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EXPECTATIONS • ACHIEVEMENTS • DISAPPOINTMENTS • THE FUTURE

Ten Years of Judicial Cooperation

by Joseph Izzo Clarke

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Joseph Izzo Clarke graduated as a Legal Procurator in 1992. He worked as a solicitor at the Office of the Maltese Attorney General between 1987 and 1993, which office was also the subject of his specialist dissertation. Between 1994 and 2004, he served as a diplomat with the Maltese Ministry of Foreign Affairs. During this period, he obtained his Master in Diplomacy at the Mediterranean Academy for Diplomatic studies in 1995, specialising in the implementation of international state obligations in national law. He was Deputy High Commissioner and Consul General at the Maltese High Commission in London between 1995 and 1998, responsible for trade and consular matters. Between 2000 and 2004, he served as Deputy Ambassador and Consul General, responsible for bilateral relations with Italy and consular matters at the Maltese Embassy in Rome.

He joined the Court of Justice of the EU in Luxembourg in 2004. He has since been head of the Maltese language unit within this institution, where he successfully recruited all the 23 lawyer linguists which complement the unit. His responsibilities include, amongst others, regular recruitment missions, as well as ensuring quality translations into Maltese of Court documents. He also regularly gives presentations on legal translation to new lawyer linguists of all language units at the Court of Justice. He recently participated as a keynote speaker, on legal translation, at the QUALETRA final conference on the implementation of Directive 2010/64/EC, on the right to translation and interpretation of persons involved in criminal cases, held at the Leuven University in Antwerp.

He is a guest lecturer on legal translation at the University of Malta. He is also author of a number of articles on translation and language issues, and this year has edited a publication of Court of Justice judgments concerning Malta on the occasion of the tenth anniversary of Malta`s accession to the EU.

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Abbreviations used in this paper

CC	Criminal Code (Maltese)
CJ	Court of Justice
CJEU	Court of Justice of the European Union
COCP	Code of Organisation and Civil procedure
ECJ	European Court of Justice
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Abstract

This paper intends to illustrate the respective roles and functions of the Court of Justice of the EU (CJEU) on the one hand, and the Maltese national courts on the other. It will then define the scope and role of the judicial cooperation between the CJEU and the national courts, highlighting the procedure relating to the preliminary rulings. The paper will then briefly describe the cases brought before the CJEU involving Malta, including those concerning requests for preliminary rulings originating from Malta, and the direct actions by the European Commission before the Court of Justice, as well as those before the General Court. After a description of the rationale behind the publication of the book *Malta u l-Qorti tal-Ġustizzja tal-Unjoni Ewropea (Malta and the Court of Justice of the European Union),* and following the conference in which it was presented, the main points that emerged from the conference will serve as a backdrop to some statistical analysis pertaining to the Maltese cases, as well as some reflections on the current situation of the judicial cooperation obtained after ten years. It will propose that, besides a mere statistical analysis of the raw figures that emerge, one must rather address his attention to the spirit of EU membership, and reflect on whether Malta's legal system has actually absorbed and understood the full meaning of the EU membership, ten years after it took place.

Ten Years of Judicial Cooperation

by Joseph Izzo Clarke

1. The roles of the Court of Justice of the European Union and the Maltese Courts within the respective legal systems

The Court of Justice of the EU (CJEU/ECJ)

The European Court of Justice (ECJ) was created in 1952, under the Treaty of Paris,[1] which established the European Coal and Steel Community. The ECJ's jurisdiction, initially limited in scope, increased with the 1957 Rome Treaties.[2] The role and structure have basically remained unchanged but the Court's activities and competencies have increased both as a result of successive treaty reforms and the enlargement of the EU.[3]. The Lisbon Treaty has changed the Court's name to "the Court of Justice of the European Union" (CJEU) and from this point onwards reference will be made to the CJEU to minimise confusion of terms.[4]

The Treaty on the European Union, as amended by the Lisbon Treaty, states that "The Court of Justice of the European Union […] shall ensure that in the interpretation and application of the Treaties the law is observed".[5]

The increase in cases over the years led to the establishment of the Court of First Instance in 1989, today the General Court. With the establishment of the Civil Service Tribunal in 2005, the CJEU's structure currently comprises three courts with distinct competences.

The decisions of the CJEU have established important fundamental legal principles, not without controversy, particularly because of its perceived "extra-judicial" role.[6] Most of these decisions arose from requests for preliminary rulings from national courts. The increase in preliminary rulings over the years highlights the growing importance being attributed to judicial cooperation between the CJEU and national courts.[7]

The CJEU today is the supreme EU court within the European Union's institutional structure. The CJEU`s competences today include: competition, human rights, administrative, social and constitutional law[8].

