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Advocate General at the Court of Justice: any doubts? Part I

Virgilijus Valančius

Dr. (HP), Judge at the General Court of the European Union
Rue du Fort Niedergrünewald, L-2925 Luxembourg
Phone: (+352) 4303 5802
E-mail: <v.valancius@gmail.com>

The article[1] briefly overviews some features of Advocates General of the Court of Justice of the European Union as well as the influence of their opinions on the case law of the Court. The research is based on the doctrine as well as on the case law. The latter spotlights *inter alia* the links between the opinions of Advocates General and the judgments of the Court both when propositions of Advocates General are followed and when they are not.
Keywords: European Union law, Court of Justice, Advocate General.

Generaliniai advokatai Teisingumo Teisme: ar kyla abejonių? I dalis

Straipsnyje aptariami kai kurie Europos Sąjungos Teisingumo Teismo generalinių advokatų bruožai ir analizuojama jų nuomonių įtaka teismui. Tyrimas grindžiamas doktrina ir Teisingumo Teismo (toliau ir TT) praktika. Jame taip pat išryškinamos generalinių advokatų nuomonių bei Teisingumo Teismo sprendimų sąsajos tiek tais atvejais, kai generalinių advokatų pateikti siūlymai yra priimami, tiek kai Teismas jais nesiremia.
Pagrindiniai žodžiai: Europos Sąjungos teisė, Teisingumo Teismas, generalinis advokatas.

Introduction

The term ‘Advocate General’ might be confusing not only for the general public but also for lawyers coming from countries not influenced by the French legal tradition. The notion of ‘Advocate General’ (hereinafter referred to also as ‘AG’) does not exist in most national jurisdictions, be it of continental or common law tradition. One may add that the term ‘Advocate General’ has nothing to do neither

[1] This article is based on the presentations given to judges, lawyers and legal scholars in Kiev, 2–3 December 2019. The article was prepared with the assistance of law clerk Ms. I. Žurauskienė. It does not reflect the view of the Court of Justice of the European Union or the judges. Due to certain scope limitations the elaboration of the given subject will be presented in two parts.

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with an 'advocate'[2], nor with a 'general'[3]. Since the procedure of the Court of Justice[4] (hereinafter referred to as the 'Court of Justice', 'Court' or 'CJ') was influenced by the French legal tradition[5]; the so-called legal advisor titled as Advocate General was introduced as a member of the Court at the European Union (hereinafter referred to also as 'EU', 'Union') level by the Treaty of Rome (1957)[6]. To be more precise, the latter had appeared even earlier at the Court of Justice, but the legal status reached the highest possible level with the Treaty of Rome[7]. In other words, the French tradition already existed at the ECSC Court of Justice, where the Advocate General was introduced as an intermediate figure[8] between the judges and the parties. As in France, such a person had to assist the Court in the performance of its duties. The notion 'to assist' remains in the current Treaties[9] as well. Advocate Generals do not participate in the deliberations of judges. Their opinions have no binding effect to the Court. Nevertheless, one cannot ignore the guiding effect of AG on legal thinking. The latter goes hand in hand with the initial idea of assistance that AG opinions are supposed to fulfil while providing certain guidance related to possible solutions of a given legal issue. This feature, during many years, has become clearly visible, influencing the development of the CJ case law.

One could not ignore that the aim of the introduction of the function of AG was also to protect judges from revealing their positions via separate or dissenting opinions and not lessening the authority of the judgment; the deliberations of judges are secret, no separate or dissenting opinions of Court of Justice judges exist so far.

The impact of Advocates General on the jurisprudence of the Court is undoubtful. Is it measurable? On the one hand, one may consider that legal arguments proposed by AG were fully or partially taken on board by the Court. In other cases, even though the direction suggested by the AG might be the same

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[2] As a term in most jurisdictions describing a licensed lawyer consulting his clients on legal issues as well as defending their interests in court.

[3] Neither in a civil, nor in a military sense of the word.

[4] The Court of Justice of the European Union (CJEU) as an institution from 1 September 2016 consists of two jurisdictions: the Court of Justice and the General Court. In this article, the reference to the Court of Justice means the mentioned part of the CJEU.

