

# **EFFECTIVE MANAGEMENT OF COURT OF JUSTICE OF EUROPEAN UNION**

Critical Analysis of Recent Reforms in the CJEU



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Summary:

European Court of Justice (CJEU) has a unique role in Europe's integration process and its standings as well as rulings have brought important consequences for the daily life of European Union's citizens. When studying international courts and their political power, it can be said that the European Court of Justice is about the most powerful and influential international court that is realistically possible. Little is anyway known what is happening inside the Court. How the Court is functioning and managed? The aim of this study was to make a comprehensive review of the function and management the CJEU concentrating on recent reforms carried out in the General Court (GC) and by analyzing their impact. Especially the efficiency was observed by analyzing, how the reforms executed the set targets; proceeding time reduction, reduction of case backlog as well as the effect on cases handled per year. Also, the monetary impact was analyzed. The statistical data that was observed for this evaluation research, was collected during the years 2011-2016. According to the findings, none of the targets were properly met with the selected approach by appointing more judges in to the General Court. At the same time, the budget was heavily increasing. To be able to execute the reforms with

more effective manner, the dynamic framework for a flexible and cost-efficient Court reform is presented. Truly dynamic change process, in a way illustrated in the framework, should lead to drastic improvement in flexibility towards the change and in the efficiency.

Key words: European Court of Justice, Reform, Efficiency, Dynamic Change Process

Further information:

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### **Abbreviations**

**AG** Advocate General

**CJEU** Court of Justice of the European Union, the collective term for the European Union's judicial arm

**CJ** Court of Justice

**CST** Civil Service Tribunal

**DGT** The Directorate-General for Translation

**EC** The European Committee

**ECHR** European Convention of Human Rights

**EU** European Union

**EP** European Parliament

**GC** The General Court

**IT** Information Technology

**TEU** Treaty on the European Union

**TFEU** Treaty on the Functioning of the European Union

## 1 INTRODUCTION

### 1.1 Background for Inspiration

Number of studies have been published where European Union's (EU) distinct and quite exceptional legal and constitutional order has been examined and observed. We can read fascinating historical studies about the integration, its phases and development, first from the very limited area of coal and steel, to eventually more comprehensive economic, social and political union of states that we have today.

European integration is a constantly evolving process where every subsequent Treaty marks a new stage in the process of creating an ever-closer union among the peoples of Europe. In other words, the Treaties create the constitutional roots and formal grounds upon which the Union's legal order grows and evolves. The idea of common values has been the backbone of this whole process and developments have led to a unique organization covering all fields of societal activity, including also areas which traditionally have been core ingredients of national sovereignty; criminal law, immigration and asylum policies as well as security and defense policy.<sup>1&2</sup>

Ever since its creation EU has evolved and transformed through institutional changes and through legal expansion with the support provided by the European Court of Justice (hereinafter the CJEU; or the Court) in the form of its legal praxis.<sup>3</sup>

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<sup>1</sup> Rosas, Allan & Armati, Lorna 201. EU Constitutional Law, p. 3, 11. Hart Publishing. Oxford and Portland, Oregon.

<sup>2</sup> Vänttinen, Sara 2016. In search for the European Solidarity: The rule of law within the European Union in the framework of constitutional pluralism. p. 13. EDILEX Edita Publishing Oy 2016

<sup>3</sup> Vänttinen, Sara 2016. In search for the European Solidarity: The rule of law within the European Union in the framework of constitutional pluralism, p. 13. EDILEX Edita Publishing Oy 2016

In its early days, the European Court of Justice was faced with two main challenges: to ensure its own effectiveness and the effectiveness of Community law in general while, at the same time, avoiding any involvement in national and political conflicts that might undermine both its own juridical credibility and the credibility of Community law. The steps taken by the Court in the interpretation of the Treaties and in the definition of its own role are largely consequences of those constraints, as well as of the determination of its judges to accord to Community law a status distinct from that of international law. One of the first moves that Court made was to construct Community law as the Community's own legal system. This implied at the creation of an entire legal framework and led to the constitutionalisation of the treaties, with well-known principles such as supremacy, direct effect, a system of jurisdictional guarantees and a framework of horizontal and vertical separation of powers.<sup>4</sup>

As said, European Court of Justice has a unique role in Europe's integration process and its standings as well as rulings and particularly its preliminary rulings have brought important consequences for the daily life of European Union's citizens. Because of the CJEU we can now enjoy equal treatment and social rights, fundamental rights and free movement of goods, persons and services.<sup>5</sup>

When studying international courts and their political power, it can be said that the CJEU is about the most powerful and influential international court that is realistically possible. Other international courts have developed important legal doctrines, but none of them have been as legally audacious or politically successful in altering completely the terrain in which they operate.<sup>6</sup>

A good example of the power the CJEU has, is their early landmark judgement from year 1964, when the European Court of Justice concluded that:

*"By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane*

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<sup>4</sup> Maduro, Miguel 1998. We the Court. Hart Publishing. Oxford and Portland Oregon. p.7

<sup>5</sup> European Union: [https://europa.eu/european-union/about-eu/institutions-bodies/court-justice\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en)

<sup>6</sup> Alter, Karen J. 2009. The European Court's Political Power: Selected Essays, p.5 Oxford University Press

*and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created body of law which binds both their nationals and themselves.”*

This powerful statement meant that law stemming from the Treaty is an independent source of law which cannot be overridden by domestic legal provisions and that transfer of powers from the Member States carries with it a permanent limitation of their sovereign rights.<sup>7</sup>

Even though it would be interesting to study more about the integration or constitutional pluralism including the tension between the legal orders of Union and the Member States, a keen interest has born to study more of this institution that can make such a binding statement and was able to do it already over 50 years ago.

## 1.2 Getting to know the CJEU

The EU performs its tasks through a complex multilevel institutional structure which consist of political, semi-political, bureaucratic and judicial institutions and bodies, including organs and civil servants of the Member States. Article 13 (1) in the Treaty on European Union (TEU) lists the Union’s institutions: the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, The European Central Bank and the Court of Auditors. It is telling in terms of the constitutional order that the institutions are specifically instructed not only to respect the limits of the powers conferred on them in the Treaties but also to practice mutual sincere cooperation. It is important to notice that the institutions have different

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<sup>7</sup> Allan Rosas, Allan & Armati, Lorna 2010. EU Constitutional Law. Hart Publishing. Oxford and Portland, Oregon. p. 11

sources of legitimacy and the institutional balance between the main Union institutions is therefore of central importance to the competence and power sharing between the Union and its Member States.<sup>8</sup>

What do we really know about the European Court of Justice?

Let's start with the introduction of the Court itself of how the Court is part of the legal order of European Union:

*"The Court of Justice of the European Union is the judicial institution of the European Union and of the European Atomic Energy Community (Euratom). It is made up of two courts: The Court of Justice and the General Court. Their primary task is to examine the legality of EU measures and ensure the uniform interpretation and application of EU law.*

*Through its case-law, the Court of Justice has identified an obligation on administrations and national courts to apply EU law in full within their sphere of competence and to protect the rights conferred on citizens by that law (direct application of EU law), and to disapply any conflicting national provision, whether prior or subsequent to the EU provision (primacy of EU law over national law).*

*The Court has also recognized the principle of the liability of Member States for breach of EU law which, first, plays an important part in consolidating the protection of the rights conferred on individuals by EU provisions and, secondly, may contribute to more diligent application of EU provisions by Member States. Infringements committed by Member States are thus likely to give rise to obligations to pay compensation which may, in some cases, have serious repercussions on their public funds. Moreover, any breach of EU law by a Member State may be brought before the Court and, where a judgment finding such an infringement is not complied with, the Court can order payment of a periodic penalty and/or a fixed sum. However, if measures transposing a directive are not notified to the Commission, it may propose that the Court impose a pecuniary penalty*

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<sup>8</sup> Rosas, Allan & Armati, Lorna 2010. EU Constitutional Law. Hart Publishing. Oxford and Portland, Oregon.p.73,75

*on a Member State, once the initial judgment establishing a failure to fulfil obligations has been delivered.*

*The Court of Justice also works in conjunction with the national courts, which are the ordinary courts applying EU law. Any national court or tribunal which is called upon to decide a dispute involving EU law may, and sometimes must, submit questions to the Court of Justice for a preliminary ruling. The Court must then give its interpretation or review the legality of a rule of EU law.*

*The development of its case-law illustrates the Court's contribution to creating a legal environment for citizens by protecting the rights which European Union legislation confers on them in various areas of their daily life.”<sup>9</sup>*

Since the establishment of the Court of Justice of the European Union in 1952, its mission has been to make sure that the EU law is applied in the same way in all EU countries. As part of that mission, the Court of Justice of the European Union:

1. reviews the legality of the acts of the institutions of the European Union,
2. ensures that the Member States comply with obligations under the Treaties, and
3. interprets European Union law at the request of the national courts and tribunals<sup>10</sup>

This means in practice, that the Court settles legal disputes between national governments and EU institutions and it can, in certain circumstances, be used to by individuals, companies or organizations to take action against EU institutions.<sup>11</sup>

The Court has been given clearly defined jurisdiction, which it exercises on references for preliminary rulings and in various categories of proceedings. The various types of proceedings are:

1. **Reference for preliminary rulings:** The national court may and sometimes must, refer to the court and ask to clarify a point concerning the interpretation of EU

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<sup>9</sup> Court of Justice CVRIA: [https://curia.europa.eu/jcms/jcms/Jo2\\_7024/en/](https://curia.europa.eu/jcms/jcms/Jo2_7024/en/)

<sup>10</sup> ELI European Law Institute: <http://www.europeanlawinstitute.eu/membership/institutional-observers/court-of-justice-of-the-european-union/>

<sup>11</sup> European Union: [https://europa.eu/european-union/about-eu/institutions-bodies/court-justice\\_en](https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en)

law or to review the validity of an act of EU law. The Court of justice's reply takes a form of a judgement or reasoned order.

2. **Actions for failure to fulfill obligations:** These actions enable the Court to determine whether a member state has fulfilled its obligations under the European law. If the Court finds that an obligation has not been fulfilled, the State must bring the failure to an end without a delay. Fixed or periodical financial penalties can follow if the Member State concerned does not comply with its judgement.
3. **Actions for annulment:** By and action for annulment an applicant seeks the annulment of a measure; a regulation, directive or decision, adopted by an institution, body, office or agency of the European Union. The Court of Justice has exclusive jurisdiction over actions brought by a Member State against The European Parliament and The Council or brought by one European Union institution against another.
4. **Actions for failure to act:** These actions enable the lawfulness of the failure of the institutions, bodies, offices or agencies of the European Union to act to be reviewed. Jurisdiction to hear actions for failure to act is shared between the Court of Justice and the General Court according to the same criteria as for actions for annulment.
5. **Appeals:** Appeals on points of law only may be brought before the Court of Justice against judgments and orders of the General Court. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court <sup>12</sup>

The European Court of Justice is situated in Luxembourg and is composed of 75 judges (28 in the Court of Justice and 47, which will be increased to 56 in 2019, in the General Court) Judges and 11 Advocates General (AG) based on the Treaty on European Union (TEU) 19, the Treaty on the functioning of the European Union (TFEU) 251-254, Lisbon

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<sup>12</sup> CVRIA: [https://curia.europa.eu/jcms/jcms/Jo2\\_7024/en/](https://curia.europa.eu/jcms/jcms/Jo2_7024/en/)

Treaty annexed Protocol N:o 3 and Rules of Procedure of the Court of Justice of European Union.<sup>13</sup> These four form the statute of the Court of Justice.

In addition to the composition, the Court is organized as follows:

- **Constitution of chambers and designation of the judge-rapporteurs:** The Court sets up chambers of five judges, the president of which is elected for 3 years, and chambers of three judges, the president of which is elected for 1 year. The President of the Court designates a judge-rapporteur to deal with a case, while an advocate general is designated by the first advocate general. If necessary, the Court may appoint assistant rapporteurs.
- **Role of the Registrar:** The Court appoints a registrar for a term of 6 years. The Registrar is responsible for the acceptance, transmission and custody of all documents, and for the records. In addition, the Registrar assists the Members of the Court and oversees the Court's publications. Lastly, the Registrar directs the services of the Court under the authority of the President of the Court.
- **Working of the Court:** cases are assigned to the full Court, the Grand Chamber or to a chamber of 5 or 3 judges. The number of judges dealing with a case depends on its importance and complexity. It sits in a Grand Chamber when a Member State or an institution which is a party to the proceedings so requests, and in particularly complex or important cases. Most cases are dealt with by 5 judges, and it is very rare for the whole Court to hear the case. Several cases may be heard and determined together by the same formation of the Court. The deliberations of the Court must remain secret.
- **Languages:** a language is assigned for each case. In direct actions, the applicant may choose the language from the 24 official EU languages. In preliminary ruling proceedings, the language of the case is that of the national court or tribunal.<sup>14</sup>

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<sup>13</sup> Raitio, Juha 2016. Euroopan Unionin Oikeus. Talentum Pro Helsinki 2016. p.134-135

<sup>14</sup> EUR-Lex - ai0049 – EN: Rules of procedure of the court of justice of European Union: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:ai0049&from=FI>

Competence requirements for the Judges and Advocates General are based on the Treaty on functioning of European Union (TFEU) 253 (1). Eligible individuals' independence is beyond doubt and they possess the qualifications required for appointment, in their respective countries, to the highest judicial offices, or are of recognized competence.<sup>15</sup>

All Judges and Advocates General are appointed by common accord of the governments of the Member States, after consultation of a panel of experts (so-called "article 255 committee" that was set up with a Lisbon Treaty) responsible for giving an opinion on prospective candidates' suitability to perform the duties concerned. Appointments are for a term of six years, which is renewable.<sup>16</sup>

The Judges of the Court of Justice elect from amongst themselves a President and a Vice-President for a renewable term of three years. The President directs the work of the Court and presides at hearings and deliberations of the full Court or the Grand Chamber. The Vice-President assists the President in the exercise of his duties and takes his place when necessary. The Advocates General assist the Court and are responsible for presenting, with complete impartiality and independence, an 'opinion' in the cases assigned to them. And as explained above The Registrar is the institution's secretary general and manages its departments under the authority of the President of the Court.<sup>17</sup>

### 1.3 The General Court

The General Court (GC) is made up, eventually in year 2019, with two judges from each Member State, now 47. Unlike the Court of Justice, General Court does not have

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<sup>15</sup> Court of Justice CVRIA: [https://curia.europa.eu/jcms/jcms/Jo2\\_7024/en/](https://curia.europa.eu/jcms/jcms/Jo2_7024/en/)

<sup>16</sup> Court of Justice CVRIA: [https://curia.europa.eu/jcms/jcms/Jo2\\_7024/en/](https://curia.europa.eu/jcms/jcms/Jo2_7024/en/)

<sup>17</sup> Court of Justice CVRIA: [https://curia.europa.eu/jcms/jcms/Jo2\\_7024/en/](https://curia.europa.eu/jcms/jcms/Jo2_7024/en/)

Advocates General. However, that task can be, in exceptional cases, be carried out by a judge.<sup>18</sup>

Cases before the General Court are heard by Chambers of five or three Judges or, in some cases, as a single Judge. It may also sit as a Grand Chamber (fifteen Judges) when this is justified by the legal complexity or importance of the case. The General Court has its own Registry, but it uses the administrative and linguistic services of the institution for its other requirements.<sup>19</sup>

The General Court has jurisdiction to:

- actions brought by natural or legal persons against acts (or against failure to act) of the institutions, bodies, offices or agencies of the European Union;
- actions brought by the Member States against the Commission;
- actions brought by the Member States against the Council in certain fields e.g. trade protection measures (dumping) and acts by which it exercises implementing powers;
- actions seeking compensation for damage caused by the institutions or the bodies, offices or agencies of the European Union or their staff;
- actions based on contracts made by the European Union which expressly give jurisdiction to the General Court;
- actions relating to intellectual property brought against the European Union Intellectual Property Office and against the Community Plant Variety Office;
- disputes between the institutions of the European Union and their staff concerning employment relations and the social security system.<sup>20</sup>

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<sup>18</sup> Court of Justice CVRIA: [https://curia.europa.eu/jcms/jcms/Jo2\\_7033/en/#compos](https://curia.europa.eu/jcms/jcms/Jo2_7033/en/#compos)

<sup>19</sup> Court of Justice CVRIA: [https://curia.europa.eu/jcms/jcms/Jo2\\_7033/en/#compos](https://curia.europa.eu/jcms/jcms/Jo2_7033/en/#compos)

<sup>20</sup> Court of Justice CVRIA: [https://curia.europa.eu/jcms/jcms/Jo2\\_7033/en/#compos](https://curia.europa.eu/jcms/jcms/Jo2_7033/en/#compos)

#### 1.4 Defining the Research & Question

It's easy to understand the responsibilities and the organizational structure of the European Court of Justice when listed as they are above, but one might start to wonder how does the Court actually function to be able to fulfill its tasks properly and effectively. What is happening inside the Court? With this question in mind we come closer to the actual topic of this thesis.

