

COURT OF JUSTICE OF THE EUROPEAN UNION - INTERNATIONAL COURT

Associate professor **Ioana Nely MILITARU**¹

Abstract

Court of Justice of the European Union (CJEU) performs according to its competence, the position of International Justice in solving disputes between two or more subjects of international law. International jurisdiction of the Court of Justice of the EU is - mandatory that each Member State has the opportunity to seize this court if it considers that another state violated an obligation incumbent upon it under Union Treaties; - optional in disputes between Member States in connection with the subject Union Treaties.

Keywords: Court of Justice, international justice, litigation, EU treaties, compulsory jurisdiction, optional jurisdiction

JEL Classification: K33, K41

I. Court of Justice - Court international²

The treaties of the European Union to impose obligations on Member States, and had the duty of putting at their disposal the means to make them should be respected. So, each Member State has the full right to an action before the Court of Justice of the European Union (C.J.U.E.) to resolve the dispute that you opposed and partners in implementation or interpretation of Union law (259 TFEU³ TEuratom, 142⁴).

The Court of Justice is also competent to rule on any dispute between Member States in connection with the subject of treaties, where it is seised with regard to this dispute under a compromise (article 273 TFEU and 154 TEuratom).

Thus, TFEU TEuratom, and predict that whenever it puts into question the application and interpretation of the provisions of the treaties in a dispute between States, the jurisdiction of the Court of Justice of the EU is mandatory.

It is empowered to resolve disputes both between the Member States, as well as to appreciate the necessary sanctions against hiring them.

The jurisdiction of the International Court of Justice, according to TEuratom, TFEU and manifests itself in two situations:

- in the first situation the Court has jurisdiction binding and is considering the possibility for each Member State to refer the matter to the Court if it considers that another Member State has breached one of the obligations incumbent on the basis of Treaties (art. 258, 259 TFEU and article 142 paragraph 1 TEuratom).

Of note is that the Rome Treaties were incorporated in burden Court mandatory jurisdiction and a main international, whenever it comes to disputes arising between Member States regarding the application of the treaties. In this situation, the Court must not inquire whether a settlement provided for by the treaties could lead to resolution of the dispute.

- in the second case, TEuratom specify a TFEU and international voluntary jurisdiction for the Court of Justice in the case of disputes between Member States in connection with the subject of treaties.

This optional jurisdiction is subject to the existence of a trade-off between the States in dispute (art. 273 TFEU and article 154 TEuratom).

¹ Ioana Nely Militaru - Department of Law, Bucharest University of Economic Studies, ioanelimilitaru@yahoo.com

² See, Brândușa Ștefănescu, Court of Justice of the European communities, Scientific and Encyclopedic Publishing, Bucharest, 1979, p. 98, 105.

³ The Treaty of the European Union's operation.

⁴ The Treaty establishing the European Atomic Energy Community.

II. Court of Justice-more than an International Court⁵

The principles⁶ underlying the Community Court are fundamentally different from those that inspire international law jurisdictions.

Any international jurisdiction is, crucially, voluntarily consented. Thus, the International Court of Justice in the Hague (ICJ) is the primary judicial organ of the United Nations, whose jurisdiction is in principle voluntary and compulsory jurisdiction is exceptional (since only a small number of States used the optional clause art. 36 of its statutes)⁷.

A unique situation in international relations is determined by the Court of Justice of the European Union (CJEU), which has a mandatory jurisdiction-which means not only that it can be referred to it unilaterally against Member States under art. 258 and 259 TFEU, for example, but that in the area that it was assigned, within its competence is exclusive; art. 344 TFEU specifies in this respect that: "Member States undertake not to submit a dispute concerning the interpretation or application of the treaties to another mode of settlement than provided for by them."

Judge International supports the effects of imperfections⁸ and gaps to the right, which leads to the distinction between disputes litigants⁹ (legal disputes in accordance with article 36 of the Statute of the International Court of Justice) and non litigants¹⁰.

Community, on the contrary, the judge as a national judge, most often is called upon to intervene over a shipment made by a national judge, before which the opposing parties may not, under penalty of denigrating, refuse formalization¹¹. Purpose its mission is defined as being to ensure "respect of law in the interpretation and application of the treaties" (19 TEU), without having to refer to the nature of the rules, which allow the community a total independence of judges for choosing sources relied on by the legal interpretation of the texts.

While the Court of Justice to judge disputes which take birth among individuals (individuals and legal entities) and international institutions, the competent jurisdiction is in principle only to resolve disputes between States.

While the Court of Justice direct, private access to it even if it is limited¹², in the case of international jurisdiction, the individual is kept away and not take part in the procedure to unfold in front of it, because it is not the subject of public international law.

Moreover, the private persons can act before the Court in Luxembourg even State whose nationals are ultimately curb its sovereignty¹³.

Whether international courts pronounce, in principle, decisions which are binding only for those States¹⁴, decisions of the Court of Justice in Luxembourg, on the contrary, they not only compulsory, but force and enforceable in the territory of the Member States¹⁵ (280 TFEU and 159 TEURATOM)-within the limits of the territory of the Union.

⁵ See R. Mehdi, *L'Avenir de la justice communautaire Enjeux et perspectives*, La documentation française, 1999, p. 142.

⁶ See, Boulouis J., *Apropos of the fonction normative de la jurisprudence. Remarques sur L'Oeuvre de la Cour jurisprudentielle de justice des Communautés*. Melanges Waline, L.G.D.J., 1974, tome I, p. 148. Cour de justice des Communautés européennes, *L'Avenir de systeme tionnel - legal de l'Union européenne*. Document de réflexion présenté au Conseil de l'Union européenne le 27 mai 1999.

