

# OVERVIEW ON THE PRINCIPAL MEANS OF APPEALS LODGED BEFORE THE COURTS OF THE EUROPEAN UNION

OANA-MĂRIUCA PETRESCU<sup>1</sup>

## Abstract

*Knowledge and understanding the means of appeals lodged before the courts of European Union (Court of Justice and Tribunal – a. n.), limited only to the points of law, are very important taking into account that the modality to control a judgment delivered by an inferior court exists since ancient times, being governed, among others, by the Latin principle: res judicata pro veritate accipitur.*

*In the following, we will examine, in general, the judicial control of the judgments and orders delivered by the General Court and by the Tribunal of Civil Service, as a specialized tribunal on civil servant issues, but also the sui generis means of appeals and the extraordinary means of reviews of the judgments and orders. We have to mention that all of them are exercised in accordance with the rules of procedure of the European courts and the Statute of the Court of Justice of the European Union.*

*Another aspect to be mentioned is that the judgments of the Court of Justice cannot be challenged to another court, as they remain final and irrevocable.*

**Keywords:** *Treaty of Lisbon, European courts, means of appeals, sui generis means of appeals, extraordinary remedies.*

## I. Introduction

The theoretical and practical importance of knowledge the role that the means of appeal have for each of national judicial system, including for the European Union, has determinate the analysis during the present paper of the following issues:

- the appeal, which can be brought before the Court of Justice against the judgments and orders of the General Court and against the decisions of the Civil Service Tribunal, as a specialized tribunal with observance of the European provisions on the conditions to lodge an appeal, the general and special procedural terms, the principal categories of the judgments that can be appealed, the grounds for appeal which shall be concise, clear and without any other meanings;

- the sui generis means of appeal (opposition and complaint when the court omitted to give a decision on a specific head of claim or on costs), as exceptions from the ordinary procedure, which can be exercised when the court does not take into consideration the defendant defences for various reasons or when the court omitted to decide on one of the heads of complaint invoked by the applicant in his application. Bearing in mind all these, we can observe that the specificity of these means of appeal consist in combining characters of many means of appeals which may be brought before the European courts;

- exceptional review procedures (third – party proceedings and revision), which represent the possibilities offered to interested parties, in the cases and conditions stipulated by the Statute of the Court of Justice and in the rules of procedures of the European courts, to request the court that delivered the contested judgment or decision to withdraw its own judgment or decision and to proceed to a new trial. This seems to be fair since any new fact discovered, relevant and unknown prior to the original judgment, may determine a different solution.

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<sup>1</sup> Ph. D., postdoctoral researcher within University of Deusto – Faculty of Law, Bilbao, Spain, 24 Avenida de las Universidades, (email: oanapetrescu27@yahoo.com).

## II. The appeal

In the European Union law, the appeal represents the mean of appeal by which the parties (e.g. institutions, bodies, agencies and offices of the European Union, the Member States, the natural and legal persons or other persons) may request to Court of Justice or General Court, as the case maybe, cancellation of the judgment, whenever it is consider to be illegal. The general rules concerning the appeal are provided in the article 256<sup>2</sup> of TFEU<sup>3</sup> para.1 in accordance to which the “*decisions given by the General Court<sup>4</sup> [...] may be subject to a right of appeal to the Court of Justice [...] in “the actions or proceedings referred to in articles 263, 265, 268, 270 and 272, with the exception of those assigned to a specialised court set up under article 257 and those reserved in the Statute for the Court of Justice” limited only to “points of law, in the conditions and the limits provided for by the Statute”, while the judgments delivered by the Civil Service Tribunal in the first instance, according to art. 270<sup>5</sup> of TFEU can be challenged with appeal to the General Tribunal, on points of law, such as: grounds of lack of competence of the Civil Service Tribunal, a breach of procedure before it which adversely affects the interests of the appellant; the infringement of Union law by the Civil Service Tribunal.*

We can noticed that once the General Court have been established in 1989, and later, the Civil Service Tribunal in 2004, the court in Luxemburg received the second grade of jurisdiction, namely court of appeal<sup>6</sup>, underlining that the judgments and the orders delivered by the latest remain final and irrevocable, as the court in Luxembourg “*doesn't know these means, as it judges in first and last instance<sup>7</sup>*”.

In the following we shall analyze shortly the principal elements of appeal, as follows:

### a. Categories of decisions that can be appealed

According to the above mentioned, we can notice that the appeal may be lodged in the cases strictly provided by the Treaty on the Functioning of the European Union and in accordance with the rules of procedure of the European courts, in the following situations:

- before the Court of Justice against the judgments delivered in first instance by the General Court and before the later one against the judgments and orders delivered by the Civil Service Tribunal, in first instance;
- before the Court of Justice or the General Court against the decisions when the General Court or Civil Service Tribunal, as the case maybe, are “*disposing of the substantive issues in part only or are disposing of a procedural issue concerning a plea of lack of jurisdiction or inadmissibility*”, in accordance with article 56 of the Statute of the Court of Justice and article 9 of Annex I to the Statute of the Court of Justice concerning the Civil Service Tribunal;

<sup>2</sup> Former article 225 of TEC.

<sup>3</sup> The Treaty on the Functioning of the European Union.

<sup>4</sup> Augustin Fuerea, *Manualul Uniunii Europene*, III edition, revised and added, (Universul Juridic Publishing House, Bucharest, 2006), p.116 and the following. The General Court (former known as Court for First Instance(CFI)), as jurisdictional instance of the Court of Justice of the European Union, has been created by Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities (88/591/ECSC, EEC, Euratom) as amended by the corrigendum published in the Official Journal of the European Communities in order to strength the judicial guarantees to individuals through the establishment of the second level of judicial authority. The General Court is an independent Court attached to the European Court of Justice.