[5] The similar function to CJ Advocate General is known in the French legal tradition. It ('*l'avocat général'*) exists in the French Court of Cassation and plays, we cite Jean-Claude Marin, 'son rôle fondamental, en tant que gardien et serviteur de la loi et du droit' (Marin, 2016.). The French administrative judiciary has for a long time now recognized the function of a '*commissaire du gouvernement*', which, by the way, at the time could even take part at the deliberation of the case together with judges and finally had to be replaced by the '*rapporteur public*'. The latter could not take part in the deliberations of a case anymore. The latest French developments were inspired by the jurisprudence of the European Court of Human Rights (*Kress v. France*, 2001).

[6] The institution of the Advocate General formally at the EEC level was established by the Treaty of Rome signed March 25, 1957. Article 166 defined the duties of AG as follows: 'The duty of the advocate-general shall be to present publicly, with complete impartiality and independence, reasoned conclusions on cases submitted to the Court of Justice, with a view to assisting the latter in the performance of its duties as laid down in Article 164'.

[7] The position of Advocate General was proposed by the French delegation already during the drafting process of the Treaty of Paris (Rapport de la délégation française sur le Traité et la Convention signés à Paris, 1951, p. 32). The first two Advocates General (Maurice Lagrange and Karl Roemer) already worked at the Court of Justice under the Treaty of Paris (1951). You will not, however, find mentioning Advocate General in the text of the Treaty of Paris. It was introduced in the text of the Protocol on the Statute of the ECSC Court of Justice.

[8] In English sometimes it is also described as a 'Legal adviser to the Court'. AG is, let us put in this way, more than an advocate/counsel but less than a judge. In the so-called vertical procedural scale AG, however, is much closer to judges than to legal representatives of the parties.

[9] While formulated slightly different the current text of Article 19 of the Treaty on European Union (2016) and Article 252 Treaty on the Functioning of the European Union (2016) reflects the same meaning as in Article 166 of the Treaty of Rome.

as taken by the Court, the different wording regarding legal arguments does not give a clear picture how much AG considerations were taken into account by the Court. Legal argumentation as such is a specific, if we may say so, piece of art. One single word may change the whole mosaic. Therefore, to measure the influence of an AG's opinions on the Court's judgments is not always an easy task. Nevertheless, there have been quite interesting efforts to do so (Arrebola *et al*, 2016)[10]. On the other hand, the impact of AG opinions can be multifaceted and the non-following of AG propositions in a particular case does not necessarily mean that it does not influence the Court of Justice case law in general. The object of this modest observation is to reflect some influence of AG opinions to the CJ case law. The article aims to overview the AG impact trough a brief analysis of both recent case law as well as earlier jurisprudence. The presentation of some judgments spotlights the links between AG opinions and the Court judgments both when the proposed AG solutions are followed and when they are not. Although the main source of the work is CJ case law and relevant AG opinions, studies of some other authors are relevant in order to provide some panoramic view on the subject matter. The latter topic has not been elaborated in the Lithuanian legal literature yet, which stimulated the author to share his modest observations with the readers of this article.

Multiple methods of research enable us to analyse the relevant sources and achieve the abovementioned objectives. Linguistic, logical and systemic methods help to underline various approaches of legal argumentation. A teleological interpretation leads to a better understanding of the objective of the AG institution in the Union's judicature. The comparative method enables to reveal the impact of AG opinions on the CJ case law as well as to examine the evolution of the CJ jurisprudence in accordance with the propositions of Advocates General.

1. Few Remarks on the Role of Advocates General

Article 252 of the Treaty on the Functioning of the European Union (2016) just briefly deals with the function of Advocates General. It is not more than a laconic textual reference that needs further elaboration. The doctrine[11] is fulfilling this gap by 'digging' towards the content of their role. The functions of Advocates General usually are described as helping the Court in the preparation of a case, proposing solutions to cases before the Court, providing legal grounds to justify that solution, as well as making critical assessments of the case law or commenting on the development of the law in the area at issue (Tridimas, 1997, p. 1358).

One may argue that Advocates General enjoy the same status as judges. This is partly true. It does not mean, however, that AG is a judge either *stricto sensu* or in a broader meaning. There is no doubt that *the same status* covers immunities and other guaranties enjoyed by the Union judges. During the oral hearing, where relevant, AG sits next to the judges[12] and afterwards publicly submits its impartial legal opinion in a given case. However, the door to the final stage of judicial process – deliberation –

[10] There you could find a more comprehensive understanding of the role of the Advocate General in the makeup of the Court of Justice of the European Union. The authors of the latter Study try to measure the influence of the Advocate General on the judgments of the Court of Justice through an econometric study using a probit model with data from annulment procedures of the last twenty years (1994–2014).