The aim of this study is to make a comprehensive review of functioning and managing the Court of Justice of European Union. This review is done by carefully going through the recent reforms done especially in the General Court and analyzing their impact. The efficiency can be observed by studying and analyzing how the reforms executed the set targets, which are the time used for proceedings, reduction of case backlog as well as the amount of new cases versus cases handled per year. As a source of information, for the actual evaluation research<sup>21</sup>, has been the realistic statistical data published by the Court especially in the annual reports. This is due to the fact that there's no access to the data and information published inside the court. With this goal, I'm convinced that I can make interesting conclusions of the topic.

This research topic was chosen based on my personal interest and clarified further together with my mentor. My background as an economist was also guiding the selection and because of my over 10 years of experience from international business, where I have planned and executed many strategic development initiatives, efficiency of the organizations and flexibility towards the change have always interested me, without forgetting the employees, the actual implementers of the change.

I made my Bachelor's thesis of the Finland's new Courts Act (673/2016) that entered force 1.1.2017. My study concentrated especially on the reforms of organization, management and administration of the work of a court in the new Act, as well as on the

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<sup>21</sup> Ervasti, Kaijus 2011. Sociology of Law as a Part of Jurisprudence. p. 89 Referee–article: <https://www-edilex-fi.ezproxy.ulapland.fi/oikeustiede/10326.pdf>

modifications to the Judges role in the administration of justice and as an official. The study was done in the national context and this time the idea is to widen the scope to supranational level.

This thesis will be different from a majority of legal dissertations since it will not be a legal-dogmatic research, studying positive law as laid down in written or unwritten European or national rules, principles, concepts, case law and annotations in the literature.<sup>22</sup> Legal-dogmatic studies are done from the “inside view-point” and with narrow view, which is not enough when studying law with wider societal perspective.

Instead, my thesis will be transdisciplinary and evaluative research based on analyzed data and I will observe the legal context and order more from “outside view-point” and with the perspective more common for other sciences, such as economics, political or administrative science.

My thesis will be done under the main subject of European Law, even though it can be categorized also as part of a socio-legal studies with a research orientation of legal policy science. To be more precise, it can be defined also as a management or administrative study concentrating on a certain legal institution. The main method is an evaluation study done through quantitative impact analysis. Evaluation is the systematic acquisition and assessment of information to provide useful feedback about the object and it's the best method to be used when analyzing functional effectiveness (*toiminnan tuloksellisuutta*) and impressiveness (*vaikuttavuutta*).<sup>23</sup> Evaluation can also include the systematic assessment of the worth or merit of some object.

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<sup>22</sup> Vranken, Jan 2012. Law and Method: Exciting Times for Legal Scholarship, February 2012. [https://www.bjutijdschriften.nl/tijdschrift/lawandmethod/2012/2/ReM\\_2212-2508\\_2012\\_002\\_002\\_004/fullscreen](https://www.bjutijdschriften.nl/tijdschrift/lawandmethod/2012/2/ReM_2212-2508_2012_002_002_004/fullscreen)

<sup>23</sup> Ervasti, Kaijus 2011. Sociology of Law as a Part of Jurisprudence. p. 90 Referee–article: <https://www-edilex-fi.ezproxy.ulapland.fi/oikeustiede/10326.pdf>

Thus, the title with subtitle of the research is:

*Effective management of Court of Justice of the European Union*

- *Critical Analysis of Recent Reforms in the CJEU* -

The central research question is:

- *What has been the effect of made reforms in the court of Justice of European Union?*

The thesis structure is simple and logical. After introduction, the work will continue by defining the theoretical framework for the topic. I start with broader governance approach from where I continue to public institution's management point of view. After that I bring forth the characteristics of a legal organization. To keep this as a legal dissertation, in this section, I will also point out the importance of fundamental rights and binding principles of the Union law that are affecting the Courts operations. At the end of the theoretical part I build a framework picture; *The House of the Court*, containing all the selected and presented approaches to help to visualize the big picture gained so far. At this point we also see that "the house" is not ready yet, based only on the theoretical viewpoint, and that the building of the house must be continued in further chapters of the thesis.

To continue so, the work will proceed by taking a deeper dive into the made reforms after The Lisbon Treaty came to effect in 2011. What has been the background reasoning as well as the ultimate goal for the reforms. After that I will start the analysis by going through pure statistical data and by making comparisons with the found data. I'm hoping to find answers to the questions such as; how the reforms have affected e.g. the duration of proceedings? How the reforms affected the budget of the Court? How the backlog of cases has changed? What has been the quality of the judgements based on the number of complaints? And so on.

As an outcome of the research I intent to make some well-founded comments on the reforms; have they been done in effective manner and have they met the set targets so that they, at the end, added value to the court itself and to the citizens of Europe. If the set targets were not met, I hope I can give suggestions for improving the efficiency based on my findings.

## 2 THE THEORETICAL FRAMEWORK

### 2.1 Governance Approach

The legal environment can be described nowadays to be more global, more turbulent, more fragmented and the problems to be resolved by regulation are more complex than ever before. *The governance approach* assumes, that the role and structure of the state are fundamentally transformed in a changing society. As modern societies become ever more complex, dynamic and diverse, governance is seen as a process of interaction between different social and political actors, and growing interdependencies between the two groups. Also, the EU is characterized by a complex system of governance in which 28 national, as well as subnational, governance systems interact with the supranational layer of EU regulatory activity and policymaking.<sup>24</sup> The expression of *The European governance* designates the body of rules, procedures and practices that relate to the way powers are exercised in the EU. The objective is to strengthen democracy at European level and to bring citizens closer to the European institutions.<sup>25</sup>

Governance is both a deliberative and iterative process. It has a deliberative nature because a wide variety of actors are encouraged to come forward to present reason and to exchange opinions and views. It changes, how institutions respond to this descriptive imperative, but three general characteristics guide the organization of deliberation:

1. Reason-based decision making -> avoid highly generalized arguments
2. Problem-solving character -> avoid making too much compromises when seeking for consensus,

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<sup>24</sup> Tala, Jyrki & Pakarinen, Auri 2009. Changing forms of legal and non-legal institutions and new challenges for the legislator: International Conference on Legislative Studies in Helsinki 2008. Helsinki: National Research Institute of Legal Policy. p.37

<sup>25</sup> EUR-Lex – Glossary of summaries: <http://eur-lex.europa.eu/summary/glossary/governance.html>

3. Participation of all those affected or their representatives -> avoid creating an empty exercise without any true obligations

As a whole, the iterative character of deliberations involves not only anticipation of a singular response, but also anticipation about the system of responsiveness and accountability to others. Iterated deliberation in the EU means firstly, that different capabilities of institutions are taken into account and that decision making does not have to be fully deliberative if a decision is made in the context of distributed deliberation. Secondly, it also adopts a more realistic view of the use of expertise and the role of experts. Iterated deliberation attempts to make expert decision making as accessible as possible to outside control and influence. Thirdly, it makes sense of circumstances under which the EU law has to be made susceptible to implementation and applicable to diverse environments. Fourthly, it is helpful for those wanting to rethink the organization and function of judicial review, and this means iterated deliberation built on peer review. To conclude, iterated deliberation has the potential to enhance learning and experimentalism in the EU new governance, but it will also open up new and untested opportunities to hold more actors to account on progress towards more transparent, inclusive and effective EU governance.<sup>26</sup>

The reason for starting to build the theoretical framework with governance approach is due to the reason that, in the context of EU, even though the reforms are executed within the Court and in its statute, they are by far solely responsibility of the Court. Numerous other institutions and ideas of an experts needs to be taken into account, and are affecting the whole process. At the same time, they can be seen as well liable to the needed improvements. At this point, I will anyway continue with the perspective concentrating on the Court itself.

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<sup>26</sup> Korkea-Aho, Emilia 2011: Doctoral Dissertation: New Governance and the EU Courts: The Experimentalist Architecture of Judicial Decision-Making. Faculty of Law University of Helsinki. Printed in Finland by Juvenes Oy. p.109-111

## 2.2 Management Approach

European Court of Justice can be identified in many ways depending on the viewpoint. When defining it from an organizational management and operational improvement perspective, and to select a few, it can be defined as a public-sector service institution with a budget-based organization.

According to Peter Drucker, a leader of a development of management education and a founder of a “modern management”, the public service institutions are increasingly important part of our society. In most respects the service institution is not very different from a business enterprise. It faces similar challenges in seeking to make work productive and it does not differ significantly from a business in its social responsibility. The service institutions do not differ from business enterprise in respect to organizational design and structure, or even in respect to the job and structure of top management, but a service institution is in a fundamentally different “business” from business. It is different in its purpose. It has different values and it needs different objectives. It also makes a different contribution to the society.<sup>27</sup>

The one basic difference between a service institution and a business is also the way the institution is paid. Businesses are paid for satisfying a customer and satisfaction of the customer is the basis for performance and results in a business. Service institutions, by contrast, are typically paid out of a budget allocation which changes what is meant by “*performance*” or “*results*”. *Results* in budget-based institution means a larger budget and *performance* is the ability to maintain or to increase one’s budget. This means that efficiency and cost control are not actually considered virtues in the budget-based institution but the importance of an institution is measured by the size of its budget and the size of its staff. To achieve results with a smaller budget or a smaller staff is therefore not a “*performance*”. It might even endanger the institution. Not to spend the budget to

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<sup>27</sup> Drucker, Peter 1973. Managing the Public Service Institution. Public Interest, 33, p. 43, 45

the hilt will only convince the budget-maker - whether a legislature or a budget committee - that the budget for the next fiscal period can safely be reduced.<sup>28</sup>

Being a budget-based institution makes it also more difficult to abandon the wrong, the old and the obsolete things. Institutions that are paid for its performance and results, the unproductive and obsolete will eventually be killed off by the customers. In a budget-based institution no such discipline is being enforced and there is a great temptation to respond to the lack of results by doubling efforts, meaning doubling e.g. the budget because there is no performance.<sup>29</sup>

Public organizations have less market pressures and market exposure, which means fewer incentives for reducing costs and improving productivity and effectiveness as well as increased reluctance to massive changes through process improvement. Public organizations have “forced customers” and monopoly with no competitors in providing the service in question which further lowers their incentive to improve and change existing operations.<sup>30</sup>

The pressure to increase effectiveness and productivity has grown enormously in the operational environment of all public-sector organizations in recent decades. The pressure has been especially strong in large professional bureaucracies like universities or justice systems. The business process effectiveness, efficiency, productivity, coordination, cost-efficiency and customer orientation has been obvious themes and targets of improvement in the private sector for a long time already, but in the public sector, the time for change and improvement has truly come relatively recently. As a basis for this improvement task, professional public organizations have increasingly started to apply improvement concepts and methods traditionally designed for process performance improvement in the manufacturing industry. Much can, and should, be learned from operations improvement and process improvement initiatives in the

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<sup>28</sup> Drucker, Peter 1973. *Managing the Public Service Institution*. *Public Interest*, 33, p. 49-50

<sup>29</sup> Drucker, Peter 1973. *Managing the Public Service Institution*. *Public Interest*, 33, p. 52

<sup>30</sup> Pekkanen, Petra 2011. *Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations*. 2011. *Acta Universitatis Lappeenranta* 444.p.33

private sector, but the applications need to be complemented with thorough understanding of the special characteristics, traditions and history of operations in different public bureaucracies.<sup>31</sup>

The application of process improvement and operations management techniques and approaches have in most cases produced significant outcomes and potential for improvement is remarkable. Changing from a traditional stable bureaucratic structure emphasizing rules and procedures towards greater orientation on change, flexibility, efficiency and productivity is not an easy task and a lot of organizational issues needs to be considered. The organizational characteristics between public professional organizations and private organizations are different and can lead to managerial and change challenges which need to be incorporated in the improvement efforts.<sup>32</sup> Next I continue by going through the key organizational characteristics of a legal institution.

### 2.3 Organizational Approach

The justice courts can be seen as a typical professional public organization, however, there are some distinctive and pronounced characteristics inherent in the functioning of a court. The most distinctive characteristic is the autonomy and self-management of the *employees* in justice courts. The inherent need for objectivity, which is the most important quality criteria of rulings, makes the issues concerning performance management and new operational procedures quite sensitive and delicate issues in courts. The fear of losing objectivity and autonomy can appear in the form of a negative attitude towards change, even though the need for improvement is realized. The pronounced role of the need for autonomy and objectivity and the fixed roles and duties

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<sup>31</sup> Pekkanen, Petra 2011. Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. 2011 Acta Universitatis Lappeenrantaensis 444.p.16-17.

<sup>32</sup> Pekkanen, Petra 2011. Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. 2011. Acta Universitatis Lappeenranta 444.p.17-18

of the different participants may create silo-thinking and restrict the possibilities to utilize more co-operation in the processes. Fixed roles and resources create also stiffness into the capacity management and resource allocations of court processes. Lack of co-operation possibilities in the court can also make the work more monotonous.

