

EU Procedural Law
4th year - 2021/2022

Rui Tavares Lanceiro

I. Evaluation

The evaluation will be based on 3 elements: 1) a written test in December (40%); 2) a paper commenting on a topic or a case by the CJEU listed in the syllabus or otherwise approved by me (30%); 3) the presentation of that paper in class (30%).

You can find a list of suggested topics for papers in part III. of this document. You can find a list of cases in the plan of classes (in part II.). You may choose other cases or topics, if I approve them.

You need to get at least a 10 out of 20 grade to pass. Class attendance is mandatory, but you can miss 1/3 of the classes given. You are supposed to have an active oral participation on class (answering/posing questions, participating in a debate). Special Covid-19 rules apply (you should wear a mask; classes will be made available through zoom to those infected and quarantined).

Test: In December, we will have a written test where you are supposed to answer to questions on the subjects covered so far. You will be able to write in English. I will let you know as soon as the date is scheduled.

Paper: The paper should be on one of the subjects covered in the syllabus or a case by the CJEU listed in the syllabus or otherwise approved by me. The paper should be written in a reasonable font size 12, 1,5 pt, max 8 pages - min 6 pages of written text.

Please bear in mind that the topic you choose should be narrow enough to be thoroughly covered in your paper (avoid too broad topics such as “the advocate general” or something like that). You may discuss the topic with me in the end of class, if you wish. You may choose to comment on one of the court cases as the topic of your paper.

The paper should be delivered to ruilanceiro@fd.ulisboa.pt, in PDF or Word format. The deadline is 15 November 2021. You may send the paper sooner, if you want.

Presentation of the paper in class: You will be asked to present the paper and some of its main ideas and discuss it with me, in class, after that deadline. It will take 10-13 minutes. We will schedule the discussions at an appropriate time.

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## **II. Plan of practical classes**

**1st class:** Presentation.

General considerations about the subject and its object of study

**2nd class:** The CJEU: CJ, GC, specialized courts

Functioning, composition, and competences

Judges and Advocates-General

The jurisdiction of the CJEU and the old “pillars” of the EU

Sources

**3rd class:** General considerations on CJUE legal proceedings - preliminary ruling procedure, appeals, and direct actions before the CJEU (actions for annulment of EU acts, actions for failure to act) and exception for illegality. Infringement proceedings against the Member States

Judgments, orders and opinions

Ordinary procedure and specific procedural arrangements (expedited and urgent)

Language regime and deadlines

**4th class:** Preliminary ruling procedure

General presentation

What can be asked?

Who can ask questions?

When is it mandatory and optional to raise questions?

Competent court

“Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings” by the CJEU

Admissibility of questions

Effects of Judgment

**5th class:** Preliminary ruling procedure

Analysis of case-law

- *Liga de Futebol Profissional e Bwin c. SCML*, 8.09.2009, Proc. C-42/07 (opinion of the Advocate-General)
- *Rosneft*, 28 March 2017, Case C-72/15 (preliminary questions and control of sanctions in CFSP)

- *Pringle*, Proc. C-370/12, 27.11.2012 (Euro; Stability Mechanism for Member States whose currency is the euro; judicial review of amendments to the Treaties, Member State's competences)
- *Sindicato dos Bancários do Norte*, Proc. C.182/12, 7.03.2013 (fundamental rights and EU; pay-cuts for public sector workers)
- *Gaston Schul*, Proc. C-461/03 6.12.2005 (question of invalidity and mandatory references; *Foto-Frost* revisited)
- Opinion of Advocate General Bobek, submitted in Case C-561/19, *Consorzio Italian Management and Catania Multiservizi SpA/Rete Ferroviaria Italiana SpA*, at 15 April 2021 (the Court of Justice should review its case-law (the criteria of the CILFIT judgment) on the duty of national courts of last instance to make a reference for a preliminary ruling).
- *Silva e Brito*, C-160/14, 9.09.2015 (*acte clair*; mandatory references)