[1] Signed on 18 April 1951.
[2] Signed on 25 March 1957.
[3] The present building was inaugurated in 2009, and will be completed by 2019. Vide the CJEU website: http://curia.europa.eu/jcms/jcms/Jo2_25536/. Similarly, personnel has increased exponentially to the curent number of around 2000.
[4] Originally the European Court of Justice, since the Lisbon Treaty it has become the Court of Justice of the EU, comprising the Court of Justice, the General Court, and the Civil Service Tribunal.
[5] Article 19, Treaty on European Union (TEU).
[6] Vide, for example, Steiner, Josephine and Woods, Lorna (2014), *EU law*, 12th edition, Oxford: Oxford University Press, p. 44 *et seq.*
[7] Vide Stephanie Bier`s 2008 paper on the ECJ`s role and its relationship with national courts, *The European Court of Justice and Member State Relations: A Constructivist Analysis of the European Legal Order*, University of Maryland.
[8] For a full list of the subject matter of cases heard, consult Court of Justice of the European Union (2014), *Annual Report 2013*, Luxembourg: Publications Office of the European Union, p. 75.

The Maltese courts

The Maltese legal system developed from the old system of the Knights of St. John, the successive reforms under the British administration,[9] and the constitutional amendments introduced by successive Maltese administrations. The Malta Independence Act of 1964 reflects, though not completely,[10] the Westminster model.

The Constitution of Malta establishes the superior and inferior courts, and the Commission for the Administration of Justice. It regulates the appointment, tenure, independence, and oath of office of judges and magistrates, as well as the appointment of the acting Chief Justice.[11] The Constitution does not define the role of the Judiciary,[12] but only defines the competences of the Constitutional Court.

It is the COCP (Code of Organisation and Civil procedure) which defines the structure of the civil courts. It states that the duties of the members of the judiciary are to "[…] faithfully perform the duties of Judge without favour or partiality, according to justice and right, and in accordance with the laws and customs of Malta, to the honour of God and the Republic of Malta."

The Maltese Criminal Code (CC),[13] on the other hand, establishes the structure and function of the courts of criminal jurisdiction. Other tribunals, such as the Industrial Tribunal, the Rent Regulation Board, the Competition and Consumer Appeals Tribunal, the Small Claims Tribunal, the Agricultural Leases Control Board, and the Administrative Review Tribunal, are established by specific laws, though many powers and functions attributed to them are similar to those attributed to the civil courts under the COCP.

The Maltese justice system[14] has a two tier level of judgment in the inferior and superior courts, as do the courts of criminal jurisdiction, which function both as court of criminal judicature, and that of criminal inquiry.

The constitutional role of the judiciary is that of ensuring the interpretation, safeguarding and observance of Maltese law, according to the principles laid out in the Constitution, in all cases brought before it.

In 2004, EU law became part of Maltese law. All Maltese courts, tribunals and boards are to apply EU law "in accordance with the principles laid down by, and any relevant decision of, the Court of Justice of the European [Union] or any court attached thereto".[15]

[9] Vide, *inter alia*, Kevin Aquilina (2013), 'The nature and sources of the Maltese mixed legal system: a strange case of Dr. Jekyll and Mr. Hyde?', *Comparative Law Review*, Vol. 4, Issue 1, 1-38.

[10] Vide J.J. Cremona (1994), *The Maltese constitution and constitutional history since 1813*, 2nd edition, Malta: PED Publications, p. 76.

[11] The position of Chief Justice is not formally defined in the constitution. This position was established by Proclamation IV of 1827 (Vide H. Harding (1980), *Maltese legal history under British rule (1801-1836)*, Malta: Progress Press, p. 187-200).

[12] Chapter VIII, Articles 95 – 101A.

[13] Chapter 9, Laws of Malta.

[14] For a description of the Maltese judicial structure, vide David Joseph Attard, (2012), *The Maltese legal system*, Vol. 1, Malta: Malta University Press, p. 131.

[15] Article 5 of the European Union Act, Chapter 460, Laws of Malta.

2. The preliminary reference: the procedure governing judicial cooperation.

Within the EU legal system, the CJEU and the Maltese courts occupy distinct roles. The CJEU interprets exclusively EU law, and does not decide on matters brought before national courts. It is the Maltese courts, as the national courts, which decide the cases brought before them. But, if necessary, they are to interpret EU law following CJEU case-law.[16]

EU law has to be interpreted uniformly across the EU. It is the CJEU`s mission to ensure this. To do so effectively, it requires the assistance of the national courts of the Member states, who are, therefore, the first enforcers of EU law. Collaboration between the CJEU and national courts has developed over time, and is the cornerstone of the judicial effectiveness of the EU.

A correct and uniform interpretation of EU law by the national courts is thus fundamental. This is made possible through a number of measures, including the availability of EU law and CJEU case-law in all official languages.

