208	381	186	599	3		2	245	5	10	129	114	20	155		2	4	47	45	122	3 278

The cases brought against Spain include an action under Article 170 of the EC Treaty (now Article 227 EC), brought by Belgium.

The cases brought against France include an action under Article 170 of the EC Treaty (now Article 227 EC), brought by Ireland.

The cases brought against the United Kingdom include three actions under Article 170 of the EC Treaty (now Article 227 EC), one brought by France and two by Spain.

1 The actions covered are actions under Articles 93, 169, 170, 171 and 225 of the EC Treaty (now Articles 88 EC, 226 EC, 227 EC, 228 EC and 298 EC), Articles 141 EA, 142 EA and 143 EA and Article 88 CS.

capital of separate commercial companies is held by the same person or the same family is insufficient, in itself, to establish that those companies are a single economic unit with the result that the actions of one company can be attributed to the other and that one can be held liable to pay the fine for the other, it is possible to reach the conclusion that an economic unit exists on the basis of a series of elements. The Court also recalled in particular that the term 'undertaking' must be understood as designating an economic unit for the purpose of the subject matter of the agreement in question even if in law that economic unit consists of several persons, natural or legal.

(e) Imputability of the unlawful conduct

During 2008, the Court *inter alia* applied its case-law on the imputability of the unlawful conduct in *Knauf Gips v Commission*. It recalled in this respect that it is possible to impute to a company all of the acts of a group if that company has been identified as the legal person at the head of that group with responsibility for its coordination.

3. Points raised on the scope of Article 82 EC

In Case T-271/03 *Deutsche Telekom v Commission* (judgment of 10 April 2008, under appeal), the Court ruled on the legality of a Commission decision punishing an abuse by Deutsche Telekom of its dominant position on the basis of its charging competitors prices for access to the network ('wholesale services') that were higher than Deutsche Telekom's prices for retail access to the local network. That pricing, in the form of a 'margin squeeze', forced competitors to charge their end-users prices higher than the prices Deutsche Telekom charged its own end-users. The Commission had therefore imposed a fine of EUR 12.6 million on Deutsche Telekom.

The Court observed that the Commission was correct to find that whilst Deutsche Telekom had observed the price cap imposed by the German regulatory authority for telecommunications and post ('the RegTP') it had sufficient discretion, from the beginning of 1998 to the end of 2001 and from 2002 until the date of adoption of the decision, to end or reduce the margin squeeze. The Court also stated that the fact that Deutsche Telekom's charges had to be approved by the RegTP did not absolve it from responsibility under competition law. As an undertaking in a dominant position, Deutsche Telekom was obliged to submit applications for adjustment of its charges at a time when those charges had the effect of impairing genuine undistorted competition on the common market.

As regards the method used by the Commission to establish the margin squeeze, the Court observed that the abusive nature of Deutsche Telekom's conduct was connected with the spread between its prices for wholesale access and its retail prices. The Commission was not therefore required to demonstrate that the retail prices were, as such, abusive.

The Commission was also correct to analyse the abusive nature of the pricing practices solely on the basis of Deutsche Telekom's charges and costs, disregarding the particular situation of competitors on the market. In that connection, the Court observed that, if the

lawfulness of the pricing practices of a dominant undertaking depended on the particular situation of competing undertakings, and particularly their cost structure — information which is generally not known to the dominant undertaking — the latter would not be in a position to assess the lawfulness of its own activities.

Lastly, the Court recalled that the prerogatives of the national authorities under Community telecommunications law do not affect the Commission's powers to find infringements of competition law. The Commission's decision cannot therefore be criticised for entailing double regulation of Deutsche Telekom's pricing practices by punishing the company for not using its discretion to end the margin squeeze.

State aid

1. Admissibility

The case-law this year has further clarified in particular the concepts of, first, a person individually concerned by a Commission decision relating to an aid scheme, second, an act producing binding legal effects and, third, a legal interest in bringing proceedings.

In Joined Cases T-254/00, T-270/00 and T-277/00 *Hotel Cipriani and Others v Commission* (judgment of 28 November 2008), the Court declared admissible the actions brought by certain beneficiaries of reductions of, and/or exemptions from, social security contributions granted to firms established on the island territory of Venice and Chioggia against a Commission decision which considered those measures to be an aid scheme which was incompatible with the common market and required that the Italian Republic recover from the beneficiaries the aid paid. Although a decision concerning an aid scheme is of general application, the fact of belonging to a closed class of actual beneficiaries of that aid scheme, who are fully identifiable and particularly affected by the obligation to pay back the State aid, is sufficient to differentiate each of them from all other persons. If, as the Commission submitted, the *locus standi* of an actual beneficiary of an aid scheme were conditional upon an examination of its individual situation in the Commission decision declaring the scheme at issue incompatible, *locus standi* would depend on whether or not that institution chose to carry out such an individual examination in the light of the information communicated to it during the administrative procedure. That approach would be a source of legal uncertainty inasmuch as the Commission's knowledge of specific individual situations is frequently a matter of chance.

Concerning the concept of an act producing binding legal effects, the Court, in Case T-233/04 *Netherlands v Commission* (judgment of 10 April 2008, under appeal), relating to a Commission decision which classified the emission trading scheme for nitrogen oxides notified by the Kingdom of the Netherlands as State aid compatible with the common market, ruled that that Member State, which had asked the Commission to declare that that scheme did not constitute aid, had standing to challenge the decision in question. As a privileged applicant, it did not have to establish a legal interest in bringing proceedings, but only that the contested decision produced legal effects. That was the case here, since the classification of that scheme as State aid, first, had the effect of enabling the

In any case, even if the measure in question differentiates between undertakings and is, therefore, in principle selective, that differentiation would arise from the nature or overall structure of the scheme of which it is part and would not therefore fulfil the condition of selectivity. Indeed, ecological considerations justify distinguishing undertakings which emit large quantities of NO_x from other undertakings.

On the other hand, in *SIC v Commission*, the Court held that the Commission had not established to the requisite legal standard that certain advantages from which the RTP benefited (exemption from notarial charges, registration charges and the costs of publication relating to that undertaking's transformation into a public limited company by way of legislation) did not fulfil the condition of selectivity on the ground that they were justified by the nature or the general logic of the system of which they were a part. First, the Commission did not examine whether the recourse to a legislative instrument which entailed the exemption from notarial charges had not been chosen with the aim of enabling public undertakings to escape those charges, but was merely part of the logic of the Portuguese legal system. Second, the Commission ought to have established whether it was consistent with the logic of the Portuguese legal system for the RTP's transformation into a public limited company to occur not in the normal way laid down for private companies, in other words, by a notarial deed (with all the consequences that entails under the general law concerning registration requirements and publication), but by legislation.

Joined Cases T-211/04 and T-215/04 *Government of Gibraltar and United Kingdom v Commission* (judgment of 18 December 2008) enabled the Court to clarify further the condition of selectivity.

In August 2002, the United Kingdom notified the Commission of the Government of Gibraltar's envisaged reform of corporate tax, which included the establishment of three taxes: a registration fee, a payroll tax and a business property occupation tax ('the BPOT'), on the basis that liability to the latter two taxes would be capped at 15 % of profits. The Commission considered that that reform was regionally selective since it provided that companies located in Gibraltar would be taxed at a lower rate than those located in the United Kingdom. It also found that three aspects of the tax reform were materially selective: first, the requirement that a company must make a profit before it becomes liable to payroll tax and BPOT, since that requirement favours companies which make no profit; second, the cap limiting liability to payroll tax and BPOT to 15 % of profits, since that cap favours companies which, for the tax year in question, have profits that are low in relation to their number of employees and occupation of business property; and, third, the payroll tax and BPOT, since those two taxes inherently favour companies which have no real physical presence in Gibraltar.

Applying the conditions set out in the case-law relating to aid granted by infra-State bodies⁽¹⁷⁾, the Court held that the reference framework for assessing whether the tax reform at issue was regionally selective corresponded exclusively to the territory of Gibraltar and that, consequently, no comparison could be made with the system applicable to the United Kingdom.

⁽¹⁷⁾ Case C-88/03 *Portugal v Commission* [2006] ECR I-7115, paragraph 67.

The Court held that, even though, at the time of the Commission's analysis, the Court of Justice's judgment of 24 July 2003 in *Altmark Trans and Regierungspräsidium Magdeburg* ⁽¹⁹⁾ ('*Altmark*') had not yet been delivered, it was in the light of the four conditions set out in that judgment ('the *Altmark* conditions') that it was appropriate to assess the legality of the contested decision. First, the Court of Justice did not place any temporal limitation on the scope of its findings in *Altmark*, and, second, the Court of Justice's interpretation of a provision of Community law is limited to clarifying and defining the meaning and scope of that provision as it ought to have been understood and applied, including by the Community institutions, from the time of its entry into force. The Court stated that, in this instance, the *Altmark* conditions, which moreover have a scope which to a large extent overlaps with that of the criteria of Article 86(2) EC, must be applied in accordance with the spirit and the purpose which prevailed when they were laid down, but in a manner adapted to the particular facts of this case.

In the context of the first *Altmark* condition, according to which the undertaking receiving the compensation must actually have clearly-defined public service obligations to discharge, the Court observed that Community law offers neither a clear and precise regulatory definition of the concept of an SGEI mission nor an established legal concept definitively fixing the conditions that must be satisfied before a Member State can properly invoke the existence and protection of an SGEI mission. Thus, Member States have a wide discretion to define what they regard as SGEIs and that definition can be questioned by the Commission only in the event of manifest error. That wide discretion does not, however, mean that a Member State is relieved of the obligation to ensure that the SGEI mission which it invokes satisfies certain minimum criteria (notably, the presence of an act of the public authority entrusting the operators in question with the mission and the universal and compulsory nature of that mission) common to any SGEI mission within the meaning of the EC Treaty, and to demonstrate that those criteria are indeed satisfied in the particular case. The lack of proof by the Member State that those criteria are satisfied may constitute a manifest error of assessment, in which case the Commission is required to make a finding to that effect. Furthermore, the Member State must indicate the reasons why it considers that the service in question, because of its specific nature, deserves to be characterised as an SGEI. In the absence of such reasons, even a marginal review by the Community institutions would not be possible. The Court stated, moreover, that the attribution of an SGEI mission does not necessarily presuppose that the operator entrusted with that mission will be given an exclusive or special right to carry it out, and that that attribution may also consist in an obligation imposed on a large number of, or indeed on all, the operators active on the same market. On the other hand, the essential conditions for establishing the existence of an SGEI mission are its universal and compulsory nature: whilst the first implies that the service-provider is obliged to contract, on consistent conditions, without being able to reject the other contracting party, the second does not mean that the service in question must necessarily be supplied to the whole population of a Member State, provided that it is offered at uniform and non-discriminatory rates and on similar quality conditions for all customers. By applying those criteria in this case, the Court held that the RES satisfies the first *Altmark* condition.

⁽¹⁹⁾ C-280/00 ECR I-7747.

1. Absolute grounds for refusal of registration

For the first time, in Case T-270/06 *Lego Juris v OHIM — Mega Brands (Lego brick)* (judgment of 12 November 2008), concerning invalidity proceedings, the Court ruled on the scope of the absolute ground for refusal provided for in Article 7(1)(e)(ii) of Regulation No 40/94, according to which signs which consist exclusively of the shape of goods which is necessary to obtain a technical result are not to be registered. The Court held that that provision precludes registration of any shape consisting exclusively, in its essential characteristics, of the shape of the goods which is technically causal of, and sufficient to obtain, the intended technical result, even if that result can be achieved by other shapes using the same or another technical solution. Those characteristics are to be determined objectively, on the basis of the graphic representation of the shape concerned and any descriptions filed at the time of the trade mark application, and not on the basis of the perception of the target consumer.

In another case involving invalidity proceedings, the Court, in Case T-405/05 *Powerserv Personalservice v OHIM — Manpower (MANPOWER)* (judgment of 15 October 2008, under appeal), defined the geographical area over which the relevant public might perceive as descriptive the sign constituted by the English word 'manpower'. In that connection, it held that that may even be the case in non-English-speaking Member States, provided that, first, that English word has been received into the language of the country in question and can be used there to replace whatever word or phrase in that language means 'workforce' or 'labour', or that, second, in the context of the goods and services protected by the mark MANPOWER, English is used — albeit only as an alternative to the national language — to address the members of the relevant public. In accordance with those criteria, the Court held that the Board of Appeal was right to find that the sign at issue is descriptive in Germany and Austria, whereas it was wrong to find that that is also the case in the Netherlands, Sweden and Denmark. Other developments concerning the role of knowledge of languages by the relevant public appear in Case T-435/07 *New Look v OHIM (NEW LOOK)* (judgment of 26 November 2008, not published), in which the Court held that, since a basic understanding of English on the part of the general public in the Scandinavian countries, the Netherlands and Finland must be regarded as a well-known fact, the Board of Appeal was entitled to take the view that the sign NEW LOOK, a banal expression which is part of everyday English and does not present any linguistic difficulty, is devoid of any distinctive character in those countries.

Another significant contribution made by the case-law in 2008 in this field concerns the scope of the reference that Article 7(1)(h) of Regulation No 40/94 makes to the absolute grounds for refusal referred to in Article 6 *ter* of the Paris Convention ⁽²³⁾. In Case T-215/06 *American Clothing Associates v OHIM (Representation of a maple leaf)* (judgment of 28 February 2008, under appeal), which arose from the action brought by an undertaking which had been refused by the Office for Harmonization in the Internal Market (Trade Marks and Designs) ('OHIM') registration of a sign consisting, inter alia, of a maple leaf, on the ground that the latter appears on the Canadian flag, the Court held that, because of the distinction

⁽²³⁾ Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised and amended (*United Nations Treaty Series*, Vol. 828, No 11847, p. 108).

trade of certain items of clothing and the items of clothing themselves is close in the sense that the goods are important or even indispensable to the provision of those services. Such services are provided at the time of sale of those goods and retail trade includes all activity carried out by the trader for the purpose of encouraging the conclusion of a sales transaction. By contrast, that relationship does not exist where the sales services covered by a mark concern accessories and the other mark covers items of clothing and leather goods.

In Case T-242/07 *Weiler v OHIM — IQNet Association — The International Certification Network (Q2WEB)* (judgment of 12 November 2008, not published), when stating the reasons for its finding that the goods and services covered by the mark Q2WEB can all be used and/or provided together or consecutively in order to provide consumers with the services in question covered by the mark QWEB Certified Site, the Court pointed out that providers of telecommunication services, in particular telecommunications services through the Internet, such as those covered by the mark QWEB Certified Site, generally supply software to their clients and a maintenance and update service for that software, which is therefore, by definition, important for the use of the telecommunications service provided, and that such software and services form part of the goods and services covered by the mark Q2WEB.

The 2008 case-law has also made a contribution to the conceptual comparison between opposing signs in *inter partes* proceedings. When the Court had to adjudicate on the similarity between the word signs EL TIEMPO and TELETIEMPO, it held, in Case T-233/06 *Casa Editorial el Tiempo v OHIM — Instituto Nacional de Meteorología (EL TIEMPO)* (judgment of 22 April 2008, not published), that nothing in the wording of the description of the goods and services in question permits the inference that the word 'tiempo' will necessarily be interpreted in its chronological sense in respect of the mark applied for and in its meteorological sense in respect of the earlier marks.

Further, it is apparent from Case T-212/07 *Harman International Industries v OHIM — Becker (Barbara Becker)* (judgment of 2 December 2008), in which the Court held that, where a word mark consists of two components, one of which is the single component comprising another word mark, it is not necessary that the common component of the conflicting marks is the dominant component in the overall impression created by the composite mark to find a likelihood of confusion. If such a condition were imposed, even though the common component has an independent distinctive role in the composite mark, the owner of the earlier mark would be deprived of the exclusive right conferred by that mark.