<sup>5</sup> Former article 236 TEC.

<sup>6</sup> Fabian Gyula, *Drept instituțional comunitar*, 2nd edition, (Sfera Juridică Publishing House, Cluj – Napoca, 2006), p.306.

<sup>7</sup> Augustin Fuerea, *Instituțiile Uniunii Europene*, (Universul Juridic Publishing House, Bucharest, 2002), p.132.

• against the decisions delivered in the *sui generis* means of appeal and exceptional review procedures<sup>8</sup>.

A special situation exists when the decision have been delivered in absence of the defendant, in which case the appeal can be lodged only against the second decision, which is adopted following the opposition lodged by the defendant.

Regarding the latest aspect, in the doctrine<sup>9</sup> has been raised the question if the first decision delivered in the original dispute, in which the defendant was absent, can be appealed by him/her, jumping over the trial of the opposition. Answering to this question the specialised literature considered that<sup>10</sup> if the rules of procedure of Civil Service Tribunal does not provide such situation, then no appeal against such decision should be lodged by the defendant who have missed in the original dispute bearing in mind the Latin principle: *ubi lex non distinguit nec nos distinguere debemus*. We are agree with this opinion having regard the defendant cannot appeal a decision which is not be enforceable to him/her, but only one that will take effects to him/her.

Finally, can be appealed the following:

- the decisions delivered in the cases when the application to intervene in the original dispute, formulated by the intervener, was dismissed (article 57 of Statute of the Court of Justice);
- the decisions of the General Court concerning: suspension of a measure taken by a institution of European Union (art.278<sup>11</sup> of TFEU); suspension of the necessary interim measures provided in article 279<sup>12</sup> of TFEU etc. (art.57 para. 3 of Statute).

#### b. Categories of applicants

Without going into further details, in general, the applicants are provided in article 56 para.2 of the Statute of the Court of Justice which stipulates that the appeal: „*may be brought by any party*<sup>13</sup> *which has been unsuccessful, in whole or in part, in its submissions*<sup>14</sup>”. However “*the interveners, other than the Member States and the institutions of the Union, may bring such an appeal only where the decision of the General Court directly [and independently] affects them*”, in all the cases when such decision has violated their rights by rejecting the application to intervene in the original dispute, without waiting for the original parties to lodge the appeal as well<sup>15</sup>.

In addition, according to paragraph 3 of article 56 of the Statute of Court of Justice and „*with the exception of cases relating to disputes between the Union and its servants, an appeal may also be brought by Member States and institutions of the Union which did not intervene in the proceedings*

<sup>8</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, Rosetti Publishing House, Bucharest, 2002, pag.119; Koen Lenaerts, Dirk Arts and Ignace Maselis, *Procedural Law of the European Law*, second edition, (Sweet and Maxwell Publishing House, London, 2006), p.459

<sup>9</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.306.

<sup>10</sup> *Ibid*

<sup>11</sup> Article 278 of TFEU stipulates that: „*actions brought before the Court of Justice of the European Union shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended*”.

<sup>12</sup> In accordance with art.279 of TFEU „*the Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures*”.

<sup>13</sup> We mean natural and legal persons, Member States, institutions, bodies, agencies and offices of the European Union – a. n.

<sup>14</sup> Case C-383/99 P Procter & Gamble Company vs. Office for Harmonisation in the Internal Market (OHIM), judgment of 20 September 2001, published in JOCE C no.3 din 05.01.2002, webpage: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:003:0009:0010:EN:PDF>.

<sup>15</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., pag.113; article 9 para 2 of the Annex I of Statute of the Court of Justice

before the General Court [...]”, which means that they become interveners, with a view to comply with the legal order of the European Union<sup>16</sup>.

Instead, the Court of Justice of European Union, through the Advocate-General, cannot file an appeal against the delivered judgment taking into account its neutral position to the parties in the litigation, but also the position of the Advocate-General who „*acting with complete impartiality and independence*”, makes “*in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his/her involvement*” (article 252 para.2 of TFEU).

### c. Terms of appeal

As the term of appeal against the decisions delivered by the General Court and the Civil Service Tribunal is concern, the European Union provisions<sup>17</sup> stipulate that, in principle, the term is **two months from the notification date of the decisions** and “*in accordance with article 278 or article 279 or the fourth paragraph of article 299 of the Treaty on the Functioning of the European Union or article 157 or the third paragraph of article 164 of the EAEC Treaty*”.

Within the same term of appeal can be also challenged the decisions of the General Court ordering, amongst other things: suspension of a measure taken by a institution of European Union (article 278 of TFEU); suspension of the necessary interim measures provided for in article 279 of TFEU or suspension of the enforcement of the decision (article 299 para. 4 of TFEU).

Notwithstanding from the above rules, the Statute of the Court of Justice<sup>18</sup> regulates a **special term of appeal**, that can be filed by any person to the Court of Justice or General Court, as appropriate, of “*two weeks from the notification of the decision dismissing the application*” to intervene in the original dispute.

Bearing in mind the lack of any explicit procedural provisions, we share the point of view issued by the specialised literature<sup>19</sup> according to which the terms of appeals above-mentioned cannot be prolonged, because of the particularities of this mean of appeal.

Furthermore, taking into consideration that the doctrine did not analyse the character of the term of appeal, we consider that, similar to the Romanian civil procedural law, this term is imperative and peremptory<sup>20</sup>, which means that its violation will lead to the forfeiture of the interested party from the right to exercise this mean of appeal, so that the unchallenged decision will remain irrevocable on the date of expiring the term of appeal.