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The Courts can be seen to have many *customers* (i.e. people or parties who come to the court with a problem) with different interests, so different perspectives and aspects need to be considered for the different processes of court operations. These facts create difficulties in determining the exact goals and performance measures for operations and specify the value creation process of the organization.<sup>34</sup> The physical participation of the customer in the process and operations, and interaction between the customer and judges are not as notable as for example in the health care processes.<sup>35</sup> There is interaction between the court and the parties during the proceedings, but traditionally this interaction has been formal and does not necessarily demand the presence of the principals. Because the work does not include direct feedback from the object, the assessment of appropriateness and effectiveness has to be based on other criteria.<sup>36</sup>

The operational practices are also traditional, containing legal and compulsory procedures which need to be studied in a certain manner and considered in the designing of improvement efforts. The output and the quality conception in justice courts is very traditional and highlights strongly the traditional aspects of good rulings and justification. There has not been much room for appreciation of process based on

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<sup>33</sup> Pekkanen, Petra 2011. Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. 2011. Acta Universitatis Lappeenranta 444.p.36

<sup>34</sup> Pekkanen, Petra 2011. Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. 2011. Acta Universitatis Lappeenranta 444.p.37-38

<sup>35</sup> Pekkanen, Petra 2011. Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. 2011. Acta Universitatis Lappeenranta 444.p.37-38

<sup>36</sup> Haavisto, Vaula 2002. Doctoral Dissertation: Court work in transition. An Activity-Theoretical Study of Changing Work Practices in a Finnish District Court 2002. University of Helsinki. Department of Education. Helsinki University Press. p.75

efficiency as a source of quality improvement. The quality conception is largely reflection of professional pride.<sup>37</sup>

In addition, one special characteristic must be mentioned. EU is essentially a multilingual enterprise, where large number of official, and at the time, legally authentic languages, and the linguistic policy of equality means that in legal disputes, the meaning of EU legal texts requires not only one of the language versions to be examined, but rather that all language versions are taken into account. This is of importance in maintaining the political objective of linguistic equality and the Court of Justice assumes the role of a translator where it acts as mediator between text producer - the EU legislator and text addressees - other courts and other authorities applying EU law.<sup>38</sup>

Given the importance of the role of as an intermediary, the Court has resource only to lawyers. The Directorate-General for Translation (DGT), which is the largest service in institution, is composed of lawyer-linguists who have a law degree or an equivalent professional qualification. Article 42 of the Rules of Procedure of the Court of Justice provides that the translation service is to be 'staffed by experts with adequate legal training'.<sup>39</sup>

## 2.4 Principles, Fundamental rights & Values

Even though the fundamental rights can be seen to be located in the very heart of national constitutions and as part of national sovereignty, the fundamental rights have played a central role also in the jurisprudence of the Court ever since their discovery 1960's. Fundamental rights constitute an expression of the deepest values of a polity

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<sup>37</sup> Pekkanen, Petra 2011. Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. 2011. Acta Universitatis Lappeenranta 444.p.37-38

<sup>38</sup> Paunio, Emilia 2011. Beyond words: The European Court of Justice and legal certainty in multilingual EU law. Helsinki: University of Helsinki.p.2,40

<sup>39</sup> Court of Justice CVRIA: [https://curia.europa.eu/jcms/jcms/Jo2\\_10742/direction-generale-de-la-traduction](https://curia.europa.eu/jcms/jcms/Jo2_10742/direction-generale-de-la-traduction)

and they must therefore be protected specifically within each polity. This means that fundamental rights reflect the fundamental choices of a polity and there can never be a catalogue of rights on which all nations or polities could agree. This does not by any means diminish the importance of international coordination in the field of human or fundamental rights. There is an inevitable interpenetration of national and supranational legal orders as people of one polity enter the jurisdiction of another.<sup>40</sup>

International agreements and other cooperation under the auspices of organizations such as the EU, causes external pressure to provide internal protection for all people within polity. A very valid statement and important perspective was highlighted in the House of Lords Select Committee Report stating that: *“Rights amount to nothing if they cannot be effectively enforced”*. The situation is particularly severe when the challenges in question concern alleged violations of fundamental rights by Union institution or by Member State operating on behalf of community.<sup>41</sup> In this respect, the Courts role, as a guardian of the EU law and order, plays an important part.

The European Court of Justice has formulated the foundation stone of its fundamental rights jurisprudence, which can be summarized as follows:

1. Fundamental rights are an integral part of the unwritten principles of law the observance of which the Court ensures.
2. In safeguarding these rights, the Court draws inspiration from the constitutional traditions common to the Member States, and cannot uphold measures which are incompatible with the fundamental rights established and guaranteed by the constitutions of these States.
3. The protection of fundamental rights must be ensured within the framework of the structure and objectives of the Community

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<sup>40</sup> Haapea, Arto 2004. *Between Minimum and Maximum Standards – Current State and Future Challenges of the Protection of Fundamental Rights in the European Union*. p.2-3,32

<sup>41</sup> Haapea, Arto 2004. *Between Minimum and Maximum Standards – Current State and Future Challenges of the Protection of Fundamental Rights in the European Union*. p.13, 32

As regard to the source of Union fundamental rights, it underlies the judgement of the Court that the importance of international declarations such as European Convention of Human Rights (ECHR) is not in their character as direct sources of Community law, but in the fact that they represent basic principles and common values to which all of the Member State signatories to the Convention have committed themselves.<sup>42</sup>

As European Union appears to keep growing both in scale (enlargement) and in depth (new policy areas of cooperation), the protection of fundamental rights becomes all the more crucial to maintaining its legitimacy.<sup>43</sup> The role of the CJEU is essential in this regard, especially when it comes to guaranteeing access to justice for every person whose fundamental rights have been allegedly violated, and to ensure future transparency.<sup>44</sup> At the same time this means that any reform must be thoroughly planned to avoid jeopardizing the efficiency of the Court nor fundamental rights of a Union citizen.

## 2.5 Concluding the theoretical part

To clarify and summarize the theoretical approaches presented here, I have drafted an epistemological picture of the Court, as I see it at the moment. The picture is just helping to visualize the presented topic and several affecting aspects and it's not in any way an academic model to be used in further professional studies. In the picture *1. Theoretical House of the European Court of Justice*, the foundation is formulated with the Courts *mission* of being the chief judicial authority in the Union (*supremacy*). Also as a foundation can be seen fundamental rights that need to be secured as well as principles;

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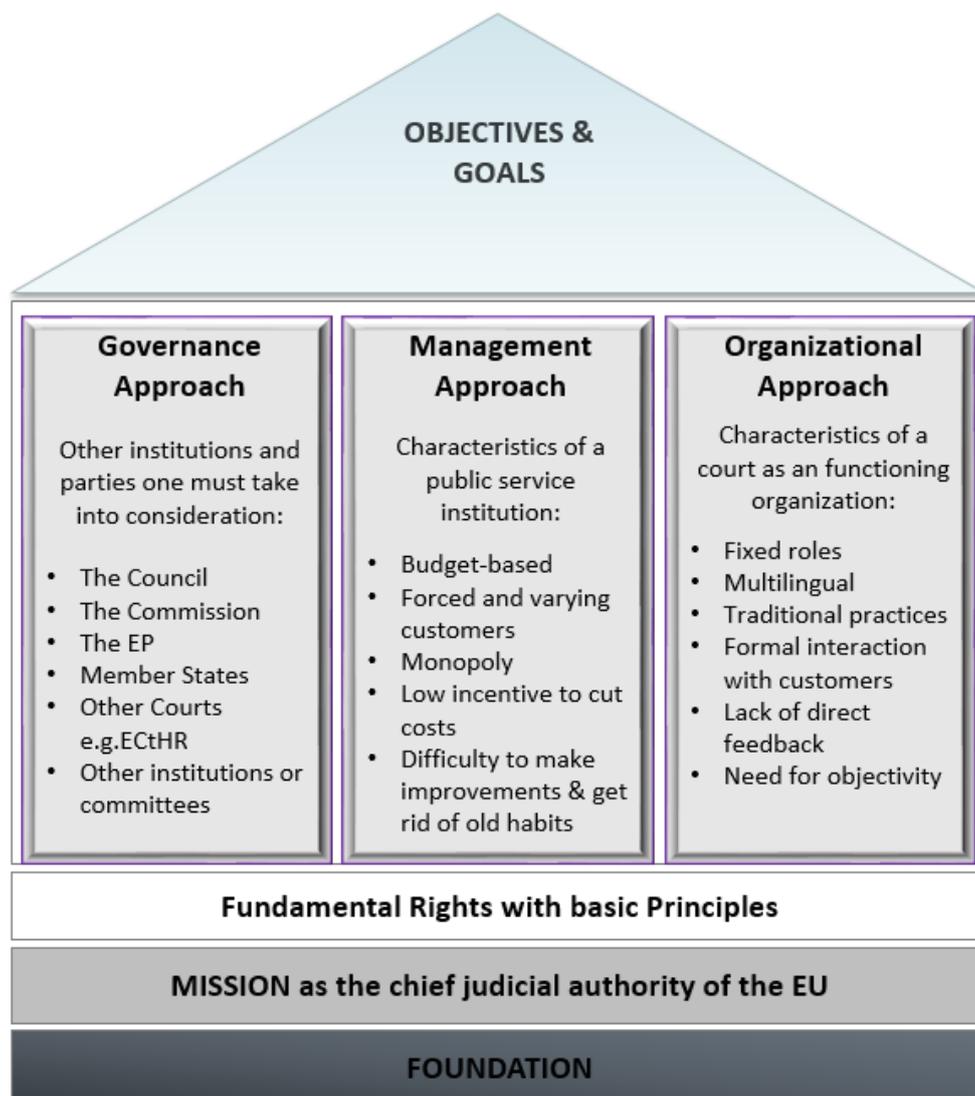
<sup>42</sup> Haapea, Arto 2004. Between Minimum and Maximum Standards – Current State and Future Challenges of the Protection of Fundamental Rights in the European Union. p.43-44

<sup>43</sup> Haapea, Arto 2004. Between Minimum and Maximum Standards – Current State and Future Challenges of the Protection of Fundamental Rights in the European Union. p.88-89

<sup>44</sup> Genberg, Jonna 2014. The Scope of Application of the Charter of Fundamental Rights of the European Union – Quo Vadimus? Helsinki Law Review 2014/1 p. 31–60. p.53. <https://www.edilex-fi.ezproxy.ulapland.fi/hlr/13816.pdf>

both constitutional (e.g. *direct effect, horizontal and vertical separation of powers and jurisdictional guarantees*), and institutional (e.g. *objectivity, equality and autonomy*). The three pillars of the house are founded with the selected theoretical approaches and they are including the key items or characteristics for each approach. The roof is reaching the sky with the Courts *goals* for the future, including the Courts objectives based on the selected goals. The House will be built further in the next chapters.

Picture 1: Theoretical House of the European Court of Justice



As we see, we are now looking at a quite static house, which will not be able to change, be flexible, be productive or in any way more efficient, unless we add some more dynamic elements into the picture. To get a more comprehensive idea of the actual situation, we need to take a deeper dive into the planned and already executed reforms in the European Court of Justice, so that follows next.

### 3 THE REFORM OF THE EU COURT

#### 3.1 Background

There's no argument against the fact that The Court of Justice of European Union (CJEU) has a fundamental role in the effective functioning of the European Union (EU) and in the Single Market. Therefore, an efficient and effective court system capable of delivering justice in a timely manner in matters of the EU law, is essential.<sup>45</sup>

The primary underlying reasons for global process ineffectiveness and inefficiencies in justice systems are still quite unclear and controversial. For example, when analyzing the delays in proceedings, which are causing headache in the national courts as well as in the CJEU, the explanations have varied during decades from the lack of resources and underfunding to the increased complexity of cases and to inconsistent and unsuitable working, management and control practices. Also, many of those who work inside the court have long blamed their too high workload and inadequate resources for the delays.<sup>46</sup>

Traditionally the solution to manage the workload has been to increase the number of EU courts. The Single European Act, in force since 1987, amended the Treaties to give the EU the power to establish a Court of First Instance which was later renamed the General Court by the Treaty of Lisbon, to assist the Court of Justice with its tasks. This power was used to create the Court in 1989 and both Courts have always had one judge per Member State. As the case load of the Court of Justice continued to increase, more

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<sup>45</sup> The European Committee 2013. Workload of the court of justice of the European Union, 16<sup>th</sup> Follow-Up -Report. House of Lords. HL Paper 163, p. 5

<sup>46</sup> Pekkanen, Petra 2011. Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. Acta Universitatis Lappeenrantaensis 444.p.16

and more of that Court's jurisdiction was transferred to the Court of First Instance, so ultimately that Court had jurisdiction for almost all actions brought against the EU's institutions, agencies and other bodies. Over time, this transfer of jurisdiction overburdened that Court in turn. Therefore, the Treaty of Nice, in force 2003, gave the EU power to create a lower tier of EU courts, called 'judicial panels', which were later renamed as 'specialized courts' by the Treaty of Lisbon. After that one such specialized court was created: the EU Civil Service Tribunal, which began its work in 2005.<sup>47</sup>

### 3.2 The 2011 Proposal

By 2011, The CJEU was trying to find a way to cope with the increasing volume of litigation. This time instead of suggesting the creation of a new court, it proposed an increase to the number of judges appointed to the General Court. At the same time, it also proposed amendments to the Court's statute as well as the creation of a class of temporary judges to assist the Civil Service Tribunal.<sup>48</sup>

In the interinstitutional file 0901/2011 (COD) the Court is explaining and defending the proposal that it is endeavoring not only to simplify the procedure that applies to cases brought before the Court, but also to adapt the Courts' Rules of Procedure to case-law and current practice, and to make them easier to understand. The simplification measures, which also affect the Statute of the Court, were intended to improve efficiency in the work of the Court as well as to reduce the duration of the proceedings. According to the proposal, since the Treaty of Nice entered into force 2003, there have been number of changes affecting the work of the Court: 1. The devolution of jurisdiction to rule on certain classes of actions, 2. the accession of 12 new Member

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<sup>47</sup> Peers, Steve 2014. Building the EU Judicial System: Politicians 1, (Judicial) Architects 0. EU law analysis. Expert insight into EU law developments. Available at: <http://eulawanalysis.blogspot.fi/2014/11/building-eu-judicial-system-politicians.html>

<sup>48</sup> Peers, Steve 2014. Building the EU Judicial System: Politicians 1, (Judicial) Architects 0. EU law analysis. Expert insight into EU law developments. Available at: <http://eulawanalysis.blogspot.fi/2014/11/building-eu-judicial-system-politicians.html>

States and number of proceedings brought by them together with old Members, 3. the transition first from two to three Chambers of five judges and then from three to four, 4. the introduction of the urgent preliminary ruling procedure in 2008, 5. and the introduction of review procedure following the establishment of Civil Service Tribunal, just to mention a few. Because of these reasons The Court concluded that a structural solution is urgently required.<sup>49</sup>

The Treaties offered two possibilities; 1. either to apply Article 257 TFEU, which states that The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish a new specialized court attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific area. In this case, it was mooted to namely cover the intellectual property matters OR 2. to use the option to increase the number of judges of the GC provided by Article 19 TEU stating that The General Court shall include at least one judge per Member State and the first paragraph of Article 254 TFEU stating that the number of judges of the General Court shall be determined by the Statute of the Court of Justice of European Union. This option would consist in increasing number of judges of the GC by means of amendment to Article 48 of the Statute in accordance to the mechanism provided for in the second paragraph of Article 281 TFEU.<sup>50</sup>

The court of justice considered that the latter solution was clearly preferable on the grounds of a) *effectiveness*, b) *urgency*, c) *flexibility* and d) *consistency*.<sup>51</sup>

Regarding the *effectiveness*, the Court wrote that a transfer of trade mark cases would offer only a brief relief because even though the repetitive cases would be passed to the specialized court, the complex cases, which is the majority, would remain within the jurisdiction of General Court. Any such relief and respite would be more limited since, once the specialized court would began delivering judgments, the number of appeals to

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<sup>49</sup> Interinstitutional file 2011/0901 (COD) 7.4.2011: Draft amendments to the Statute of the Court of Justice of the European Union and to Annex1 thereto. From CJEU to the Council. P.3,7