Lastly, the Court clarified what is the average consumer's level of attention when he or she purchases an inexpensive item of furniture. Since that consumer acts on the basis of a number of functional and aesthetic considerations, in order to ensure that that furniture is in keeping with other furniture already in his or her possession, the Court held, in Case T-112/06 *Inter-KEA/OHIM — Waibel (idea)* (judgment of 16 January 2008, not published), that while the actual act of purchase may be completed quickly in the case of certain items of furniture, the process of comparison and reflection before the choice is made requires, by definition, a high level of attention.

(c) Interest in bringing proceedings in relation to invalidity proceedings

In Case T-160/07 *Lancôme v OHIM — CMS Hasche Sigle (COLOR EDITION)* (judgment of 8 July 2008, under appeal), the Court held that it is apparent from the scheme of Article 55(1) of Regulation No 40/94 that the legislature intended to permit any natural or legal person and any group or body having the capacity to sue or be sued to bring applications for a declaration of invalidity based on absolute grounds for invalidity, and that it is not necessary to demonstrate the existence of an interest in bringing proceedings, whereas, with regard to applications for a declaration of invalidity based on relative grounds for invalidity, it expressly restricted the group of potential applicants for a declaration of invalidity to proprietors of marks or of earlier rights and to licensees.

(d) Obligations of the Boards of Appeal

Relying on its settled case-law concerning the obligation to provide a statement of reasons ⁽²⁶⁾, the Court stated, in Case T-304/06 *Reber v OHIM — Chocoladefabriken Lindt & Sprüngli (Mozart)* (judgment of 9 July 2008), that the Board of Appeal is not, as a general rule, required to provide in its decision a specific answer to each argument regarding the existence in other similar cases of decisions of its own at various stages in the procedure, or those of national courts which go in a particular direction, if the reasons for the decision which it adopts in a specific case show, at the very least implicitly but clearly and unequivocally, why those other decisions were not relevant or were not taken into consideration in its assessment.

In *COYOTE UGLY*, the Court held that, although the Board of Appeal is entitled, when it identifies a similarity, even if only partial, between the goods and services at issue in opposition proceedings, to separate of its own motion the services covered by the mark applied for by stating precisely the sub-categories compatible with the earlier mark, it is not required to do so.

Plant variety rights

Regulation No 2100/94 ⁽²⁷⁾ on Community plant variety rights allows for the grant of industrial property rights which are valid throughout the Community in respect of plant varieties. The implementation and application of this Community regime are carried out by the Community Plant Variety Office ('the CPVO'), a decentralised Community agency which has its headquarters in Angers (France), and which has been operational since 27 April 1995. Within the CPVO, a Board of Appeal responsible for deciding on appeals against certain types of decisions taken by the CPVO has been established. In accordance with Article 73 of that regulation, an appeal to the Community judicature lies from decisions of the Board of Appeal of the CPVO.

⁽²⁶⁾ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, and Case C-3/06 P *Groupe Danone v Commission* [2007] ECR I-1331.

⁽²⁷⁾ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).

During 2008, the Court delivered two initial judgments relating to decisions adopted by the Board of Appeal of the CPVO. Having had the opportunity to rule principally on admissibility in Case T-95/06 *Federación de Cooperativas Agrarias de la Comunidad Valenciana v CPVO — Nador Cott Protection (Nadorcott)* (judgment of 31 January 2008) the Court defined the scope of the review which it exercises in this area in Case T-187/06 *Schröder v CPVO (SUMCOL 01)* (judgment of 19 November 2008). In that connection, it observed that, when the Community judicature rules on decisions taken by a Community administrative authority on the basis of complex technical assessments, it exercises in principle limited review and does not substitute its assessment of the facts for the assessment made by that authority. However, that does not mean it must decline to review the administration's interpretation of technical data. That approach may be transposed to cases in which the administrative decision is the result of complex appraisals in scientific domains, such as botany or genetics. In this instance, the appraisal of the distinctive character of a plant variety in the light of the criteria laid down in Article 7(1) of Regulation No 2100/94 was of a scientific and technical complexity such as to justify a limit to the scope of review by the courts. Those criteria require that it be ascertained whether the candidate variety is clearly distinguishable by reference to the expression of the characteristics that results from a particular genotype or combination of genotypes, from any other variety. On the other hand, appraisal of whether there exists another variety which is a matter of common knowledge in accordance with the criteria laid down in Article 7(2) of that regulation does not require expertise or special technical knowledge and is not of a complexity such as to justify a limit to the scope of review by the courts. Those criteria merely require it to be ascertained, for example, whether, on the date of application for a plant variety right in respect of the candidate variety, another variety had been the object of a right or was entered in an official register of plant varieties.

Access to documents

In Case T-403/05 *MyTravel v Commission* (judgment of 9 September 2008, under appeal), the Court of First Instance clarified the extent of the right of access provided for by Regulation No 1048/2001⁽²⁸⁾ to certain documents appearing in the Commission's file, in connection with the assessment of the compatibility of a concentration with the common market, and to documents drafted by the Commission's staff following the annulment of one of its decisions by the Court.

That judgment relates to the operation concentrating the undertakings Airtours and First Choice, declared incompatible with the common market by the Commission. That decision having been annulled by the Court in Case T-342/99 *Airtours v Commission* [2002] ECR II-2585, the Commission set up a working group comprising officials of its Directorate-General (DG) for Competition and the legal service in order to consider whether it was appropriate to bring an appeal against that judgment and to assess the implications of that judgment on the procedures for the control of concentrations or in other areas. MyTravel, the successor in title to Airtours, made a request to the Commission for access to two kinds

⁽²⁸⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

In Case T-144/05 *Muñiz v Commission* (judgment of 18 December 2008, not published), the Court of First Instance also tackled the issue of the application of the exception relating to protection of the decision-making process, in connection with a request for access to preparatory documents submitted by a working group to the Nomenclature Committee, which plays a part in the legislative process for the adoption of measures classifying goods, when classification of particular goods is likely to give rise to difficulty. The Court considered that, while the protection of the decision-making process from external pressure may constitute a legitimate ground for restricting access to documents, the reality of such pressure must be established with certainty, and it must be shown that there was a foreseeable risk that the classification decision would be substantially affected. In addition, although account must be taken of the Commission's desire that staff and experts should continue to be able to express their opinions freely, it must nonetheless be determined whether those concerns are objectively justified. The Court found that such was not the case in the circumstances, the Commission not having corroborated its contentions with any evidence, and annulled the contested decision.

The exception relating to protection of commercial interests was the subject of consideration in Case T-380/04 *Terezakis v Commission* (judgment of 30 January 2008, not published). The Commission had, in particular, refused to grant the applicant access to a contract concluded between Athens International Airport and the Hochtief consortium, relating to the construction of the new Athens airport at Spata, on the ground that to disclose the contract would cause serious harm to the commercial interests of the parties to the contract. The Court stated that, by its nature, such a document was likely to contain confidential information concerning both the companies in question and their business relations and that, as a general rule, precise information relating to the cost structure of an undertaking constitutes business secrets, the disclosure of which to third parties is likely to undermine its commercial interests. Although certain passages contained information about the contracting parties and their business relations, the examination carried out by the Commission did not make it possible to determine specifically whether the exception relied on actually applied to all the information contained in the contract. Given that it seemed not to be impossible for the Commission to give reasons justifying the need for confidentiality in respect of the whole of the main contract without disclosing its content and, thereby, depriving the exception of its very purpose, and that it was not for the Court to substitute its assessment for that of the Commission, the court annulled the contested decision insofar as it refused access, even partially, to the contract.

In Case T-42/05 *Williams v Commission* (judgment of 10 September 2008, not published), the question arose whether the decision partially refusing access to certain documents identified therein may be interpreted as entailing an implied refusal of access to certain other kinds of documents, such as memoranda and e-mails exchanged at the time of the preparatory work for Directive 2001/18⁽²⁹⁾ on GMOs, which were not identified, but for which also access was sought. For that purpose, the Court proceeded in three stages. First, it found that the Commission held a significant number of preparatory documents other than those identified in the contested decision and that, in the absence of any statement

⁽²⁹⁾ Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1).

III. Appeals

During 2008, 37 appeals were brought before the Court of First Instance against decisions of the Civil Service Tribunal. In total, 21 of those cases were closed by the Appeal Chamber, composed of five judges, that is to say, the President of the Court of First Instance and four Presidents of Chambers in rotation. In six judgments, the Court set aside in part the decisions under appeal, three of those cases being referred back to the Civil Service Tribunal ⁽³⁵⁾.

One of the decisions given in this area in 2008 (in Case T-414/08 *Combescot v Commission*, judgment of 5 March 2008) was the subject of a proposal for review put forward by the First Advocate General on the basis of the second subparagraph of Article 225(2) EC and of Article 62 of the Statute of the Court of Justice. However, the proposal was not followed ⁽³⁶⁾.

As regards organisation, the Court decided that for cases lodged between 1 October 2008 and 30 September 2009 the Appeal Chamber is to be composed of three judges only, that is to say, the President of the Court and, in rotation, two Presidents of Chambers, it being possible to refer the case to an extended formation of five judges (decision of 8 July 2008, OJ 2008 C 197, p. 17).

IV. Applications for interim relief

This year 58 applications for interim relief were brought before the Court of First Instance, representing a significant increase over the number of applications made in 2007 (34), which itself was much higher than the number in the previous year. In 2008, 57 applications for interim relief were disposed of, as against 41 in 2007. Just one application for a stay of execution was granted in the order of the President of the Court in Case T-257/07 R II *France v Commission* (order of 30 October 2008, not published).

With regard to the case giving rise to the order in *France v Commission*, it is to be borne in mind that the judge hearing the application for interim measures had already, by order of 28 September 2007 in Case T-207/07 R *France v Commission* [2007] ECR II-4153, suspended, in view of the seriousness of the claim alleging breach of the precautionary principle, the operation of the rules relaxing the health measures applicable to transmissible spongiform encephalopathies which the Commission had adopted in 2007 on the basis of evolving scientific knowledge. No appeal was brought before the President of the Court of Justice against the order of 28 September 2007. In contrast, the Commission repealed those relaxation rules and adopted new legislation the enacting terms of which were almost identical to those of the rules repealed. Only the statement of reasons for the new legislation was

⁽³⁵⁾ Case T-262/06 P *Commission v D* (judgment of 1 July 2008), Case T-253/06 P *Chassagne v Commission* (judgment of 19 September 2008) and Case T3/07 P *Neophytou v Commission* (judgment of 13 October 2008). On the other hand, the Court gave final judgment in Case T-250/06 P *Ott and Others v Commission* (judgment of 22 May 2008), Case T-56/07 P *Commission v Economidis* (judgment of 8 July 2008), and Joined Cases T-90/07 P and T-99/07 P *Belgium and Commission v Genette* (judgment of 18 December 2008).

⁽³⁶⁾ Decision of the Court of Justice in Case C-216/08 *RX* (16 April 2008, not published).

On 17 September 2008 Melli Bank brought a second action for annulment of the same decision ⁽⁴⁰⁾. The application for interim measures, coupled to that second action, was dismissed by order of the President of the Court of First Instance in Case T-332/08 R *Melli Bank v Council* (order of 17 September 2008, not published) for the same reasons as those explaining the rejection of the first application. Finally, the order of 15 October 2008 in Case T-390/08 R *Melli Bank v Council* (not published) dismissed on the same grounds the application for interim measures coupled with the action brought by BMI, the applicant's parent company, seeking annulment of the same decision.

The third group of cases is linked to the decision by which the Commission, without imposing any fines, ordered 24 copyright management companies established in the European Economic Area ('the EEA') and members of CISAC (Confédération Internationale des Sociétés d'Auteurs et Compositeurs — International Confederation of Societies of Authors and Composers) to, inter alia, review the reciprocal representation agreements that they had all concluded bilaterally with a view to the management of public performance rights held by the authors (composers and writers) in their musical works ⁽⁴¹⁾. According to the Commission, this network of bilateral agreements was based on a concerted practice contrary to Article 81 of the EC Treaty and Article 53 of the EEA Agreement. The CISAC and 20 management companies brought actions for annulment of that decision. Nine management companies — the German, Italian, French, Polish, Finnish, Hungarian, Danish, Greek and Norwegian — coupled to their actions applications for suspension of operation of the contested decision.

The President of the Court of First Instance, by orders of 14 November 2008 in Case T-398/08 R *Stowarzyszenie Autorów, ZAiKS v Commission* (not published), Case T-401/08 R *Säveltäjän Tekijänoikeustoimisto Teosto v Commission* (not published), Case T-410/08 R *GEMA v Commission* (not published), Case T-411/08 R *Artisjus v Commission* (not published), Case T-422/08 R *Sacem v Commission* (not published), of 20 November 2008 in Case T-433/08 R *SIAE v Commission* (not published), and of 5 December 2008 in Case T-425/08 R *KODA v Commission* (not published), and the judge hearing an application for interim measures (Mr Papasavvas), in Case T-392/08 *AEPI v Commission* (order of 19 November 2008, not published), rejected eight of the applications for want of urgency, for the applicants had not established serious irreparable harm was imminent if the contested decision were to be put into immediate effect. In those orders, it was observed in particular that the contested decision, far from dealing with the field of what are known as 'offline' activities of the applicants (concerts, radio, discothèques, bars, etc.), concerned what is known as the 'online' use of copyright (by Internet, satellite and cable retransmission), which had not been shown by any of the applicants to form a considerable portion of their revenue. Furthermore, according to those orders, in the contested decision the Commission did not prohibit the system of reciprocal representation agreements as such or prevent the applicants from practising certain territorial delimitations but merely criticised the coordinated nature of the approach followed to that end by all the management companies. Lastly, inasmuch as the applicants feared that the contested decision might, because it gave rise to legal uncertainty concerning the validity and content

⁽⁴⁰⁾ With regard to those two actions, the conditions for *lis alibi pendens* had not been satisfied, the second having been introduced within the period prescribed by the fifth paragraph of Article 230 EC and based on pleas in law independent of those raised in the first action.

⁽⁴¹⁾ Commission Decision C (2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

B — Composition of the Court of First Instance



(Order of precedence as at 31 December 2008)

First row, from left to right:

F. Dehousse, Judge; O. Czúcz, President of Chamber; N. J. Forwood, President of Chamber; A. W. H. Meij, President of Chamber; V. Tiili, President of Chamber; M. Jaeger, President of the Court; J. Azizi, President of Chamber; M. Vilaras, President of Chamber; M. E. Martins Ribeiro, President of Chamber; I. Pelikánová, President of Chamber.

Second row, from left to right:

E. Moavero Milanese, Judge; I. Labucka, Judge; V. Vadapalas, Judge; I. Wiszniewska-Białecka, Judge; E. Cremona, Judge; D. Šváby, Judge; K. Jürimäe, Judge; S. Papisavvas, Judge; N. Wahl, Judge.

Third row, from left to right:

K. O'Higgins, Judge; L. Truchot, Judge; A. Dittrich, Judge; T. Tchipev, Judge; M. Prek, Judge; V. Ciucă, Judge; S. Soldevila Fragoso, Judge; S. Frimodt Nielsen, Judge; E. Coulon, Registrar.

1. Members of the Court of First Instance

(in order of their entry into office)



Marc Jaeger

Born 1954; lawyer; attaché de justice, delegated to the Public Attorney's Office; Judge, Vice-President of the Luxembourg District Court; teacher at the Centre Universitaire de Luxembourg (Luxembourg University Centre); member of the judiciary on secondment, Legal Secretary at the Court of Justice from 1986; Judge at the Court of First Instance since 11 July 1996; President of the Court of First Instance since 17 September 2007.