Most importantly, in case of doubt by a national court, the CJEU shall "give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions".[17]

The request for a Preliminary Ruling is thus the procedure by which judicial cooperation between the CJEU and national courts operates. It is today the most frequent action before the CJEU.[18] Preliminary Ruling is established by the Treaties,[19] and regulated by the rules of procedure of the CJEU,[20] as well with its own recommendations.[21] The procedure takes into consideration the procedural, linguistic, structural and legal differences that exist between the legal orders of the Member States, so as to ensure maximum efficiency in proceedings.

It is the national court that decides on whether to make a referral. What constitutes a national court can be established only by the CJEU. Case-law has established that, "… in order to determine whether a body making a reference is a court or tribunal for the purposes of Article [267 TFEU], which is a question governed by Community law alone, it takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent".[22]

A distinction between referrals concerning interpretation of EU law, and referrals concerning its validity has to be made. With regard to interpretation, national courts carry discretion on whether to make a referral or not. However, courts against which no appeal is possible are obliged to make a referral.

[16] Judgment of the ECJ, 28 June 1978, Simmenthal (70/77, ECR 1978 p. 1453), vide paragraph 21. This is transposed in Maltese law as per footnote 16.

[17] Article 267 of the Treaty on the Functioning of the European Union (TFEU). The ECJ, in its judgment of 6 October 1982 CILFIT/Ministero della Sanità (283/81, ECR 1982 p. 3415), established guidelines with regard to the referral of preliminary questions.

[18] The ECJ's 2013 annual report indicates a 50 % increase (302 to 450) in references for preliminary rulings, while direct actions have decreased by 50 % (143 to 72) since 2009.

[19] Article 19(3)(b) TEU, Article 267 TFEU, and Articles 23 and 23a of the Statute of the ECJ.

[20] Rules of Procedure of the Court of Justice of 25 September 2012 (OJ L 265, 29.9.2012), as amended on 18 June 2013 (OJ L 173, 26.6.2013).

[21] Recommendations to national courts and tribunals in relation to the initiation of Preliminary Ruling proceedings (OJ: 2012/C 338/01).

[22] Vide, inter alia, Case C-54/96 *Dorsch Consult* [1997] ECR I-4961, paragraph 23.

They are exempt from doing so only if an issue has already been decided by case-law and no new questions arise on the matter.

In questions concerning the validity of EU acts, all national courts are obliged to make a referral. Though they may reject pleas in this sense, it is only the CJEU that has jurisdiction to declare them invalid. Exceptionally, in cases of serious doubt, national courts may suspend an EU act on which a national measure is based, and refer a request to the CJEU in this sense.

The timing of the request for Preliminary Ruling is left with the national court, but the national court should obtain enough information on the case so as to furnish all relevant factual and legal information to the CJEU.

The form of the request by the national court follows national procedural rules. The request has to keep in mind translation requisites. Simple language, clear and precise wording, and avoidance of unnecessary details are thus required. The document has to be as short as possible. If deemed too long, a shortened version will be prepared and translated by the CJEU for notification to all parties concerned.[23] Translation is part of the judicial process. Therefore, lengthy and unclear documents can create translation difficulties, potentially causing delays in the proceedings.

The request should include a summary of the subject-matter of the dispute and the relevant findings of fact, the national provisions applicable and, where appropriate, the relevant national case-law, the reasons for the referral, and the relationship between the national provisions and EU law applicable to the main proceedings.[24]

The request must be drafted in a concise form, and the questions must be clearly identifiable. Numbered pages and paragraphs, and precise references are also recommended, while information on the arguments of the parties, and possible indications by the national court on possible replies by the CJEU, should also be included. If these requisites are not met, the request will be deemed inadmissible.

Once the request is referred, the case follows the CJEU's rules of procedure. On average, cases are decided within sixteen months. Upon reception, the request is translated in all languages and referred to all interested parties, who have two months to send their observations and/or requests for intervention, if deemed necessary.

The CJEU hears the parties in their pleadings in one sitting, and receives, if deemed necessary, the opinion of the Advocate General.[25] Communication between both courts continues throughout the procedure before the CJEU, until the final decision is adopted and published in all official languages. This decision is binding not only on the national referring court, but on all courts within the EU. National courts are encouraged to inform the CJEU of any eventual judgments given on the basis of the CJEU's replies.

In some cases, the treatment times of a case are shortened, if the nature of the case so requires.[26] A case may be also treated with urgency in cases concerning the areas of freedom, security and justice.[27] In these cases,

[23] The parties that may present observations and/or intervene are listed in Article 23 of the Statute of the ECJ, vide also footnote 20.

[24] Recommendations of the ECJ, paragraph 22.

[25] In 2013, 52 % of referrals required an opinion.

[26] The expedited procedure, under Article 105 of the Rules of Procedure of the ECJ.