<sup>50</sup> Interinstitutional file 2011/0901 (COD) 7.4.2011: Draft amendments to the Statute of the Court of Justice of the European Union and to Annex1 thereto. From CJEU to the Council. P.7

<sup>51</sup> Dehousse, Franklin 2016. The reform of the EU courts II, Abandoning the management approach by doubling the General Court, p. 13-14 Egmont Paper 83.

the General Court would increase. The Court concluded that increasing the number of judges within the GC, offers a great deal more advantages than establishing a specialized court and that in organizational terms, it is easier to integrate new Judges into an existing organizational structure than to establish a new one.<sup>52</sup>

Considering the *urgency* of the situation, establishing a specialized court, appointing its Judges, selecting its Registrar and adopting its rules of procedure, would probably slow down the handling of the cases for too long. The Court used as a comparison, the time it took to get Civil Service Tribunal up and running properly, which was over 2 years. Instead, the appointment of new Judges, according to the Court, should have an immediate effect on handling of cases, on the backlog and on the time used for proceeding to be completed.<sup>53</sup>

Yet another advantage which the Court concluded, was the *flexibility* of the proposed solution and the fact that was in a sense reversible. The General Court can use additional human resources as may become available if the number of cases falls in a particular area to deal with cases in other areas. It would be much more difficult to dismantle a new court once it had come into operation than to reduce the number of Judges.<sup>54</sup>

In addition to these practical considerations, other associated with the concern to maintain the *consistency* of European Union law. Trade mark cases include disputes about the registration of Community trademarks, currently within the jurisdiction of the GC and, on appeal, of the Court of Justice, but also disputes relating to the infringements or to national trade marks, which are brought before the Court in the context of questions referred for a preliminary ruling on the interpretation of Directives 89/104 and 2008/95. Trademark cases require the uniform interpretation, preferably by a single court. Thus, using the option of conferring on the GC responsibility for dealing with questions referred for a preliminary ruling, would cause more problems and difficulties

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<sup>52</sup> Interinstitutional file 2011/0901 (COD) 7.4.2011: Draft amendments to the Statute of the Court of Justice of the European Union and to Annex1 thereto. From CJEU to the Council. P.8

<sup>53</sup> Interinstitutional file 2011/0901 (COD) 7.4.2011: Draft amendments to the Statute of the Court of Justice of the European Union and to Annex1 thereto. From CJEU to the Council. P.8

<sup>54</sup> Interinstitutional file 2011/0901 (COD) 7.4.2011: Draft amendments to the Statute of the Court of Justice of the European Union and to Annex1 thereto. From CJEU to the Council. P.8

than provide benefits. The allocation of questions referred for a preliminary ruling between the two courts could also create confusion among Member States' courts and discourage them from referring such questions.<sup>55</sup>

Based on the internal analysis done by the Court, the listed advantages with the latter option were reported to the Council:

- To halt the increase in the number of pending cases
- To clear the backlog of pending cases
- To reduce the length of the proceedings thus delivering judgements within a reasonable time
- To promote consistency of case law
- To increase flexibility in the dealing of a cases
- To simplify the judicial framework of the EU (since there would be 2 courts instead of 3)
- To solve the difficulties in the appointment of judges
- To restore to the Court of Justice the power to rule on appeal in civil service cases<sup>56</sup>

The Court of Justice therefore considered that an increase in the number of judges, by at least 12, bringing the number of GC Judges to 39, is necessary. The increase would make it possible, not only to complete each year the same number of cases as are brought, but also begin to absorb the GC's backlog of pending cases. The additional resources could provide also an opportunity for reorganization enabling the "other actions" category to be dealt with as a matter of priority, and perhaps through

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<sup>55</sup> Interinstitutional file 2011/0901 (COD) 7.4.2011: Draft amendments to the Statute of the Court of Justice of the European Union and to Annex1 thereto. From CJEU to the Council. P.9

<sup>56</sup> Dehousse, Franklin 2016. The reform of the EU courts II, Abandoning the management approach by doubling the General Court, p. 23 Egmont Paper 83.

specialization by certain chambers and flexible management of case allocation, the General Courts productivity could be improved.<sup>57</sup>

Also, other institutions published their opinions. According to The European Committees'<sup>58</sup> (EC) the 14<sup>th</sup> report from April 2011, concerning the workload of the Court of Justice, the most immediate problem lied in the General Court which had, according to the received evidence, significant problems with existing workload as well as ability to manage its future workload. Civil Service Tribunal raised no concerns within the Committee which they saw as a success story. The committee made several recommendations designed to alleviate the problems. Most importantly, for the General Court, the Committee suggested the increase in the number of Advocates General and that it should be made as quickly as possible. This comparatively straightforward reform, would assist the Court increasing the speed and the quality of decision-making. Overall conclusion on structural reform of the GC was that the proliferation of specialist tribunal separate from GC would not be desirable because they cost more than the CST, but to increase instead GC's judiciary by appointing the necessary number, less than 28, on a rotating basis.<sup>59</sup>

In their follow-up report, year 2013, the European Committee renewed their recommendation to increase the number of Advocates General as an increase would bring significant benefits to the speed of the Court processing cases and to the quality of judgments. This is since Advocates General play an important role in the delivery of justice and keeping the machinery of the Court running smoothly. The Committee had gone also through the latest statistics from the General Court, and remained therefore convinced that there was still a very case for increasing the number of judges in the GC.

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<sup>57</sup> Interinstitutional file 2011/0901 (COD) 7.4.2011: Draft amendments to the Statute of the Court of Justice of the European Union and to Annex1 thereto. From CJEU to the Council. P.10

<sup>58</sup> The European Committee consider EU documents in advance of decisions being taken on them in Brussels, to influence Government's position and to hold them to account. The Committee also conducts inquiries and makes reports. If the report is for debate, then the debate is held in the House of Lords. The Committee has six sub-committees: A) Economic and financial affairs, B) Internal Market, Infrastructure and Employment, C) External affairs, D) Agriculture, Fisheries, Environment and Energy, E) Justice, Institutions and Consumer Protection and F) Home affairs, Health and Education.

<sup>59</sup> The European Committee 2011. Workload of the court of justice of the European Union, 14<sup>th</sup> Report. House of Lords. HL Paper 163, p.2-6

They also urged Member States to, without a delay, find a solution for appointing additional judges that safeguards the stability of the Court and the quality of the judiciary.<sup>60</sup>

### 3.3 Amended 2014 Proposal

Since 1 December 2014, following the transitional period introduced by the Lisbon Treaty, The Court of Justice has had the full jurisdiction under Article 258 of Treaty on the Functioning of the European Union (TFEU) to decide infringement proceedings against any Member State.<sup>61</sup> At the same time the scope and depth of the EU competence areas are expanding on a regular basis and the specialization of EU law has increased leading to a difficulty to master the whole of the EU competence areas. The Treaty simplified the ordinary decision process of the EU, but at the same time suppressed the third pillar and submitted all internal security matters (immigration, asylum, police and justice cooperation) to the ordinary legislative procedure. This strongly strengthened the protection of fundamental rights in the EU law system, but the combination of these changes increased the judicial workload.<sup>62</sup>

The ordinary legislative procedure requires approval from the Member states through the Council, as well as approval from the European Parliament to such changes. To the Courts first proposal, the response was two-folded. The Council and European Parliament adopted the proposal on temporary judges for the Tribunal, as well as the most of the other proposed changes to the statute of CJEU, but they did not adopt the increase in the number of judges on the General Court because they could not agree

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<sup>60</sup> The European Committee 2013. Workload of the court of justice of the European Union, 16<sup>th</sup> Follow-Up -Report. House of Lords. HL Paper 163, p. 5

<sup>61</sup> CURIA 2015: Annual Report 2014. p.7 Publications Office of the European Union.  
[https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-04/en\\_ecj\\_annual\\_report\\_2014\\_pr1.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-04/en_ecj_annual_report_2014_pr1.pdf)

<sup>62</sup> Dehousse, Franklin 2011. The reform of the EU courts, The need for management approach, p. 12-13 Egmont Paper 53.

how to share the extra judges among Member States and how to rotate the positions between them.<sup>63</sup>

In the interinstitutional file 0901B/2011 (COD), from November 2014, the Court was making amendments to the first proposal. This was due to the fact that, while an agreement in principle has been established to increase the number of Judges at the GC, it seemed impossible to overcome differences of opinion such as the method of appointment additional judges, both to General Court as well as to CST. The negative impact of this impasse on the proper functioning of CST was already becoming evident, as the uncertainty regarding the composition was clearly not conducive to efficient case-management. As the workload of the GC was concerned, the situation was even more serious than it was when the legislative initiative of the Court of Justice was put forward. At that time, also first actions for damages, in consequence of the Court of Justice's finding of a breach by the GC of the reasonable time principle, had been brought<sup>64</sup> involving case for damages of close to 20 million. Therefore, amended proposal was containing a proposal to even double the number of Judges at the General Court and again the establishment of a specialized court was seen too time consuming when highlighting the urgency of finding a solution.<sup>65</sup>

### 3.4 Selection and Nomination Process of the Judges

How the European Courts are constituted, including the number of Judges and Advocates General, has a direct impact on the selection process of the candidates. The Appointment of Judges has long been an unstudied area of sovereign activity and

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<sup>63</sup> Peers, Steve 2014. Building the EU Judicial System: Politicians 1, (Judicial) Architects 0. EU law analysis. Expert insight into EU law developments. Available at: <http://eulawanalysis.blogspot.fi/2014/11/building-eu-judicial-system-politicians.html>

<sup>64</sup> T-479/14 Kendrion v Court of Justice of the European Union; T-577/14 Gascogne Sack Deutschland GmbH and Gascogne v Court of Justice of the European Union

<sup>65</sup> Interinstitutional file 2011/0901B (COD) 20.11.2014: Response of the Court of Justice to the Presidency's invitation to present new proposals on the procedures for increasing the number of Judges at the General Court of the European Union. p.3-12

described as a “shrouded process”. The key principle has been that there must be one judge from each Member State and in the reform the amount eventually increases to two.<sup>66</sup> With the Councils’ decision 2013/336EU on 25<sup>th</sup> of June, also number of Advocates General of the Court of Justice of European Union were decided to be increased from 8 to 11.<sup>67</sup>

The Treaty of Lisbon introduced one significant change to the traditional selection process that can be found in TFEU article 255. The article provides that: *“A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254. The panel shall comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognized competence, one of whom shall be proposed by the European Parliament. The Council shall adopt a European decision establishing the panel's operating rules and a European decision appointing its members. It shall act on the initiative of the President of the Court of Justice.”*<sup>68</sup>

In brief, the nomination process is following; the practice is that every Member State put up only one candidate for consideration at a time. It is Members States task to present the best candidates fulfilling the criteria defined in the article 253, 254 and 255. Any proposal for a candidate is submitted to the panel via the General Secretariat. The panel can ask the relevant Government for additional information or material. At least five members must be present at the meeting and it must give a reasoned opinion on each candidate. A Member State can seriously challenge the panel’s view if necessary. At the end, the final nomination of a judge requires unanimous agreements of the

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<sup>66</sup> Lord Mance: 19<sup>th</sup> of Oct. The Speech given to the United Kingdom Association for European Law: The Composition of the European Court of Justice. p.4,12  
[https://www.supremecourt.uk/docs/speech\\_111019.pdf](https://www.supremecourt.uk/docs/speech_111019.pdf)

<sup>67</sup> EUR-Lex – 2013D0336: Decision of increasing the number of Advocates-General of the Court of Justice of the European Union. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013D0336&from=FI>

<sup>68</sup> Lord Mance: 19<sup>th</sup> of Oct. The Speech given to the United Kingdom Association for European Law: The Composition of the European Court of Justice. p.13  
[https://www.supremecourt.uk/docs/speech\\_111019.pdf](https://www.supremecourt.uk/docs/speech_111019.pdf)

Governments of Europe, so even one adverse voice could in theory prevent the nomination. One important point to remember is that the panel lacks the possibility to choose between the candidates, so the essential responsibility for the nomination therefore rests on individual Member State.<sup>69</sup>

As said traditionally, States have regarded international appointments as a sovereign privilege, which have been sometimes exercised for domestic reasons, with the aim of international advantage. But it seems that after the introduction of panel 255 the recent initiatives have been taken by States voluntarily. They recognize that the panel ensures that justice is administered with competence and efficiency at international level and it's beneficial to both States and their citizens, especially now that the decisions which international courts make are put increasingly under legal and public spotlight.<sup>70</sup>

### 3.5 The 2015 Approval

According to the Court's Press Release No 44/2015 the two main reasons for planned reforms were increasing backlog of ever more complex cases and excessive duration and delays in judicial proceedings which jeopardize the realization of justice and had already given rise to claims of damages against European Union. For several years, especially the General Court (GC) had faced a challenging situation because of the increase of cases before it. Between the years 2000 and 2014 the number of cases increased from 398 to 912<sup>71</sup> and in year 2014 a new record was achieved with a total of 1691 cases brought

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<sup>69</sup> Lord Mance: 19<sup>th</sup> of Oct. The Speech given to the United Kingdom Association for European Law: The Composition of the European Court of Justice. p.13-14  
[https://www.supremecourt.uk/docs/speech\\_111019.pdf](https://www.supremecourt.uk/docs/speech_111019.pdf)

<sup>70</sup> Lord Mance: 19<sup>th</sup> of Oct. The Speech given to the United Kingdom Association for European Law: The Composition of the European Court of Justice. p.27  
[https://www.supremecourt.uk/docs/speech\\_111019.pdf](https://www.supremecourt.uk/docs/speech_111019.pdf)

<sup>71</sup> Court of Justice of European Union 2015: Press release No 44/15. p.1.  
<https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-04/cp150044en.pdf>

before the all three courts ending up with the highest number since the judicial system of the European Union was created.<sup>72</sup>

On December 16.12.2015 The Council of European Union and the European Parliament (EP) approved the regulation reforming the structure of Court of Justice of European Union and in more detailed the General Court of the European Union. As reforms were requested as early as 2011, the final decision ended almost four years of inter-institutional debate of the topic.<sup>73</sup>

One essential aspect of the reform is that it will happen in three successive phases. The first phase, which took effect immediately after the regulation entered into force, consisted in adding 12 new judges each with their corresponding staff. The second phase of the reform, which took effect on in September 2016 consisted the absorption by the General Court of the Civil Service Tribunal (CST) and its seven judges with staff and corresponding case load. Since that the CJEU has consisted only two courts; The Court of Justice (CJEU) and The General Court (GC). The third and final phase, which is expected to take place in September 2019, will follow with the appointment of the nine remaining additional judges.<sup>74</sup> With same decision, The Parliament (EP) and The Council also provided 1. a political statement requiring Member States to take the greatest possible account of gender equality when proposing their candidates for the judges; and 2. a clause in the legislation itself requiring the Court of Justice to report, by 2021, on the functioning of the General Court and, where appropriate, to make proposals for reforms to its statute.<sup>75</sup>

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<sup>72</sup> CURIA 2015: Annual Report 2014. p.7 Publications Office of the European Union.  
[https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-04/en\\_ecj\\_annual\\_report\\_2014\\_pr1.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-04/en_ecj_annual_report_2014_pr1.pdf)

<sup>73</sup> Abenhaïm, Marc 26.1.2016 Epilogue, at least, on the reform of the General Court -blog post.  
<http://kluwercompetitionlawblog.com/2016/01/26/epilogue-at-last-on-the-reform-of-the-general-court/>

<sup>74</sup> CURIA 2016: Annual Report 2015. p.49. Publications Office of the European Union.  
[https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-08/rapport\\_annuel\\_2015\\_activite\\_judiciaire\\_en\\_web.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-08/rapport_annuel_2015_activite_judiciaire_en_web.pdf)

<sup>75</sup> Abenhaïm, Marc 26.1.2016 Epilogue, at least, on the reform of the General Court -blog post.  
<http://kluwercompetitionlawblog.com/2016/01/26/epilogue-at-last-on-the-reform-of-the-general-court/>

In addition to the reform related to the number of high position officials, some improvements to the Courts efficiency have been sought by increasing the use of the various procedural instruments to expedite the handling of certain cases; the urgent preliminary ruling procedure, priority treatment, the expedited procedure, the simplified procedure and the possibility of giving judgment without an opinion of the advocate general.<sup>76</sup>

The reforms will lead to a profound change in the composition of the General Court, most notably, a doubling in the number of judges. Also, we are pass the second phase which means that Civil Service Tribunals' absorption to the General Court has happened already last year. In the next chapter, I go deeper to the reforms and start examining the effect of the made changes so far.