Virpi Tiili

Born 1942; Doctor of Laws of the University of Helsinki; assistant lecturer in civil and commercial law at the University of Helsinki; Director of Legal Affairs and Commercial Policy at the Central Chamber of Commerce of Finland; Director-General of the Office for Consumer Protection, Finland; member of a number of committees and advisory bodies, inter alia Chairperson of the Supervisory Commission for the Marketing of Medicinal Products (1988–90), member of the Advisory Council on Consumer Affairs (1990–94), member of the Competition Council (1991–94) and member of the editorial board of the Nordic Intellectual Property Law Review (1982–90); Judge at the Court of First Instance since 18 January 1995.



Josef Azizi

Born 1948; Doctor of Laws and Master of Sociology and Economics of the University of Vienna; Lecturer and senior lecturer at the Vienna School of Economics, the Faculty of Law of the University of Vienna and various other universities; Honorary Professor at the Faculty of Law of the University of Vienna; Ministerialrat and Head of Department at the Federal Chancellery; Member of the Steering Committee on Legal Cooperation of the Council of Europe (CDCJ); Representative *ad litem* before the Verfassungsgerichtshof (Constitutional Court) in proceedings for review of the constitutionality of federal laws; Coordinator responsible for the adaptation of Austrian federal law to Community law; Judge at the Court of First Instance since 18 January 1995.



John D. Cooke

Born 1944; called to the Bar of Ireland (1966); admitted also to the Bars of England and Wales, of Northern Ireland and of New South Wales; Practising barrister (1966–96); admitted to the Inner Bar in Ireland (Senior Counsel) 1980 and New South Wales (1991); President of the Council of the Bars and Law Societies of the European Community (CCBE) (1985–86); Visiting Fellow, Faculty of Law, University College Dublin; Fellow of the Chartered Institute of Arbitrators; President of the Royal Zoological Society of Ireland (1987–90); Bencher of the Honorable Society of King's Inns, Dublin; Honorary Bencher of Lincoln's Inn, London; Judge at the Court of First Instance from 10 January 1996 to 15 September 2008.



Arjen W. H. Meij

Born 1944; Justice at the Supreme Court of the Netherlands (1996); Judge and Vice-President at the College van Beroep voor het Bedrijfsleven (Administrative Court for Trade and Industry) (1986); Judge Substitute at the Court of Appeal for Social Security, and Substitute Member of the Administrative Court for Customs Tariff Matters; Legal Secretary at the Court of Justice of the European Communities (1980); Lecturer in European Law in the Law Faculty of the University of Groningen and Research Assistant at the University of Michigan Law School; Staff Member of the International Secretariat of the Amsterdam Chamber of Commerce (1970); Judge at the Court of First Instance since 17 September 1998.



Mihalis Vilaras

Born 1950; lawyer (1974–80); national expert with the Legal Service of the Commission of the European Communities, then Principal Administrator in Directorate-General V (Employment, Industrial Relations, Social Affairs); Junior Officer, Junior Member and, since 1999, Member of the Greek Council of State; Associate Member of the Superior Special Court of Greece; Member of the Central Legislative Drafting Committee of Greece (1996–98); Director of the Legal Service in the General Secretariat of the Greek Government; Judge at the Court of First Instance since 17 September 1998.



Nicholas James Forwood

Born 1948; Cambridge University BA (1969), MA (1973) (Mechanical Sciences and Law); called to the English Bar in 1970, thereafter practising in London (1971–99) and also in Brussels (1979–99); called to the Irish Bar in 1981; appointed Queen's Counsel (1987); Bencher of the Middle Temple (1998); representative of the Bar of England and Wales at the Council of the Bars and Law Societies of the EU (CCBE) and Chairman of the CCBE's Permanent Delegation to the European Court of Justice (1995–99); Governing Board member of the World Trade Law Association and European Maritime Law Organisation (1993–2002); Judge at the Court of First Instance since 15 December 1999.



Maria Eugénia Martins de Nazaré Ribeiro

Born 1956; studied in Lisbon, Brussels and Strasbourg; Member of the Bar in Portugal and Brussels; independent researcher at the Institut d'études européennes de l'Université libre de Bruxelles (Institute of European Studies, Free University of Brussels); Legal Secretary to the Portuguese Judge at the Court of Justice, Mr Moitinho de Almeida (1986–2000), then to the President of the Court of First Instance, Mr Vesterdorf (2000–03); Judge at the Court of First Instance since 31 March 2003.



Franklin Dehousse

Born 1959; law degree (University of Liege, 1981); research fellow (Fonds national de la recherche scientifique, 1985–89); legal adviser to the Chamber of Representatives (1981–90); Doctor in Laws (University of Strasbourg, 1990); Professor (Universities of Liege and Strasbourg; College of Europe; Institut royal supérieur de Défense; Université Montesquieu, Bordeaux; Collège Michel Servet of the Universities of Paris; Faculties of Notre-Dame de la Paix, Namur); Special Representative of the Minister for Foreign Affairs (1995–99); Director of European Studies of the Royal Institute of International Relations (1998–2003); *assesseur* at the Council of State (2001–03); consultant to the European Commission (1990–2003); member of the Internet Observatory (2001–03); Judge at the Court of First Instance since 7 October 2003.



Ena Cremona

Born 1936; Bachelors Degree (BA) in languages, Royal University of Malta (1955); Doctor of Laws (LLD) of the Royal University of Malta (1958); practising at the Malta Bar from 1959; Legal Adviser to the National Council of Women (1964–79); Member of the Public Service Commission (1987–89); Board Member at Lombard Bank (Malta) Ltd, representing the Government shareholding (1987–93); Member of the Electoral Commission since 1993; examiner for doctoral theses in the Faculty of Laws of the Royal University of Malta; Member of the European Commission against Racism and Intolerance (ECRI) (2003–04); Judge at the Court of First Instance since 12 May 2004.



Ottó Czúcz

Born 1946; Doctor of Laws of the University of Szeged (1971); administrator at the Ministry of Labour (1971–74); lecturer (1974–89), Dean of the Faculty of Law (1989–90), Vice-Rector (1992–97) at the University of Szeged; Lawyer; Member of the Presidium of the National Retirement Insurance Scheme; Vice-President of the European Institute of Social Security (1998–2002); Member of the scientific council of the International Social Security Association (1998–2004); Judge at the Constitutional Court (1998–2004); Judge at the Court of First Instance since 12 May 2004.



Irena Wiszniewska-Białecka

Born 1947; Magister Juris, University of Warsaw (1965–69); researcher (assistant lecturer, associate professor, professor) at the Institute of Legal Sciences of the Polish Academy of Sciences (1969–2004); assistant researcher at the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, Munich (award from the Alexander von Humboldt Foundation — 1985–86); Lawyer (1992–2000); Judge at the Supreme Administrative Court (2001–04); Judge at the Court of First Instance since 12 May 2004.



Küllike Jürimäe

Born 1962; degree in law, University of Tartu (1981–86); Assistant to the Public Prosecutor, Tallinn (1986–91); diploma, Estonian School of Diplomacy (1991–92); Legal Adviser (1991–93) and General Counsel at the Chamber of Commerce and Industry (1992–93); Judge, Tallinn Court of Appeal (1993–2004); European Masters in human rights and democratisation, Universities of Padua and Nottingham (2002–03); Judge at the Court of First Instance since 12 May 2004.



Ingrida Labucka

Born 1963; Diploma in law, University of Latvia (1986); investigator at the Interior Ministry for the Kirov Region and the City of Riga (1986–89); Judge, Riga District Court (1990–94); Lawyer (1994–98 and July 1999 to May 2000); Minister for Justice (November 1998 to July 1999 and May 2000 to October 2002); Member of the International Court of Arbitration in The Hague (2001–04); Member of Parliament (2002–04); Judge at the Court of First Instance since 12 May 2004.



Savvas S. Papasavvas

Born 1969; studies at the University of Athens (graduated in 1991); DEA in public law, University of Paris II (1992), and PhD in law, University of Aix-Marseille III (1995); admitted to the Cyprus Bar, Member of the Nicosia Bar since 1993; Lecturer, University of Cyprus (1997–2002), Lecturer in Constitutional Law since September 2002; Researcher, European Public Law Centre (2001–02); Judge at the Court of First Instance since 12 May 2004.



Teodor Tchipev

Born 1940; Degree in law at St Kliment Ohridski University, Sofia (1961); Doctorate in law (1977); Lawyer (1963–64); Legal adviser, State Automobile Enterprise for International Transport (1964–73); Research fellow at the Institute of Law, Bulgarian Academy of Sciences (1973–88); Associate professor of civil procedure at the Faculty of Law of St Kliment Ohridski University, Sofia (1988–91); Arbitrator at the Court of Arbitration of the Chamber of Trade and Industry (1988–2006); Judge at the Constitutional Court (1991–94); Associate professor at Paissi Hilendarski University, Plovdiv (February 2001 to 2006); Minister for Justice (1994–95); Associate professor of civil procedure at the New Bulgarian University, Sofia (1995–2006); Judge at the Court of First Instance since 12 January 2007.



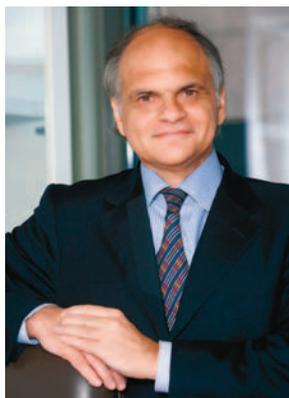
Valeriu M. Ciucă

Born 1960; Degree in law (1984), doctorate in law (1997), Alexandru Ioan Cuza University, Iași; Judge at the Court of First Instance, Suceava (1984–89); Military judge at the Military Court, Iași (1989–90); Professor at Alexandru Ioan Cuza University, Iași (1990–2006); Stipended student specialising in private law at the University of Rennes (1991–92); Assistant professor at Petre Andrei University, Iași (1999–2002); Lecturer at the Université du Littoral Côte d'Opale, Dunkirk (Research Unit on Industry and Innovation) (2006); Judge at the Court of First Instance since 12 January 2007.



Alfred Dittrich

Born 1950; studied law at the University of Erlangen-Nuremberg (1970–75); Articled law clerk in the Nuremberg Higher Regional Court district (1975–78); Adviser at the Federal Ministry of Economic Affairs (1978–82); Counsellor at the Permanent Representation of the Federal Republic of Germany to the European Communities (1982); Adviser at the Federal Ministry of Economic Affairs, responsible for Community law and competition issues (1983–92); Head of the EU Law Section at the Federal Ministry of Justice (1992–2007); Head of the German delegation on the Council Working Party on the Court of Justice; Agent of the Federal Government in a large number of cases before the Court of Justice of the European Communities; Judge at the Court of First Instance since 17 September 2007.



Santiago Soldevila Frago

Born 1960; graduated in law from the Autonomous University of Barcelona (1983); Judge (1985); from 1992 judge specialising in contentious administrative proceedings, assigned to the High Court of Justice of the Canary Islands at Santa Cruz de Tenerife (1992 and 1993), and to the National High Court (Madrid, May 1998 to August 2007), where he decided judicial proceedings in the field of tax (VAT), actions brought against general legislative provisions of the Ministry of the Economy and against its decisions on State aid or the government's financial liability, and actions brought against all agreements of the central economic regulators in the spheres of banking, the stock market, energy, insurance and competition; Legal Adviser at the Constitutional Court (1993–98); Judge at the Court of First Instance since 17 September 2007.



Laurent Truchot

Born 1962; graduate of the Institut d'études politiques, Paris (1984); former student of the École nationale de la magistrature (National School for the Judiciary) (1986–88); Judge at the Regional Court, Marseilles (January 1988 to January 1990); Law Officer in the Directorate for Civil Affairs and the Legal Professions at the Ministry of Justice (January 1990 to June 1992); Deputy Section Head, then Section Head, in the Directorate-General for Competition, Consumption and the Combating of Fraud at the Ministry of Economic Affairs, Finance and Industry (June 1992 to September 1994); Technical Adviser to the Minister for Justice (September 1994 to May 1995); Judge at the Regional Court, Nîmes (May 1995 to May 1996); Legal Secretary at the Court of Justice in the Chambers of Advocate General Léger (May 1996 to December 2001); Auxiliary Judge at the Court of Cassation (December 2001 to August 2007); Judge at the Court of First Instance since 17 September 2007.



Sten Frimodt Nielsen

Born 1963; graduated in law from Copenhagen University (1988); civil servant in the Ministry of Foreign Affairs (1988–91); tutor in international and European law at Copenhagen University (1988–91); Embassy Secretary at the Permanent Mission of Denmark to the United Nations in New York (1991–94); civil servant in the Legal Service of the Ministry of Foreign Affairs (1994–95); external lecturer at Copenhagen University (1995); Adviser, then Senior Adviser, in the Prime Minister's Office (1995–98); Minister Counsellor at the Permanent Representation of Denmark to the European Union (1998–2001); Special Adviser for legal issues in the Prime Minister's Office (2001–02); Head of Department and Legal Counsel in the Prime Minister's Office (March 2002 to July 2004); Assistant Secretary of State and Legal Counsel in the Prime Minister's Office (August 2004 to August 2007); Judge at the Court of First Instance since 17 September 2007.

**Kevin O'Higgins**

Born 1946; educated at Crescent College Limerick, Clongowes Wood College, University College Dublin (BA degree and Diploma in European Law) and the King's Inns; called to the Bar of Ireland in 1968; Barrister (1968–82); Senior Counsel (Inner Bar of Ireland, 1982–86); Judge of the Circuit Court (1986–97); Judge of the High Court of Ireland (1997–2008); Bencher of King's Inns; Irish Representative on the Consultative Council of European Judges (2000–08); Judge at the Court of First Instance since 15 September 2008.

**Emmanuel Coulon**

Born 1968; law studies (Université Panthéon-Assas, Paris); management studies (Université Paris Dauphine); College of Europe (1992); entrance examination for the Centre régional de formation à la profession d'avocat (Regional training centre for the Bar), Paris; certificate of admission to the Brussels Bar; practice as a lawyer in Brussels; successful candidate in an open competition for the Commission of the European Communities; Legal Secretary at the Court of First Instance of the European Communities (Chambers of the Presidents Mr Saggio (1996–1998) and Mr Vesterdorf (1998–2002)); Head of Chambers of the President of the Court of First Instance (2003–05); Registrar of the Court of First Instance since 6 October 2005.

2. Change in the composition of the Court of First Instance in 2008

Formal sitting on 15 September 2008

By decision of the representatives of the Governments of the Member States of the European Communities of 22 July 2008, Mr Kevin O'Higgins was appointed Judge of the Court of First Instance of the European Communities until 31 August 2013.

Mr Kevin O'Higgins succeeded Mr John D. Cooke who had carried out the duties of Judge at the Court of First Instance since 10 January 1996.