[27] Article 107 of the Rules of Procedure.

the CJEU does away with written observations or written parts of the procedure. It is the national court that normally requests this, though exceptionally the CJEU may do so on its own accord. On average, cases are decided within two months.

Where the referral concerns questions to which the replies would have been already given in previous cases, the CJEU may apply the simplified procedure under Article 99 of the Rules of Procedure, by means of a reasoned order.

The recommendations of the CJEU with regard to making a referral are reflected in Maltese law.[28] These rules confirm the Maltese court's discretion to settle the terms of the reference to the CJEU, as well as the requirements for clarity and translation. The basic details regarding the parties, the facts, the nature of the case, are reiterated, as are the need to indicate the national and Union law relevant to the dispute, the claims of the parties, and why a ruling is sought. The questions are also to be formulated simply. The order of reference is to be transmitted to the CJEU through the court registrar without delay. The title of the referring court is to be clearly indicated.

A definite list of which Maltese courts, tribunals or boards may make a request for a Preliminary Rulingto the CJEU cannot be indicated. Every Maltese judicial body may therefore make a referral, and it will be up to the CJEU to decide if the judicial body is a court according to the criteria indicated before. This issue has not yet been raised in referrals from Malta.

3. Cases involving Malta before the CJEU.

The preliminary rulings

AJD Tuna case

AJD Tuna is a Maltese registered company which operates in the farming and fattening of blue fin tuna caught in the Mediterranean. During the 2008 season, the European Commission adopted Regulation No *530/2008*. Amongst other matters, Article 1 stated that "Fishing for blue fin tuna […] by purse seiners flying the flag of or registered in Greece, France, Italy, Cyprus and Malta shall be prohibited as from 16 June 2008. It shall also be prohibited to retain on board, place in cages for fattening or farming, tranship, transfer or land such stock caught by those vessels as from that date.'"

Consequently, the Maltese authorities precluded AJD Tuna from acquiring and importing in Malta blue fin tuna for its farming and fattening activities. The applicant could not acquire the remaining quota of its tuna allocation by dealing with extra-community tuna fishermen. Considering itself prejudiced, AJD Tuna brought proceedings before the Maltese courts requesting liquidation of damages and compensation.[29]

The applicant maintained that the EU Regulation lacked adequate statement of reasons. Secondly, Articles 1 and 3 of the Regulation infringed basic Regulation No 2371/2002, as the existence of a serious threat or need for immediate action was not indicated. Thirdly, the Regulation infringed the principle of legitimate expectations and,

[28] For Civil cases, vide Legal Notice 279 of 2008, entitled Court Practice and Procedure and Good Order Rules (Part X, Article 21). For criminal cases, vide Legal Notice 280 of 2008, as amended, entitled Court Practice and Procedure and Good Order (Criminal Code) Rules of Court (Part IV, Article 6).

[29] AJD Tuna Limited vs Direttur tal-Agrikoltura u s-Sajd *et*, 1210/2008.

fourthly, infringed the principle of proportionality. The fifth plea in law stated that the measure was unreasonable and discriminatory on grounds of nationality. Lastly, prior to the approval of the Regulation, the interested parties had not been consulted.

The defendants, on their part, maintained that the action of the Director for Agriculture and Fisheries was in conformity with and, above all, in fulfilment of his obligations under Commission Regulation No 530/2008.

The Civil Court, First Hall, submitted that the order for reference was made because the government action could not be examined before it was determined whether the EU Regulation was valid or not. Furthermore, interpretation of Article 3 of the Regulation was also necessary.[30]

The CJEU, in its judgement,[31] stated that the validity of Article 7(2) of the Basic Regulation as regards *audi alteram partem* and effective judicial protection was not affected by the fact that the Regulation did not seek to obtain the observations of operators likely to be affected by the measures. Article 7(1) of the Basic Regulation empowers the Commission to adopt measures to end serious threats to living aquatic resources. An emergency measure is not adopted depending on economic interests, but solely to conserve living aquatic resources and the marine eco-system. Since the Regulation fell within Article 288 TFEU, it was not covered by Article 41 of the Charter of Fundamental Rights.

However, the CJEU found the Regulation invalid in so far as it set the date for the entry into force of the measures as 16 June 2008, but deferred that date to 23 June 2008 for Spanish purse seiners. This created an unjustified difference in treatment on grounds of nationality between the Spanish seiners, on one hand, and the Maltese, Greek, French, Italian and Cypriot seiners. This case is now still pending before the Civil Court, First Hall, of the Maltese Courts of Justice.

Vodafone and Mobisle case

Both Vodafone and Mobisle are Maltese registered companies that are licensed providers of mobile telephony services. They were charged fees as administrative charges by the Maltese government under Articles 40 and 41 of Act No II of 2005. Applicants claimed that these regulations were invalid in so far as they were *ultra vires* with regard to the Maltese Parliament's powers and in so far as they were in conflict with Articles 12 and 13 of EU Directive 2002/20.

