EPSU CJ
European Public Service Union
Court of Justice
associated to Union Syndicale Fédérale

EN

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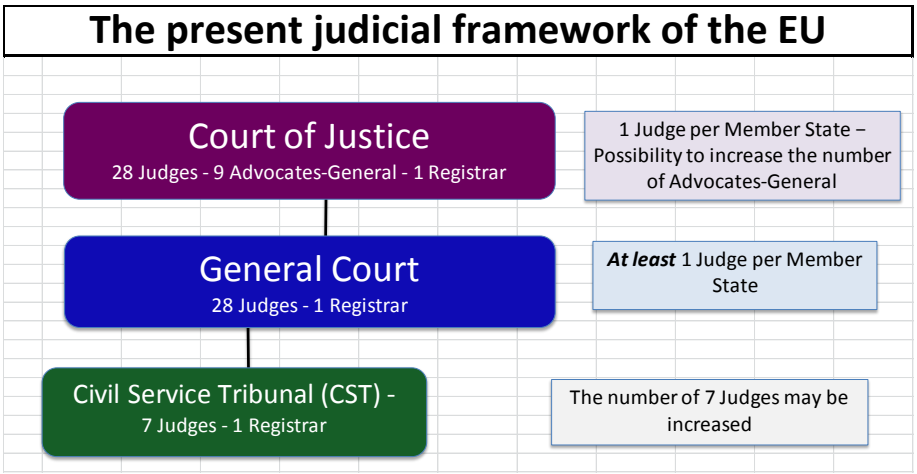
No to abolishing the CST!

Giving in to a sweeping tide of intergovernmentalism, the Court of Justice is proposing to abolish the Civil Service Tribunal (CST). EPSU CJ opposes that: The Institution does not need more judges, but more staff!

2000– Before even the signing of the Treaty of Nice, which opened the way to establishing '**specialised courts'** (now Article 257 TFEU), Member States asked (Declaration No 16) the Court of Justice and the Commission to prepare as swiftly as possible a draft decision establishing a judicial panel entrusted with settling civil service disputes. This will was not subject to any *'re-evaluation'* clause (as opposed to Declaration No 14).

The European constituent power thus expressed its will to create **three levels of jurisdiction**.

2004– Adopted by the Council, backed by a positive opinion from the Court of Justice, Decision 2004/752 establishing the CST recites that «*the establishment of a specific judicial panel to exercise jurisdiction* […] *in European civil service disputes* […] *would improve the operation of the Community courts system* ».



As for the **appointment of the 7 judges** of this new court, an original mechanism was introduced: contrary to what happens with the Court of Justice and the General Court, where each Member State chooses its own candidate, for the CST it is the candidates themselves who apply directly for the job; a selection committee draws up a list with twice as many candidates as the judges to be appointed by the Council; it is the first judicial body of the Union whose composition is at odds with the intergovernmental approach.

A further important innovation of this new specialized tribunal is the **amicable settlement** of disputes.

2011– Facing an increasing case burden, which sometimes entails excessively lengthy proceedings, the Court of Justice asked the EU legislature **to increase the number of judges of the General Court**. The Commission, Parliament and Council agreed in principle, ***but***… diverging views of the Member States as to the way of appointing additional judges proved to be impossible to reconcile!

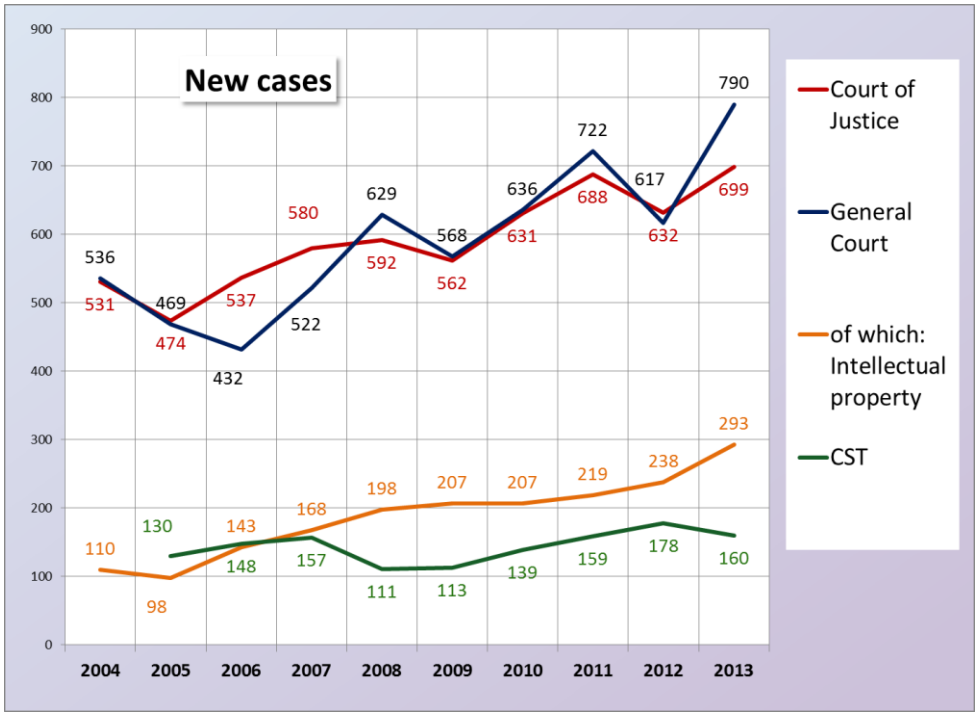
2014– The Court of Justice takes note of the Council's conclusion that *"any solution involving fewer Judges than the number of Member States, and, consequently, requiring a choice to be made between Member States, would encounter the same difficulties as those which, in recent years, have prevented agreement from being reached in the Council"* .