Another aspect to be highlighted refers to fact that the European provisions and the doctrine in the field do not stipulate, directly or indirectly and in a clear manner, the situations in which the term of appeal can be suspended. In this context, we believe that, at the European level, the term of appeal can be suspended rightful in the following situations, which should be applied only to the natural and legal persons and provided *expressis verbis* in the rules of procedure of the European courts, namely:

- the death of the natural person;
- opening the judicial reorganization and bankruptcy of the legal person based on a final decision rendered by the national court of the respective legal person;
- the death of the advocate who assists or represents the party in the dispute;

<sup>16</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., pag.306; Koen Lenaerts, Dirk Arts and Ignace Maselis, op. cit., pag.462; Case C-434/98 P. Council of the European Union v Silvio Busacca and Others and Court of Auditors of the European Communities, judgment of 5 October 2000, published in European Court reports 2000, webpage: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998J0434:EN:HTML>.

<sup>17</sup> Articles 56 and art.9 of the Annex I of Statute of the Court of Justice.

<sup>18</sup> Articles 57 para.1 and art.10 of the Annex I of Statute of the Court of Justice.

<sup>19</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., p.113.

<sup>20</sup> Ioan Leș, *Drept procesual civil*, (Lumina Lex Publishing House, Bucharest, 2002), p.594.

- the intervention of a fortuity situation, which is beyond the control of the natural person to exercise this mean, which can be, from our point of view, an unforeseeable and unavoidable event such as: natural disasters (e.g. flood, fire, earthquake), state of siege, state of emergency or state of urgency.

d. The grounds of appeal

According to the provisions regulated by the Statute of the Court of Justice<sup>21</sup>, the appeal to the Court of Justice or General Court, as the case maybe, shall be limited to “*only points of law*”<sup>22</sup>, based on:

- *grounds of lack of competence of the General Court,*
- *a breach of procedure [...] which adversely affects the interests of the appellant as well as*
- *the infringement of Union law* (by the General Court or the Civil Service Tribunal – a. n.)

Instead, the appeal cannot be lodged against the taxes and the costs or the party cannot be forced to pay the costs<sup>23</sup>, otherwise the appeal will be declared inadmissible.

Similar to the grounds of appeal invoked in the Romanian procedural law<sup>24</sup>, those invoked before the court in Luxemburg must be concise, precise and clear; they can be resolved regardless the order in which they have been mentioned in the application initiating an appeal. Also, it is important that the grounds of law should be written in detail in order to understand better which the grounds for cassation the contested judgment are because it is not enough only to write them, briefly<sup>25</sup>.

Amongst the most invoked grounds of appeal<sup>26</sup>, we can mention:

a. procedural errors. In order to be admitted by the court several conditions should be meet:

i. the applicant shall demonstrate that its interests have been affected, directly and substantially by misapplication of certain rules of procedure, except those which aren't the basis of the solution adopted by the court or those who have been tacitly accepted by the applicant during the original dispute<sup>27</sup>.

ii. a serious prejudice to the interests of the applicant should be brought by the procedural error. Concerning this condition, from our point of view not any prejudice is likely to justify the interest for the appellant to file an appeal against the judgment delivered by the European court.

b. another ground of appeal which is raised by the appellants very often is the infringement of Union law. Moreover, the phrase “*infringement of Union law*” is generally used to designate the primary and the secondary law, the principles of law generally recognized as well as the fundamental

<sup>21</sup> Articles 58 and art.11 of the Annex I of Statute of the Court of Justice.

<sup>22</sup> Case C-362/95 P Blackspur DIY Ltd, Steven Kellar, J.M.A. Glancy and Ronald Cohen v Council of the European Union and Commission of the European Communities, judgment of 16 September 1997, published in European Court reports 1997, webpage: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0362](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0362); Case C-174/97 P. Fédération française des sociétés d'assurances, Union des sociétés étrangères d'assurances, Groupe des assurances mutuelles agricoles, Fédération nationale des syndicats d'agents généraux d'assurances, Fédération française des courtiers d'assurances et de réassurances and Bureau international des producteurs d'assurances et de réassurances vs. Commission, order of 25 March 1998, published in European Court reports 1998, webpage : [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61997O0174&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61997O0174&lg=en).

<sup>23</sup> Article 58 para.2 of the Statute of the Court of Justice; Case C-39/00 Services pour le groupement d'acquisitions SARL v Commission of the European Communities, order of 13 December 2000, published in European Court reports 2000, webpage: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=62000O0039](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=62000O0039).

<sup>24</sup> Ioan Leș, *Drept procesual civil*, op. cit., pag.596.

<sup>25</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., p.115.

<sup>26</sup> Article 112 para.1 point. c) of the Rules of Procedure of the Court of Justice; Art.138 para. 1 point. c) of the Rules of Procedure of the General Court.

<sup>27</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.308.

rights. In many cases, the applicant seeks to obtain a new management of evidence in the court, when in the original dispute he/she either did not have enough time to provide evidence or he/she did not provide the useful evidence at that moment to assure the winning of the dispute or other reasons<sup>28</sup>.

In the end, as a general condition provided by the rules of procedure of the European courts<sup>29</sup>, the appeal cannot modify the object of the litigation filed before the General Court or Civil Service Tribunal, which means that the parties shall present the same final conclusions as those presented before the first instance<sup>30</sup>.

e. Trial the appeal and the legal effects of the judgment

The procedure of trial the appeal is regulated, in detail, both by the Statute of the Court of Justice<sup>31</sup> and the rules of procedure European Court, according to which “*where an appeal is brought [...] the procedure before the Court of Justice shall consist of a written part and an oral part*” which can be eliminated in the conditions established by the court in Luxembourg.