[11] See, for instance, Jacobs, 2000; Greaves, 2011; Clément Wiltz, 2011; etc.

[12] For those who are not aware of the French legal tradition it might look a bit confusing that next to judges is sitting another person wearing the same type of robe but not a judge and having nothing to do with the court registry.

is not open to AG (Rules of Procedure of the Court of Justice, 2012)[13]. No doubt, the latter difference between AG and judges is significant. Does it make the role of AG less important? Does the legislative implication that AG is supposed *just* 'to assist' (Treaty on the Functioning of the European Union, 2016, Article 252) judges lessen its role? Of course not. On the contrary, Advocates General, via their opinions, try to convince (often – very successfully) the judges to render the proper judgment. They do it through legal arguments that are as solid as possible.

Can judges not make their decisions based on legal arguments submitted only by the lawyers of the parties? Yes, they can. Then, why must a 'third party', the 'third lawyer' or 'legal advisor', something like an *amicus curiae*, come on the stage[14]? In principle, as in most national jurisdictions, cases could be adjudicated without the assistance of Advocates General. The rules of procedure of the Court of Justice could also be easily modified. Thus, one may raise doubts whether the introduction of Advocates General was the best solution.

Despite some ambiguity based perhaps on the fact that the Advocate General, as a procedural figure, does exist just in few EU member states, the latter has proven its 'added value' in the EU judicature. No doubt, the legal doctrine would have lost many inspirations without AG opinions. The published opinions of AG immediately provoke legal debates. There is no difference whether AG proposals are accepted or rejected, admired or criticized; legal discussions itself play a positive role for the further development of legal discourse on the subject matter. In certain cases, AG opinions provoke social, economic or even political debate[15] as well. Thus, the issue of transparency initiates a forum for various types of discussion. AG opinions being publicly available compensate to a certain extent the lack of separate and dissenting opinions of CJ judges. As mentioned above, the fathers of the Treaties of Paris and Rome and their successors rejected the introduction of separate and dissenting opinions of judges. Instead, they provided an important *tribunus* for Advocates General, whose solid legal argumentation may lead, as in Roman times, *inter alia,* to veto unfavourable legislation.

In most cases, AG is involved when the legal issue at stake is either new or complex. It is obvious that legal provisions could not give clear answers to all situations. In other words, by suggesting the way of interpretation of numerous EU legislation and certain path for its application, Advocates General often enter the *terra incognita*[16], where we are far from either *acte claire* or *acte éclairé*[17].

Is the legal nature of an AG opinion clear enough, and could it be argued by the parties of the given case? The latter question seems to be answered in the order of the Court in *Emesa Sugar* (2000).

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[13] According to Article 32 of the Rules of Procedure of the Court of Justice, only those Judges who participated in that hearing and, where relevant, the Assistant Rapporteur responsible for the consideration of the case shall take part in the deliberations.

[14] M. Bobek before, becoming an Advocate General of the CJ, used an interesting term – 'a forth in the Court' (Bobek, 2012).

[15] Article 50 TEU has never been interpreted before the Brexit vote. Since the case was brought before the CJ, the AG's opinion was demanded. The opinion of Advocate General Campos Sánchez-Bordona (*Wightman and Others*, 2018) on this issue attracted media attention not only on both sides of the English Chanel but also all over the world.

[16] Nowadays it is obvious that legal regulation is not that clear while dealing with new economies. The case of the company *Uber* might be an example. AG had to elaborate its legal reasoning and propose to the Court whether an economic model used by Uber was to be considered as information technology or transport services in light of the existing EU regulation. AG Szpunar's opinion is touched later.

[17] The debate initiated by the judge Thomas Bull (Supreme Administrative Court of Sweden) during the *Forum des Magistrats* held at the CJEU on 18–19 November 2019 whether the CILFIT doctrine should not be revised seemed not to have escaped the ears of the participants, including the Advocates General. Indeed, what somebody might view as absolutely evident, to others, however, might pose legitimate questions and *vice versa*. The lively legal debate was provoked by the Court of Justice in *Commission v. France (Précompte mobilier)* (2017).