Proceedings were initiated before the First Hall of the Civil Court on 19 April 2005.[32] This court found in favour of the defendants. Both companies appealed before the Constitutional Court on 10 December 2008.

In essence, the companies held that Members States are precluded from imposing taxes other than those levied under the general authorisation for provision of telephone services. They claimed that they were subjected to burdens not contemplated by the Directive, that the tax was imposed only on the applicants, and that the charge was therefore discriminatory. They further stated

[30] The full details and documentation, including the opinion of Advocate General Trstenjak and the judgement, can be viewed through the CJEU website (http://curia.europa.eu/jcms/jcms/j_6/).

[31] 17 March 2011, delivered by the Second Chamber of the Court of Justice, C-221/09, ECR 2011 p. I-1655, ECLI:EU:C:2011:153.

[32] Vodafone Malta Limited (C-10865) u s-soċjetà Mobisle Communications Limited (C-24655) vs L-Avukat Ġenerali, Il-kontrollur tad-Dwana, Il-Ministru tal-Finanzi, L-Awtorità ta' Malta dwar il-Komunikazzjoni (Qorti Kostituzzjonali – Appell Ċivili Nru 361/2005/1).

that the regulations do not provide for the collection of the tax from the public according to consumption.

The defendants rebutted that the administrative charges in the Directive are of a different nature from a tax on consumption, which Members States can impose on the operator, and that the latter are not precluded from doing so by the Directive. They further held that the issue does not concern the interpretation of Articles 12 and 13 of the Authorisation Directive, but the interpretation and classification of an excise tax as established in Articles 40 and 41 of Act II of 2005.

The Constitutional Court harboured doubts on the applicability and interpretation of Articles 12 and 13 of the Directive, particularly in the light of the Mobistar judgment.[33] It therefore asked the CJEU whether the provisions of the directive actually prohibit Member States from imposing a fiscal burden on mobile telecommunications operators.

The third chamber of the CJEU, by decision dated 27 June 2013, stated that Article 12 of the Directive does not preclude legislation which imposes fees on mobile telephony operators. Provided, however, that the duty is not linked to the procedure for access to the market, but to the use of mobile telephony services.

After being referred back to the Constitutional Court in Malta, judgment was passed on 3 March 2014, whereby the applicant's claims were rejected and, basing itself on the CJEU's interpretation, the Constitutional Court ruled that the fees charged were deemed not to have been unlawful.

Direct actions

Other cases before the CJEU involving Malta concern actions by the European Commission in various fields, alleging non-observance by Malta of its Treaty obligations.

In undoubtedly the most known case, concerning spring hunting,[34] the Commission alleged that Malta failed to fulfil its obligations under Council Directive 79/409/EEC, on the conservation of wild birds, when between 2004 and 2007, it authorised the opening of the spring hunting seasons for quails and turtle doves without complying with the Directive's conditions. The Maltese government rebutted the allegations, saying that the Directive does not have the aim of abolishing spring hunting, but that a case by case evaluation has to be made. It stated that the opening of the spring hunting seasons was justified in Malta's case, given the particular circumstances of the Maltese islands.

The second chamber of the CJEU accepted that the law did not abolish definitively spring hunting. It found, however, that the Maltese authorities had not observed the principle of proportionality in applying the derogation under the law. For this reason, the CJEU ruled that Malta had failed to observe its obligations under the Directive.

In the Gozo Channel case, the Commission alleged that the Maltese authorities did not fulfil their obligations under Regulation No 3577/92 when they signed an exclusive contract with Gozo Channel, on 16 April 2004, for the provision of the maritime transport service between Malta and Gozo, without a prior call for tenders. The Maltese position

[33] Judgment given by the Court of Justice on 8 September 2005 in Joined Cases C-544/03 and C-545/03, *Mobistar SA* (C-544/03) v *Commune de Fléron, and Belgacom Mobile SA* (C-545/03) v *Commune de Schaerbeek* ([2005] ECR I-7723).

[34] Judgment of 10 September 2009, Commission / Malta (C-76/08, ECR 2009 p. I-8213) ECLI:EU:C:2009:535

was that since the contract had been signed before Malta's accession, it was not bound by the treaty and the said regulation's obligations. On this basis, and on the fact that the Commission's application did not specify clearly its allegations, the CJEU found in favour of Malta, and dismissed the case.[35]

In a subsequent case,[36] the Commission sought a declaration from the CJEU that, by failing to decommission fire protection systems and fire extinguishers containing halon for non critical uses on board ships, and to recover such halon, Malta did not fulfil its obligations under Regulation (EC) No 2037/2000. The Maltese government contested the interpretation given by the Commission, and argued that the use of such halon was allowed by what the regulation defined as critical use. The CJEU ruled in favour of the Maltese government in this case as well, agreeing with its interpretation of the regulation. Moreover, the Commission had failed to prove to the satisfaction of the CJEU its allegations. The case was also dismissed.