A basic condition to trial an appeal in good conditions is represented by the preliminarily admissibility of the application, which will be considered filed “*by lodging [it] at the Registry of the Court of Justice or of the General Court*”. Whenever it is lodged directly to the Registry of the General Court or the Civil Service Tribunal, the court “*shall immediately transmit to the Registry of the Court of Justice [or the General Court, as the case maybe] the papers in the case at first instance and, where necessary, the appeal*”. Furthermore, the application initiating an appeal shall be drafted in the language of the case used in the judgment delivered by the General Court or by the Civil Service Tribunal which is appealed by the interested party<sup>32</sup>.

In other manner of speaking, an appeal shall meet the same formal requirements, as those required for the written application; otherwise the sanction will be the dismissal of the application as inadmissible.

After the trial of the application initiating an appeal, the judges can delivered one the following solutions<sup>33</sup>:

a. **the applicant withdraws his appeal**, in conditions stipulated by the rules of procedure. If, meanwhile, the term for appeal has expired, the principal effect of the judgment will be the irrevocability of it, gaining *res judicata*. Also, the case will be erased from the Registry of cases and the appellant shall pay the costs, except when these costs have been provoked by the defendant or when the court in Luxembourg order the parties to share the costs where equity so requires, according to article 69 para.3 of rules of procedure of the Court of Justice;

b. when the appeal is obviously inadmissible or unfounded, **the Court of Justice or the General Court, as the case maybe, may** anytime, based on the report of the Judge-Rapporteur and after the hearing of the Advocate-General, to **dismiss the appeal**, in whole or in part, through reasoned order. With the same occasion, the court shall decide related to the costs, as well. Usually,

<sup>28</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.309.

<sup>29</sup> Article 113 para 2. of the Rules of Procedure of the Court of Justice; Art.139 para.2 f the Rules of Procedure of the General Court.

<sup>30</sup> Case C-341/00 Conseil national des professions de l'automobile, Fédération nationale des distributeurs, loueurs et réparateurs de matériels de bâtiment-travaux publics et de manutention, Auto Contrôle 31 SA, Yam 31 SARL, Roux SA, Marc Foucher-Creteau and Verdier distribution SARL v Commission of the European Communities, order of 5 July 2001, published in European Court reports 2001, webpage : [http://eur-lex.europa.eu/smartapi/cgiisga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=62000O0341&lg=en](http://eur-lex.europa.eu/smartapi/cgiisga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=62000O0341&lg=en).

<sup>31</sup> Article 59 of the Statute of the Court of Justice

<sup>32</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.309; Article111 of the Rules of Procedure of the Court of Justice; Article 137 of the Rules of Procedure of the General Court.

<sup>33</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., p.117; Article 61 of the Statute of Court of Justice; Article 119 of the Rules of Procedure of the Court of Justice; Article 145 of the Rules of Procedure of the General Court.

this decision is taken before opening the oral procedure or at latest by hearing the Advocate-General<sup>34</sup> or the judge in charge with this attribution, as in the case of General Court;

c. **admission of the appeal, in whole or in part, by the Court of Justice or General Court, as the case maybe**, in which situation:

i. the decision delivered in first instance by the General Court or Civil Service Tribunal is dismissed or;

ii. the dispute is trailed by the Court of Justice or General Court, as the case maybe, when the case may be tried by the court which was filed it;

iii. the case is transmitted to the General Court or Civil Service Tribunal, as the case maybe, but only regarding the points of law.

Regarding the modality to trial the appeal, although the European provisions in the matter does not provide for anything, we believe that several elements concerning the judgment in first instance of the written application (e.g. modality to deliberate and to deliver the judgment) can be apply by similarity taking into consideration that during the appeal “*the judgment shall be delivered in open court; the parties shall be given notice to attend to hear it*”<sup>35</sup> (article 64 para.1 of rules of procedure of Court of Justice). In this context, the minute or the operative part of the judgment shall be presented in public session.

In addition, “*the Registrar shall record on the original of the judgment the date on which it was delivered*”<sup>36</sup>, which means that the judgment “*shall be binding from the date of its delivery*” (article 65 of rule of procedure of Court of Justice). Furthermore, the written text of the entire judgement together with the grounds are at the disposal of the interested parties in the language of the case or in French language, in front of the trial room<sup>37</sup>.

In other formulation, similar to the file lodged before the Romanian courts<sup>38</sup>, the judgment delivered by the European court of appeal aims to solve any dispute brought before, aiming at achieving a more effective judicial control made by the court of appeal (whether is the Court of Justice or the General Court) than the first court and at avoiding that a illegal judgment shall become final.

In general, the judgment delivered by the court of appeal produces its effects upon the parties and the interveners or in other manner of speaking; they are *inter partes* and not *erga omnes*. In addition, an appeal shall not have suspensory effect<sup>39</sup> (in accordance with article 60 of the Statute of the Court of Justice), except when the Court of Justice decides otherwise, in articles 278 and 279 of the Treaty on the Functioning of the European Union or in article 157 of the EAEC Treaty.

Another effect consists of in divesting the court of appeal, by delivering its judgment, which shall determinate the enforcement of the judgment by the party who won the trial, automatically.

### III. *Sui generis* means of appeal

In principle, the decisions, regardless the legal order in which they have been delivered by the courts (national, European Union or international) may be appealed through ordinary or extraordinary means of appeal.

<sup>34</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.311.

<sup>35</sup> Koen Lenaerts, Dirk Arts and Ignace Maselis, op. cit., p.579.

<sup>36</sup> Article 64 para.3 of the Rules of Procedure of Court of Justice.

<sup>37</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.274.

<sup>38</sup> Ioan Leș, *Drept procesual civil*, op. cit., p.622-623.