⁷ The jurisdiction of the ICJ will work only if they are connected by a declaration of acceptance (article 36 para. 2 of the UN Charter), see Alexandru Bolinteanu, Adrian Năstase, Bogdan Aurescu, *Contemporary international law*, All Beck, Bucharest, 2000.

⁸ See Guy Isaac, Marc Blanquet, *Droit communautaire general*, 8 ed. Dalloz., Paris, 2001, p. 251.

⁹ Optional clause from article. 36 of the Statute of ICJ concerning how to recognise as compulsory ICJ jurisdiction by States has not only used by a small number of States, but each time the acceptance statements were accompanied by reservations.

¹⁰ ICJ, Rec. 1966, 36 and 47.

¹¹ ECJ RULING Algera, 12.7.1957, aff. 7/3-7/56 and 57, rec. 118; see Lagrange, *La Cour de Justice des Communautés européennes du Schuman plan of l'Union européenne* in Melanges Dehousse, Labor. Bruxelles et Nathan, Paris, 1979, tome II, p. 127.

¹² Within the ECSC was allowed only for legal persons-businesses.

¹³ See, Brândușa Ștefănescu, op. cit. p. 138.

¹⁴ As an example, the decisions of the International Court of Justice have always mandatory force party (article 94 paragraph 1 of the Charter of the UNITED NATIONS). Mandatory force of a relative, are not mandatory except for the parties to the dispute and only about the cause that has been resolved. For details, see Adrian Năstase Alexandru Bolinteanu, Bogdan Aurescu, op. cit., p. 206.

¹⁵ Thus, decisions which decided to penalize agents pay fines are enforceable in the territory of the Member States without the need for exequatur. See Roxana Munteanu, *European Law*, Oscar Print, Publishing House, Bucharest, 1996, p. 241.

The Court of Justice is empowered to pronounce sanctions (pecuniary) against any litigant, so Member States and against.

All this makes the Court of Justice in the internal jurisdiction of States, a community¹⁶ engaged in a process of integration being vested with not only guarantee compliance with Community law, but also with the guarantee of unity of its application¹⁷.

The Court of Justice is a jurisdiction within the Union of States, modeled on the State courts by litigants person by nature of disputes which are subject to and through the procedure¹⁸ after stating that behaves the same as supranational¹⁹ Court federal jurisdiction, through its extremely varied and comprehensive²⁰.

III. Conclusions

The Court of Justice of the European Union, through its jurisprudence, has a major contribution to the process of European integration. It was founded as an independent authority to ensure that the interpretation and application of the treaties, the Union territory of the Member States of the European communities initially, currently the EU. In this respect, the Court of Luxembourg has both a court jurisdiction, as well as those of federal courts. Through its competence extremely varied and comprehensive, C.J.U.E., although the International Court is behaving in the same time as the Supreme Court of a federal State, highlighting the constitutional powers of control, administrative control, or in full jurisdiction²¹ in disputes between Member States, the organs of the Union, private individuals and Member States, or even private individuals²². The Court of Justice also has advisory functions as a Court of arbitration and as a Court of appeal²³.

Bibliography

1. Brândușa Ștefănescu, *Curtea de justiție a Comunităților Europene*, Scientific and Encyclopedic Publishing, Bucharest, 1979.
2. Mehdi R., *L'avenir de la justice communautaire Enjeux et perspectives*, La documentation Française, 1999.
3. Boulouis J., *Apropos de la fonction normative de la jurisprudence. Remarques sur l'oeuvre jurisprudentielle de la Cour de justice des Communautés*. Melanges Waline, L.G.D.J., 1974, tome I.
4. Alexandru Bolintineanu, Adrian Năstase, Bogdan Aurescu, *Drept internațional contemporan*, All Beck, Bucharest, 2000.
5. Guy Isaac, Marc Blanquet, *Droit communautaire general*, 8 ed. Dalloz, Paris, 2001.
6. Roxana Munteanu, *Drept European*, Oscar Print, Bucharest, 1996.
7. J.V. Louis, *L'ordre juridique communautaire*, 6 ed., Bruxelles, 1993.
8. L. Cartou, *L'Union européenne, Traités de Paris-Rome-Maastricht*, Paris, Dalloz, 1996.
9. Fabian Gyula, *Curtea de Justiție Europeană, Instanță de judecată supranațională*, Rosetti, Bucharest, 2002.
10. Ioana Nely Militaru, *Trimiterea Prejudicială în fața Curții Europene de Justiție*, Lumina Lex, Bucharest, 2005.

¹⁶ See, Roxana Munteanu, op. cit., p. 241.

¹⁷ See J.V. Louis, *L'Ordre juridique communautaire*, 6 Ed., Brussels, 1993, p. 52 56; see Commission decision of the European human rights of 19 January 1989 on the quality of the domestic jurisdiction of the Court of Justice in Luxembourg with regard to art. 26 of the European Convention on human rights, in L'annuaire français du droit international, 1988, p. 383; see Roxana Munteanu, op. cit., p. 241.

¹⁸ See I. Cartou, *L'Union Européenne Traités de Rome, Paris, Maastricht*, Paris, Dalloz, 1996, p. 164 and 165.

¹⁹ See Fabian Gyula, *The European Court of Justice, the Court supranational*, C. A. Rosetti, Bucharest, 2002.

²⁰ "It highlights the constitutional control duties (article. 228 TEC; 173 TEC), administrative control (174 TEC) or in full jurisdiction in disputes between Member States, community bodies and States, community bodies and private individuals and Member States, or even particularii between them."

²¹ See Ioana Nely Militaru, *Sending an interlocutory before the Court of Justice*, Lumina Lex, Bucharest, 2005, p. 13.

²² See, Brândușa Ștefănescu, op. cit. p. 139.

²³ See Ioana Nely Militaru, op. cit. p. 14 et seq.