The CJEU found Malta had not fulfilled its obligations in three other cases, which have not been published. The first case[37] concerned the obligation of submitting the plans and outlines required under Council Directive 96/59/EC, on the disposal of various chemicals. The second case involved the level of emissions of the Delimara power station,[38] while the third case concerned failure to present summary reports on the monitoring programmes on Malta's internal waters[39].

There were also a number of cases before the General Court. One case concerned trademarks instituted by Maltese company Simonds Farsons Cisk.[40] Simonds Farsons Cisk, owner of the trademark "Kinnie", contested the decision of the Office for the Harmonisation in the Internal Market (OHIM) which had rejected its opposition to the registration as a trade mark of a non-alcoholic drink bearing the trade name "Kinji". The Maltese company had objected "because the signs are similar and because the goods concerned are identical or very similar". The General Court, however, dismissed that action and allowed the registration of the trade mark.

In two other cases, separate actions were brought by Maltese registered companies against measures adopted by the EU Council intended to freeze their assets with the aim of restricting nuclear proliferation in Iran.[41] In both cases, the relative Council decisions concerning the applicants were annulled with regard to the persons involved, as the General Court found that the procedural rights of the applicants had not been observed.

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[35] Judgment of 28 October 2010, Commission / Malta (C-508/08, ECR 2010 p. I-10589) ECLI:EU:C:2010:643

[36] Judgment of 19 May 2011, Commission / Malta (C-376/09, ECR 2011 p. I-4017) ECLI:EU:C:2011:320

[37] Full details and reference can be found in the ECJ website. Alternatively, the book *Malta u l-Qorti tal-Ġustizzja tal-UE* lists all cases in greater detail. The book is available free of charge in PDF format in the EU Office of publications bookshop (Link: http://bookshop.europa.eu/mt/malta-u-l-qorti-tal-gustizzja-tal-unjoni-ewropea-pbQD0413195/?CatalogCategoryID=WTQKABsteF0AAAEjKpEY4e5L)

[38] Judgment of 1 October 2009, Commission / Malta (C-252/08, ECR 2009 p. I-159*, Summ.pub.) ECLI:EU:C:2009:601

[39] Judgment of 22 December 2010, Commission / Malta (C-351/09, ECR 2010 p. I-180*, Summ.pub.) ECLI:EU:C:2010:815

[40] Judgment of 24 November 2005, Simonds Farsons Cisk / OHIM - Spa Monopole (KINJI by SPA) (T-3/04, ECR 2005 p. II-4837) ECLI:EU:T:2005:418

[41] Judgment of 12 December 2013, Nabipour and others / Council (T-58/12) ECLI:EU:T:2013:640, and Judgment of 16 September 2013, Islamic Republic of Iran Shipping Lines and others / Council (T-489/10) ECLI:EU:T:2013:453

Finally, an action by a Maltese company involving action with regard to an EU tender related to the provision of translation services was decided in the beginning of 2014.[42] Euris Consult, a Maltese translation company, had submitted a tender offer to Parliament for translation services. The offer package was damaged in the post, and was received open and torn. Though this was through no fault of the company, Parliament rejected the offer because the procedural rules on submission of offers, designed to ensure the confidentiality of the contents of tenders, had not been complied with. The General Court upheld Parliament's position and rejected the application of the Maltese company because the formal requisites had not been originally adhered to.

Compared to other Member States, cases involving Malta or Maltese nationals (both legal and physical persons) are relatively few. But whereas the small number of cases against Malta as a Member State can be taken to be a positive indication of how Malta has observed its Union obligations,[43] cases undertaken by Maltese nationals (including foreign residents) may also be a sign that there is as of yet a limited knowledge, in Malta, of the possibilities of action under EU law to safeguard individual and collective rights.

[42] Judgment of 30 April 2014, Euris Consult / Parliament (T-637/11) ECLI:EU:T:2014:237

[43] One must nonetheless keep in mind that a number of cases against Malta were withdrawn before the case was brought to an end. A complete overview of such actions over the first ten years of membership can be found in the book *Malta u l-Qorti tal-Ġustizzja*, cited in footnote 39.

4. Conclusion

The Malta Conference

Statistics for Maltese cases before the CJEU give the impression that the Maltese courts are not yet fully integrated in the judicial procedure of the EU. Two requests for preliminary rulings in ten years from Maltese courts seem to confirm this.