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<sup>76</sup> CURIA 2015: Annual Report 2014. p.9 Publications Office of the European Union.  
[https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-04/en\\_ecj\\_annual\\_report\\_2014\\_pr1.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-04/en_ecj_annual_report_2014_pr1.pdf)

## 4 ANALYSING THE REFORMS

### 4.1 Public Criticism

The reforms raise several implementation challenges, both for Member States and for the General Court itself; the timing had been unrealistically tight, the absorption of the Civil Service Tribunal caused transitional impacts and getting 28 additional judges up to speed on the workings and before that even nominated due to the changes and challenges in the nomination process itself, was afraid to entail delays of its own.<sup>77</sup>

Overall the proposal to double the number of judges met with fierce opposition, not only from some MEP's but first and foremost, from inside the Court itself and from its Judges. Also, the media attention to the topic was quite unique because it did not directly concern any judicial ruling by a Court, instead The Court including its President Mr. Vassilios Skouris, was subject to unprecedented media scrutiny following intense internal fighting about a contentious reform proposal.<sup>78</sup>

The main concern and criticism was focusing on the fact that raising number of judges would cost a lot of money. Every judge gets paid over 220.000 euros plus benefits per year plus the additional staff needed to each chamber. Also, the amount of backlog was

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<sup>77</sup> Abenhaïm, Marc 26.1.2016 Epilogue, at least, on the reform of the General Court -blog post. <http://kluwercompetitionlawblog.com/2016/01/26/epilogue-at-last-on-the-reform-of-the-general-court/>

<sup>78</sup> Alemanno Alberto & Pech Laurent 30.6.2015 Reform of the EU's Court System: Why a more accountable – not a larger – Court is the way forward. European Law Blog. <http://europeanlawblog.eu/2015/06/30/reform-of-the-eus-court-system-why-a-more-accountable-not-a-larger-court-is-the-way-forward/>

not as bad as made out and some opinions were saying it could have been fixed by adding more support staff, not judges.<sup>79</sup>

Committee on Legal Affairs of the European Parliament criticized and argued the proposal especially because they saw that it was amounting to an unnecessary increase in spending, at a time when the EU was imposing severe austerity measures to balance Member States budgets. The committee also saw that proper impact assessment was missing and that the figures provided by the Court concerning of the backlog cases and the average duration should have been questioned.<sup>80</sup>

In more detail, the Committee on Legal Affairs' and its Rapporteur prepared a counterproposal: "*Draft European Parliament Legislative Resolution*" on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union (09375/1/2015–C8-0166/2015 2011/0901B(COD)). Per proposals explanatory note, with regard to the Courts proposal, it should have been first clarified whether the problem is actually the shortage of the Judges or just an issue arising from the Council itself due to its inability to make a number of appointments which do not match to the number of its members. For the Committee, it was difficult to understand that the GC requested another twelve judges in 2011, agreed that nine were sufficient in 2013 but anyway stated that 28 more judges are required after all in 2014, together with the abolition of a CST that was not even mentioned before.<sup>81</sup>

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<sup>79</sup> Robinson, Duncan 27.4.2015. Financial Times: The 1st rule of ECJ fight club...is about to be broken. Brussels Blog. <http://blogs.ft.com/brusselsblog/2015/04/27/the-1st-rule-of-ecj-flight-club-is-about-to-be-broken/?mhq5j=e3>

<sup>80</sup> Abenhaïm, Marc 26.1.2016 Epilogue, at least, on the reform of the General Court -blog post. <http://kluwercompetitionlawblog.com/2016/01/26/epilogue-at-last-on-the-reform-of-the-general-court/>

<sup>81</sup> Committee on legal affairs.14.10.2015. Recommendation for second reading on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union (09375/1/2015 –C8-0166/2015 -2011/0901B(COD)) p.12 Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0296+0+DOC+PDF+V0//EN>

The committee also counted that the proposed doubling would increase the related legal secretaries and assistants by over 100 and each office would cost more than 1 million a year to run, so the total remuneration would require an increase in EU structural spending of more than 20 million euros per year. When at the same time all other institutions were agreeing to reduce the employee numbers around 5% and this way cut their budgets around 0.5%, it would need a clear justification on behalf of the Court to increase its own. The Committee continued that the Judges should not be appointed based on political reasons, instead they should be chosen for their technical and legal expertise, which would guarantee the quality of decision-making. Judges should also be independent and nominated only for a single nine-year term to avoid the temptation to carry out their duties in such a way as to please those who appointed them to earn re-nomination. Also, gender equality was emphasized and committee strictly defended the view that the number of female judges should be equal to the male judges.<sup>82</sup>

The Committee criticized also that the whole procedural legality was harmed, because the amended request from the Court came with a simple letter in October 2014 addressed to the Italia Presidency of the Council. Reforms like this should not be introduced through the back door. Also, reforms of such nature and the new request should have been handled as a true and new legislative proposal because of its (changed) content. An impact study explaining reforms necessity, scope, costs as well as other consequences was never carried out, even though promised by the Court since 2011. The Committee was proposing to conduct an external and independent study to be the prerequisite for the legislator to be able to weight up all the consequences of its statutes. Especially the Court structure and the financial impact would require a serious and impartial analysis and assessment, which did not take place. Concluding the explanatory statement, the Committee reminded that CST had been its whole existence

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<sup>82</sup> Committee on legal affairs.14.10.2015. Recommendation for second reading on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union (09375/1/2015 –C8-0166/2015 -2011/0901B(COD)) p.12,13 Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0296+0+DOC+PDF+V0//EN>

for over 10 years, a judicial success story. In addition, The EU Treaties (Nice and Lisbon) provide for the creation of specialized courts, not their abolition so scrapping the CST would, therefore mean abandoning the system of specialized courts.<sup>83</sup>

At the end of the paper, based on the Rules of Procedure of the European Parliament, Rules 66(6) and 69(1) and (2)(a), (c) and (d), the Rapporteur made the following conclusions and recommendations:

1. **To reject the proposal to double the number of GC Judges.** The Court should justify the exact number of judges actually required.
2. **To reject the proposal to abolish the Civil Service Tribunal** because of lack of legal basis in the Treaty.
3. **Recommend the appointment of 19 legal secretaries,** pursuant to and for the purposes of Rules of Procedure. Each Judge would then have one more legal secretary.
4. **Recommend the establishment of by Parliament and the Council of a joint committee of experts,** to analyze the overall workings of justice in the EU and make suggestions to improve it without forgetting the following aspects:
  - a. The recruitment of judges should be through open tender from amongst law professors of repute and judges from the high courts of each Member State;
  - b. The appointment of each judge should be for a term of nine years only, and it cannot be renewed or extended.
  - c. Absolute respect for gender parity in the recruitment of judges should be in place

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<sup>83</sup> Committee on legal affairs.14.10.2015. Recommendation for second reading on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union (09375/1/2015 –C8-0166/2015 -2011/0901B(COD)) p.13,14 Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0296+0+DOC+PDF+V0//EN>

5. Recommend that all EU courts should be scrutinized by the European Committee for the Efficiency of Justice. (CEPEJ)<sup>84</sup>

However, despite the Committees well-founded opposition, the proposal of the Court was supported by a coalition of the two biggest parliamentary groups and was passed by the European Parliament on 28 October 2015 and by the Council on 3 December 2015. It seems that the political decision-making was showing its power and won the debate after all.

#### 4.2 Statistical Facts & Findings

It is endless to debate between the opinions if the parties don't share the same view about the topic. It's much more difficult to argue against the facts, so let's now get to the point of comparing the published data and to see what does these statistics reveal about the made reforms.

Measuring, managing and controlling performance is the key activity in controlling and directing the transformation process in any organization and guiding all improvement efforts. In a professional public organization, the setting of precise goals and targets for operations is said to be challenging.<sup>85</sup>

A relevant question is what should be measured? Whether to measure output/efficiency or outcome/effectiveness. Outputs can be easily measured in quantifiable terms e.g.

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<sup>84</sup> Committee on legal affairs.14.10.2015. Recommendation for second reading on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union (09375/1/2015 –C8-0166/2015 -2011/0901B(COD)) p.15,16 Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0296+0+DOC+PDF+V0//EN>

<sup>85</sup> Pekkanen. Petra 2011. Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. 2011. Acta Universitatis Lappeenranta 444.p.33

cases solved. However, these numbers tell us little about the success of the organization, and are mainly of use in the calculation of the ratio of input to output. The increase in the number of outputs, for given input, simply demonstrates how efficiently the organization is converting its inputs into outputs, but provides very little information about the effectiveness or value of these outputs. As commonly known, measuring the outcomes is more difficult than measuring the output, and probably for this reason, output measures are used often more than outcome measures.<sup>86</sup>

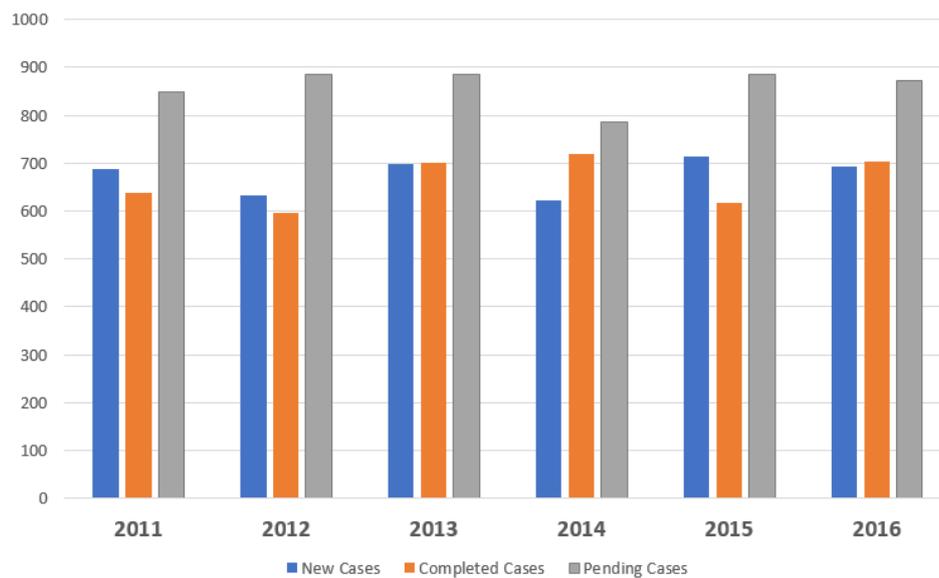
Let's start with the general activity statistics including the mostly mentioned reason for the reforms at first place, the backlog. Because the Annual Report 2016 of the Court of Justice did not include the overall statistics of all the three Courts as simple charts, I have combined information to the below tables from different sources; from the presentation held by Heikki Kanninen, the Vice President of the General Court, in 12.10.2016 during our student visit to the CVRIA, and from the Annual Reports 2015 & 2016.

*\*The figures given in the tables below (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).*

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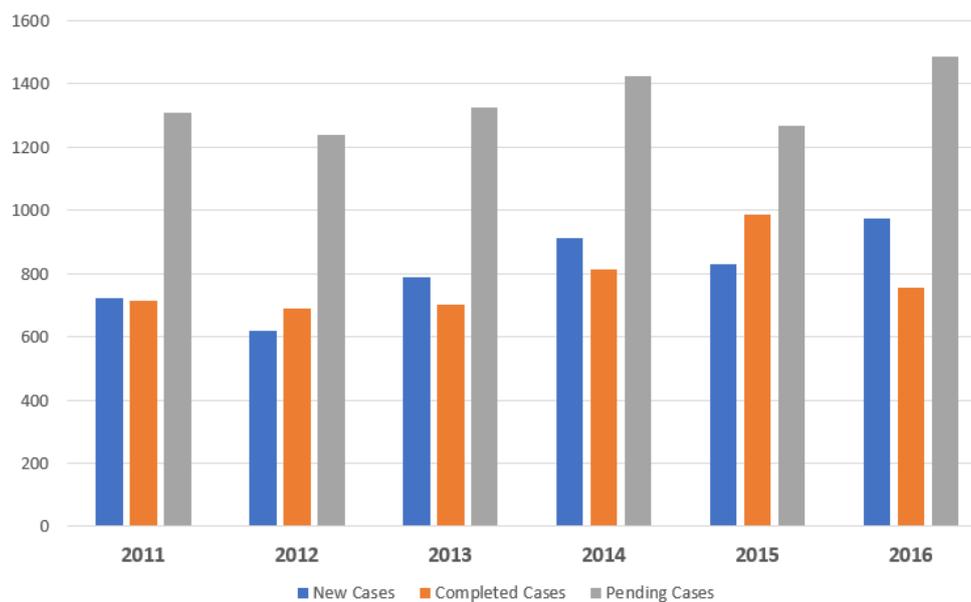
<sup>86</sup> Pekkanen, Petra 2011. Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. 2011. Acta Universitatis Lappeenranta 444.p.34

*Table 1: General Activity of the Court of Justice 2011-2016\**



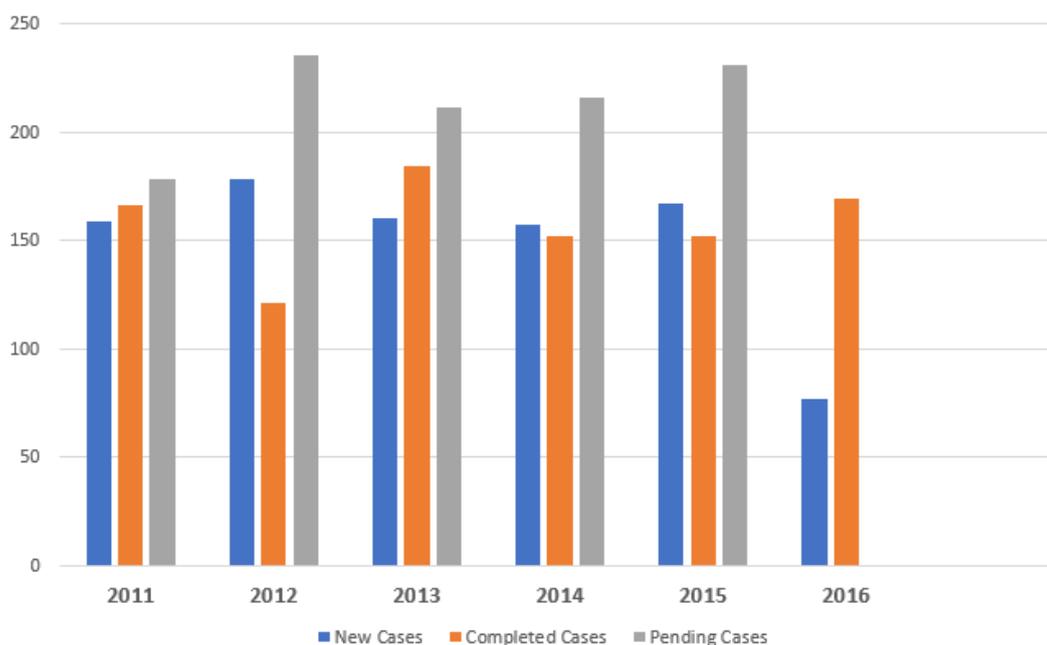
	2011	2012	2013	2014	2015	2016
New Cases	688	632	699	622	713	692
Completed Cases	638	595	701	719	616	704
Cases Pending	849	886	884	787	884	872