4. Former Members of the Court of First Instance

José Luis Da Cruz Vilaça (1989–95), President from 1989 to 1995

Donal Patrick Michael Barrington (1989–96)

Antonio Saggio (1989–98), President from 1995 to 1998

David Alexander Ogilvy Edward (1989–92)

Heinrich Kirschner (1989–97)

Christos Yeraris (1989–92)

Romain Alphonse Schintgen (1989–96)

Cornelis Paulus Briët (1989–98)

Jacques Biancarelli (1989–95)

Koen Lenaerts (1989–2003)

Christopher William Bellamy (1992–99)

Andreas Kalogeropoulos (1992–98)

Pernilla Lindh (1995–2006)

André Potocki (1995–2001)

Rui Manuel Gens de Moura Ramos (1995–2003)

Paolo Mengozzi (1998–2006)

Verica Trstenjak (2004–06)

Jörg Pirrung (1997–2007)

Rafael García-Valdecasas y Fernández (1989–2007)

Hubert Legal (2001–07)

Presidents

José Luis Da Cruz Vilaça (1989–95)

Antonio Saggio (1995–98)

Bo Vesterdorf (1998–2007)

Registrar

Jung Hans (1989–2005)

C — Statistics concerning the judicial activity of the Court of First Instance

General activity of the Court of First Instance

1. New cases, completed cases, cases pending (2004–08)

New cases

2. Nature of proceedings (2004–08)
3. Type of action (2004–08)
4. Subject matter of the action (2004–08)

Completed cases

5. Nature of proceedings (2004–08)
6. Subject matter of the action (2008)
7. Subject matter of the action (2004–08) (judgments and orders)
8. Bench hearing action (2004–08)
9. Duration of proceedings in months (2004–08) (judgments and orders)

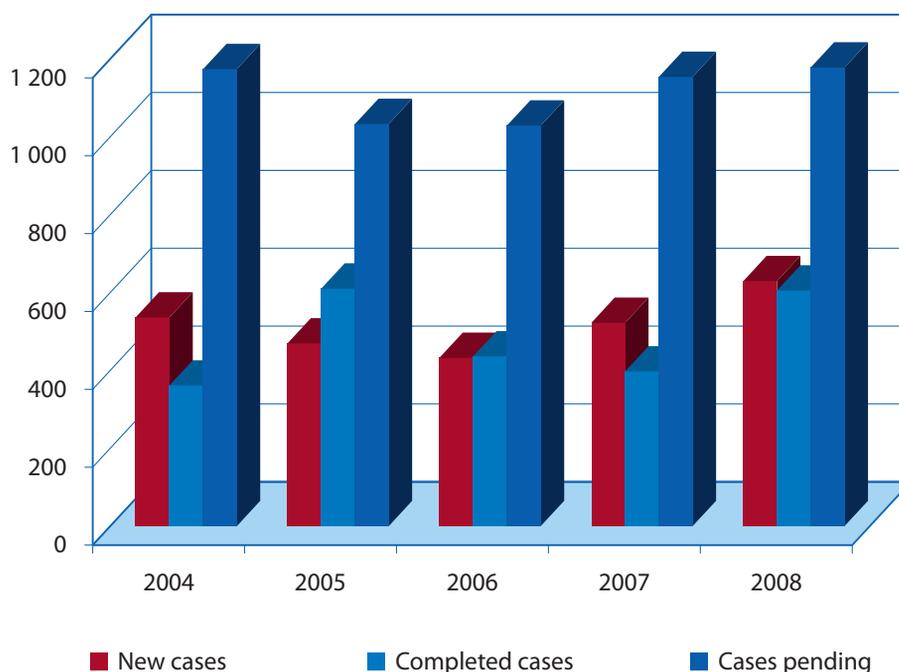
Cases pending as at 31 December

10. Nature of proceedings (2004–08)
11. Subject matter of the action (2004–08)
12. Bench hearing action (2004–08)

Miscellaneous

13. Proceedings for interim measures (2004–08)
14. Expedited procedures (2004–08)
15. Appeals against decisions of the Court of First Instance to the Court of Justice (1989–2008)
16. Distribution of appeals before the Court of Justice according to the nature of the proceedings (2004–08)
17. Results of appeals before the Court of Justice (2008) (judgments and orders)
18. Results of appeals before the Court of Justice (2004–08) (judgments and orders)
19. General trend (1989–2008) (new cases, completed cases, cases pending)

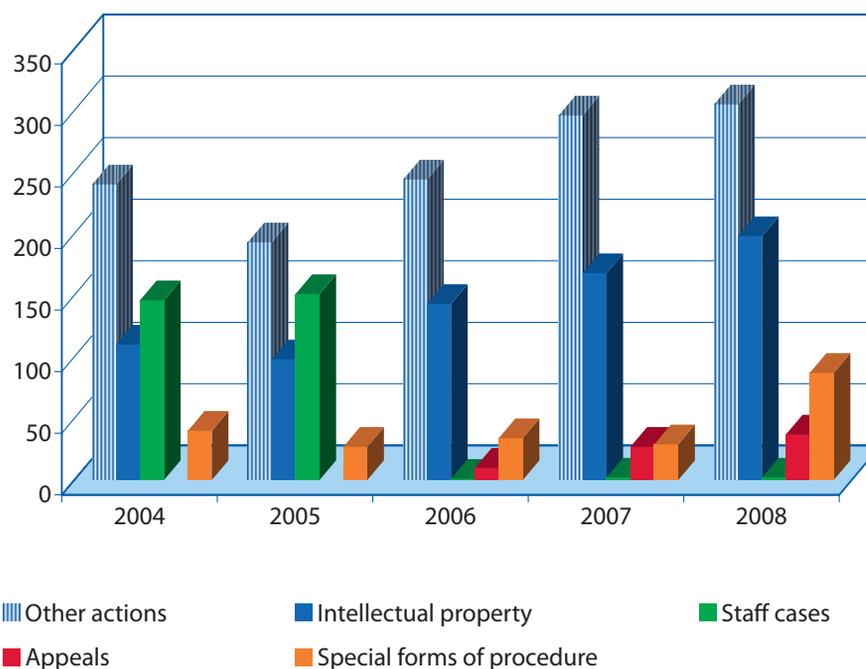
1. General activity of the Court of First Instance — New cases, completed cases, cases pending (2004–08) ⁽¹⁾



	2004	2005	2006	2007	2008
New cases	536	469	432	522	629
Completed cases	361	610	436	397	605
Cases pending	1 174	1 033	1 029	1 154	1 178

⁽¹⁾ Unless otherwise indicated, this table and the following tables take account of special forms of procedure. The following are considered to be 'special forms of procedure': application to set a judgment aside (Article 41 of the Statute of the Court of Justice; Article 122 of the Rules of Procedure of the Court of First Instance); third-party proceedings (Article 42 of the Statute of the Court of Justice; Article 123 of the Rules of Procedure); revision of a judgment (Article 44 of the Statute of the Court of Justice; Article 125 of the Rules of Procedure); interpretation of a judgment (Article 43 of the Statute of the Court of Justice; Article 129 of the Rules of Procedure); taxation of costs (Article 92 of the Rules of Procedure); legal aid (Article 96 of the Rules of Procedure), and rectification of a judgment (Article 84 of the Rules of Procedure).

2. New cases — Nature of proceedings (2004–08) ⁽¹⁾

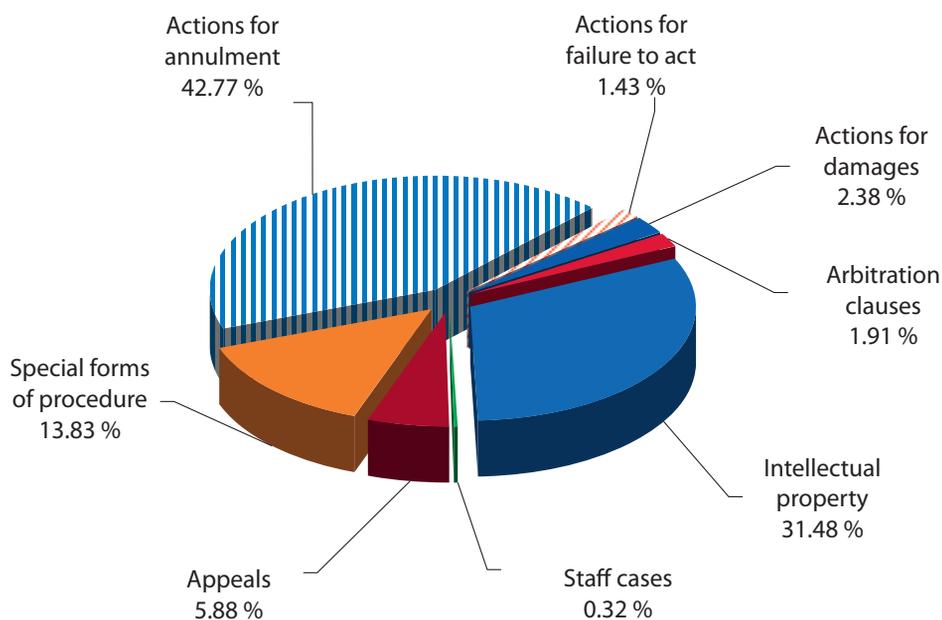


	2004	2005	2006	2007	2008
Other actions	240	193	244	296	305
Intellectual property	110	98	143	168	198
Staff cases	146	151	1	2	2
Appeals			10	27	37
Special forms of procedure	40	27	34	29	87
Total	536	469	432	522	629

⁽¹⁾ The entry 'other actions' in this and the following tables refers to all direct actions other than actions brought by officials of the European Communities and intellectual property cases.

3. New cases — Type of action (2004–08)

Distribution in 2008

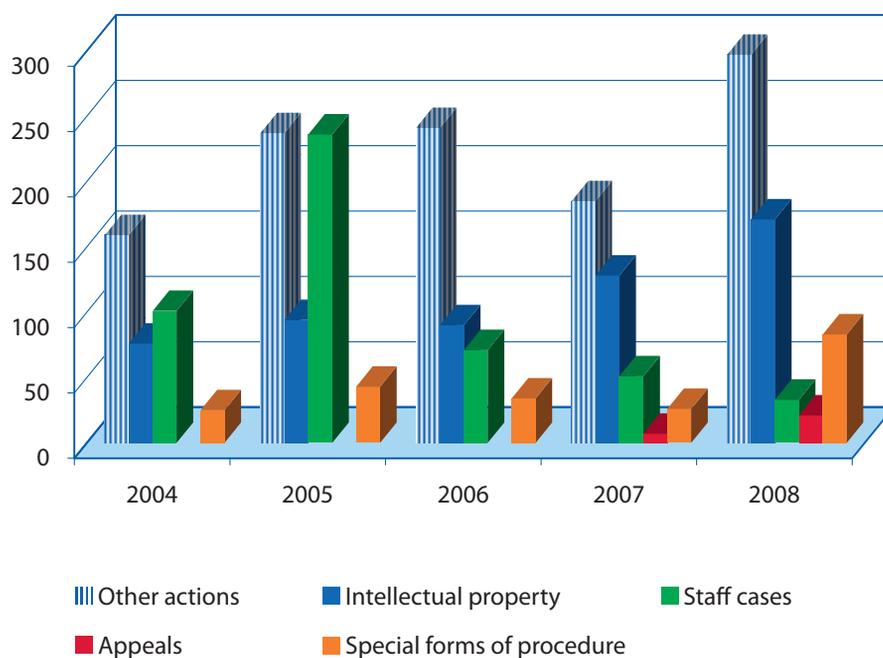


	2004	2005	2006	2007	2008
Actions for annulment	199	160	223	249	269
Actions for failure to act	15	9	4	12	9
Actions for damages	18	16	8	27	15
Arbitration clauses	8	8	9	8	12
Intellectual property	110	98	143	168	198
Staff cases	146	151	1	2	2
Appeals			10	27	37
Special forms of procedure	40	27	34	29	87
Total	536	469	432	522	629

4. New cases — Subject matter of the action (2004–08)

	2004	2005	2006	2007	2008
Accession of new States	1				
Agriculture	25	21	18	34	14
Approximation of laws	1			1	
Arbitration clause		2	3	1	12
Budget of the Communities				2	
Commercial policy	12	5	18	9	10
Common Customs Tariff	1		2	1	
Common foreign and security policy	4		5	12	6
Community own resources		2			
Company law	6	12	11	10	30
Competition	36	40	81	62	71
Culture			3	1	2
Customs union	11	2		4	1
Economic and monetary policy		1	2		
Energy			1		
Environment and consumers	30	18	21	41	14
External relations	3	2	2	1	2
Fisheries policy	3	2		5	23
Free movement of goods	1			1	1
Freedom of establishment	1				1
Freedom of movement for persons	1	2	4	4	1
Freedom to provide services			1		3
Intellectual property	110	98	145	168	198
Justice and home affairs		1		3	3
Law governing the institutions	33	28	15	28	43
Regional policy	10	12	16	18	7
Research, information, education and statistics	6	9	5	10	1
Social policy	5	9	3	5	3
State aid	46	25	28	37	55
Taxation			1	2	
Transport	3		1	4	1
Total EC Treaty	349	291	386	464	502
Total CS Treaty					1
Total EA Treaty	1		1		
Staff Regulations	146	151	11	29	39
Special forms of procedure	40	27	34	29	87
OVERALL TOTAL	536	469	432	522	629

5. Completed cases — Nature of proceedings (2004–08)



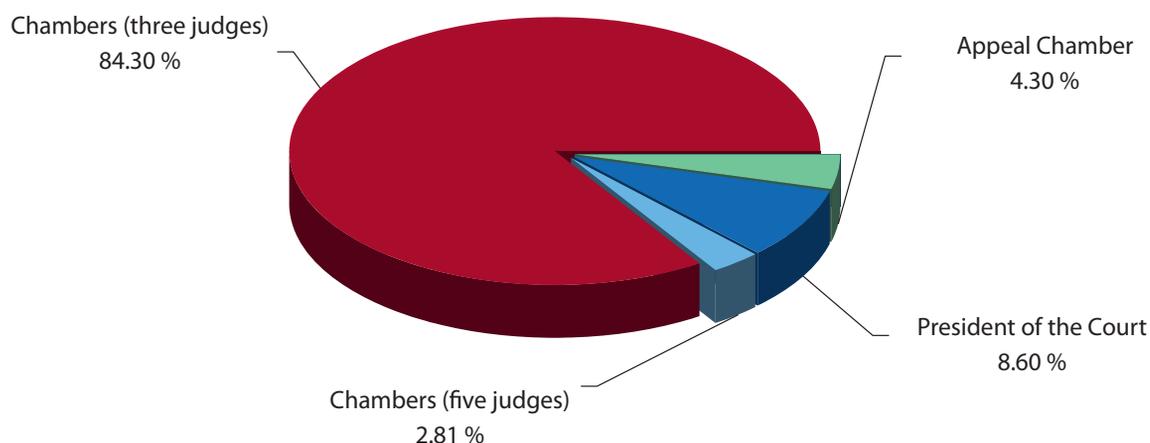
	2004	2005	2006	2007	2008
Other actions	159	237	241	185	297
Intellectual property	76	94	90	128	171
Staff cases	101	236	71	51	33
Appeals				7	21
Special forms of procedure	25	43	34	26	83
Total	361	610	436	397	605

6. Completed cases — Subject matter of the action (2008)

	Judgments	Orders	Total
Agriculture	17	21	38
Approximation of laws		1	1
Arbitration clause	1	2	3
Commercial policy	6	6	12
Common Customs Tariff		3	3
Common foreign and security policy	4	2	6
Company law	10	14	24
Competition	14	17	31
Culture	1	1	2
Customs union	2	1	3
Economic and monetary policy		1	1
Environment and consumers	1	27	28
External relations	1	1	2
Fisheries policy	1	3	4
Free movement of goods		2	2
Freedom of establishment		1	1
Freedom of movement for persons		2	2
Intellectual property	121	50	171
Justice and home affairs		1	1
Law governing the institutions	11	25	36
Regional policy	7	35	42
Research, information, education and statistics	3	7	10
Social policy	3		3
State aid	23	14	37
Taxation		2	2
Transport		3	3
Total EC Treaty	226	242	468
Staff Regulations	33	21	54
Special forms of procedure		83	83
OVERALL TOTAL	259	346	605