This figure alone, however, is not conclusive. The justice system is made up of other actors, not only the judiciary. A more holistic view needs to be taken. This is why the roles of the political administrators, the Maltese judiciary, the legal profession and the public, as well as the media and the university, need to be brought in the equation. On the tenth anniversary of Malta's accession to the EU, the Maltese language unit at the CJEU published a book aimed at outlining judicial events involving Malta at the CJEU.[44] The book simply presented the picture during these ten years, leaving it up to the reader to arrive at his own conclusions. It was also an opportunity to celebrate the anniversary, highlight the Maltese language as an official language of the EU, and advertise the career prospects for lawyer linguists at the CJEU.

The book outlines the role of the CJEU, and includes the full texts of all the judgments involving Malta. It also explains the all-important role of translation within the judicial process of the CJEU. Moreover, it includes a limited but qualified selection of CJEU judgments which outline the most fundamental legal principles established by it over these last sixty years, with a particular focus on the procedural requisites concerning the preliminary ruling.

[44] Vide details in footnote 36.

The theme of the book provided the perfect backdrop for a conference[45] organised by the Maltese Chamber of Advocates, and its presentation on this occasion was the stimulus to discuss the issues and questions that this subject raises.

The conference in effect included many of the major players of the Maltese justice system and the CJEU.[46] The presentations and subsequent discussions did touch on these themes, and the main conclusions are reproduced hereunder:[47]

- Many Maltese, including members of the legal profession and the judiciary, are not fully aware of the implications of EU membership for the Maltese judicial system. Moreover, the legal profession needs to continuously develop its professional competences, both as regards EU law, as well as regards general developments in the legal field. It should help its clients understand their EU rights, something which is not always being done;

- Unfortunately, the full impact of Malta's accession to the EU on its legal system is still not yet absorbed. Malta is still in a transitional phase, a sort of uncharted territory. The legislative obligations were an immense burden on Malta's limited resources, and a huge effort had to be undertaken to satisfy them. It will still take some more time before the Maltese legal system adapts fully to the obligations of membership. This raises the question of how much more resources should be allocated to the main actors in the justice sector, financial and human resources, so as to allow the main actors to develop fully Malta's role in the EU judicial sector;

- Though Malta satisfied its accession criteria, this was only the first step of a very long voyage, whereas many thought they had actually arrived at their destination. Now Malta is expected to play its role as an EU member state, and as such a greater effort is required. For example, government departments have to coordinate more with the Attorney General's Office, to enable this office to clearly present Malta's position in cases before the CJEU;

- Few in Malta are aware of the mechanism of the preliminary ruling, as well as the fact that other tribunals can make preliminary references. Preliminary references necessarily delay national proceedings. In the light of criticism on case delays,[48] lack of referrals might be interpreted to signify a reluctance to avoid

[45] Held on 24 April 2014. Full conference details are found in the Chamber of Advocates website (link: http://www.avukati.org/news_detail.aspx?id=374621).

[46] The speakers and participants included the Minister for Justice, Hon. Dr. Owen Bonnici, the Chief Justice, Hon. Dr. Silvio Camilleri, the Attorney General, Dr. Peter Grech, the Maltese judges at the ECJ, Dr. Anthony Borg Barthet, from the Court of Justice, and Prof. Eugene Buttigieg, from the General Court.

[47] What follows in the following paragraphs are statements that have been made during the conference. A more detailed write-up can be obtained from the Chamber of Advocates.

[48] Vide *The EU justice scoreboard*, and in particular Malta`s position with regard to duration of cases (Link: http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_communication_en.pdf). This document in effect paints a rather bleak picture of the efficiency of the Maltese legal system.

unnecessary delays. However, this is no justification for non-referral;

- The media and university also have a role to play. They should be encouraged to play their part in explaining better to the public the realities of the EU.

Statistics

Statistical data can help, but its interpretation carries many pitfalls.[49] An indicative reference to existing statistics can, however, give a partial idea of the real situation, possibly by comparing the performances of similar states.

Preliminary references from a new member state are normally limited in number in the first years, increasing as time goes by. The size and location of Malta means that the only relatively comparable EU states are Estonia, Latvia, Lithuania, Cyprus, Slovenia, and Luxembourg.

The number of referrals made in the first ten years by these states was divided in two five year periods, so as to analyse their quantitative progression. In the first five years, Malta, Luxembourg and Slovenia did not send any preliminary references, while Cyprus sent one, Latvia three, Estonia four, and Lithuania five. In the next five year period, Malta and Luxembourg sent two, Cyprus four, Slovenia five, Estonia eleven, Lithuania eighteen, and Latvia twenty seven.

Comparing the first and second five year periods of all these states, an increase in referrals is evident. With regard to the 2004 entrants, no other data is obviously available.

Luxembourg, on the other hand, in its subsequent five year periods, sent two (1968 – 1972), two (1973 – 1977), five (1978 – 1982), ten (1983 - 1987), ten (1988 – 1992), nine (1993 – 1997), twelve (1998 – 2002), eight (2003 – 2007), and twenty three (2008 – 2012).[50] It is still difficult to interpret Luxembourg's figures because of different legal, historical and political contexts, not least because it has the logistical advantage of hosting the CJEU. In any case, the tendency shows an upward trend.