In this case, the applicant sought a leave to submit written observations after AG had delivered his opinion. The Court dismissed such an application. While explaining the role of Advocates General, it has stressed that they have the same status as the Judges, particularly as far as it concerns immunity and the grounds on which they may be deprived of their office, which guarantees their full impartiality and total independence. Moreover, Advocates General, none of whom is subordinate to any other, are not public prosecutors nor are they subject to any authority, in contrast to the manner in which the administration of justice is organized in certain Member States. They are not entrusted with the defence of any particular interest in the exercise of their duties. Finally, the Court added that an AG opinion ends the oral procedure. It does not form part of the proceedings between the parties, but rather opens the stage of deliberation by the Court. AG opinion constitutes, in the words of the Court, the individual reasoned opinion, expressed in open court, of a Member of the Court itself (*Emesa Sugar,* 2000, paragraphs 12–14). The abovementioned order was not the first time when the Court had to treat a request to discuss an AG opinion. Earlier. the Court of Justice had also refused to allow re-opening of the oral procedure in order to discuss an AG opinion by reasoning that it marks the end of the oral procedure (*Alvarez v. Parliament,* 1982, paragraphs 8–9).

Indeed, AG opinions can probably foster both the social legitimacy of the Court and democratic deliberation within the European Union as a whole. The legitimizing role of AG comes from the fact that it provides a valuable 'bridge' between the judicial deliberations of the Court that is not open for the general public: an AG opinion makes the process of judicial reasoning more transparent by giving the citizens clear insight into the arguments and facts available to the Court (Hinarejos, 2012, p. 625). Therefore, the role of AG in the judicial process of the Court is much more than the result of its opinion having been followed or not. In any case, the opinion contributes to the deliberative nature of the judicial process and fosters trust among the citizens by making part of these deliberations accessible (Hinarejos, 2012, p. 625). The fact itself that a degree of assistance was deemed to be necessary already indicates a wish to secure the best possible legal assessment for a case and automatically enhances the feeling of confidence in the process leading to the decisions reached by the Court (Albors-Llorens, 2012, p. 511).

Some authors claim that the Advocate General in the European judicial environment is more similar to that of a judge than to the position of a mere advisor to the judge (Bach-Golecka, 2012, p. 54). That could be right with some reservation. One could understand a declaration 'similar to a judge' as 'almost a judge'. The status of AG as a 'Member of the Court' is indeed high. On the other hand, it is doubtful whether this condition, as well as the important procedural position[18], could let us compare AG and judges *as similar*. Yes, indeed, as expressed above, the AG in a certain procedural scale appears to be closer to judges than to the parties and their lawyers. Nevertheless, even though AG is an important figure in the EU judicature, it cannot be put in the same bookshelf with the judges[19]. The comparison of an AG's opinion with a vehicle for a public dialogue (Hinarejos, 2012, p. 632) is a quite precise one. Thus, although AG opinions do not have a legal effect and do not bind the Court, they raise questions that in a way strengthen those judgments even if they do not follow a solution proposed by AG.

[18] Even if in reality it is, if you want, a heavyweight.

[19] To our view, the similar figure to AG in current French tradition called 'rapporteur public' and sometimes translated in English as 'Legal advisor' semantically (and not only) better reflects the notion of somebody really independent, including from judges and the case law.

2. AG Opinions as Stimulators of Legal Debate

As mentioned above, it is often difficult to determine whether an AG opinion was followed or not. Not only the legal proposals may be taken into consideration merely partially, but also the Court sometimes provides a different reasoning to achieve the same conclusion or develops the propositions of AG by itself. Even admitting existing limitations in establishing such an influence of Advocates General on the case law of the Court, a recent econometric analysis provided by the University of Cambridge has shown some figures that allow us to imagine the statistical revelance . As one of the findings, the researchers have presented that the Court is approximately 67 percent more likely to annul an act (or part of it) if an Advocate General advises to annul than if it advises to dismiss the case or declare it inadmissible (Arrebola *et al.*, 2016, p. 3). The examples of AG opinions being the first step into a future judgment are numerous. Being a first step might also mean different levels of acceptance: sometimes the Court completely follows the proposition, while in other cases only some parts of the reasoning may coincide.

As an example of a followed AG opinion are recent cases concerning the issue of possible payment of damages suffered because of the excessive length of the proceedings before the General Court (hereinafter referred to also as the 'GC') (*European Union v. Gascogne Sack Deutschland and Gascogne,* 2018*; European Union v. Kendrion,* 2018*; European Union v. ASPLA and Armando Álvarez,* 2018). In this group of cases, the Court had to decide whether the GC was right to order the European Union to pay compensation in respect of material and non-material damage suffered by a group of companies because of the excessive length of the proceedings before the GC.