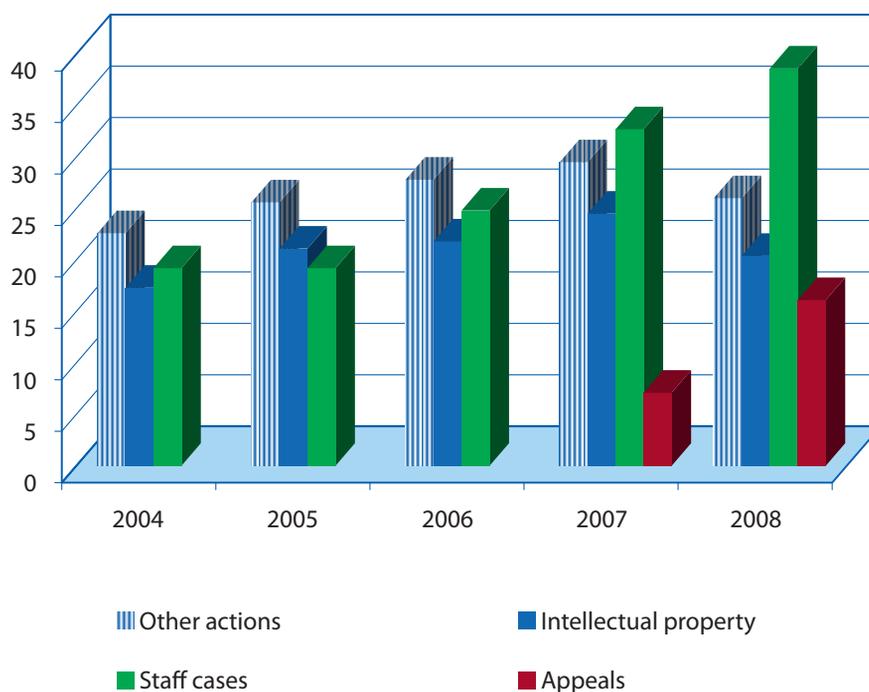
8. Completed cases — Bench hearing action (2004–08)

Distribution in 2008



	2004			2005			2006			2007			2008		
	Judgments	Orders	Total												
Grand Chamber				6		6				2		2			
Appeal Chamber										3	4	7	16	10	26
President of the Court		7	7		25	25		19	19		16	16		52	52
Chambers (five judges)	18	46	64	28	34	62	22	33	55	44	8	52	15	2	17
Chambers (three judges)	141	135	276	181	329	510	198	157	355	196	122	318	228	282	510
Single judge	13	1	14	7		7	7		7	2		2			
Total	172	189	361	222	388	610	227	209	436	247	150	397	259	346	605

9. Completed cases — Duration of proceedings in months (2004–08) ⁽¹⁾
(judgments and orders)

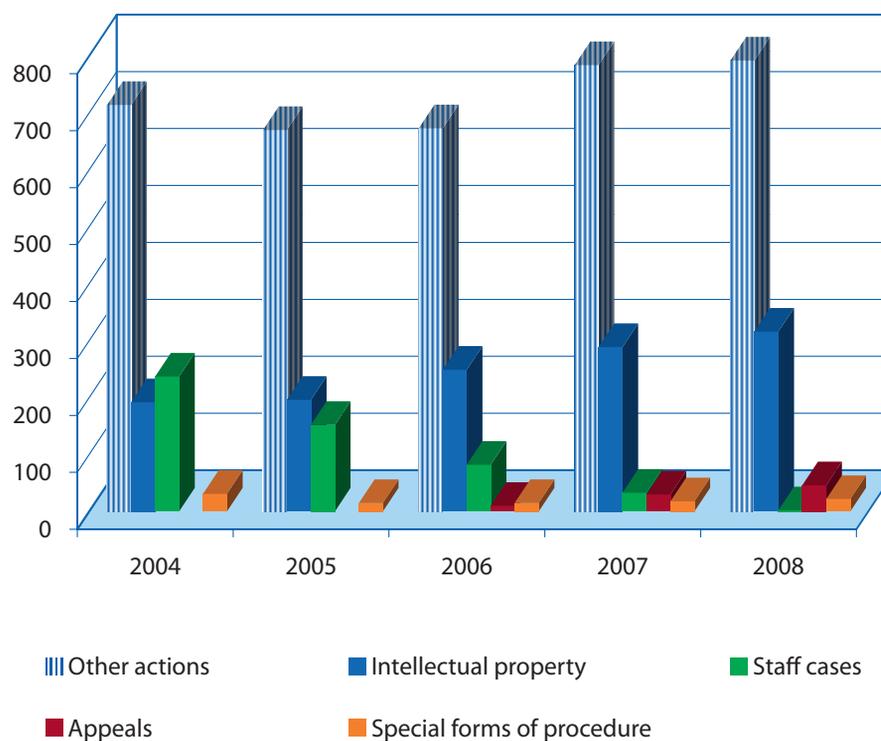


	2004	2005	2006	2007	2008
Other actions	22.6	25.6	27.8	29.5	26.0
Intellectual property	17.3	21.1	21.8	24.5	20.4
Staff cases	19.2	19.2	24.8	32.7	38.6
Appeals				7.1	16.1

⁽¹⁾ The calculation of the average duration of proceedings does not take account of: cases ruled upon by interlocutory judgment; special forms of procedure; cases referred by the Court of Justice following the amendment of the division of jurisdiction between it and the Court of First Instance; cases referred by the Court of First Instance after the Civil Service Tribunal began operating.

The duration of proceedings is expressed in months and tenths of months.

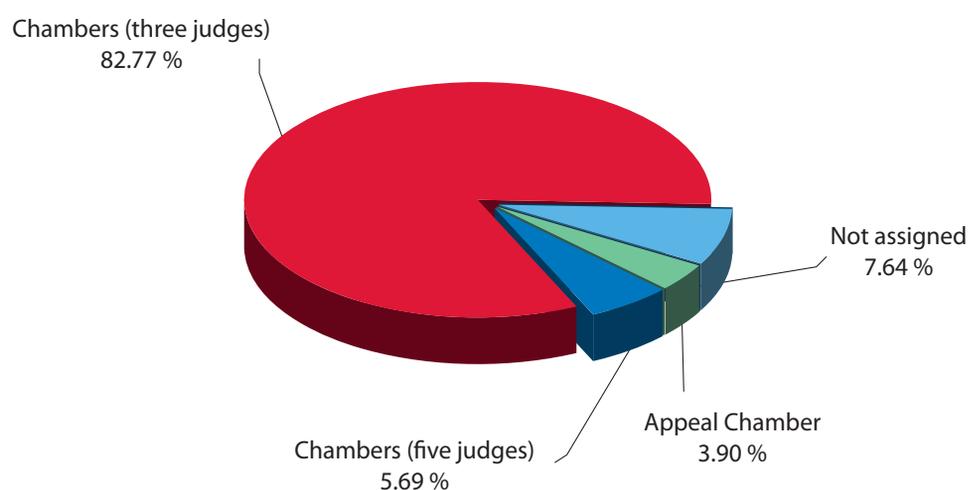
10. Cases pending as at 31 December — Nature of proceedings (2004–08)



	2004	2005	2006	2007	2008
Other actions	714	670	673	784	792
Intellectual property	192	196	249	289	316
Staff cases	237	152	82	33	2
Appeals			10	30	46
Special forms of procedure	31	15	15	18	22
Total	1 174	1 033	1 029	1 154	1 178

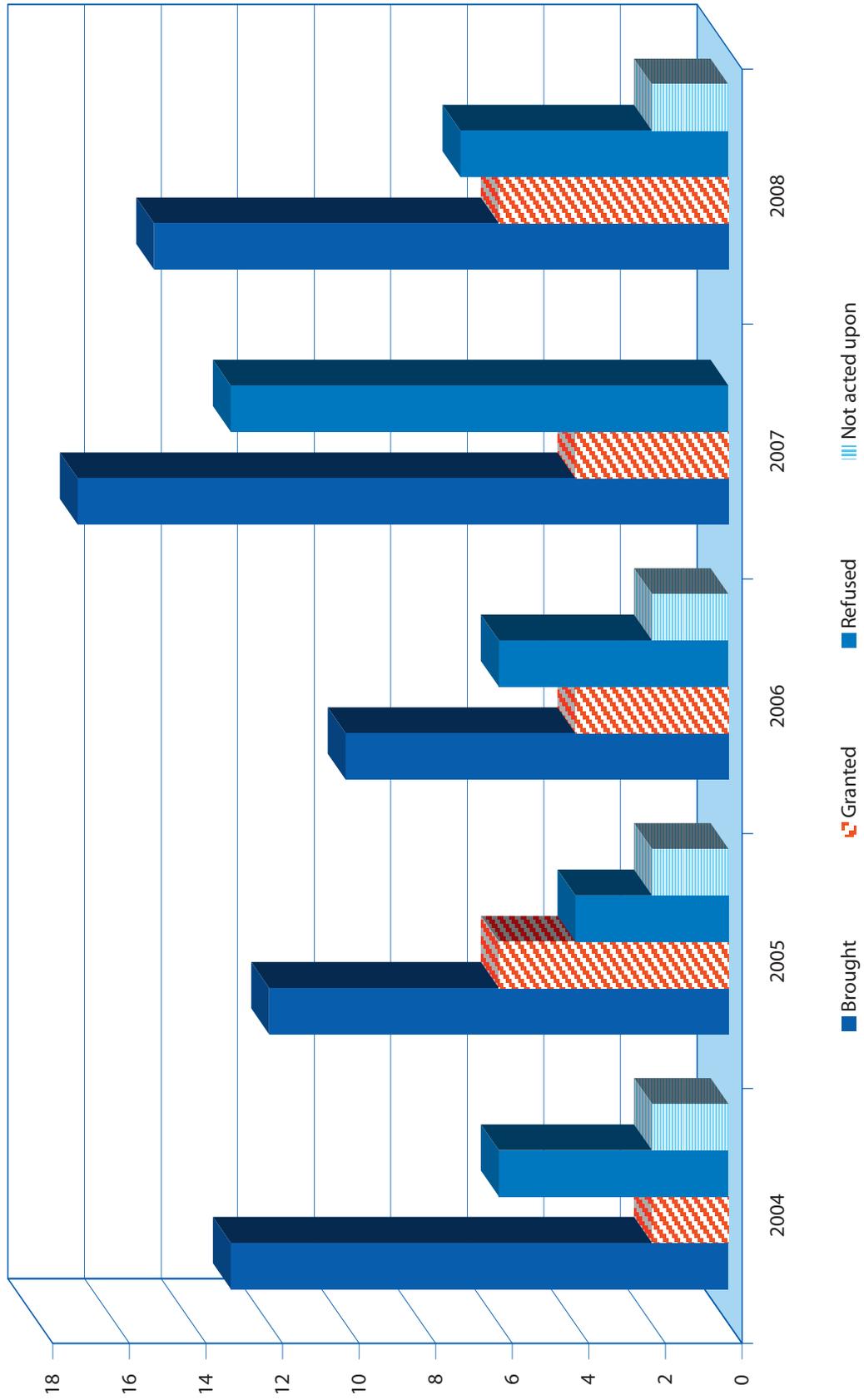
12. Cases pending as at 31 December — Bench hearing action (2004–08)

Distribution in 2008

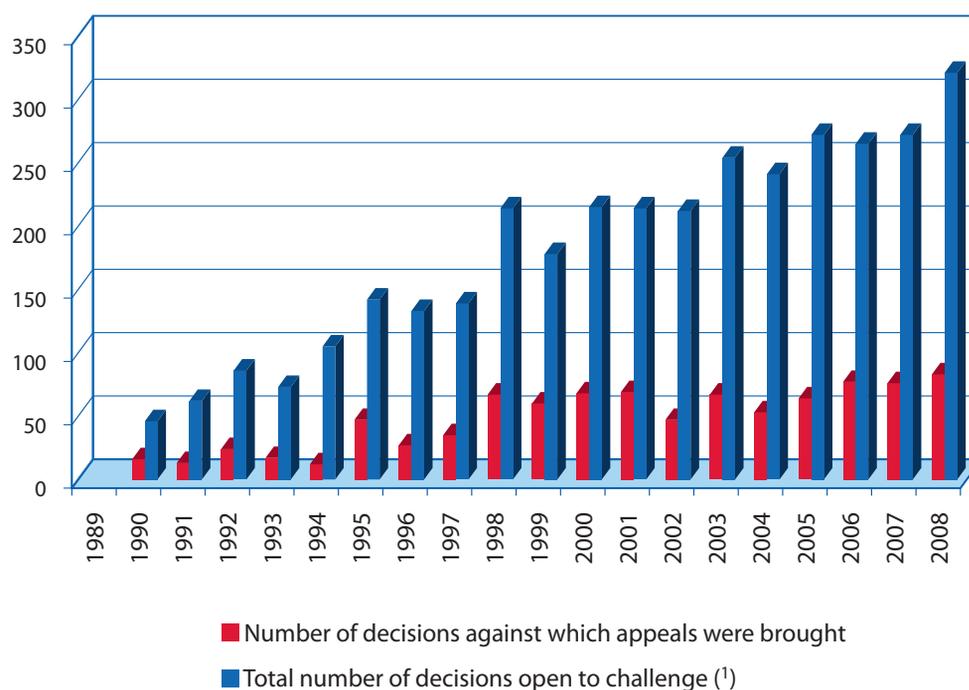


	2004	2005	2006	2007	2008
Grand Chamber	6	1	2		
Appeal Chamber			10	30	46
President of the Court			1		
Chambers (five judges)	187	146	117	75	67
Chambers (three judges)	914	846	825	971	975
Single judge	1	4	2		
Not assigned	66	36	72	78	90
Total	1 174	1 033	1 029	1 154	1 178

14. Miscellaneous — Expedited procedures (2004–08)



15. *Miscellaneous* — Appeals against decisions of the Court of First Instance to the Court of Justice (1989–2008)



	Number of decisions against which appeals were brought	Total number of decisions open to challenge ⁽¹⁾	Percentage of decisions against which appeals were brought
1989			
1990	16	46	35 %
1991	13	62	21 %
1992	24	86	28 %
1993	17	73	23 %
1994	12	105	11 %
1995	47	142	33 %
1996	27	133	20 %
1997	35	139	25 %
1998	67	214	31 %
1999	60	178	34 %
2000	68	215	32 %
2001	69	214	32 %
2002	47	212	22 %
2003	67	254	26 %
2004	53	241	22 %
2005	64	272	24 %
2006	77	265	29 %
2007	76	272	28 %
2008	83	321	26 %

⁽¹⁾ Total number of decisions open to challenge — judgments, and orders relating to admissibility, concerning interim measures, declaring that there was no need to give a decision or refusing leave to intervene — in respect of which the period for bringing an appeal expired or against which an appeal was brought.

17. *Miscellaneous* — Results of appeals before the Court of Justice (2008) (*judgments and orders*)

	Appeal dismissed	Decision totally or partially set aside and no referral back	Decision totally or partially set aside and referral back	Removal from the register/no need to adjudicate	Total
Agriculture	1	1			2
State aid	5	2	5		12
Competition	4		1		5
Law governing the institutions	7	2	1		10
Environment and consumers	4	1		1	6
Free movement of capital		1			1
Freedom of movement for persons	1				1
Fisheries policy		3			3
Economic and monetary policy	1				1
Common foreign and security policy		1			1
Regional policy	1				1
Intellectual property	13	2		2	17
External relations	4				4
Staff Regulations	8	2			10
Common Customs Tariff	1				1
Customs union	1	1			2
Total	51	16	7	3	77

19. *Miscellaneous* — **General trend (1989–2008)** (*new cases, completed cases, cases pending*)

	New cases ⁽¹⁾	Completed cases ⁽²⁾	Cases pending on 31 December
1989	169	1	168
1990	59	82	145
1991	95	67	173
1992	123	125	171
1993	596	106	661
1994	409	442	628
1995	253	265	616
1996	229	186	659
1997	644	186	1 117
1998	238	348	1 007
1999	384	659	732
2000	398	343	787
2001	345	340	792
2002	411	331	872
2003	466	339	999
2004	536	361	1 174
2005	469	610	1 033
2006	432	436	1 029
2007	522	397	1 154
2008	629	605	1 178
Total	7 407	6 229	

¹ 1989: the Court of Justice referred 153 cases to the newly created Court of First Instance.