<sup>39</sup> Koen Lenaerts, Dirk Arts and Ignace Maselis, op. cit., p.466.

In European Union law, in comparison with the judicial system of the Member States, including Romanian, the judgments can be also appealed through *sui generis* means of appeal, namely: opposition and complaint when the court omitted to give a decision on a specific head of claim or on costs.

Using these means of appeal represents an exception from the ordinary procedure, taking into account that they combine characters of many means of appeals which may be brought before the European courts.

The doctrine<sup>40</sup> considers that one notion is proper to be used as regards these means of appeal such as “*opposition*” taking into consideration that both of them are having a common origin, namely: for various reasons the court either did not consider the defendant defences or does omit to give a decision on a specific head of claims coming from the applicant<sup>41</sup>.

#### a. The opposition

According to the Statute of the Court and the procedural provisions<sup>42</sup> whenever the defendant “*after having been duly summoned, fails to file written submissions [through the defence], in the proper form within the time prescribed, the applicant may apply [to the court] for judgment by default*”.

After the written procedure is finalised, the court shall decide the date for opening the oral procedure in order to continue the debates in the absence of the defendant, hearing the conclusions of the Advocate General and analyzing, in the same time, whether:

- the appropriate formalities have been complied with;
- the conclusions of the applicant are well founded. Their validity is verified only briefly and regarding the state of facts, whilst the legal grounds shall be analysed in detail<sup>43</sup>.

In addition, the court shall rule on the admissibility of the written application, in which situation shall decide, if necessary, conducting preparatory inquiry<sup>44</sup>.

The decision rendered, in a case when the defendant has been absent, is final but it can be “*challenged (by the defendant – a. n.) within one month from the date when it was notified*”<sup>45</sup> through an opposition, “*which must be lodged in the form prescribed by Articles 37 and 38 of these Rules*”. In this context, “*the objection shall not have the effect of staying enforcement of the judgment by default unless the Court of Justice decides otherwise*” (article 41 of the Statute of the Court of Justice).

Bearing in mind all the above mentioned, we can observe that the opposition is a genuine written application, when the defendant asks either for the annulment of the judgment rendered *in absentia* or the admission of his claims formulated against the applicant<sup>46</sup>. This application shall meet the formal formalities provided for in the rules of procedure of the European courts.

<sup>40</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., p.121.

<sup>41</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.318.

<sup>42</sup> Article 41 of the Statute of Court of Justice; Article 94 of the Rules of Procedure of Court of Justice; Article 122 of the Rules of Procedure of General Court; Article 116 of the Rules of Procedure of Civil Service Tribunal.

<sup>43</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., p.122.

<sup>44</sup> Mădălina Voican, Ruxandra Burdescu, Gheorghe Mocuța, *Curți internaționale de Justiție*, (C. H. Beck Publishing House, Bucharest, 2000), p.98; Augustin Fuerea, *Instituțiile Uniunii Europene*, op. cit., p. 127; Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.318.

<sup>45</sup>; Mădălina Voican, Ruxandra Burdescu, Gheorghe Mocuța, op. cit., p.100; Augustin Fuerea, *Instituțiile Uniunii Europene*, op. cit., p. 127.

<sup>46</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., p.122; Augustin Fuerea, *Instituțiile Uniunii Europene*, op. cit., p. 132.



After the notification of the opposition, the court sets the date by which the other party may submit written comments, and the following procedure is carried out by general rules, no matter the court of European Union before which the case was brought.

Nevertheless, the court may decide to suspend the enforcement of the judgment until the trial of the opposition lodged by the defendant, in accordance with the provisions of the rules of procedure.

Regarding the application lodged in term by the defendant, the court shall decide by way of a judgment which may not be challenged again with another opposition<sup>47</sup>, but may be contested with appeal.

To avoid the abuse of using this *sui generis* mean of appeal by the parties and taking into consideration that the European legislation keeps the silence related to it, in our opinion the defendant is allowed to use this mean of appeal only one time.

The original of this judgment shall be annexed to the original of the judgment by default and a note of the judgment on the opposition shall be made in the margin of the original of the judgment by default<sup>48</sup>.

b. Complaint when the court omitted to give a decision

Another *sui generis* mean of appeal is complaint when the court omitted to give a decision<sup>49</sup>, which can be filed by any interested party (applicant, defendant, intervener, which can be, as the case maybe: an institution, an agency, a body or office of the European Union, a natural or legal person) “*within a month after service of the judgment*” or the decision when “*the court [omitted] to give a decision on a specific head of claim or on costs*”, in which situation the court rendered *minus petitia* (article 67 para. 1 of the rules of procedure of the Court of Justice). The same situation can be found in other national legislations of the Member States, including Romanian<sup>50</sup>.

Although the rules of procedure of the General Court and Civil Service Tribunal<sup>51</sup> do not mention anything, from our point of view these provisions should be modified and amended, by allowing the two courts to rule not only on the costs of the dispute but also on a complaint when the court omitted to give a decision on a specific head of claim, which should be decisive and different from the others heads of claim, according to the doctrine in the field<sup>52</sup>.

Through the Registry, the application is notified to the opposite party in the dispute and the „*President shall prescribe a period within which that party may lodge written observations*”. “*After these observations have been lodged, the Court shall, after hearing the Advocate General, decide both on the admissibility and on the substance of the application*”<sup>53</sup> in order to stop parties to suffer to much the consequences of an error committed by an European court when rendered its first judgment<sup>54</sup>.

To be admissible, the complaint, as the opposition lodged by the defendant, shall meet the same formal conditions, taking into account that both of them are *sui generis* means of appeal. The

<sup>47</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.319.

<sup>48</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., p.122.