Similar 'difficulties' have prevented Member States from reaching agreement on appointing the judges of the CST.

Conclusion: Whenever the number of judges departs from the sacred number 28 or a multiple of this number, the legislative process is bogged down by the whims of the Member States, to the detriment of the Institution, its staff and the litigants.

In search of the sacred number 28

Rather than criticising national egoisms and the cavalier attitude of the Member States, as would have done old-



time Presidents and Members of this Institution, the Court of Justice is struggling to find tricks to circumvent the obstacle.

By way of a '**legislative initiative'** (which the Treaty curiously allows to a judicial power appointed by the executive power, which will then conveniently hide behind 'expert opinion'), it proposes to add to the General Court the sacred number of 28 judges, in three stages, so that everything would fall into what, in the Council's mind, appears to be the 'natural' order, shaped on its own intergovernmental image.

In the process, the CST would be abolished and civil service cases would return to square one, the General Court; with no legal basis, given that the Treaty (Art. 257) provides for 'establishing ', but not for 'abolishing' a specialised court. Article 257 TFEU would henceforth become a dead letter.

'Lack of alternatives', says the Court of Justice!

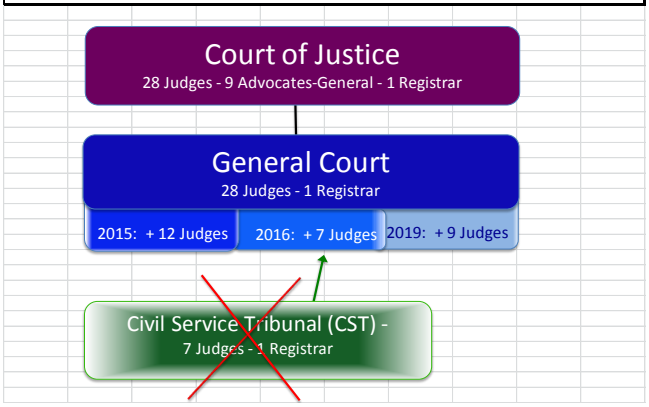
However, in an analytical document, the General Court takes the opposite view. **Alternatives do exist**, which are less expensive, more efficient since they rely on specialisation, more respectful of litigants' rights and legally indisputable.

If the Court of Justice's plan were to be adopted, setting up 'labour disputes' Chambers within the General Court would do nothing more than perpetuate the Member States' quarrel: In a court in which Economic Law and huge financial stakes prevail, **Civil Service cases would look like a poor relative**, unrewarding for the judges who would be placed in these Chambers, and who would no longer be chosen on the criterion of their specialising in the field of Civil Service.

As for appeals on points of law, which would henceforth be of the exclusive competence of the Court of Justice, plans for swiftly determining cases are under consideration (increased use of reasoned Orders, processing elements of the case files by the Research & Doc Directorate, introducing a mechanism for filtering appeals).

Finally, any increase in the number of judges and their chambers will not help to speed up proceedings, as it is hoped, without an increase in the staff levels of the Institution's Services (Translation in particular), a fact which the Court of Justice passes over in silence, including before the Member States. Given the reluctance of some Member States as to the costs of this reform, there is every reason to believe that the Court of Justice expects the Services to cope with a significant increase in the case load with no change in staffing levels!

Legislative initiative of the Court of Justice



Counter-proposal of the General Court