1993: the Court of Justice referred 451 cases as a result of the first extension of the jurisdiction of the Court of First Instance.

1994: the Court of Justice referred 14 cases as a result of the second extension of the jurisdiction of the Court of First Instance.

2004–05: the Court of Justice referred 25 cases as a result of the third extension of the jurisdiction of the Court of First Instance.

² 2005–06: the Court of First Instance referred 118 cases to the newly created Civil Service Tribunal.

1. Members of the Civil Service Tribunal

(in order of their entry into office)



Paul J. Mahoney

Born in 1946; law studies (Master of Arts, Oxford University, 1967; Master of Laws, University College London, 1969); lecturer, University College London (1967–73); barrister (London, 1972–74); Administrator/Principal Administrator, European Court of Human Rights (1974–90); Visiting Professor at the University of Saskatchewan, Saskatoon, Canada (1988); Head of Personnel, Council of Europe (1990–93); Head of Division (1993–95), Deputy Registrar (1995–2001), Registrar of the European Court of Human Rights (2001 to September 2005); President of the Civil Service Tribunal since 6 October 2005.



Horstpeter Kreppel

Born in 1945; university studies in Berlin, Munich, Frankfurt-am-Main (1966–72); First State examination in law (1972); court trainee in Frankfurt-am-Main (1972–73 and 1974–75); College of Europe, Bruges (1973–74); Second State examination in law (Frankfurt-am-Main, 1976); specialist adviser in the Federal Labour Office and lawyer (1976); Presiding Judge at the Labour Court (Land Hesse, 1977–93); lecturer at the Technical College for Social Work, Frankfurt-am-Main, and at the Technical College for Administration, Wiesbaden (1979–90); national expert to the Legal Service of the Commission of the European Communities (1993–96 and 2001–05); Social Affairs Attaché at the Embassy of the Federal Republic of Germany in Madrid (1996–2001); presiding judge at the Labour Court of Frankfurt-am-Main (February to September 2005); Judge at the Civil Service Tribunal since 6 October 2005.



Haris Tagaras

Born in 1955; graduate in law (University of Thessaloniki, 1977); special diploma in European law (Institute for European Studies, Free University of Brussels, 1980); doctorate in law (University of Thessaloniki, 1984); lawyer-linguist at the Council of the European Communities (1980–82); researcher at the Thessaloniki Centre for International and European Economic Law (1982–84); Administrator at the Court of Justice of the European Communities and at the Commission of the European Communities (1986–90); professor of Community law, international private law and human rights at Athens Panteion University (since 1990); external consultant for European matters at the Ministry of Justice and member of the Permanent Committee of the Lugano Convention (1991–2004); member of the national Postal and Telecommunications Commission (2000–02); member of the Thessaloniki Bar, lawyer to the Court of Cassation; founder member of the Union of European Lawyers (UAE); associate member of the International Academy of Comparative Law; Judge at the Civil Service Tribunal since 6 October 2005.



Sean Van Raepenbusch

Born in 1956; graduate in law (Free University of Brussels, 1979); special diploma in international law (Brussels, 1980); Doctor of Laws (1989); head of the legal service of the Société anonyme du canal et des installations maritimes (Canals and Maritime Installations Company), Brussels (1979–84); official of the Commission of the European Communities (Directorate-General for Social Affairs, 1984–88); member of the Legal Service of the Commission of the European Communities (1988–94); Legal Secretary at the Court of Justice of the European Communities (1994–2005); lecturer at the University of Charleroi (international and European social law, 1989–91), at the University of Mons Hainault (European law, 1991–97), at the University of Liège (European civil service law, 1989–91; institutional law of the European Union, 1995–2005; European social law, 2004–05); numerous publications on the subject of European social law and constitutional law of the European Union; Judge at the Civil Service Tribunal since 6 October 2005.

2. Order of precedence

from 1 January to 30 September 2008

P. MAHONEY, President of the Tribunal
H. KREPPEL, President of Chamber
S. VAN RAEPENBUSCH, President of Chamber
I. BORUTA, Judge
H. KANNINEN, Judge
H. TAGARAS, Judge
S. GERVASONI, Judge
W. HAKENBERG, Registrar

from 1 October to 31 December 2008

P. MAHONEY, President of the Tribunal
H. KANNINEN, President of Chamber
S. GERVASONI, President of Chamber
H. KREPPEL, Judge
I. BORUTA, Judge
H. TAGARAS, Judge
S. VAN RAEPENBUSCH, Judge
W. HAKENBERG, Registrar

C — Statistics concerning the judicial activity of the Civil Service Tribunal

General activity of the Civil Service Tribunal

1. New cases, completed cases, cases pending (2005–08)

New cases

2. Percentage of the number of cases per principal defendant institution (2006–08)
3. Language of the case (2006–08)

Completed cases

4. Judgments and orders — Bench hearing action (2008)
5. Outcome (2008)
6. Interim measures adopted — Outcome (2006–08)
7. Duration of proceedings in months (2008)

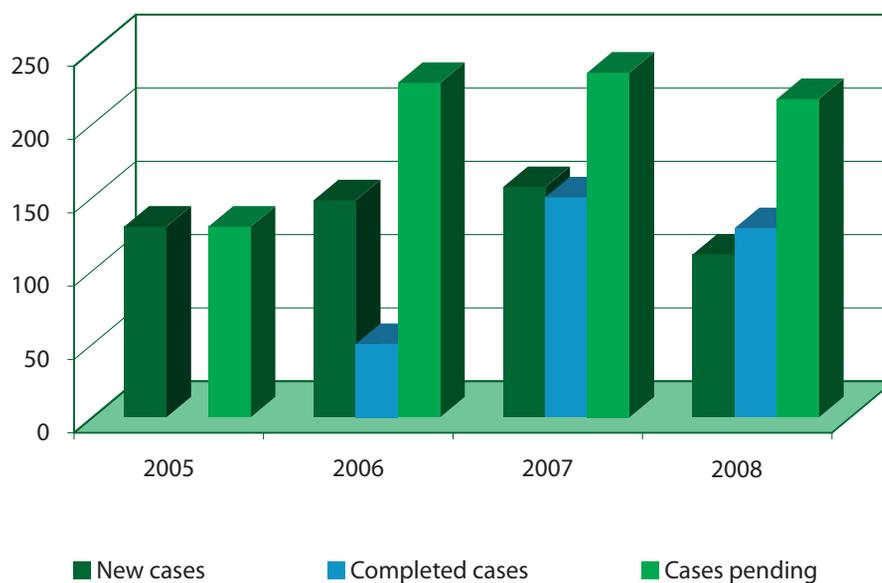
Cases pending as at 31 December

8. Bench hearing action (2006–08)
9. Number of applicants (2008)

Miscellaneous

10. Decisions of the Tribunal on appeal to the Court of First Instance (2006–08)
11. Results of appeals to the Court of First Instance (2006–08)

1. *General activity of the Civil Service Tribunal — New cases, completed cases, cases pending (2005–08)*



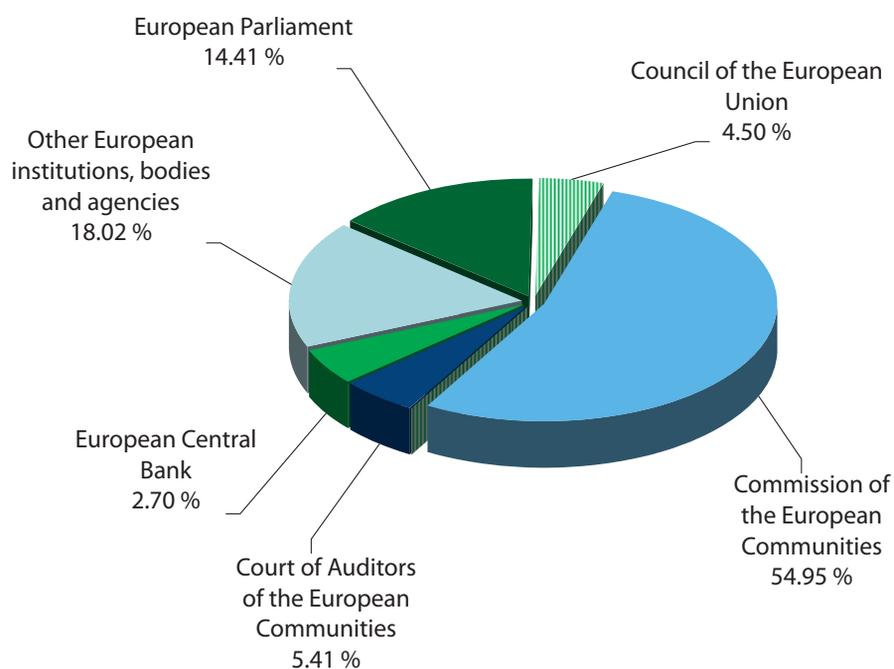
	2005	2006	2007	2008
New cases	130	148	157	111
Completed cases	—	50	150	129
Cases pending	130	228	235	217 ⁽¹⁾

The figures given (gross figures) represent the total number of cases, without account being taken of the joinder of cases on the grounds of similarity (one case number = one case).

⁽¹⁾ Including nine cases in which proceedings were stayed.

2. *New cases* — Percentage of the number of cases per principal defendant institution (2006–08)

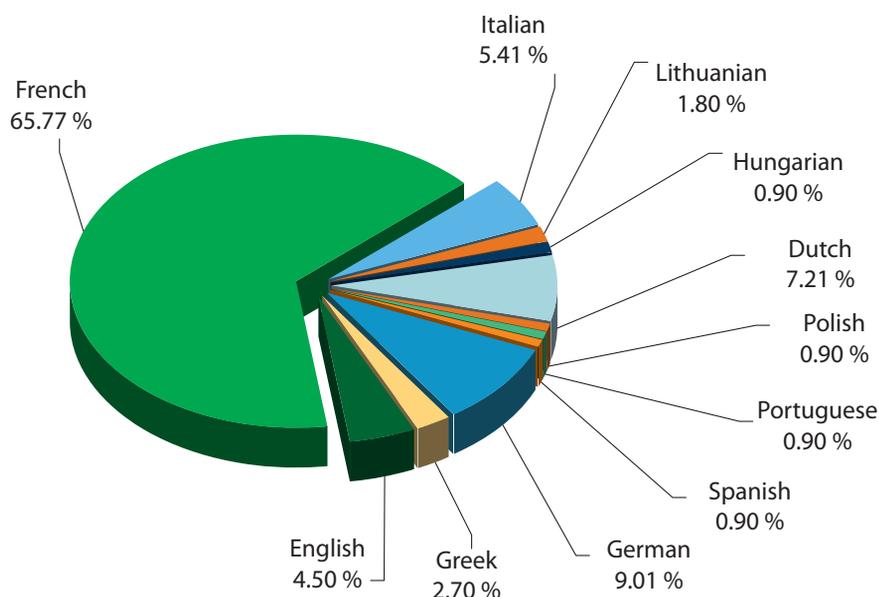
Percentage of number of new cases (2008)



	2006	2007	2008
European Parliament	7.14 %	13.38 %	14.41 %
Council of the European Union	6.07 %	3.82 %	4.50 %
Commission of the European Communities	75.00 %	50.96 %	54.95 %
Court of Justice	3.57 %	3.82 %	—
Court of Auditors of the European Communities	1.79 %	1.91 %	5.41 %
European Central Bank	1.07 %	1.27 %	2.70 %
Other European institutions, bodies and agencies	5.36 %	24.84 %	18.02 %
Total	100 %	100 %	100 %

3. New cases — Language of the case (2006–08)

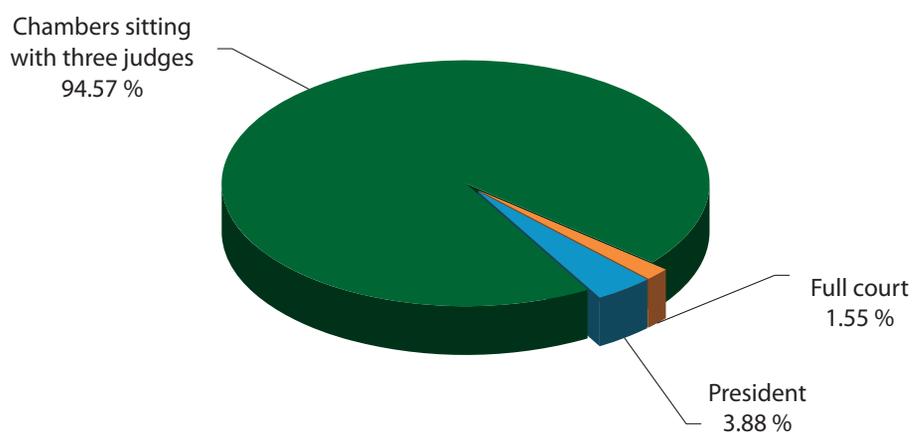
Distribution in 2008



Language of the case	2006	2007	2008
Bulgarian	—	2	—
Spanish	1	2	1
German	2	17	10
Greek	3	2	3
English	8	8	5
French	113	102	73
Italian	10	17	6
Lithuanian	—	2	2
Hungarian	2	1	1
Dutch	7	3	8
Polish	—	—	1
Portuguese	—	—	1
Romanian	—	1	—
Slovene	1	—	—
Finnish	1	—	—
Total	148	157	111

The language of the case corresponds to the language in which the proceedings were brought and not to the applicant's mother tongue or nationality.

4. *Completed cases — Judgments and orders — Bench hearing action (2008)*



	Judgments	Orders terminating proceedings ⁽¹⁾	Cases brought to a close in other ways	Total
Full court	2	—	—	2
President	—	5	—	5
Chambers sitting with three judges	66	55	1	122
Single judge	—	—	—	—
Total	68	60	1	129

⁽¹⁾ Including seven cases brought to a close by amicable settlement.

5. Completed cases — Outcome (2008)

	Judgments			Orders					Cases brought to a close in other ways	Total
	Actions upheld in full	Actions upheld in part	Actions dismissed in full	Actions/ applications [manifestly] inadmissible or unfounded	Amicable settlements following intervention by the Tribunal	Removal from the register on other grounds, no need to adjudicate or referral back	Applications upheld (special forms of procedure)			
Assignment/reassignment to a post	—	—	2	2	—	1	—	—	5	
Competitions	1	2	4	2	—	—	—	—	9	
Working conditions/leave	—	2	2	1	1	—	—	—	6	
Appraisal/promotion	7	8	12	4	2	5	—	1	39	
Pensions and invalidity allowances	—	—	2	3	—	6	—	—	11	
Disciplinary proceedings	—	—	1	2	—	—	—	—	3	
Recruitment/appointment/ classification in grade	1	6	4	5	—	2	—	—	18	
Remuneration and allowances	—	—	8	2	4	3	—	—	17	
Termination of an agent's contract	—	—	3	1	—	1	—	—	5	
Social security/occupational disease/accidents	1	1	1	1	—	2	—	—	6	
Other	—	—	—	8	—	1	1	—	10	
Total	10	19	39	31	7	21	1	1	129	

6. Completed cases — Interim measures adopted — Outcome (2006–08)

Number of applications for interim measures granted		Outcome	
		Granted in full or in part	Dismissal
2006	2	–	2
2007	4	–	4
2008	4	–	4
Total	10	–	10

7. Completed cases — Duration of proceedings in months (2008)

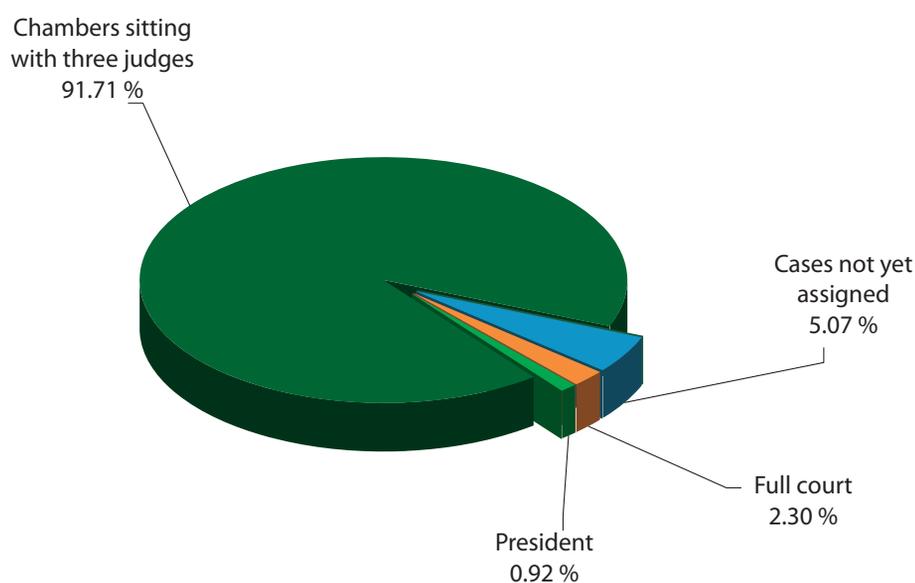
Judgments		Average duration	Overall average
New cases before the Civil Service Tribunal		16.9	19.7
Cases initially brought before the Court of First Instance ⁽¹⁾		32.6	
Total	68		
Orders			
New cases before the Civil Service Tribunal		11.3	14.0
Cases initially brought before the Court of First Instance ⁽¹⁾		38.3	
Total	61		
OVERALL TOTAL	129		17.0

The durations are expressed in months and tenths of months.