<sup>49</sup> Mădălina Voican, Ruxandra Burdescu, Gheorghe Mocuța, op. cit., pag.99; Koen Lenaerts, Dirk Arts and Ignace Maselis, op. cit., pag.598; Article 67 of the Rules of Procedure of Court of Justice; Article 85 of the Rules of Procedure of General Court; Article 85 of the Rules of Procedure of Civil Service Tribunal.

<sup>50</sup> Mihaela Tăbărcă, *Drept procesual civil*, volum I, (Universul Juridic Publishing House, Bucharest, 2005), p.392.

<sup>51</sup> Article 85 para.1 of the Rules of Procedure of General Court; Article85 of the Rules of Procedure of Civil Service Tribunal.

<sup>52</sup> Brândușa Ștefănescu, *Curtea de Justiție a Comunităților Europene*, (Scientific and Encyclopaedia Publishing House, Bucharest, 1979), p.127; Fabian Gyula, *Drept instituțional comunitar*, op. cit., p..319.

<sup>53</sup> Brândușa Ștefănescu, op. cit., p..128; Article 67 the Rules of Procedure of Court of Justice; Article 85 the Rules of Procedure of General Court; Article 85 of the Rules of Procedure of Civil Service Tribunal.

<sup>54</sup> Brândușa Ștefănescu, op. cit., p..128.

application will be also admissible when, by its error, the court omitted to give a decision on a specific head of claim or on costs from the original judgment.

Although the procedural rules of the General Court and Civil Service Tribunal keep the silence in the matter, in our opinion, the decision can be appealed in the similar way as the origin judgment that has been the object of the complaint.

#### IV. Exceptional review procedures

In the proceedings brought before the courts of the European Union, the judgments can be also appealed with third-party proceedings or revision, which can be considered to be exceptional review procedures because of their special nature.

These two exceptional review procedures represent the possibilities given to the parties and other interested parties to ask to the court that delivered the contested judgment to dismiss its own judgment or decision and render a new decision in the case, with the observance of the conditions stipulated in the Statute of the Court of Justice and the rules of procedures of the European courts.

Bearing in mind the above mentioned, we highlight then fact that these exceptional reviews procedures do not imply a new trial before a higher-level court, as it is in the case of appeal.

##### a. Third-party proceedings

Without putting in discussion the principle *res judicata pro veritate accipitur*, the third-party proceedings<sup>55</sup>, well known as contestation in annulment, represents one of the two exceptional remedies procedures, which can be lodged exclusively by the third parties, in the following conditions:

- “in the cases and in the conditions [stipulated] in the rules of procedure”;
- against the decisions delivered by the courts of the European Union;
- “to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights<sup>56</sup>”, especially when the third parties haven’t the possibility to participate in the original dispute<sup>57</sup>, because of independently reasons.

The specialised doctrine<sup>58</sup> emphasized that to file an application for third-party proceedings the contested judgment shall bring serious damages to the rights of the third-parties. In this context, it is not enough for them to have a legitimate interest to protect, as it is regulated in article 97 para.1 letter b.) of the rules of procedure of the Court of Justice.

Furthermore, the prejudice suffered by the third party shall be resulted from the content or from the motivation of the judgment, in which situation the court will analyse from case to case, in a seriously manner, if their rights have been prejudiced or not.

The category of the third parties who can file such application is broad and can include the institutions, the bodies, the offices and the agencies of the European Union, the Member States as well as the natural and legal persons<sup>59</sup>.

<sup>55</sup> In French is well known as „*la tierce opposition*”.

<sup>56</sup> Brândușa Ștefănescu, op. cit., p.129; Augustin Fuerea, *Instituțiile Uniunii Europene*, op. cit., p.132; Fabian Gyula, *Drept instituțional comunitar*, op. cit., pag.315; T.C. Hartley, *The foundations of European Community Law*, sixth edition, (Oxford University press, USA, 2007), p.63; Article 42 of the Statute of the Court of Justice.

<sup>57</sup> Koen Lenaerts, Dirk Arts and Ignace Maselis, op. cit., p.589; Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.315.

<sup>58</sup> Koen Lenaerts, Dirk Arts and Ignace Maselis, op. cit., pag.590; Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.316.

<sup>59</sup> Article 42 of Statute of the Court of Justice.

The application initiating third party proceedings will be considered inadmissible when it is introduced by:

- the intervener, who participated in the original dispute;
- the legal persons who, although they had the possibility to intervene as interveners in the original dispute, from reasons non imputable to them, they did not participate in the original dispute<sup>60</sup>.

Instead, an application initiating third party proceedings shall be admissible if it is lodged only by the parties who, theoretically, could take part in the original dispute, but practically weren't present in the litigation as interveners.

Natural and legal persons can not intervene in the disputes regulated by articles 258 and 259 of TFEU, having as main object failure of the Member States to fulfil an obligation under the Treaties, by lodging an application initiating third party proceedings even when they have been prejudiced in their rights<sup>61</sup>.

According to the rules of procedure<sup>62</sup>, in order to be admissible an application initiating third party proceedings shall meet the same formal conditions and shall respect the same procedural terms, as in case of written application. In addition, the application shall include supplementary mentions regarding: "*the judgment [or the decision] contested; the [legal reasons why] that judgment is prejudicial to the rights of the third party; the [facts] reasons for which the third party was unable to take part in the original case*" and shall be also supported by relevant documents.

The application initiating third party proceedings is "*made against all the parties to the original*" dispute and the term to file the application is within "*two months of the publication*" of the judgment contested in the Official Journal of the European Union, according to the provisions stipulated in the rules of procedure of the European courts.

Upon the request of the third party, the court may suspend the enforcement of the judgment contested, but only for justified reasons.

