

Recast of the Rules of Procedure of the ECJ

Georgia Koutsoukou is a researcher fellow of the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law. This contribution summarizes the most relevant features of the Recast Rules of Procedure of the ECJ, which were the object of a thorough presentation at one of the Institute's weekly seminars. A table of correspondence of the new and old rules was published in the Official Journal C 337, 6.11.2012.

The Rules of Procedure of the ECJ have been recently amended and, as provided in Article 210 of the Rules, the new provisions entered into force on November 1st, 2012 (OJ L 265/I, 29.9.2012). The preamble of the new Rules of Procedure sheds light on the reasons which led to their amendment. Above all, the preponderance of preliminary proceedings in the Court's practice necessitated the adaptation of the rules, which were originally primarily tailored to direct actions, to its caseload. It is further noteworthy that the new rules take account of procedural economy considerations and, additionally, purport to simplify complex procedures and ease certain procedural arrangements.

The first Title (Articles 3-42) concerns the internal organization of the Court. Firstly, Article 10 provides for the creation of the function of the **Vice President** of the Court in order to reduce the task burden of the President. Article 27 has altered the composition of the Grand Chamber. It is also noteworthy that Article 22 (1) extends the **right to consult the register** of the Registry to "anyone" in order to increase transparency in the function of the Court.

The second Title (Articles 43-92) refers to the procedural provisions common to all types of procedure and has brought about significant changes. As for the written part of the procedure, according to Article 58 of the Rules the Court can determine the **maximum length of written pleadings and observations** through decision published in the Official Journal of the European Union. With regard to the oral part of the procedure, the Court can by virtue of Article 76 (2) on proposal of the Judge Rapporteur and after hearing the Advocate General **abstain from holding a hearing in case** the written pleadings or observations are sufficient for the ruling to be delivered. Moreover, Article 77 introduces the

possibility for **similar cases to be heard jointly**. Article 83 has restricted the Court's discretion in relation to the **reopening of oral procedure** through determination of the conditions under which the court may issue such an order. Finally, we should point out that, unlike the old rules, the new provisions do not provide for common rules on **legal aid**. There are rules on legal aid only for references for a preliminary ruling and appeals in other titles of the Rules. This can be attributed to the minor, if any, importance of legal aid for direct actions.

The new Rules introduce a separate, third Title on references for a preliminary ruling (Articles 93-118) due to their obvious preponderance in the court practice. For the first time Article 94 determines the minimum essential content of any request for preliminary ruling and Article 97 clarifies the term "parties to the proceedings". Besides, the Court considered it necessary to introduce a rule on anonymity in Article 95. Article 100 adopts the Court's case law by providing that it remains seized as long as the request for a preliminary ruling is not withdrawn by the referring Court. To enhance the procedural efficiency, Article 99 **simplifies and harmonizes the procedural requirements for a decision by reasoned order**. As for the goal of proceedings acceleration, it must be noted that the **expedited procedure** does not take place only at the request of the referring court but also on motion of the President of the Court according to Article 105 (1). Further, there are some changes with regard to the **urgent preliminary ruling** procedure. Firstly, a case connected to another pending case assigned to a Judge Rapporteur can be assigned pursuant to Article 108 (2) to the same Judge Rapporteur, even if he is not a member of the designated Chamber. Secondly, another Member State can be invited according to Article 109 (3) to participate in the proceedings, in case the request for a preliminary ruling refers to an administrative procedure or to judicial proceedings in its territory.

The fourth Title (Articles 119-166) deals with direct actions. Article 124 (1) extends the **time-limit for lodging a defense** from one to two months and Article 124 (3) allows the extension of the time-limit only in exceptional cases. According to Articles 126 (2) and 133, respectively, the President of the Court is entitled to **specify the issues to which the reply and the rejoinder should relate** and to initiate an expedited procedure. The provisions on the intervention of the Member States and other EU-Institutions have been also simplified. Besides, pursuant to Article 145, disputes concerning the costs are assigned to the Chamber of three or five judges, whose member is the Judge Rapporteur

responsible for the case.

The fifth Title (Articles 167-190) concerns the appeals against the decisions of the General Court. First of all, Article 176 et seq. draws a clearer distinction between response to the appeal and cross-appeal. The latter has to be submitted according to Article 176 (2) by **document separate from the response**. Additionally, Article 183 clarifies that the manifest inadmissibility or the discontinuance of an appeal deprives the cross-appeal of its purpose. Moreover, Article 182 provides for **decisions by reasoned order** with reference to the relevant case law in case the Court has already ruled on one or more questions of law identical to the ones raised by the pleas in law of the appeal or cross appeal.

The Review of the decisions of the General Court is regulated in the sixth Title (Articles 191-195). Article 191 foresees the **designation of reviewing Chamber** consisting of five Judges for an one-year period. The proposal to review may be made by the First Advocate General and the decision of the Court refers both to the proposal of the Advocate General and the substance of the Case, as stipulated in Article 192 and 195 respectively.

The seventh title (Articles 196-200) amends the relevant procedural arrangements with regard to the Opinions in context of Article 218 TFEU on the agreements between the EU and third countries or international organizations. Article 197 states that **only one Advocate General** instead of all (eight) will be participating at the proceedings. The opinions must further on be delivered **in open court** by virtue of Article 200.

Last but not least, Article 206, which forms part of the eighth and last Title (Articles 201-206) on particular forms of procedure, introduces a new procedure for requests of the Member States according to **Article 269 TFEU**, i.e. **requests for the review of the legality of observations and recommendations** made by the Council or European Council in case of clear risk of a serious breach by a Member State of the values referred to in Article 2 TEU.

To conclude, by adopting these new Rules of Procedure, the Court seeks to adapt to the changes in its caseload and dispose within a reasonable period of time of the cases brought before it by fostering the acceleration of the proceedings. It will be interesting to see in the future whether and how these quite significant amendments successfully achieve the desired outcome.