⁽¹⁾ When the Civil Service Tribunal commenced work, the Court of First Instance transferred 118 cases to it.

8. Cases pending as at 31 December — Bench hearing action (2006–08)

Distribution in 2008



	2006	2007	2008
Full court	6	3	5
President	4	2	2
Chambers sitting with three judges	207	205	199
Single judge	—	—	—
Cases not yet assigned	11	25	11
Total	228	235	217

9. Cases pending as at 31 December — Number of applicants (2008)

The 10 pending cases with the greatest number of applicants in a single case

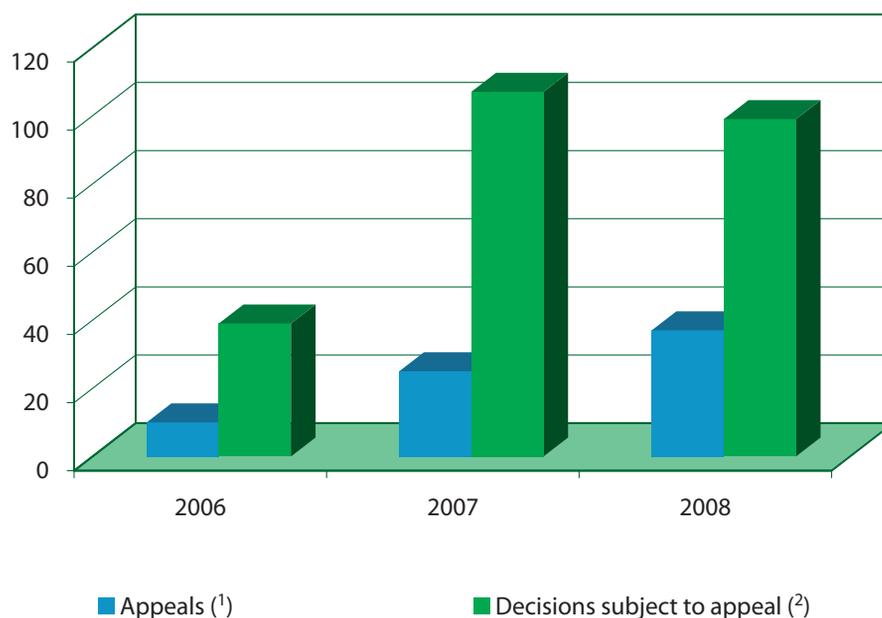
Number of applicants per case	Fields
181	Staff Regulations — Recruitment — Members of the contract staff — Duration of contracts, renewal and/or extension for a definite or indefinite period
143	Staff Regulations — Appointments — Candidates placed on a reserve list before the new Staff Regulations entered into force
108	EIB — Pension — Annual adjustment
80	Staff Regulations — Members of the auxiliary session staff of the Parliament — Interim workers — Reclassification as members of the contract staff with contracts of indefinite duration
76	Staff Regulations — Appointments — Reclassification of contracts of fixed duration as a single contract of indefinite duration
59	Staff Regulations — Promotion — Promotion year 2005 — Additional grades provided for by the new Staff Regulations
47	Staff Regulations — Members of the contract staff — Recruitment — Selection procedure CAST27/RELEX — Non-inclusion on the reserve list
29	Staff Regulations — Contract staff — Review of classification and remuneration
27	Staff Regulations — Staff of the crèche and childcare services — Remuneration
21	Staff Regulations — Remuneration — Allowance for shiftwork — Allowance for workers regularly required to remain on standby duty — Articles 56a and 56b of the Staff Regulations

The term 'Staff Regulations' below means the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities.

Total number of applicants for all pending cases

	Total applicants	Total pending cases
2006	1 652	228
2007	1 267	235
2008	1 161	217

10. *Miscellaneous* — Decisions of the Tribunal on appeal to the Court of First Instance (2006–08)



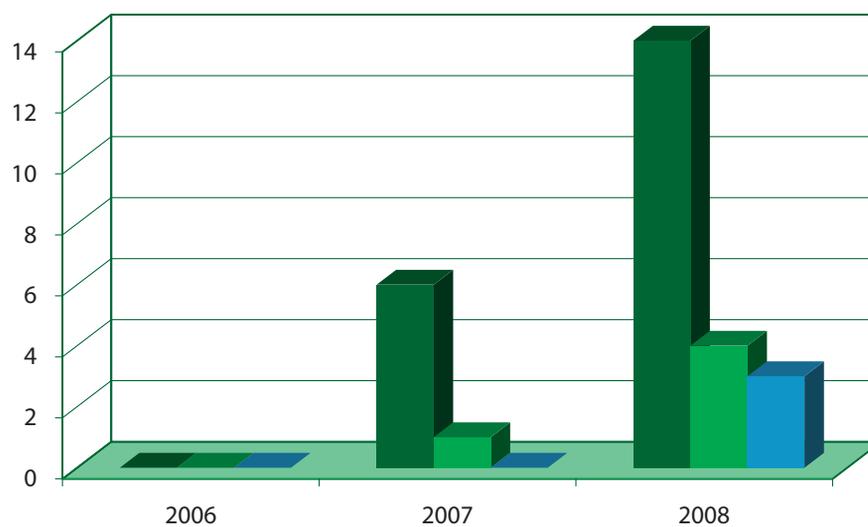
	Appeals (1)	Decisions subject to appeal (2)	Percentage of appeals (3)	Percentage of appeals leaving the amicable settlement procedure out of the reckoning
2006	10	39	25.64 %	22.22 %
2007	25	107	23.36 %	21.93 %
2008	37	99	37.37 %	34.91 %

(1) Decisions appealed against by several parties are taken into account only once. In 2007, two decisions were each the subject of two appeals.

(2) Judgments, orders declaring the action inadmissible, clearly inadmissible or clearly unfounded, orders for interim measures, orders that there is no need to adjudicate and orders refusing leave to intervene, made or adopted during the reference year.

(3) For a given year this percentage may not correspond to the decisions subject to appeal given in the reference year, since the period allowed for appeals may span two years.

11. *Miscellaneous* — Results of appeals to the Court of First Instance (2006–08)



- Appeal dismissed
- Decision totally or partially set aside and no referral back
- Decision totally or partially set aside and referral back

	2006	2007	2008
Appeal dismissed	—	6	14
Decision totally or partially set aside and no referral back	—	1	4
Decision totally or partially set aside and referral back	—	—	3
Total	—	7	21

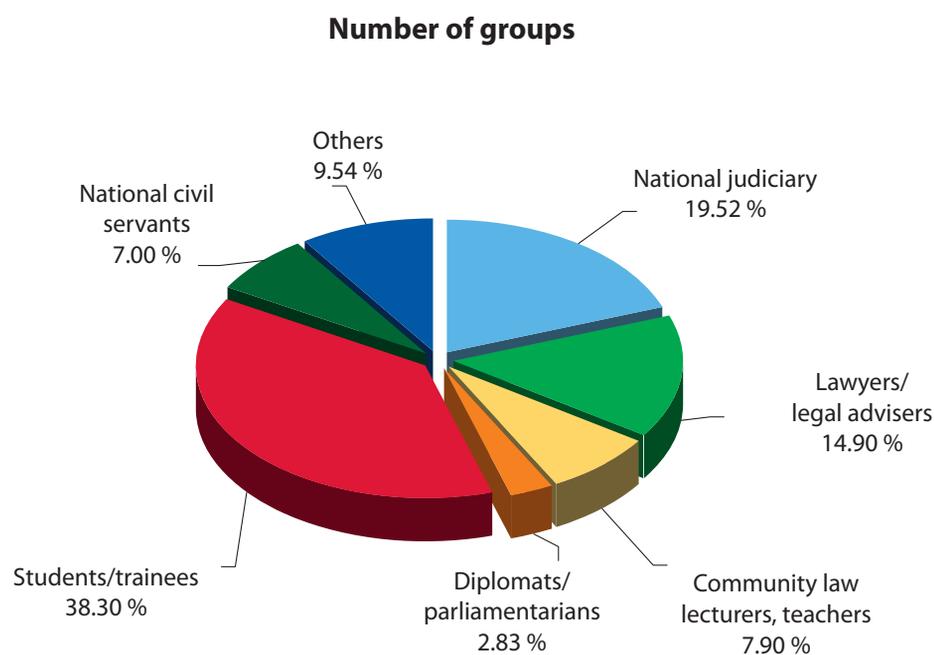
A — Official visits and events at the Court of Justice, the Court of First Instance and the Civil Service Tribunal

Court of Justice

24 January	Mr M. A. Moratinos, Minister for Foreign Affairs of the Kingdom of Spain
25 January	Mr F. Fillon, Prime Minister of the French Republic
13 February	Delegation from the Corte centroamericana de Justicia
1 April	Delegation from the Court of the Future Network, Australia
9 April	Mr A. Krautscheid, Minister for Federal and European Affairs and the Media of the <i>Land</i> of Nordrhein-Westfalen
14–15 April	Delegation of Netherlands judges — Gerechtscoördinatoren
17 April	HE Mr E. Duckwitz, Permanent Representative of the Federal Republic of Germany to the European Union
17 April	HE Mr K. Darroch, Permanent Representative of the United Kingdom to the European Union
17 April	Ms B. Ask, Minister for Justice of the Kingdom of Sweden
18 April	HE Mr H. D. Schweisgut, Permanent Representative of the Republic of Austria to the European Union
21–28 April	Delegation from the Court of Justice of the Central African Economic and Monetary Community (CAEMC), the Court of Justice of the West African Economic and Monetary Union (WAEMU) and the Court of Justice of the Economic Community of West African States (Ecowas)
28 April	HE Ms M. Vicenová, Permanent Representative of the Czech Republic to the European Union
14 May	HE Mr P. Guex, Ambassador of the Swiss Confederation to the Grand Duchy of Luxembourg and HE Mr J. De Watteville, Ambassador, Head of the Swiss Mission to the European Union
5 June	Mr J. Pospíšil, Minister for Justice of the Czech Republic
9–10 June	Member States Judges' Forum (Belgium, Bulgaria, Denmark, Germany, Estonia, Greece, Cyprus, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, United Kingdom)
9–27 June	Exhibition 'Sous le regard de Dame Justice' by P. Heinisch, painter and caricaturist

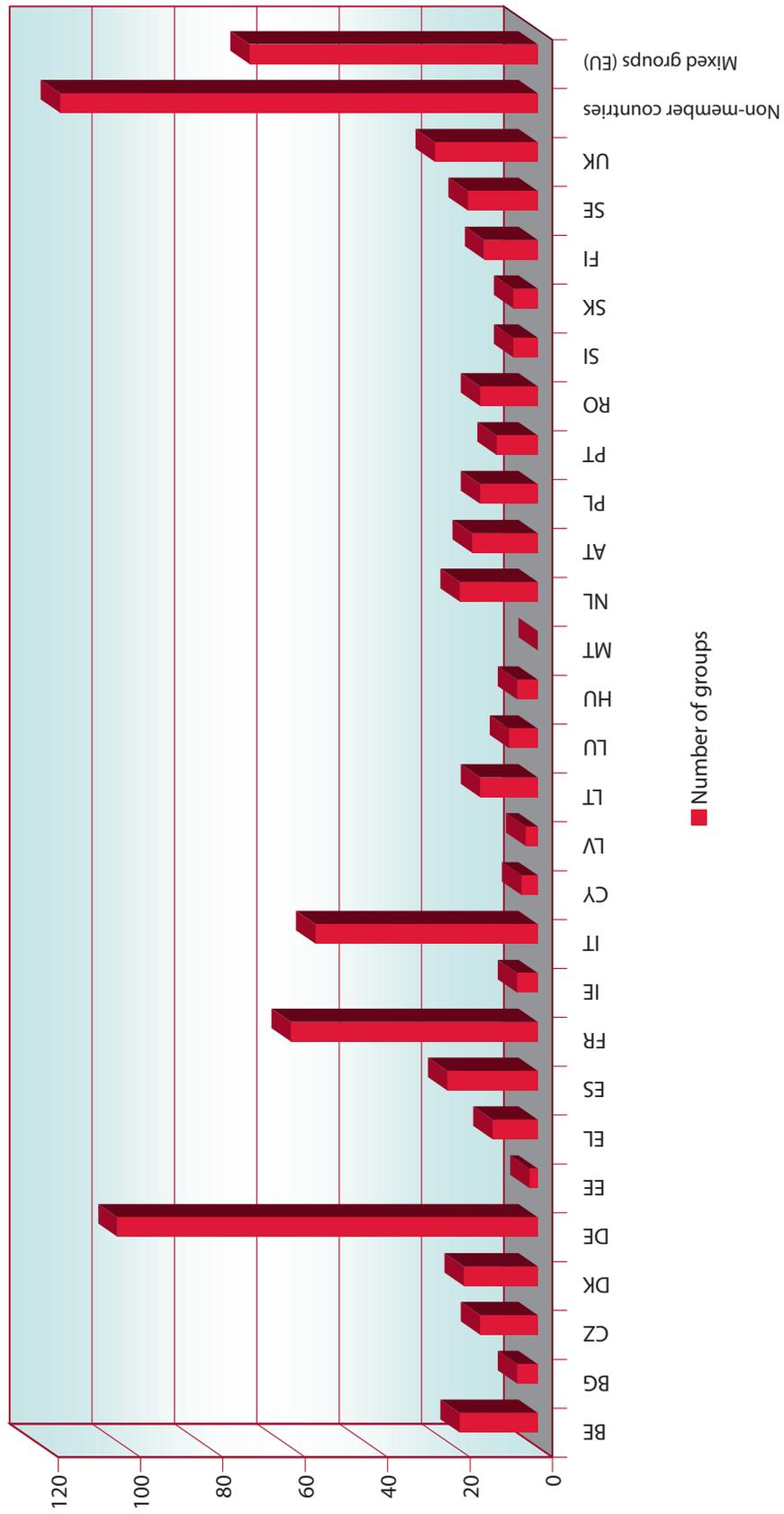
B — Study visits (2008)

1. Distribution by type of group



	National judiciary	Lawyers/legal advisers	Community law lecturers, teachers	Diplomats/parliamentarians	Students/trainees	National civil servants	Others	Total
Number of groups	131	100	53	19	257	47	64	671