**6th class** Analysis of case-law relating to the Preliminary ruling procedure

- *Gauweiler*, Proc. C-62/14, 16.06.2015 (Constitutional Courts and references for preliminary rulings)
- *Achmea*, C-284/16 6.03.2018 (arbitration; autonomy of the EU legal order)
- *Commission v. Poland*, 15 July 2021, Case C-791/19 (Disciplinary regime applicable to judges - Independence of judges - Article 267 TFEU - Limitation of the right and obligation of national courts to make references to the Court of Justice for a preliminary ruling).
- *Repubblica v. Il-Prim Ministru*, 20 April 2021, Case C-896/19 (European Union values - Rule of law - Effective judicial protection - Independence of judges).
- *Puligienica Facility Esco*, C-689/13, 5 April 2016, and *Elchinov*, C-173/09, 5 October 2010 (appeals against decision to use the Preliminary ruling procedure)

**7th class:** Practical exercises on the preliminary ruling procedure

**8th class:** Control of EU legality: Direct actions before the CJEU

Actions for annulment of EU acts:

Admissibility

The concept of a reviewable act

Standing

Jurisdiction

Time limits

Grounds for annulment and standard of review

Court's decision: effects, consequences, and *res iudicata*

**9th class:** Analysis of case-law relating to the action for annulment:

- *Portugal c. Commission*, Proc. C-159/96, 19.11.1998, (annulment of international agreement; jurisdiction in international matters; effects of the decision)
- *Inuit*, Proc. C-583/11 P, 3.10.2003, (acts which may be challenged; Treaty of Lisbon and the standing of individuals changes introduced by the Lisbon Treaty, standing; distinction between regulatory and legislative acts; right to effective judicial protection)
- *Commission c. Council*, Proc. C-28/12, 28.04.2015 (annulment of a non-typical act; jurisdiction in international matters)
- *Hungary v European Parliament*, 3 June 2021, Case C-650/18, (Resolution of the European Parliament on a proposal requesting the Council of the European Union to determine whether there is a clear risk of a serious breach of the values on which the Union is founded - Jurisdiction of the Court of Justice - Admissibility of the action – reviewable act)
- *Polisario Front c. Council* (T-512/12) 10.12.2015, (annulment of international agreement; jurisdiction in international matters) (V. also C-104/16 P, de 21.12.2016)

**10<sup>th</sup> class:** Analysis of case-law relating to the action for annulment

- *Venezuela v Council*, 22 June 2021, Case C-872/19 P (CFSP - Restrictive measures - Action for annulment brought by a third State - Admissibility)
- *People's Climate Case, Armando Carvalho and Others v Council of the EU and EP*, 25 March 2021, Case C-565/19 P (Action for annulment with a claim for damages - Environment - 2030 climate and energy package - Article 263, fourth paragraph, TFEU - Lack of individual concern)
- *Stichting Milieu e Vereniging Milieudefensie*, Proc. C-404/12 P e C-405/12 P e C-401/12 P a C-403/12 P, 13.01.2015;
- Order of the ECJ of 16 June 2021, *Eleanor Sharpston v Council of the European Union and Conference of the Representatives of the Governments of the Member States*, Case C-684/20 P (Admissibility of action - Challengeable act)
- *Rimševičs/Latvia*, Case 202/18 (annulment by the Court of Justice of a national decision suspending the Governor of the national central bank)

**11<sup>th</sup> class** Actions for failure to act

Admissibility

Notion of failure to act

Standing

Jurisdiction

Time limits

The pre-litigation stage and the litigation stage

Grounds of illegality

Consequences

Case-law analysis:

- Order of the CJ, 05.05.2000, *ACSV c. European Ombudsman and European Parliament*, Proc. No T-103/99
- *Lukáš Wagenknecht c. European Council*, Proc. T-715/19 (Alleged conflict of interest of the representative of the Czech Republic at a European Council meeting - Alleged lack of action by the European Council)

### 12th class The Objection of Illegality

Definition

Standing

Time limit

Consequences

Case-law analysis:

- *Nachi Europe v. Hauptzollamt Krefeld*, Case C-239/99, 15.02.2001

### The Action for Infringement of Union Law by a Member State

Failure of a Member State to fulfil an obligation under the Treaties

Parties

### 13th class The Action for Infringement of Union Law by a Member State

The pre-litigation stage and the stage of the procedure held before the Court of Justice

Means of defense

Consequences: Result of the action; Legal force of the judgment declaring that a Member State has failed to fulfill its obligations

Sanctions for failure to comply with the judgment

Analysis of case-law on infringement proceedings:

- *Commission v. Germany*, Case C-95/12, 22.10.2013 (judgment establishing the failure and obligation to execute)
- *Hungary c. Slovakia*, Case C-364/10, 16.10.2012, (EU citizenship, Head of State)
- *Commission v. Portugal*, Case C-557/14, 22.06.2016, (Art 268(2) TFEU)
- *Slovenia v. Croatia*, 8 July 2019, Case C-457/18 (jurisdiction of the Court of Justice over the determination of the common border between two Member States)
- *Commission v. Belgium*, Case No C-543/17 (Failure to transpose and/or communicate transposition measures - Article 260(3) TFEU - Application for an order to pay a daily penalty payment)
- *Commission v. Slovenia*, 17 December 2020, Case C-316/19, (Seizure of documents on the premises of the Central Bank of Slovenia - Article 4(3) TEU - Principle of sincere cooperation)

**14th class** The action for damages for non-contractual liability of the European Union

Description

Admissibility

Legitimacy

Competent court

Deadline

The responsibility of the European Union and the responsibility of the Member State: delimitation criteria

**15th class** Case Law on action for damages

- *Francovich*, Proc. C-6/90, 19.11.1991, (responsibility of Member States)
- *Dole Fresh*, Proc. T-56/00, 6.3.2003, (responsibility of the EU)
- *Traghetti*, Proc. C-173/03, 13.06.2006, (responsibility of Member States for judicial acts)
- *Silva e Brito*, C-160/14, 9.09.2015, (responsibility of Member States for judicial acts)
- *Ledra Advertising c. Commission / ECB, Eleftheriou c. Commission / ECB e Theophilou c. Commission / ECB*, Proc. C-8/15 P C-9/15 P, C-10/15 P, (admissibility of the action / imputation of the damage, provenance: illegality).
- *Council v. K. Chrysostomides & Co. and Others*, 16 December 2020, Case C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, (Non-contractual liability of the European Union - Statements of the Eurogroup - Memorandum of Understanding).
- *Dalli v Commission*, 25 February 2021, Case C-615/19 P (Non-contractual liability - OLAF investigation - Sufficiently serious breach of a rule of law conferring rights on individuals - Non-material damage - Causal link).

**16th class** Proceedings for Interim Measures Before the Union Courts

The typical and the atypical Interim Measures

Subject-Matter

Identity of the Parties

Special Characteristics

Consequences

Proceedings for Interim Measures and the national Judge

Case law on Interim Measures

- *Factortame*, Proc. C-213/89, 19.06.1990 (Interim Measures)
- *Germany c. Council*, Proc. C-280/93 R, 29.06.1993 (Interim Measures; requirements)
- *Atlanta*, Proc. 465/93, 09.11.1999 (national courts and interim measures based on considerations of Community law)
- Order of the Court of 21/05/2021, *Czech Republic v Poland*, Case C-121/21 (Poland must immediately cease lignite extraction activities at the Turów mine)

**17th class** Articulation of ECJ case law with the existence of other jurisdictions: The Constitutional Courts of the Member States and EU law

- Ruling 422/2020 by the Portuguese Constitutional Court - European Union Law/principle of primacy over national constitutional rules/article 8, no. 4 of the CRP
- [Judgment of the German Constitutional Court of 5 May 2020 on the European Central Bank's Public Sector Procurement Programme](#) (2 BvR 859/15)
- *Melloni*, Case C-399/11, 26 February 2013, and *M.A.S. and M.B.* Case C-42/17, 5 December 2017 (Taricco II).

The exclusive jurisdiction of the Court of Justice and the relationship with the existence of other jurisdictions: The Office for Harmonisation in the Internal Market; the future Unified Patent Court; the flight to arbitration mechanisms - in particular the ISDS (Investor-State Dispute Settlement) clauses concerning the settlement of disputes between the foreign investor and the host State

- *MOX factory* case, Proc. No C-459/03, 30.05.2006

**18th class** Fundamental Rights and the CJEU

- Judgments of the ECJ of 8 April 2014, *Digital Rights Ireland*, Cases C-293/12 and C-594/12, and of 21 December 2016; *Tele2 Sverige*, Cases C-203/15 and C-698/15; *H. K v. Prokuratuur*, Case C-746/18 (Obligation on the general and undifferentiated storage of traffic and location data - Charter of Fundamental Rights)
- Judgment of the Court of Justice of 24 June 2019, *Commission c. Poland*, Case C-619/18 (lowering of the retirement age of Supreme Court judges, breach of the principles of irremovability of judges and judicial independence)