Both the Advocate General and the Court were of the same opinion that the GC erred in law by awarding the applicants the material damages. The Court analysed only the causal link and grounded its judgment to annul the rewarding of material damages only on the misinterpretation of the notion of 'causal link'. AG, however, has provided a full analysis, examined not only the causal link but also the existence of damage, and found that the General Court erred in law by determining the damage suffered. Moreover, AG has provided more insights about the concept and interpretation of the existence of the causal link. It is clear that both the Advocate General and the Court were following the same argumentation line. The main argument proving the non-existence of the causal link in this case was that the relevant undertakings were able, subsequently, to reverse their initial decision to defer payment and submit a bank guarantee and thus avoid the possible related damages due to a long court procedure. However, for example, AG has paid more attention to the critics of one of the main GC arguments in favour of the applicants that at the time when they provided a bank guarantee, the breach of the obligation to adjudicate within a reasonable time by the General Court was unforeseeable. Although the Court has also criticized such an argument in this particular case, it did not develop a more comprehensive analysis as regards this issue. The CJ approach to the solution of the case is not clear. It may let think that the AG opinion could be interpreted as a supplement to the Court's argumentation that helps to understand it better.

In *Intel v. Commission* (2017) the Court, while following the proposed outcome of the case, however, did not agree with all the proposed insights and has chosen a bit different direction. As proposed by the AG, the Court has set aside the judgment of the GC and referred the case back to it. AG has proposed to uphold five out of six appeal grounds, the Court of Justice has, however, upheld only one of them. Two other grounds (proposed to be upheld by AG) were rejected and three have been treated as not being necessary to rule on.

The main reason for the verdict of the Court was its finding that in the analysis of whether the rebates applied by Intel were capable of restricting competition, the General Court failed to take into consideration Intel's arguments seeking to expose alleged errors committed by the Commission in the

'As Efficient Competitor test' (hereinafter referred to as 'AEC test'). The Court stressed that although the Commission treated the rebates as restricting competition by their very nature, the AEC test however played an important role in the Commission's assessment. Therefore, the General Court was required to examine all of Intel's arguments concerning that test (*Intel v. Commission*, 2017, paragraphs 143–144). Thus, the Court has set aside the judgment of the General Court on this sole ground.

The AG went further. His analysis regarding this issue was more exhaustive. First , the AG emphasized that the General Court erred in law by finding that 'exclusivity rebates' constitute a separate and unique category of rebates that require no consideration of all the circumstances in order to establish an abuse of a dominant position. Second, although the AG was also of the opinion that the General Court had to take into account Intel's arguments regarding the AEC test, it stressed that the General Court failed to establish the anticompetitive foreclosure effect of the rebates by assessing all the circumstances among which were more elements than only the AEC test.

The laconic Court judgment in *Intel v. Commission* (2017) has left a few unanswered questions and some space for debate and interpretations. The AG clearly stated that all circumstances must be taken into account and strongly criticized the idea of presumption of abuse of a dominant position in case of 'exclusivity rebates' without an analysis of the circumstances of the case. Again, transparency of AG opinion in this particular case received an immediate effect as well. Many commentators admitted it as a strong push towards effects-based analysis in the field of abuse of dominant position (The latest Intel from Luxembourg…, 2016; AG Wahl in Intel appeal…, 2016; The Intel case…, 2017). The judgment of the Court of Justice, while heading towards the same direction, was much more moderate and left open questions whether the untouched issues shall be treated as provided in the AG opinion or, on the contrary, that means the Court did not agree with them. The main question in *Intel v. Commission* (2017) remained whether the Court supported the AG position, which obviously lead towards a more effect-based analysis in the case of abuse of dominant position. On the other hand, the argumentation of the Court lets us think as well that in exclusive and loyalty rebate cases the anticompetitive harm is presumed and the Court only clarified on the possibility to rebut this presumption by obliging the Commission to take into account all the arguments aimed to deny effects on competition.

The lack of such clarity of why the Court remains silent towards some legal argumentation submitted by an AG is often criticised by the doctrine in the light of the lack of separate and dissenting opinions (Weiller, 2001)[20]. In particular in cases when the AG attracts attention of the Court on the lack of coherence, ambiguity or clarity in the case law[21]. Having done this, the AG inevitably opens doors for legal debate not only among judges of the Court in a given case or legal commentators but also among Member States judges. Thus, in this respect, AG opinions are not less important than separate or dissenting opinions. AG opinions are usually longer than CJ judgments. Advocates General often try

[20] Weiller raises an interesting issue arguing that the dissent often produces a paradoxical effect of legitimating the majority because it becomes evident that alternative views were considered even if ultimately rejected.