*Table 2: General Activity of the General Court 2011-2016\**



	2011	2012	2013	2014	2015	2016
New Cases	722	617	790	912	831	974
Completed Cases	714	688	702	814	987	755
Cases Pending	1308	1237	1325	1423	1267	1486

*Table 3: General Activity of the Civil Service Tribunal 2011-2016\**

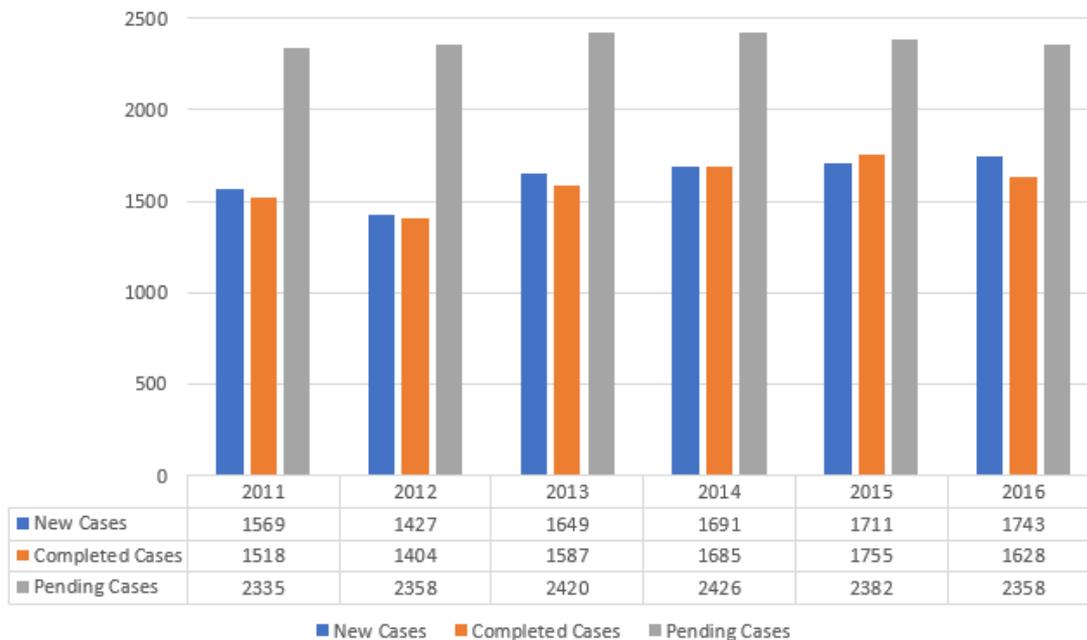


	2011	2012	2013	2014	2015	2016
New Cases	159	178	160	157	167	77
Completed Cases	166	121	184	152	152	169
Cases Pending	178	235	211	216	231	-

*\*The Civil Service Tribunal was dissolved on 1 September 2016, jurisdiction at first instance over disputes between the European Union and its officials or other members of staff being transferred to the General Court of the European Union. From January to August 2016, 169 cases were completed by the Civil Service Tribunal.*

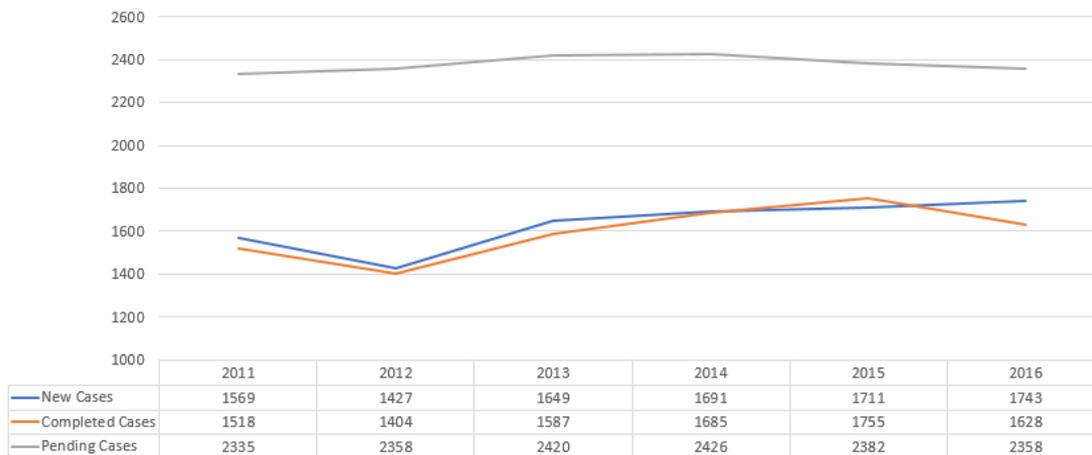
In the table 4, I have combined the activity figures of all three courts to the one chart visualizing the development of all activities. Year 2016 figures are including the cases transferred from CST to the GC.

Table 4: General Activity Figures of all the three Courts together 2011-2016



The below table 5 shows the same combined activity figures as a line chart.

Table 5: General Activity Figures of all three Courts 2011-2016 as a line chart



According to the statistics the number of new cases have increased since year 2012 with the total increase of +11% between years 2011-2016. Anyway, from year 2013 the overall curve is only slightly upwards and the increase has been all together +5,7%.

Between year 2015 and 2016 there's only a small increase with ~30 cases which means only +1,7% increase.

The number of completed cases were mentioned in the Courts Annual Report of 2016 as a positive figure, but the statistics show that the total amount actually decreased by 127 cases from the previous year 2015, which means decrease of -7,3 %. One can wonder why this decrease was not mentioned in the annual report. Since year 2012 there has been anyway a steady growth in the number of completed cases, so let's hope year 2016 figure was just a short deviation due to the transformation challenges.

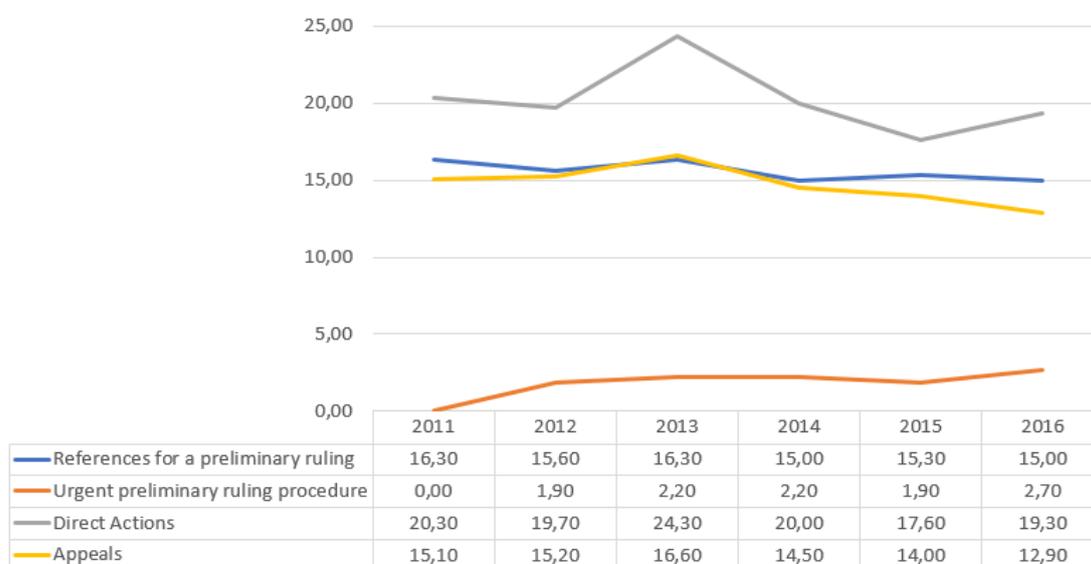
Then to the backlog. The number of pending cases has been high, over 2300 cases per year, and almost at the same level for several years already. There's no evidence on any bigger decrease that was one of the background reasons for the reform. Between years 2014-2015 the decrease has been -1,8%, and last year between 2015-2016 only -1%.

At this point it's good to remind that when the first phase of the reform took place right at the end of 2015, the first 12 new judges and corresponding staff were appointed and started their work. The second phase of the reform, took effect on in September 2016 and 7 more judges with staff started their work. So, in total this means 19 new judges started working during 2016 in the General Court, but that cannot be seen to have affected the activities at least with clear positive effect.

It might be too early to make any conclusions yet, and it should be remembered that there are always challenges at the beginning when changes are done, new organizations starting and new tasks adopted, but at least the latter addition of judges consisted of the former Civil Service Tribunal (CST) judges, so we are not talking about any newcomers to the Court or to the work itself. Such high-profile positions come with a huge responsibility and with high expectations. It can be fairly expected that the orientation should not take too long and the contribution of new judges would lead to some positive changes in the statistics latest at the end of this year, once 2017 numbers are revealed. Would have been nice to know the mid-year figures of year 2017, but they were not publicly available.

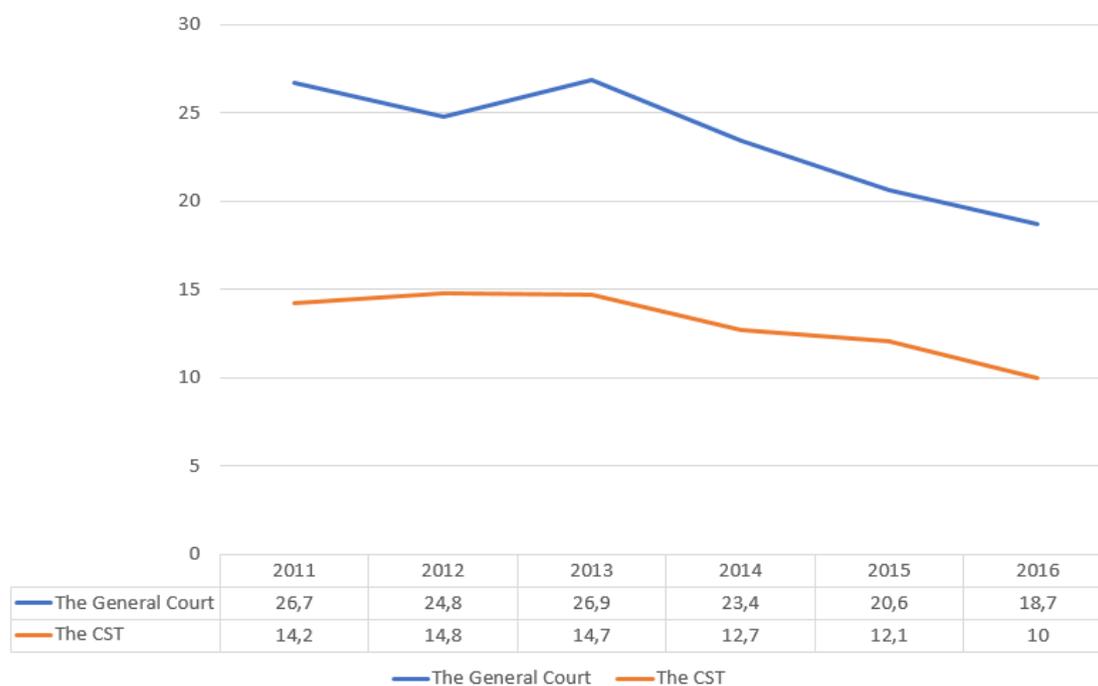
Next, I have gathered information regarding the proceeding times and below tables summarize the average duration times in months for the proceedings. First the average duration for the European Court of Justice per different proceeding type in table 6, and then average duration of all proceedings for The GC and for the CST in table 7. Average proceeding times for all types proceedings were not available for the Court of Justice (except for year 2016 which was 16.7 months), therefore separate table 6.

*Table 6: The Average Proceeding Times in Months of the European Court of Justice per Different Proceeding Type 2011-2016*



*\*The calculation of the average duration of proceedings does not take account of: cases ruled upon by interlocutory judgment; special forms of procedure; appeals concerning interim measures or interventions. The duration of proceedings is expressed in months.*

*Table 7: The Average Duration\* of All Proceedings in Months of the GT and the CST  
2011-2016*



The figures for the Court of Justice show that for direct actions and for urgent preliminary ruling procedure, the time have increased since last year but for direct actions the average time has anyway decreasing overall line since 2011. For urgent preliminary ruling, the increase and this kind of development with the proceeding time should be cut. According to the Report on *the use of the urgent preliminary ruling procedure by the Court of Justice*,<sup>87</sup> the Courts principal intended and declared objective is to dispose of these types of cases in approximately two to four months.

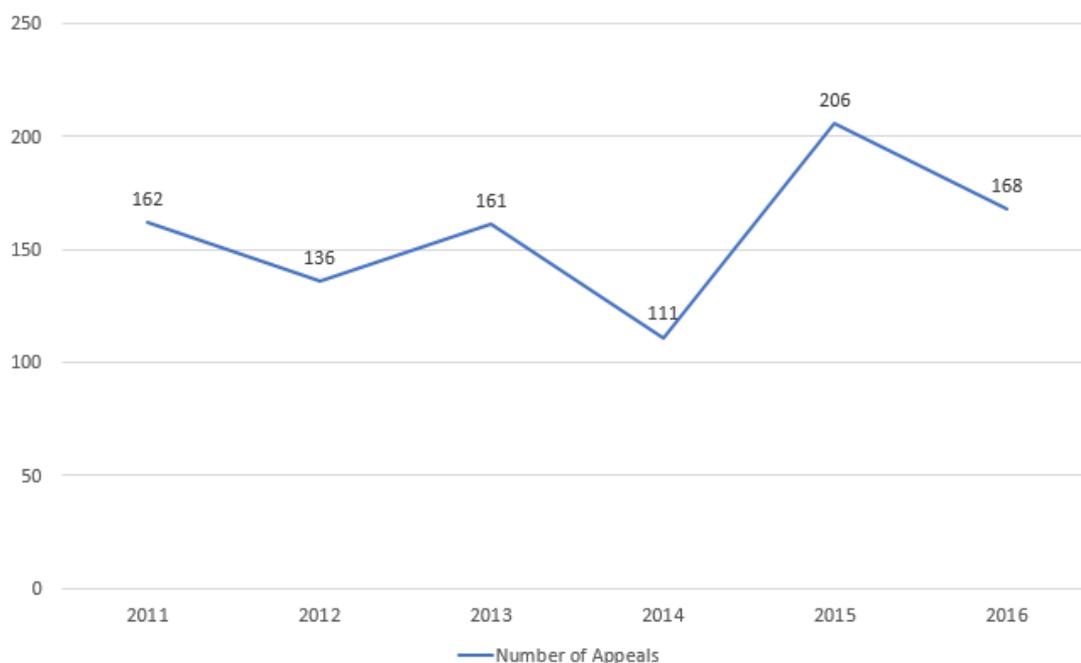
For appeals and references for preliminary ruling the proceeding time have slightly decreased. Both proceedings take anyway still over one year, according to the statistics, and one can argue is that still a too long time for the opinion, order or judgement to take place.