**19<sup>th</sup> class: Right of access to effective judicial protection, administrative cooperation between Member States and complex administrative procedures**

- Judgment of the CJ, 16 May 2017, *Berlioz*, Case C 682/15
- Judgment of the Court of Justice, 19 December 2018, *Silvio Berlusconi and Finanziaria d'investimento Fininvest SpA*, Case C-219/17
- Judgment of the Court of Justice, 3 December 1992, *Oleificio Borelli*, C-97/91

**20<sup>th</sup> class** Final thoughts

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III. Topic List for papers (other topics are possible – please check with me):

1. Scope of jurisdiction of the CJEU in matters of fundamental rights (ECJ, 26.02.2013, Åkerberg Fransson, Proc. C-617/10; Yoshikazu Iida, Proc. C-40/11, para. 79, and 10 July 2014, Hernández (C-198/13), paras. 33-34)
2. Independence of national courts (cf. Judgment of the Court of Justice of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, Case C-64/16; Judgment of the Court of Justice of 24 June 2019, *Commission v. Poland*, Case C-619/18; Judgment of the Court of Justice of 15 July 2021, *Commission v. Poland*, Case C-791/19; Judgment of the Court of Justice of 20 April 2021, *Repubblika c. Il-Prim Ministru*, Case C-896/19).
3. The competence of the CJEU in matters of common foreign and security policy - use of the preliminary ruling mechanism (Judgment of the CJ, Rosneft, 28 March 2017, Case C-72/15).
4. The competence of the CJEU in matters of common foreign and security policy - control of smart sanctions (Judgment of the CJ, Rosneft, 28 March 2017, Case C-72/15, TG judgment of 14 December 2018, RENV Hamas v. Council, Case T-400/10)
5. Area of Freedom, Security and Justice: Right of access to an independent and impartial national court and the European Arrest Warrant (see the judgment of the Court of Justice of 25 July 2018, *Minister for Justice and Equality v. LM.*, Case C 216/18 PPU)
6. Questions referred for a preliminary ruling and the possibility of appeal to higher courts (judgments of the ECJ, *Puligienica Facility Esco*, C 689/13, 5 April 2016, and *Elchinov*, C-173/09, 5 October 2010)
7. Powers of the national court to ask questions for a preliminary ruling (Case C 614/14 *Ognyanov*, 5 July 2016)

8. Arbitral tribunals and preliminary questions (*Ac. Ascendi*, C-377/13, 12 June 2014)
9. Autonomy of the EU legal order and investment arbitration between Member States (ECJ Judgment, 6.03.2018, *Achmea*, C-284/16; ECJ Opinion No 1/17, CETA, 30 April 2019)
10. Dialogue and tension between the Constitutional Courts and the CJEU – division of jurisdictions – *Gauweiler*, C-62/14, 16.06.2015, Judgment of the German Constitutional Court on 5.5.2020 on the PSPP (Public Sector Procurement Programme) programme of the European Central Bank (2 BvR 859/15)
11. Dialogue and tension between the Constitutional Courts and the CJEU – level of protection of fundamental rights: *Melloni*, C 399/11, 26.02.2013, and *M.A.S. and M.B.* Judgments, C 42/17, 5.12.2017 (*Taricco II*); Ruling No. 422/2020 of the Portuguese Constitutional Court;
12. Dialogue and tension between Constitutional Courts and CJEU III - the Portuguese experience: Judgement 422/2020 of the Portuguese Constitutional Court.
13. Standing of individuals in actions for annulment: the concept of 'regulatory act' within the meaning of the fourth paragraph of Article 263 TFEU - *Inuit* judgment, C 583/11 P, of 3 October 2013)
14. Standing of individuals in actions for annulment in environmental matters - Judgments of the Court of Justice of the European Communities of 13 January 2015 in *Stichting Milieu and Vereniging Milieudefensie*, Case C-404/12 P and C-405/12 P and C-401/12 P to C-403/12 P; and Case C-565/19 P *People's Climate Case, Armando Carvalho and Others v Council of the EU and EP*, Judgment of the General Court of 14 March 2018 in *TestBioTech v Commission*, Case T-33/16)
15. Right of access to effective judicial protection and administrative cooperation between Member States (*Berlioz* judgment, C 682/15, 16 May 2017)
16. Right of access to effective judicial protection and the ECB (Judgment of the Court of Justice of 19 December 2018, *Silvio Berlusconi and Others v Banca d'Italia and Others*, Case C-219/17)
17. CJEU scrutiny of Member States' decisions - the case of the resignation of the Governor of the National Central Bank (ECJ, 26 February 2019, *Ilmārs Rimšēvičs and European Central Bank c. Latvia*)