[21] See, for example, Opinion of Advocate General Bobek (*Dzivev and Others*, 2018): <…> In the crudest terms, the issue (re)opened by the present case is essentially: may a national court, in the name of 'effective collection' of VAT (or other own resources of the European Union), selectively set aside national provisions, such as rules on prescription and limitation periods (*Taricco*, *M.A.S.*); monetary thresholds for criminalisation (*Scialdone*); time limits applicable to the closure of the pre-trial stage of criminal proceedings (*Kolev*); or, as in the present case, national rules on admissibility of evidence in criminal proceedings obtained unlawfully, if the observance of those rules would mean impunity for the accused? (paragraph 65). Then AG Bobek comes with further proposal: <….> It is fair to acknowledge at the outset that the approach advocated here is based on the firm conviction that the correct approach to the Member States' potential (systemic) failures in effective collection of VAT (or the protection of other financial interests of the European Union) is the approach embraced in *M.A.S.* and *Scialdone*, and not that in *Taricco* and *Kolev* (paragraph 69).

to reflect main doctrinal streams, provide their views based on various issues[22]. The Court judgments are shorter, trying to focus on the subject matter necessary to solve the legal issue. The reasons why not all legal arguments submitted by AG find reflection in the Court judgment might be various. For instance, a procedural economy, lack of relevance to a given case, having not convinced the majority of the panel, etc. One aspect should be clear: there is no doubt that all legal arguments raised by AG are discussed by the panel of judges. Could the institute of separate and dissenting opinion bring more benefit to the EU judicature? Probably, not. It seems that AG institute is successfully fulfilling this gap at the Court of Justice.

Recent reforms in Poland gave to the Court of Justice another opportunity to develop interpretation of the EU law. AG Tanchev position was quite coherent in the so-called 'Polish saga'. On 24 June 2019, the CJEU following the AG Tanchev Opinion held that lowering the retirement age of Supreme Court judges is incompatible with EU law (*Commission v. Poland (Indépendance de la Cour suprême)*, 2019). In the following case related to disciplinary issues, despite the stronger point of view of AG Tanchev, the Court of Justice, however, decided to take an intermediate step[23] stating the referring court "<…> in the light of all the relevant factors established before it has <…>" to determine whether a number of objective factors "<…> may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law <…>" (*Commission v. Poland (Indépendance de la Cour suprême),* 2019). In other words, the national jurisdiction should have a final say in deciding whether the Disciplinary Chamber of the Polish Supreme Court should/could be considered as independent and impartial body. Having in mind the context of the judicial reform in Poland, the latter task for the national judge might not be an easy one.

Thus, one of the most visible and obvious features of AG opinions regarding the CJ case law is its impact to a particular case. If the Court approves AG propositions, the latter smoothly become an integral part of a Court judgment. The degree of acceptance may however vary markedly – while in some cases the Court accepts the most of propositions, in other cases only part of them may be followed. The acceptance may be also implicit when the Court does not take position on some particular issues but obviously follows the argumentation proposed by Advocate General.

A few concluding observations

1. AG opinions do not have a legal effect since they do not bind the Court; however, their existence strengthens the legitimacy of the Court's judgments even if a proposed solution is not followed. The title of this paper, concluded with the phrase 'any doubts?' regarding the institute of Advocate General in the CJ, could be interpreted as 'do you have a better solution?'
2. The influence of the AG opinions on the CJ case law lies primarily in its impact on a particular case. The degree of acceptance of the proposed legal arguments may however vary markedly from total to partial acceptance.
3. Advocates General do not avoid to pay attention to the divergence of the EU judicature's case law. Thus, AG opinions play a role in strengthening the coherence of the Court of Justice case law as well.

[22] A good example of diversity of opinions were recent cases related with the wear of Islamic headscarves at work. While AG Kokott has considered that a ban on wearing headscarves in companies may be admissible (*G4S Secure Solutions,* 2016*)*, AG Sharpston was of the opinion that such a company policy constituted unlawful direct discrimination (*Bougnaoui and ADDH,* 2016*)*. The Court's approach was less strict towards this issue and it has not found that the mentioned requirement led to a direct discrimination (*G4S Secure Solutions,* 2017*; Bougnaoui and ADDH,* 2017*).*

[23] On the other hand, one should not forget that the Court is limited by the certain particularities of the Preliminary ruling proceedings that had to be respected in the given case.