Analysing the application lodged by the third party, the court may take one the following solutions:

- admission of the application in which case the judgment appealed shall be modified accordingly;
- dismissal of the application, which can be appealed in the same conditions as for the judgment contested.

Finally, "*the original of the judgment in the third-party proceedings shall be annexed to the original of the contested judgment. A note of the judgment in the third-party proceedings shall be made in the margin of the original of the contested judgment*" (article 97 of the rules of procedure of the Court of Justice).

#### b. Revision

The revision<sup>63</sup> represents the second exceptional review procedure regulated by the rules or procedure of the European courts<sup>64</sup> and can be lodged by the interested party against the final judgment rendered by the courts of the European Union. In this context, a new trial of the original dispute is required, whenever "*the court expressly recording the existence of a new circumstance*"

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<sup>60</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., p.119.

<sup>61</sup> Koen Lenaerts, Dirk Arts and Ignace Maselis, op. cit., p.589 -590.

<sup>62</sup> Brândușa Ștefănescu, op. cit., p.129; Koen Lenaerts, Dirk Arts and Ignace Maselis, op. cit., p.590; Article 97 the Rules of Procedure of Court of Justice; Article123 - 124 the Rules of Procedure of General Court; Article 117 the Rules of Procedure of Civil Service Tribunal.

<sup>63</sup> In French is well known as "*la révision*".

<sup>64</sup> Augustin Fuerea, *Instituțiile Uniunii Europene*, op. cit., p. 133; Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.316; Articles 98 – 100 the Rules of Procedure of Court of Justice; Articles 125 – 128 of the Rules of Procedure of General Court; Article 119 of the Rules of Procedure of Civil Service Tribunal.

“which has a determined influence and, before the rendering of the final decision, was unknown by the court and the party that request this revision”, from reasons non imputable to the parties<sup>65</sup>.

In the European doctrine<sup>66</sup>, in order to be admissible, an application for revision shall meet certain conditions, as follows:

a. the existence of new circumstances, which can be only “facts” having decisive influence on the context of the judgment rendered, which could change the judgment, least from the theoretical point of view. In this case it is about previous facts unknown by the court or by the party from reasons beyond of their will<sup>67</sup>;

b. the previous fact, unknown by the court or by the party, should have decisive influence in the case. Instead, the measures adopted by the European Commission to enforce a contested judgment cannot be considered as decisive facts<sup>68</sup>.

In order to open the revision on the grounds concerning the contested judgment or decision, the court shall proceed to an examination of admissibility of the application<sup>69</sup>.

Concerning the moment when an application for revision may be lodged, the European procedural provisions<sup>70</sup> regulate that the application “shall be made within three months of the date on which the facts on which the application is based came to the applicant's knowledge” but no later than “the lapse of 10 years from the date of the judgment” (article 44 para.3 of Statute of the Court of Justice). The latest term, from our point of view, is calculated from the delivery of a judgment is a limitation period, which means that any overcoming of the term determinates the loss of the right by the interested party to file the revision.

To be admissible, in accordance with the European procedural provisions<sup>71</sup>, the application for revision shall meet the same formal conditions as the written application and shall respect the same procedural terms. In addition, the application for revision shall “specify the judgment [or the decision] contested; indicate the points on which the judgment [or the decision] is contested; set out the facts on which the application is based; indicate the nature of the evidence to show that there are facts justifying revision of the judgment [or the decision], and that the time-limit laid down in Article 98 has been observed” and shall be also supported by the appropriate documents.

In addition, “the application must be made against all parties to the case in which the contested judgment [or decision] was given”(article 99 last para. of rules of procedure of the Court of Justice).

Although the European provisions in the field keep the silence, nevertheless we share the point of view stated by the Fabian Gyula in his work “Dreptul instituțional comunitar”, that: “the application for revision may be filed only by those who have participated in the original dispute as a party” under the article 44 of the Statute of the Court of Justice, moving forward to the idea of providing special regulations in its rules of procedure to allow the intervener to file the application as well, whenever he/she considers that the fact of which he/she was aware, subsequently, has a

<sup>65</sup> Fabian Gyula, *Curtea de Justiție Europeană, instanță de judecată supranațională*, op. cit., p. 120; T.C. Hartley, op. cit., p.64; Article44 para.1 of the Statute of the Court of Justice.

<sup>66</sup> Augustin Fuerea, *Instituțiile Uniunii Europene*, op.cit., p. 133; Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.317.

<sup>67</sup> Koen Lenaerts, Dirk Arts and Ignace Maselis, op. cit., p. 593.

<sup>68</sup> *Ibid*

<sup>69</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., pag.317.

<sup>70</sup> Article 98 of the Rules of Procedure of Court of Justice; Article125 of the Rules of Procedure of Civil Service Tribunal.

<sup>71</sup> Brândușa Ștefănescu, op. cit., p.130; Article 99 of the Rules of Procedure of Court of Justice; Article126 of the Rules of Procedure of General Court; Article 119 para. 2 of the Rules of Procedure of Civil Service Tribunal.

decisive influence for the dispute. Instead, the doctrine considered that “*it must be prevented the possibility for the intervener to invoke reasons for revision about which, for the party in the original dispute, the limitation period has already occurred*<sup>72</sup>”.

“*Without prejudice to its decision on the substance*”, after the hearing of the Advocate – General and taking into consideration the written observations of the parties, the court shall analyze, *in camera*, the admissibility of the application for revision and give the decision, in accordance with the procedural provisions. This decision is likely to find, specifically, the existence of a new fact, recognizing its characters that allow the opening of the revision.

“*The original of the revising judgment shall be annexed to the original of the judgment revised. A note of the revising judgment shall be made in the margin of the original of the judgment revised*<sup>73</sup>” and the new judgment shall be notified to the parties.