18. Judicial review of recommendations (Judgment in Belgium v. Commission, C-16/16 P, 20 February 2018)
19. Judicial review of the Eurogroup's statement (Acs. ECJ Mallis and Malli v. Commission and ECB, Tameio Pronoias Prosopikou Trapezis Kyprou c. Commission and ECB, Chatzithoma c. Commission and ECB, Chatziioannou c. Commission and ECB and Nikolaou c. Commission and ECB, Proc. C-105/15 P, C-106/15 P, C-107/15 P, C 108/15 P and C-109/15 P)
20. Data protection, privacy and the EU Charter of Fundamental Rights (ECJ judgments Digital Rights Ireland, Cases C-293/12 and C-594/12; Tele2 Sverige, Cases C-203/15 and C-698/15; and *H. K v. Prokuratuur*, Case C-746/18)
21. The Schrems v. Facebook saga: the protection of privacy and international data traffic (ECJ Judgments of 06.10.2015, Schrems, Proc. C-362/14, and of 16 July 2020, Schrems II, Proc. C-311/18)
22. Brexit and CJEU (Judgment of the ECJ, 19 September 2018, RO, Case C-327/18 PPU, Judgment of the ECJ, 10 December 2018, Wightman, Case C-621/18, (The United Kingdom is free to revoke unilaterally its intention to withdraw from the European Union)
23. Implications for EU litigation of the entry into force of Protocol 16 to the European Convention on Human Rights
24. Are the Member States bound by the Charter of Fundamental Rights? (Judgments of the ECJ of 26.02.2013, Åkerberg Fransson, Proc. C-617/10, para. 21, of 8 November 2012, Yoshikazu Iida, Proc. C-40/11, para. 79, and of 10 July 2014, Hernández (C-198/13), paras. 33-34)
25. The *acte clair* doctrine and the so-called obligation to refer (C-160/14, CJEU, 9.09.2015, Silva and Brito and Opinion of Advocate General Bobek in Case C-561/19 Consorzio Italian Management and Catania Multiservizi SpA/Rete Ferroviaria Italiana SpA on 15 April 2021)
26. Actions for damages under national law for infringement of the provisions of competition law of the Member States and of the European Union (Case C-637/17, Cogeco, [2019] ECR I-0000)
27. Action for annulment and control of State aid (GC judgment of 19 May 2021, Ryanair v. Commission, Case T-465/20)

28. The CJEU and administrative procedures with national and European Community intervention (Case C-97/91 *Oleificio Borelli*, 3 December 1992; Case C-219/17 *Silvio Berlusconi and Finanziaria d'investimento Fininvest SpA*, judgment of the Court of Justice, 19 December 2018)
29. Effective judicial protection and accelerated procedure
30. The exclusive jurisdiction of the CJEU and the link with alternative dispute settlement mechanisms
31. Judicial review of excessive deficits: a competence for national courts or the CJEU?
32. Does the national *res indicata* prevail over the rule of EU law?
33. Jurisdiction of the Court of Justice over amendments to the Treaties (judgment of 27.11.2012, *Pringle*, Case C-370/12)
34. The CJEU and religious freedom (ECJ judgment 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen VZW*, Proc. C-426/16; ECJ judgment 11 September 2018, *IR v JQ*, Proc. C-68/17; ECJ judgment 15 July 2021, *WABE and MH Müller Handel*, Proc. C-804/18 and C-341/19).
35. The CJEU and Same-Sex Marriage (ECJ Ac. 5 June 2018, *Coman*, Proc. C-673/16).