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Advocate General at the Court of Justice: any doubts? Part I

Virgilijus Valančius
(the General Court of the European Union)

S u m m a r y

The article briefly overviews some features of Advocates General of the Court of Justice of the European Union and analyses the influence of their opinions to the case law of the Court in particular, stimulating legal debate. The research is based on the case law. The latter spotlights as well the links between the opinions of Advocates General and the judgments of the Court both when the AG propositions are followed and when they are not.

The analysis provided in the article allows to make several concluding remarks. First, AG opinions do not have a legal effect and do not bind the Court, however their existence strengthens the legitimacy of the Court's judgments even if a solution proposed is not followed. The title of this paper, concluded with the phrase 'any doubts?' regarding to the institute of Advocates General in the CJ, could be interpreted as 'do you have a better solution?' Second, the influence made by the AG opinions to the CJ case law is primarily its impact to a particular case. The degree of acceptance of the proposed legal arguments may however vary markedly from total to partial acceptance. Third, Advocates General do not avoid paying attention to the divergence of the case law. Thus, AG opinions play a role in strengthening the coherence of the Court of Justice case law as well.

Generaliniai advokatai Teisingumo Teisme: ar kyla abejonių? I dalis

Virgilijus Valančius
(Europos Sąjungos Bendrasis Teismas)

S a n t r a u k a

Straipsnyje aptariami kai kurie Europos Sąjungos Teisingumo Teismo generalinių advokatų bruožai ir analizuojama jų nuomonių įtaka teismui, pabrėžiant teisinės minties stimuliavimo veiksnį. Tyrimas grindžiamas Teisingumo Teismo praktika. Jame taip pat išryškinamos generalinių advokatų nuomonių ir Teisingumo Teismo sprendimų sąsajos tiek tais atvejais, kai generalinių advokatų pateikti siūlymai yra priimami, tiek kai Teismas jais nesiremia.

Atlikta analizė leidžia padaryti keletą apibendrinančių išvadų. Pirma, nors generalinių advokatų nuomonės neturi privalomosios teisinės galios ir neįpareigoja Teisingumo Teismo, tačiau jų egzistavimas sustiprina Teisingumo Teismo sprendimų įteisinimą net ir tais atvejais, kai pateiktais siūlymais nesivadovaujama. Straipsnio pavadinimas, kuris baigiasi žodžiais „ar kyla abejonių?“ vertinant generalinio advokato institutą TT, gali būti interpretuojamas kaip „ar turite geresnį pasiūlymą“? Antra, generalinių advokatų nuomonių įtaka Teisingumo Teismo jurisprudencijai itin pasireiškia jų poveikiu konkrečiose bylose. Pasiūlytai teisinei argumentacijai gali būti pritariama visiškai arba iš dalies. Trečia, generaliniai advokatai dažnai atkreipia Teisingumo Teismo dėmesį į jurisprudencijos netolygumus, tokiu būdu stiprinamas ESTT praktikos nuoseklumas.

Virgilijus Valančius yra Europos Sąjungos Bendrojo Teismo teisėjas. Baigęs teisės studijas Vilniaus universitete, dirbo Lietuvos teismuose, Europos ir tarptautinėse teisėjų organizacijose. Doktorantūros studijas baigė ir daktaro disertaciją apgynė bei habilitacijos procedūrą atliko Mykolo Romerio universitete. Stažavosi Nyderlandų, Didžiosios Britanijos, JAV teismuose. Mokslo pedagoginį darbą dirbo Vilniaus ir Mykolo Romerio universitetuose. Svarbiausi moksliniai interesai ir tyrimų sritys – ES teisė, konstitucinė ir administracinė teisė, civilinis procesas.

Virgilijus Valančius is a judge at the General Court of the European Union. After graduating from the Vilnius University, he worked in Lithuanian courts, European and international judicial organizations, passed his traineeship in Dutch, Great Britain and US courts. He has defended his doctoral thesis as well as habilitation procedure at the Mykolas Romeris university. He has been involved in scientific pedagogical work at Vilnius and the Mykolas Romeris universities. His main areas of research are EU law, constitutional and administrative law, and civil proceedings.