Since the European procedural provisions do not mention anything we believe that the revising judgment can be challenged with appeal, in the similar conditions as the contested judgment.

## V. Conclusions

A better knowledge of the role that the means of appeal have for every judicial system, including for the European Union determinateed an in-depth research of these means, bearing in mind the Latin principle of *res judicata pro veritate accipitur* (the decision of a court is assumed to be correct).

Thus, the appeal cannot be understand better without analyzing the main components of it, as follows: the notion; the modalities to lodge an appeal and its general and special terms; principles categories of judgments and decisions that can be appealed by the interested parties; the applicants and the grounds of appeal.

Analyzing this mean of appeal have shown us that only the judgments and decisions of General Court and Civil Service Tribunal can be challenged with appeal, whilst the judgments delivered by the Court of Justice remain final and irrevocable, as the court in Luxembourg “*doesn't know these means of appeal, as it judges in the first and last instance*”.

Whenever the court do not taken into consideration the defendant defences or omitted to decide on a specific head of claims filed by the applicant, the interested party can use one of the *sui generis* means of appeal (the opposition and the complaint). The specificity of these means, as an exception from the ordinary procedure, consist in combining the characters of many means of appeal which can be brought before the Court of Justice, and can be used only in the conditions provided for by the rules of procedure of the European courts.

Finally, the Statute of the Court of Justice and the rules of procedure of the European courts regulated specific conditions for lodging the exceptional review procedure (third –party proceedings and revision) as possibilities for the interested parties to request to the court that delivered the contested judgment or decision to withdraw it and to proceed to a new trial. From our point view, this seems to be since every new fact discovered, relevant and unknown prior the delivery of the judgment or decision, may determine a different solution from the European court.

<sup>72</sup> Fabian Gyula, *Drept instituțional comunitar*, op. cit., p.318.

<sup>73</sup> Article 100 of the Rules of Procedure of Court of Justice; Article 127 of the Rules of Procedure of General Court.

## References

### Authors

- Fuerea Augustin, *Instituțiile Uniunii Europene*, (Universul Juridic Publishing House, Bucharest, 2002),
- Fuerea Augustin, *Manualul Uniunii Europene*, III edition, revised and added (Universul Juridic Publishing House, Bucharest, 2006),
- Gyula Fabian, *Curtea de Justiție Europeană, instanță de judecată supranațională*, (Rosetti Publishing House, Bucharest),
- Gyula Fabian, *Drept instituțional comunitar*, 2nd edition, (Sfera Juridică Publishing House, Cluj – Napoca, 2006),
- Hartley T.C., *The foundations of European Community Law*, sixth edition, (Oxford University press, USA, 2007),
- Lenaerts Koen, Arts Dirk and Maselis Ignace, *Procedural Law of the European Law*, second edition, (Sweet and Maxwell Publishing House, London, 2006),
- Leș Ioan, *Drept procesual civil*, (Lumina Lex Publishing House, Bucharest, 2002),
- Tăbărcă Mihaela, *Drept procesual civil*, volum I, (Universul Juridic Publishing House, Bucharest, 2005),
- Voican Mădălina, Burdescu Ruxandra, Mocuța Gheorghe, *Curți internaționale de Justiție*, (C. H. Beck Publishing House, Bucharest, 2000).

### European Union legislation

- Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities (88/591/ECSC, EEC, Euratom)
- Rules of Procedure of Civil Service Tribunal
- Rules of Procedure of Court of Justice
- Rules of Procedure of General Court
- Statute of the Court of Justice
- The Treaty on the Functioning of the European Union.
- Treaty establishing the European Community.

### European Union jurisprudence

- Case C-174/97 P. Fédération française des sociétés d'assurances, Union des sociétés étrangères d'assurances, Groupe des assurances mutuelles agricoles, Fédération nationale des syndicats d'agents généraux d'assurances, Fédération française des courtiers d'assurances et de réassurances and Bureau international des producteurs d'assurances et de réassurances vs. Commission, order of 25 March 1998, published in European Court reports 1998
- Case C-341/00 Conseil national des professions de l'automobile, Fédération nationale des distributeurs, loueurs et réparateurs de matériels de bâtiment-travaux publics et de manutention, Auto Contrôle 31 SA, Yam 31 SARL, Roux SA, Marc Foucher-Creteau and Verdier distribution SARL v Commission of the European Communities, order of 5 July 2001, published in European Court reports 2001
- Case C-362/95 P Blackspur DIY Ltd, Steven Kellar, J.M.A. Glancy and Ronald Cohen v Council of the European Union and Commission of the European Communities, judgment of 16 September 1997, published in European Court reports 1997
- Case C-383/99 P Procter & Gamble Company vs. Office for Harmonisation in the Internal Market (OHIM), judgment of 20 September 2001, published in JOCE C no.3 din 05.01.2002
- Case C-39/00 Services pour le groupement d'acquisitions SARL v Commission of the European Communities, order of 13 December 2000, published in European Court reports 2000
- Case C-434/98 P. Council of the European Union v Silvio Busacca and Others and Court of Auditors of the European Communities, judgment of 5 October 2000, published in European Court reports 2000

### Webpages:

- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:003:0009:0010:EN:PDF>.

- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998J0434:EN:HTML>.
- [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0362](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0362)
- [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61997O0174&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61997O0174&lg=en).
- [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=62000O0039](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=62000O0039)
- [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=62000O0341&lg=en](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=62000O0341&lg=en).

#### ACRONYMS

- a.n. – author note
- art.- article
- op. cit – paper cited
- pag. – page
- para. – paragraph
- TEC - Treaty establishing the European Community
- TFEU The Treaty on the Functioning of the European Union