<sup>87</sup> Vassilios Skouris. 31<sup>st</sup> of Jan 2012. Report on the use of the urgent preliminary ruling procedure by the Court of Justice to the Council. p.3 available at:  
[https://curia.europa.eu/jcms/upload/docs/application/pdf/2012-07/en\\_rapport.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2012-07/en_rapport.pdf)

Average proceeding times, both in CST and the GC, have nicely decreasing lines. In the GC, since year 2011, the proceeding time have shortened from 26,6 months to 18,7 months in 2016 which is almost -30%. This is really a good direction in protecting the legitimate expectations, legal certainty and enabling judgement within a reasonable time for the parties.

The quality of the General Courts work and judgements it makes, can be at least to some extent, measured with the number of appeals brought to the Court of Justice, as appeals on points of law are brought before the Court of Justice against judgments and orders of the General Court. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Table 8 shows the development of these appeals. The data is collected from the Annual Reports of 2014 and 2016.

*Table 8: The Number of Appeals\* brought to the CJEU against the GC 2011-2016*



*\*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).*

The amount of appeals has decreased since last year and the amount of 168 appeals was 24.3% of all the proceedings. From quality perspective, this is a good development. On the other hand, the Court is realistically explaining the reduction to be attributable, in part, to the reduction in the number of cases completed by the General Court. As can be seen in the table 2, the amount of completed cases in the GC was 987 cases in year 2015 and 755 cases in year 2016, which means decrease of -23.5%.

Finally, how much all of this has cost so far and what are the effects from the budget perspective. According to the Report of *Estimated cost of increasing the number of Judges at the General Court*<sup>88</sup> from year 2014, the Court estimated the cost burden of increasing the number of judges to be following:

*Table 8: The Estimated Cost Burden of Increasing the Number of Judges at the GC*

2014 Cost estimates	2014 Total Budget of the Court 348 mill
Creation of 12 Judges (2015)	€11.6 mill
Creation of 7 Judges from CST (2016)	€2.4 mill
Creation of 9 Judges (2019)	€8.9 mill
Total 28 Judges	€22.9 mill

Table 9 show the annual budget figures between years 2011-2016 and estimated annual budget for 2017. These figures are total budget figures so the actual cost of the reform is included to the overall number. The challenge with the budget figures presented below, were that they were not easily available. To get to the point that figures from year 2011-2017 are in the same table, I had to go through several information sources

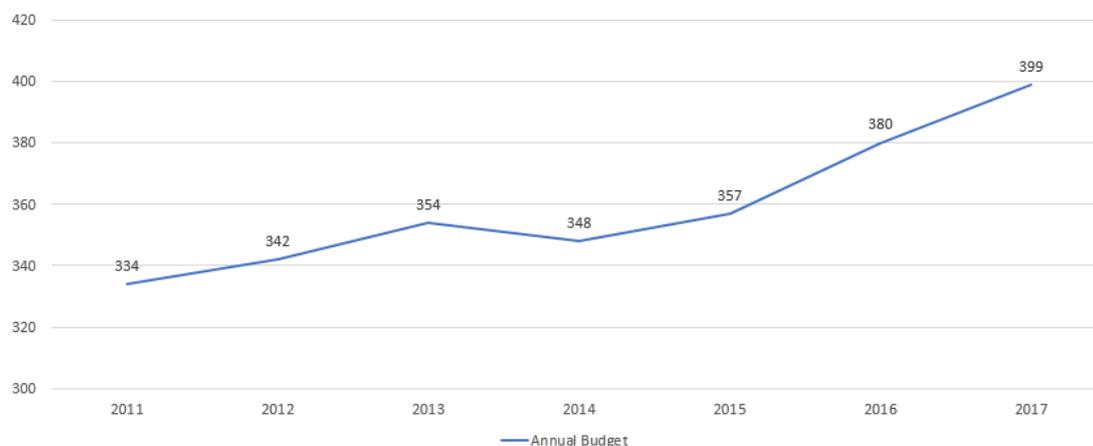
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<sup>88</sup> CVRIA. Court of Justice of European Union. October 2014. Report on the estimated cost of increasing the number of Judges at the General Court p.2 available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-05/8-en-annexe-coutestimatif-364.pdf>

and put some effort to the investigation. Finally, the European Commissions' European EU Budget Financial Reports offered the best information. From the European Court of Justices' publications, the data from last 5 years was not found.<sup>89</sup>

As we see there's a huge increase in the Courts budget. Between year 2015 and 2016 the budget has increased 23M and the budgeted cost for two first phases of the reform was expected to cost 14M, so there were some other additional costs of 9M during year 2016. The estimated increase for the year 2017 is also quite impressive with almost 20 million increase. Total this makes increase of +5% for the total budget. The last phase of the reform is due in 2019 and is expected to bring ~9M extra cost.

*Table 9: The Annual Budget Figures 2011-2016 and Estimated Annual Budget for 2017*



One could argue that the reform has been costly and, according to the budget figures, inefficiently managed. It should be remembered that the estimated costs are not one-time additions to the budget, instead a judge of the General Court and his/her staff cost

<sup>89</sup> European Commission 2012. EU Budget 2012 Financial Report available at: [http://ec.europa.eu/budget/financialreport/2012/pdf/financialreport-2012\\_en.pdf](http://ec.europa.eu/budget/financialreport/2012/pdf/financialreport-2012_en.pdf)

the taxpayer approximately €1M per annum. The cost of doubling the number of judges at the General Court will thus amount to in or around €28M each year.<sup>90</sup>

The defensive argument from the General Court was that the cost of the reform was rather limited and in fact constitute good value for money.<sup>91</sup> In the Commissions' report *Draft General Budget of the European Union for the financial year 2017*, the explanation was continued with the statement that it is important to emphasize that almost all the increase (80%) in the 2017 budget compared with 2016 almost, is due to salary adjustments and technical factors over which the Court has no control. For the remainder, the increase is appropriations corresponding to the new obligation linked to the Irish language and to three priorities defended by the Court; increasing external services in the field of languages, security and 5<sup>th</sup> extension building project.<sup>92</sup>

One could argue, are these right priorities in the time of rigor budget obligations on all EU institutions, by the Council, as a budgetary authority, as well as by the Commission.

In this chapter, I went through the data provided by the Unions' institutions and selected, to my opinion, the key figures available from where I constructed the tables of statistics covering the years of 2011-2017. I also included a short analysis based on my findings after every presented statistic. In the next chapter, I deepen the analysis by building further the theoretical house of the Court that was started in the chapter 2 combined with the information from the reality.

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<sup>90</sup> Dehousse, Franklin 2016. The reform of the EU courts II, Abandoning the management approach by doubling the General Court, p. 83 Egmont Paper 83.

<sup>91</sup> Dehousse, Franklin 2016. The reform of the EU courts II, Abandoning the management approach by doubling the General Court, p. 83 Egmont Paper 83.

<sup>92</sup> European Commission 2017. DRAFT General Budget of the European Union for the financial year 2017. Available at: <http://eur-lex.europa.eu/budget/data/DB/2017/en/SEC04.pdf>. p.13

## 5 MANAGING THE CHANGE

### 5.1 Towards Learning Organization

Managing the Court reform brings a unique perspective to a study of organizational change, flavored by the fact that in court reforms, objectives and orders are usually - at least to some extent – set in advance by people other than the change implementers themselves.<sup>93</sup> In the court environment, this means that when following the new procedure, implementers must sometimes learn something that might not yet been defined or even understood.<sup>94</sup> This does not anyway mean that the change could not be managed properly.

The pressure to increase effectiveness and productivity has grown enormously in the operational environment of all public-sector organizations including legal institutions. To find out what is needed to be a successful public *service institution*, I get back to Peter Drucker's management doctrines.

The successful service institution requires a discipline practiced by the managers and leaders of the institutions. Service institutions need to think through 1. their own specific *function, purpose and mission* and derive 2. *clear objectives and goals* from that foundation. They need *efficiency* that is control of costs and above all they need *effectiveness* – emphasis on the right results. This all must be done by thinking through the 3. *right priorities* which enable the selection of *right targets*; to set standard accomplishment and performance to define the minimum acceptable results. The

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<sup>93</sup> Vaala Haavisto: Doctoral Dissertation: Court work in transition. An Activity-Theoretical Study of Changing Work Practices in a Finnish District Court 2002. University of Helsinki. Department of Education. Helsinki University Press. p.45

<sup>94</sup> Vaala Haavisto: Doctoral Dissertation: Court work in transition. An Activity-Theoretical Study of Changing Work Practices in a Finnish District Court 2002. University of Helsinki. Department of Education. Helsinki University Press. p.66

deadlines are set to start the work on results and to make someone accountable for them. Also, 4. clear *measurement of performance* needs to be defined and that same measurement is used to collect 5. the *feedback* on the done efforts by building up a self-control system to review the results. Finally, 6. An organized *audit of objectives and results* is needed to identify unsatisfactory performance and obsolete, unproductive activities and a mechanism to remove such activities rather than wasting money and energy where the results are not. Especially this last requirement may be the most important one, yet least understood.<sup>95</sup>

From the organizational management perspective, the legal institutions should change from traditional stable bureaucratic structure towards greater orientation on change, flexibility, efficiency and productivity. The implementation and at the same time a change process should be seen as a “journey” - a continuous process of adaptation, subject to constant modification and adjustment in goals and strategies. During the journey, the progress is evaluated against predefined targets based on the feedback collected in the mid-way measurement points. After analyzing and digesting the lessons learned from the previous phases, the overall direction of the journey should be changed, if needed. This might lead to a re-evaluation of the needed actions (reforms).

Making modifications and amendments to the big plan should not be seen as a negative thing, but instead, as a flexible approach to the situations that sometimes come in front of you unexpectedly. In business environment, this is a normal procedure and is enabling fast reaction and corrective actions before big economical losses or other damages.<sup>96</sup>

Before I try to include these crucial elements of a learning organization and an adaptive change journey into the picture of the House of the Court built in chapter 2, let's first see how did the theoretical elements of the *House* hit the reality.

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<sup>95</sup> Drucker, Peter 1973. Managing the Public Service Institution. Public Interest, 33, p. 58-59

<sup>96</sup> This text is written based on my personal experiences after working for over 10 years in big change and operational development programs in multinational corporation Nokia.

## 5.2 Turning Theory into Practice

When analyzing the made reforms and existing situation against the theoretical framework built in the chapter 2, following can be concluded;

From the governance perspective, many institutions have taken part to the Court reforms, especially in the planning phase. First and foremost, The Council and The Parliament, who had to approve the proposal due to the normal legislative procedure as explained earlier.

European Union's institutions are specifically instructed to practice mutual sincere cooperation. When the decision-making process is executed in deliberative and iterative manner it enables smooth interaction between the different parties, enables expression of different opinions and exchange of views. This enables the system to be responsive and emphasizes the accountability to others. A danger however is, that you either end up making too much compromises when seeking for consensus, or end up making bad decisions because of the escalated urgency.

When analyzing the whole reform process and even there's a saying that "*well begun is half done*", it's difficult to understand why the approval process took over 4 years. In private sector, a company would be out of business if the first approval would take that much time. The inefficient start and stretched schedule, caused the situation to escalate so that the final decisions were made through questionable procedure and were lacking the consensus.

Peer-review is a powerful tool when used efficiently and can lead to fruitful outcomes. When the Courts are planning the changes in its statute, it would anyway be worth of analyzing carefully which organizations and institutions should really take part to the process. Is every reform needing the approval from the Council or from the Parliament or could some of the operational development activities be done solely as an internal exercise, without of course jeopardizing the procedural legitimacy? At least, with the approval on December 2015, The Council and the EP provided a clause to the Court to

make proposals for future reforms to its statute, so maybe in the future the process is a bit more faster and easier.

After the planning phase, the environment should be organized so that the change is even possible. In the Courts environment, this means efficient management and open communication towards the employees, as well as outside the Court. Everyone, meaning the implementers of the change should be informed about the selected direction and target, and what are the planned execution steps to reach that target. With proper communication and open attitude, the involved parties can be committed to the process. At the same time, they are also made liable to the change and with clear accountabilities within their own role.

When analyzing the reform, the Courts overall direction was a bit unclear. The management failed in communication of the set targets, and even more importantly, failed to clearly share the reasoning for the reform and expectations for the participants. This can be fairly concluded, due to the fierce opposition the reform raised inside the Court and the arguments it caused. If the implementers don't share the same view about the future, even after a well-founded and openly shared justification, something has gone wrong from the management perspective.

Then to the organizational perspective. One special characteristic of the Court is that it operates within the political context, therefore it's not always fair to make the comparison to a private sector company. Many procedures in the Court are dictated by laws and other regulations, and are therefore often, either directly or indirectly, under the formal control of politicians. This means that the management need to consider the political context linked to the operational decisions. Due to the limited autonomy and authority of an individual organization, this might lead to inflexibility of the process and management.<sup>97</sup>

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<sup>97</sup> Petra Pekkanen: Doctoral Dissertation: Delay reduction in courts of justice – possibilities and challenges of process improvement in professional public organizations. 2011. Acta Universitatis Lappeenranta 444.p.35

When analyzing the reform further, one organizational characteristics of the Court, the multilingualism, is rising above all. The Court is required to observe the principle of multilingualism in full in order to communicate with the parties in the language of the case and to ensure that the case-law is disseminated in every one of the Member States. In practice, this requirement takes the form of obliging the Court to manage up to 552 language combinations.

Even though the political objective is the linguistic equality, one could argue is the strict imperative requirement becoming an obstacle for operational changes and development and will therefore prevent the flexibility and adjustability of the Court, without forgetting the cost burden it causes. Could something related to the linguistic services be rationalized?

To my opinion, at least with the GC, it should be carefully considered. According to the presentation held by Heikki Kanninen, the Vice President of the General Court, in October 2016, during our student visit to the CVRIA, the proceeding languages in year 2016 were approximately following; English 34%, French 24%, German 17% and Italian 9% and Spanish 6%. These 5 main languages cover already 90% of all of the cases. Maybe the approach of translating everything automatically into every official language of the Union, should be changed to the direction that the translation is done, in addition to these 5 main languages, only on request.

The Translation Directorate General (TDG) is the institutions largest service. In year 2016 and with the 613 lawyer-linguistics, the staff was 28,3% of the Court' total staff. With streamlining and rationalizing the work of the linguistic services and with the provision of ever more efficient IT tools, e.g. computer-assisted translation, huge efficiency improvements and cost reduction possibilities are available.

Then another organizational finding is related to the traditionally fixed roles and responsibilities the static Court environment is said to have. According to the Annual Report 2016, The Court has used an administrative staff to complement The Court staff. To my opinion, this is a positive sign and something I see as a really good example of internal flexibility. The rotation of jobs and changing roles and responsibilities, if of

course well-managed and on a voluntary-basis, is always a good way to increase motivation and satisfaction among the employees. Satisfied employees are usually also more productive.