It would therefore appear, on the one hand, that the initial negative impression still exists, since Malta sent the least referrals overall, but that, on the other hand, this performance is roughly comparable to similarly small states, considering also Malta's smaller population.

Of course, this conclusion settles the issue only partially. Though it is very difficult to compare these countries, from a numerical point of view, there are marked differences. In fact, while Malta (two), Luxembourg (two), Cyprus (five) and Slovenia (five) sent the least referrals, Estonia (fifteen), Lithuania (twenty two) and Latvia (thirrty) were much more active in this sphere. Perhaps no definite conclusion can be arrived at from these figures, but an interpretation of these figures can be arrived at, namely that the Maltese legal system has not fully awoken to the openings provided by the EU judicial system and that there is the potential to do more.

Final reflections

There are other figures which can be more indicative than official data. For example, of the approximately four thousand lawyers who visit the CJEU annually, very few come from Malta. No official visit by the Chamber of Advocates has been registered so far.

[49] Statistic 19 of the ECJ annual report gives an overview of new references for Preliminary Ruling(by Member State per year) in its 2013 report, in the part concerning the Court of Justice.

[50] Court of Justice of the European Union, op. cit.

Moreover, only five lawyers have requested a traineeship, despite the competent Maltese authorities having been informed of and been requested to encourage lawyers to explore such a possibility over these years.

Though attempts to inform on the CJEU`s role through presentations and printed material have been numerous, interest from Maltese institutions in establishing working contacts at administrative level has been at best lukewarm, notwithstanding a satisfactory show of interest at individual level. Attempts by the Maltese language unit to maintain contact with all the relevant legal and linguistic institutions were frequent and regular, but rarely managed to instil the desired interest in establishing a permanent working relationship, notwithstanding the obvious advantages that such working relationship could mean for the institutions.

Two official delegations by the Court of Justice and the General Court, composed of the highest officials, visited Malta in 2011, but this was not even mentioned in the national press or in any other competent Maltese website.

One other worrying aspect is the space and importance given to CJEU case-law in Malta. Apart from the hunting case mentioned before, little importance was given by the media to even the more important judgments, and very little mention was made of cases involving Malta.

Even the Maltese courts, tribunals and boards rarely mention EU legislation in their decisions, even where such a mention should be evident, or even mandatory. Lawyers presenting their case rarely resort to quoting EU law[51]. It becomes therefore clear that when analysing all these aspects, the shortcomings of the legal system are evenly spread, and involve all the actors concerned.

This apparent indifference is preventing the operators within the Maltese legal system from participating fully in the EU judicial structure. Consequently, the rights and benefits which Maltese citizens as EU citizens could benefit from are not being enjoyed fully. Whether this is due to genuine lack of enthusiasm or conviction in the EU system, the organisational realities of the Maltese judicial system or lack of facilities, funds and/or resources, is something that could, and should, be looked into.

Accession to the EU was supposed to be a very big event for the legal sector in Malta, but while statistically Malta`s situation seems nearly comparable to other Member States, it seems that the attitude towards change is somewhat indifferent, and that business is going on as usual. It is, perhaps, on this aspect, rather than on statistics, that one should reflect.

A greater participation could possibly foster a more intense and frequent exchange of best practices not only for the legal profession, but for those that administer the justice system, as well as the members of the judiciary themselves. Benefits to the system could be gained by adopting practical ideas concerning court management techniques, judgment drafting, as well as staff deployment, not to mention the correct use of IT tools to manage appointments for sittings, documental archiving and storage, research and other matters related to the carrying out of the judicial process. Finally, the application of EU

[51] One has to state here that during the conference, mention was made of at least eight requests for a Preliminary Ruling in these years, by Maltese lawyers to Maltese courts, which have allegedly been turned down. The exact facts here are yet to be confirmed, as the precision of this statement was disputed by the Chief Justice during the conference.

legal principles will definitely bring about a more open and transparent application of justice. Together with those positive elements already present in the current Maltese judicial system, these new ideas could help to improve the Maltese justice system dramatically, not least the emphasis currently placed by the CJEU on shortening the cases' life span. All this, and even more, if applied properly and in an open-minded spirit, could result in justice being delivered better, quicker and in a fairer manner.

Of course, all the other Member States have their own problems and shortcomings. It would not be realistic to think that everything is perfect on foreign shores. This should not be the excuse, however, to isolate oneself and avoid opportunities for exchange and improvement. It is this exchange of information and best practices that can help the Maltese justice system improve itself. After all, the justice system supposed to serve the individual, not the members of the justice system themselves.

The EU provides opportunities and rights. Through the possible shortcomings of the justice system, the Maltese public could be missing out on some of them.

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