2. Distribution by Member State (2008)

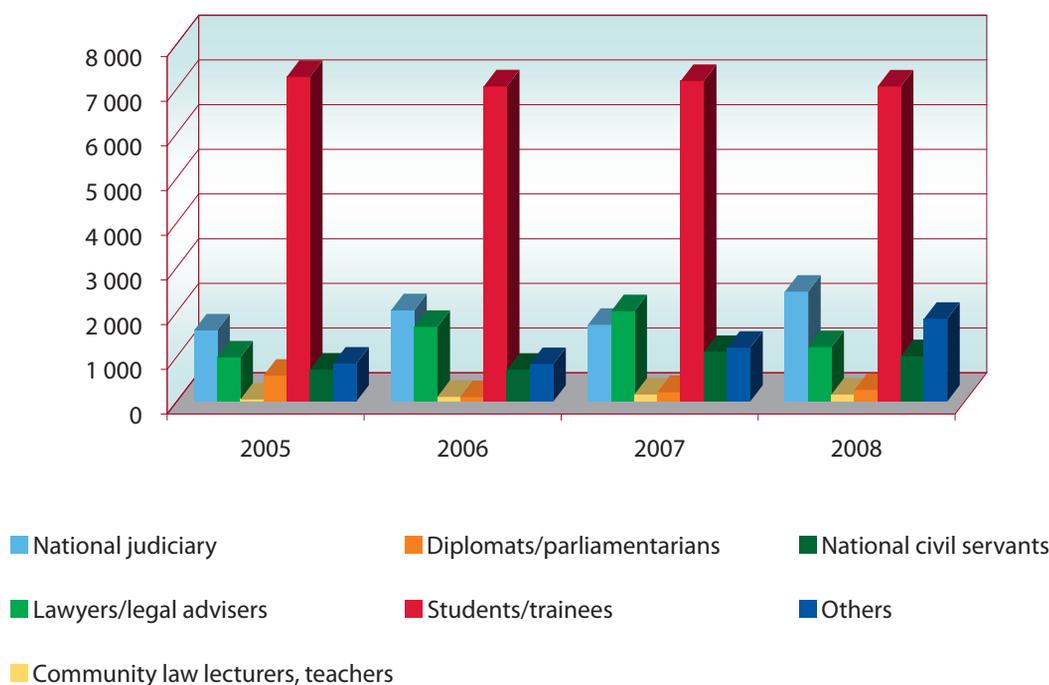


	Number of visitors										Total	Number of groups
	National judiciary	Lawyers/ legal advisers	Community law lecturers, teachers	Diplomats/parliamentarians	Students/trainees	National civil servants	Others	Total	Number of groups			
BE		53	1		400				20	474	19	
BG	34	13			42					89	5	
CZ		46	14		24					84	14	
DK	8	10	43	31	98	27			90	307	18	
DE	375	265	29	70	1 113	163			828	2 843	102	
EE				27						27	2	
EL	121		6		150					277	11	
ES	294	33			36	18			103	484	22	
FR	230	46	7		1 118	143			297	1 841	60	
IE	10				74					84	5	
IT		55	3		534					592	54	
CY	4		8		16					28	4	
LV					23	40				63	3	
LT			9		15					24	14	
LU		55			161	14				230	7	
HU			8		80	8				96	5	
MT										0	0	
NL	86	52		50	271				42	501	19	
AT	18	76	4		190				38	326	16	
PL	68	73	4		84	105				334	14	
PT	3		6		20					29	10	
RO	60		2			3				65	14	
SI	3	10				7				20	6	
SK	78				34					112	6	
FI		30		39	52	11			27	159	13	
SE	188	17		6	61				97	369	17	
UK	100	37			335				16	488	25	
Non-member countries	215	57	12	39	1 320	50			82	1 775	116	
Mixed groups (EU)	568	291			802	427			214	2 302	70	
Total	2 463	1 219	156	262	7 053	1 016			1 854	14 023	671	

3. National judiciary (2008)

	BE	BG	DK	DE	EE	EL	CY	LV	LT	LU	NL	PL	PT	UK	Total
Study visit	8	6	3	16	2	8	2	2	4	2	7	15	8	8	91

4. Trend in number and type of visitors (2005–08)



Number of visitors

	National judiciary	Lawyers/legal advisers	Community law lecturers, teachers	Diplomats/parliamentarians	Students/trainees	National civil servants	Others	Total
2005	1 595	989	48	581	7 267	716	853	12 049
2006	2 044	1 673	108	101	7 056	714	840	12 536
2007	1 719	2 025	157	213	7 178	1 111	1 206	13 609
2008	2 463	1 219	156	262	7 053	1 016	1 854	14 023

D — Visits and participation in official functions

Court of Justice

11 January	Representation of the Court at the formal sitting of the Court of Cassation, in Paris
12 January	Representation of the Court at the ceremony organised by Mr L. Gonzi, Prime Minister of Malta, on the occasion of the entry of Malta into the euro area, in Valetta
16 January	Representation of the Court at the Rechtspolitischer Neujahrsempfang at the Ministry of Justice, in Berlin
18–19 January	Participation of a delegation from the Court at the third colloquium of the Presidents of the Austrian, German and Swiss Constitutional Courts, the President of the European Court of Human Rights and the President of the Court of Justice of the European Communities, in Vienna
22–23 January	Representation of the Court at the general training seminar on trade marks and designs for judges of the national courts of the 27 Member States of the European Union, in Alicante
25 January	Participation of a delegation from the Court at the formal sitting of the European Court of Human Rights, in Strasbourg
25 January	Representation of the Court at the ceremony inaugurating the judicial year of the Supreme Court of Cassation, in Rome
25 January	Representation of the Court at the formal sitting of the European Court of Human Rights and at the seminar on 'The role of consensus in the system of the European Convention on Human Rights', in Strasbourg
29 January	Representation of the Court at the formal ceremony for the opening of the judicial year of the Supreme Court of Portugal, in Lisbon
31 January	Representation of the Court at the formal session in honour of Mr G. Hirsch, President of the Federal Court of Justice, and on the occasion of the entry into office of his successor, at the invitation of Ms B. Zypries, Minister for Justice of the Federal Republic of Germany, in Karlsruhe
24 February	Representation of the Court at the ceremony organised by the President of the Republic of Estonia, Mr Toomas Hendrik Ilves, on the occasion of the 90th anniversary of the Republic of Estonia, in Tallinn
12 March	Representation of the Court at the celebration of the 50th anniversary of the European Parliament, in Strasbourg

12 March	Representation of the Court at the Annual General Assembly of the Constitutional Court of the Republic of Poland, in Warsaw
9 April	Representation of the Court on the occasion of the 25th anniversary of the Constitutional Court of Portugal, in Lisbon
7 May	Representation of the Court at the formal reception given at the Hofburg by the President of the Republic of Austria on the occasion of the departure from office of Mr Korinek, President of the Austrian Constitutional Court, in Vienna
16–17 May	Representation of the Court at the Second International Constitutional Colloquium, organised by the Constitutional Court of Andorra, on the topic 'International law and national constitutions in the jurisprudence of constitutional courts', in Andorra la Vella
28–31 May	Participation of a delegation from the Court at the FIDE Congress, in Linz
1 June	Representation of the Court at the ceremony organised on the occasion of the Italian National Day, in Rome
9 June	Representation of the Court at the opening of the exhibition of the architect Mr D Perrault, at the Centre Pompidou, in Paris
9–10 June	Representation of the Court at the colloquium on 'Ways and means of strengthening the implementation at national level of the European Convention for the Protection of Human Rights and Fundamental Freedoms', in Stockholm
15–16 June	Representation of the Court at the meeting of the Board of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, and at the colloquium organised by that association, in Warsaw
30 June	Representation of the Court at the third colloquium of the Network of the Presidents of the Supreme Judicial Courts of the Member States of the European Union, in Ljubljana
3 July	Participation of the President of the Court in a meeting with Mr J.-C. Piris, Director-General, Legal Adviser to the Council of the European Union, and Mr H.-G. Pöttering, President of the European Parliament, in Brussels
2–3 September	Participation of a delegation from the Court at the celebration of the 90th anniversary of the Supreme Administrative Court of Finland, in Helsinki
8–9 September	Representation of the Court at the seminar organised by the Supreme Court of Spain and the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union on the topic 'Convergence of the supreme administrative courts of

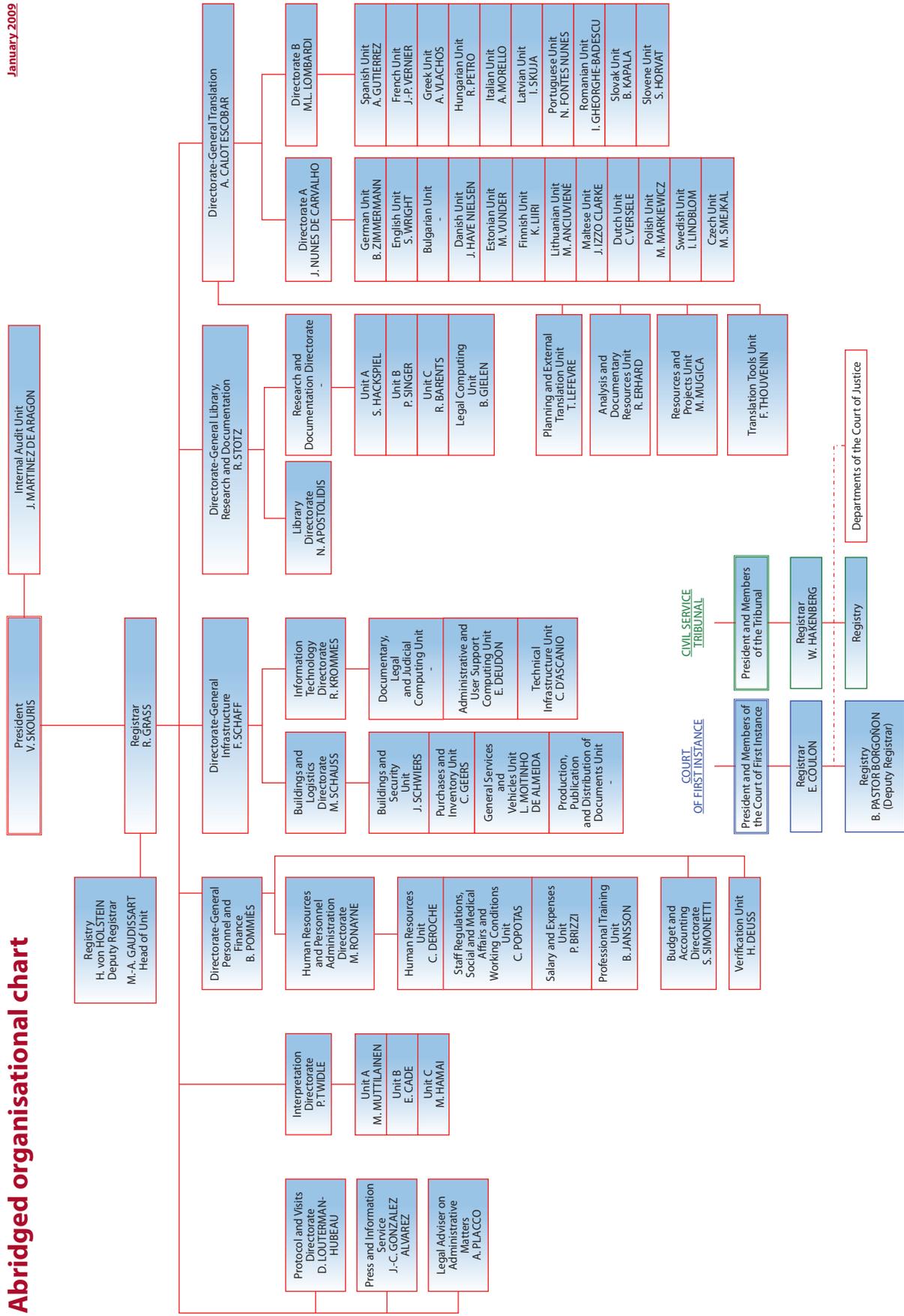
	the European Union in the application of Community law', in Santander
10–11 September	Representation of the Court at the formal sitting organised on the occasion of the 15th anniversary of the establishment of the Constitutional Court of the Czech Republic, in Brno
16 September	Representation of the Court at the ceremonies organised on the occasion of the 175th anniversary of the Portuguese Supreme Court, in Lisbon
22 September	Representation of the Court at a meeting of a delegation from the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union with Commissioner Barrot to discuss the activities of the association and their financing, in Brussels
24 September	Participation of the President of the Court at a dinner in honour of the Ecumenical Patriarch Bartholomew, at the invitation of Mr V. Kaskarelis, Ambassador, Permanent Representative of the Hellenic Republic to the European Union, in Brussels
29 September	Representation of the Court at the ceremony opening the judicial year of the Supreme Court, presided over by His Majesty the King of Spain, in Madrid
30 September– 1 October	Representation of the Court at the Opening of the Legal Year, in London
1 October	Representation of the Court at the Verfassungstag (formal commemoration of the establishment of the Austrian Constitutional Court), in the presence of the President of the Republic of Austria, in Vienna
3 October	Representation of the Court at the ceremonies organised as part of the 'Tag der Deutschen Einheit', in Hamburg
7–8 October	Representation of the Court at the annual conference of the European Union Forum of Judges for the Environment, in Paris
9–10 October	Representation of the Court at the meeting of the heads of the Appeal Courts of the capitals of the European Union, in Paris
13 October	Representation of the Court on the occasion of the 10th anniversary of the entry into force of Protocol No 11 to the European Convention on Human Rights, at the European Court of Human Rights, in Strasbourg
13 October	Representation of the Court at the '10th Anniversary Meeting of the European Judicial Network', in Madeira

16–17 October	Representation of the Court at the conference of the Presidents of the Supreme Courts and the Principal State Counsel of the Member States of the European Union, in Vienna
25–28 October	Participation of a delegation from the Court in an official visit to the Supreme Court of Cassation of the Republic of Bulgaria, in Sofia
31 October	Representation of the Court at the formal sitting of the Court of Cassation of the Netherlands on the occasion of the retirement of its President, Mr W. J. M. Davids, in The Hague
2–3 November	Representation of the Court at the colloquium organised on the occasion of the 50th anniversary of the Constitutional Council, in Paris
17 November	Representation of the Court at the meeting of the Board of the Association of the Councils of State and Supreme Administrative Jurisdictions of the Member States, in Brussels
6 December	Representation of the Court at the annual reception organised on the occasion of the National Day, at the invitation of the President of the Republic of Finland, in Helsinki
18 December	Representation of the Court at the ceremony organised on the occasion of 'Constitutionality Day', in Ljubljana

Court of First Instance

11 January	Representation of the Court at the formal sitting of the Court of Cassation, in Paris
15 January	Representation of the Court at the conference organised on the occasion of the 50th anniversary of the Bundeskartellamt, in Bonn
25 January	Representation of the Court on the occasion of the formal sitting of the European Court of Human Rights, in Strasbourg
15–18 May	Participation of the President and Members of the Court at a meeting organised by the Attorney General and high dignitaries of the Republic of Cyprus and speech on the jurisdiction of the Court of First Instance in matters of Community competition law, in Nicosia
28–31 May	Representation of the Court at the 23rd FIDE Congress, in Linz
2–5 June	Representation of the Court at the 14th Congress of the Conference of European Constitutional Courts, in Vilnius
25 June	Participation of the President at the reception given by the French Prime Minister, Mr F. Fillon, on the occasion of the 60th anniversary of the Secretariat General for European Affairs, in Paris
2 September	Representation of the Court at the ceremony organised on the occasion of the 90th anniversary of the Supreme Administrative Court of Finland, in Helsinki

Abridged organisational chart



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Court of Justice of the European Communities

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