### 5.3 Dynamic House of the CJEU

I continue now the building of the House of the European Court of Justice with remaining and essential elements.

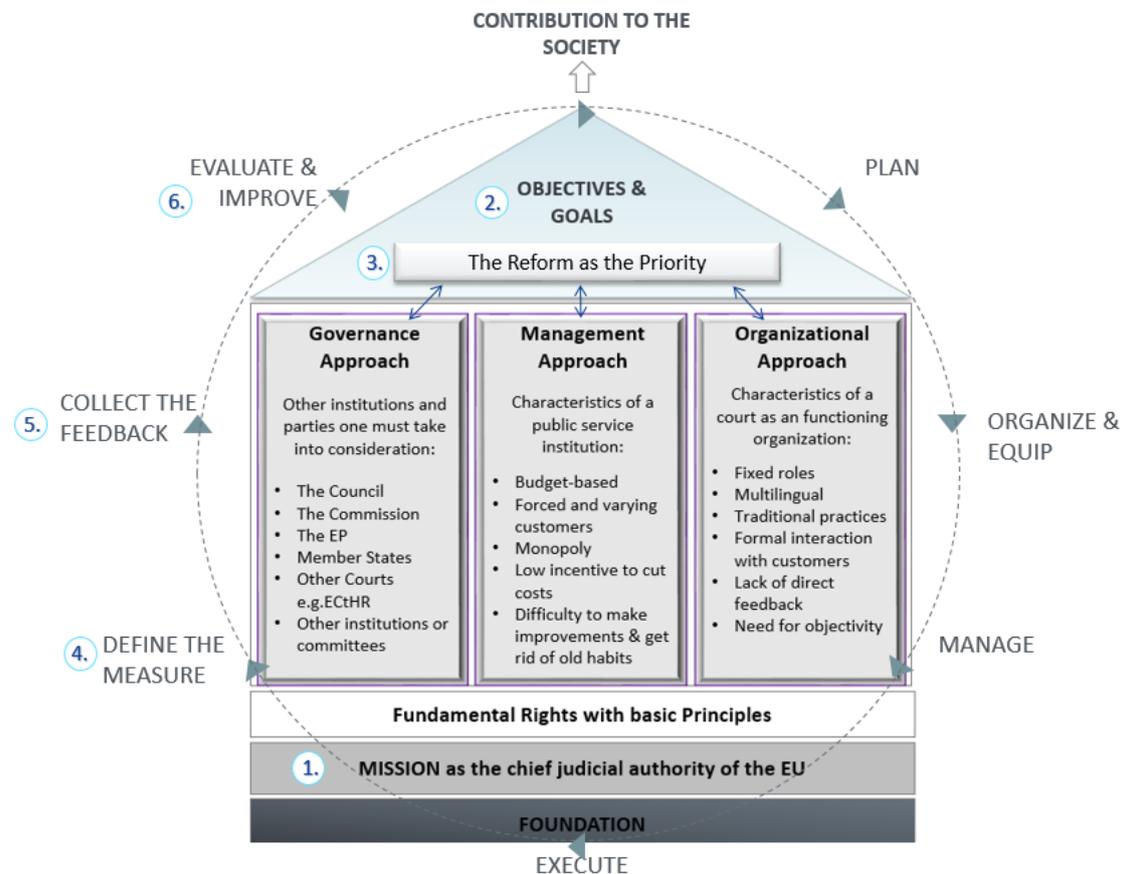
The European Court of Justice has a clear function, 1. purpose and mission as the chief judicial authority in the European Union. As the Courts 2. objectives and goals can be seen its contribution to the society of protecting the fundamental rights, legitimate expectations, legal certainty and judgements within a reasonable time.

Under the objectives and goals, there's a new element in the roof, the Courts' 3. priorities which for last 5 years, can well be seen the whole reform initiative. All pillars below are supporting the common priorities and aiming for the same target. The target of the reform is ultimately the systemic and lasting strengthening of the structure of the courts of the European Union, in the interest of litigants.<sup>98</sup>

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<sup>98</sup> European Commission 2017. DRAFT General Budget of the European Union for the financial year 2017. Available at: <http://eur-lex.europa.eu/budget/data/DB/2017/en/SEC04.pdf> p. 4

Picture 2. The Dynamic House of the European Court of Justice



What I think has been lacking in the CJEU, are the latter part of the success factors; 4. clear measurement of performance, 5. the feedback collection on the done efforts and on results and 6. an organized audit of objectives and results to get rid of unproductive activities. These all are important elements of a learning and at the same time flexible organization.

The circle in the picture, illustrates the continuing journey that the Court, with its reform(s), is now on. The Journey means also, that even though the certain targets are met, then new targets are defined and the journey continues. At the same time, the status of the house is strengthening.

When thinking the reform as a journey and the fact that it will happen in three iterative phases, the Court, has now a tremendous opportunity to learn from the previous phases.

By collecting the feedback on done efforts and analyzing the journey so far, the corrective actions could be executed. This would lead to improvements in the process, so that the remaining last phase could be executed with the manner that is more flexible and cost efficient than the previous phases. There's no point of repeating the same mistakes again. It's important to remember also that, when functioning as a true learning organization, all unproductive and unnecessary activities should be removed. This might be a challenge for an organization that is used to the certain traditional way of doing things.

As a practical hint, the feedback of the reform as well as proposals for improvement for the next phase could be collected e.g. among the employees, which could lead to innovative findings and proposals of new ways of doing things. This would also increase the positive feeling within the employees that their opinions are heard.

We have now included all the needed elements to the *Dynamic House of the European Court of Justice*. They all are needed so that the building survives in a changing environment and can fulfill its purpose in the society in an efficient manner. Being a truly dynamic in a way illustrated in the picture, should lead to increased flexibility towards the change and improvements in the efficiency.

Based on the statistics and findings presented in this thesis, I can conclude that some of the elements have been lacking during last 5 years and are still missing from the work and management done in the CJEU.

## 6 CONCLUDING REMARKS

In a rapidly changing world, the courts have been considered stable and unwavering organizations experiencing almost no external pressure for change. They have been widely regarded as resistant to improvements and difficult to change, if not unchangeable. During recent years, the court work has anyway been in turmoil and courts are facing criticism because of the delays, high costs and alleged decline in the quality of the results.<sup>99</sup>

The whole process of European integration is currently facing serious challenges such as Euro zone crisis, consequent flood of asylum seekers as well as speculation of “Brexit” or “Grexit”.<sup>100</sup> This leads to a pressure to enrich and extend judicial expertise in courts due to several ongoing, globally linked societal and cultural developments.<sup>101</sup> In addition to this, completely new area of expertise is needed because of the application of information technology is broadening with fast speed. This is not only outside the Court but also inside, as provision of ever more efficient information technology (IT) tools has been set as an objective to enable greater efficiency in the performance of the Court.<sup>102</sup>

The Court of Justice of the European Union has become a large institution, of more than 2100 persons. However, the institution’s management has mainly remained the same.<sup>103</sup> Any organization, whether biological or social, needs to change its basic

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<sup>99</sup> Haavisto, Vaula 2002. Doctoral Dissertation: Court work in transition. An Activity-Theoretical Study of Changing Work Practices in a Finnish District Court 2002. University of Helsinki. Department of Education. Helsinki University Press. p.2

<sup>100</sup> Vanttinen, Sara 2016. In search for the European Solidarity: The rule of law within the European Union in the framework of constitutional pluralism, p. 77. EDILEX Edita Publishing Oy 2016

<sup>101</sup> Haavisto, Vaula 2002. Doctoral Dissertation: Court work in transition. An Activity-Theoretical Study of Changing Work Practices in a Finnish District Court 2002. University of Helsinki. Department of Education. Helsinki University Press. p.66

<sup>102</sup> European Commission 2017. DRAFT General Budget of the European Union for the financial year 2017. Available at: <http://eur-lex.europa.eu/budget/data/DB/2017/en/SEC04.pdf> p. 7

<sup>103</sup> Dehousse, Franklin 2011. The reform of the EU courts, The need for management approach, p. 19 Egmont Paper 53.

structure if it significantly changes its size and any organization that doubles or triples in size needs to be restructured. Similarly, any organization, whether a business, a nonprofit, or a government agency, needs to rethink itself once it is more than forty or fifty years old, so that it does not outgrow from its policies and its rules of behavior.<sup>104</sup>

With the reform in questions, the Court is now trying to restructure. The change and improvement is urgently needed due to the inefficiency of the Court to maintain legal certainty and to secure the due process of law, but as well, due to the increasing workload of employees of the Court.

To sum up, the Court used as the most important criterion when choosing between the two options to execute the reform by adding new judges and by absorption of CST or by founding more specialized courts; effectiveness, flexibility and consistency, as urgency was more relating to the situation at hand.

After two executed phases of the reform and based on the findings, were these targets met?

Flexibility was explained to be in the decision of not founding a specialized court but to increase the number of judges. According to the Court, the flexibility comes with the reversibility of the reform, meaning that the number of judges can, in flexible way, be decreased, if the extra staff would not be needed anymore. This is anyway something that is really difficult to believe. If the Member States could not agree on nominating a smaller number of judges in the first place, how would they ever agree on doing away with an office.

Based on the findings, we can make some general conclusions related to the flexibility. It seems that, even with some of the new appointed judges were previously judges in the CST, it takes time to get the new organization up and running and the new staff onboard and working. After the first year of appointments, the statistics so no major

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<sup>104</sup> Dehousse, Franklin 2011: The reform of the EU courts, The need for management approach, p. 19 Egmont Paper 53.

changes in the amount of completed cases nor backlog of the cases. The duration of the proceedings has anyway decreased a bit and that's a good sign.

As the whole approval phase took almost 4 years, we are not talking about truly flexible environment. To defend the Court, these kinds of decisions are anyway affected by the political context so the long procedural time cannot be seen to be caused by solely by the Court. Also, it needs to be remembered that cases are usually related to some fundamental right of a party, so the thorough investigation is partially justified. Valid point to bring out is also, that cases related to the *obligation to adjudicate within a reasonable time*, T-479/14 Kendrion v Court of Justice of the European Union and T-577/14 Gascogne Sack Deutschland GmbH and Gascogne v Court of Justice of the European Union, were both judged in favor of the complainant early this year. This means that the European Union, represented by the Court of Justice of the European Union, was ordered to pay compensation of damages of approximately 600 000 euros. Reasonable time principle is therefore a valid concern for the Court, even though the possible damage expenses were a bit exaggerated in the original planning documents.<sup>105</sup>

The effectiveness was explained by the Court to be related to judge increase, which would halt the increase the number of pending cases, clear the backlog of pending cases and reduce length of proceedings. As with flexibility, the statistics anyway reveal that none of those targets were properly met. Flexibility, efficiency and productivity improvements are rarely met by increasing the number of staff, so something more is needed to tackle the problem.

Many of the European Court of Justice' procedures are dictated by laws and other regulations, and the operations are often under the control of the Member States. This means, that when making changes or big management decisions, especially if they

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<sup>105</sup> Judgment of the General Court (Third Chamber, Extended Composition)

10 January 2017T-577/14 - Gascogne Sack Deutschland ja Gascogne v. Union available at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=186675&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=46504> and

Judgment of the General Court of 1 February 2017 — Kendrion v European Union (Case T-479/14) available at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=188867&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=45991>

require more budgeted money, The CJEU need to take account of the political context linked to the topic. This might cause challenges, because some central governmental instances might feel that their priority is policy-making, rather than operations. This anyway should not prevent the organization of such importance to totally discard the need for a change and effective management.

What comes to the budget, and even though it's decided within the overall EU budget and from the CJEU perspective comes automatically, it cannot be increased year after year. Within the challenging time of an economic insecurity in Europe, one should even more thoroughly investigate the different alternatives to enable the change and soundly justify the increase in spending, if needed. In my opinion, e.g. the counter-option of appointing more legal secretaries instead of judges, were not properly investigated and calculated. The estimated increase to the CJEU budget for this year is over 5% ending up with the total budget of nearly 400M euros.

One additional thing must be mentioned, as we are reaching the end of this study. The purpose of the *regulation (EC) [1049/2001](#) of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents*<sup>106</sup>, is to make access to the documents of the European institutions easier for citizens. They may access any type of documents, subject to the conditions defined in the Regulation. Despite of the clear regulation and aim for transparent administration the institution can make exceptions and refuse access to a document.

The biggest challenge with this thesis was to find information. Even though there should be public access to the documents of the institutions e.g. budget figures had to be dug out from several different sources. Also, some of the published reports were just including the information favorable to the Court and the less attractive figures and facts were left out. It is of course about the selection of the viewpoint and the message you

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<sup>106</sup> EUR-Lex - I14546 – EN: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AI14546>

want to emphasize, but at some point, it seemed like the truth was hidden behind some not so relevant measures.

Also, the nomination process for the CJEU Judges and Advocate General is still far from transparent. Council of the European Union refused to give a requested public access to the opinions on the suitability of Member State candidates to perform the duties of Judge and Advocate General at the Court of Justice and the General Court of the EU. Such opinions are drawn up by the panel a.k.a article 255 committee, and are used by the Member States, when they deliberate on whether to appoint a candidate and the refusal was based on protecting the privacy of an individual.

Despite the European Ombudsman decision 1011/2015/TN<sup>107</sup> to welcome the council's policy change and despite the proven fact that greater publicity of the panel's output could not only maximize the effectiveness and enhance the democratic legitimacy and accountability of the respective judicial selection processes, which might even in turn strengthen the authority of the European courts in the eyes of the public as a whole, the panels opinions and selection process remains preserved.<sup>108</sup>

Furthermore, one could argue whether this appointment process takes sufficiently into consideration the growing specialization of EU law, which requires and increased experience level.<sup>109</sup>

Even though concluding that the Court did not redeem its promises with the reform or have at least not yet done that, hopefully this is only due to too early measurement point on a longer change journey and with right amount of devotion, the reform will exceed the expectations set to it within coming years.

According to the Court, in addition to the legislative decisions, the Court has for several years explored the reform of working methods implemented and has a very strict

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<sup>107</sup> <https://www.ombudsman.europa.eu/en/cases/summary.faces/en/68468/html.bookmark>

<sup>108</sup> Bobek, Michal 2015. *Selecting Europe's judges: A critical review of the appointment procedures to the European courts*. Oxford University Press. p. 220.

<sup>109</sup> Franklin Dehousse 2011: *The reform of the EU courts, The need for management approach*, p. 13 Egmont Paper 53.

framework of Rules of Procedure of the Courts, designed to guarantee the proper administration of justice and equal treatment of all parties. The reform of the Rules of Procedure of the courts is offering a valuable opportunity to enhance efficiency in dealing with cases.<sup>110</sup>

To study this more and to define proper and better flexibility and productivity measures and evaluation, an access to the Courts inside evaluation studies, information and procedures would be needed, or a possibility to perform a new study or survey inside the Court to find out e.g. how the employees of the Court feel about the done reforms?

This would be an interesting topic for the future and wider research, concentrating on the Courts internal operational procedures and deepening the understanding of the subject for improving the effective management of the CJEU.

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<sup>110</sup> European Commission 2017. DRAFT General Budget of the European Union for the financial year 2017. Available at: <http://eur-lex.europa.eu/budget/data/DB/2017/en/SEC04.pdf> p. 6