

Trio Conference - Rome 13 November 2014

Introductory speech by President Vassilios Skouris

Excellences, ladies and gentlemen,

Please accept in the first place my apologies for not managing to be with you today. Unforeseen professional obligations keep me in Luxembourg.

But thanks to the possibilities offered by modern technologies I can still address this very important forum. And indeed, I felt I had to insist on delivering a number of messages in order to put an accent on the importance of the Trio presidency conferences.

It is of a particular honour for the Court, that this series focuses on its role in building an Area of Freedom, Security and Justice following the Lisbon Treaty. And obviously not just for symbolic reasons. This first of the three conferences on the role of the Court comes at a point where we are reaching crucial deadlines and crossroads for the area of freedom, security and justice.

The years since the Schengen convention have been very enriching for the domain and in particular marked a steady enhancement of the Court's competences and attributions.

Through several dozens of initiatives and legal instruments the European Legislator extended dramatically the

“europeanisation” of the field and called for a systematic assessment of the ever changing involvement of the Court.

The area of freedom, security and justice developed a significant momentum and covers now a very broad spectrum ranging from the management of the European Union’s external borders to judicial cooperation in civil and criminal matters, including asylum and immigration policies, police cooperation, and the fight against crime and terrorism.

The Tampere, Hague, and Stockholm programmes have paved the way towards substantial uniformity, ensuring the free movement of persons while offering a high level of protection to citizens.

The Lisbon Treaty organised a structure that improves transparency and facilitates the supervision of the European legislative activities both on the distribution of powers between the Union and the Member States and the protection of citizens of the European Union. A major contribution has been that all legislative competences conferred upon the European institutions are now subject to identical procedures and take the form of a simplified set of legal norms, without grey areas as for their legal effects.

The Lisbon Treaty expanded also the Court of Justice's jurisdiction to issue preliminary rulings in the area of Freedom, Security and Justice and extended it so as to include police and

criminal justice measures adopted before the entry into force of that Treaty. This was done through the repeal of articles 68, paragraph 1, of the EC Treaty and 35 of the EU Treaty.

Article 68 of the EC Treaty provided that the criminal law issues under the first pillar could not be raised before the Court of Justice in the context of a preliminary ruling by the courts of the Member States whose decisions could be subject to judicial review under the respective national legislation. The lower courts of the Member States had thus no right to submit a question, and requests in this context were rejected as inadmissible. The repeal of this limitation ensures the full implementation and enforcement of EU law in the area, but also complies with the principle of procedural economy and guarantees a fast and efficient solution of legal issues related to the European Union context.

Article 35 of the Treaty on European Union which was also repealed, provided that the Court of Justice was competent to give preliminary rulings on the interpretation or validity of legal norms adopted prior to the Lisbon Treaty on judicial and police cooperation in criminal matters, for as long as corresponding statements accepting the jurisdiction of the Court were made by Member States, with a further possibility for the latter to reserve the access to preliminary rulings exclusively to the national courts of last resort. Although most Member States have

accepted jurisdiction without limitation, the formal repeal of Article 35 TEU offers henceforth the possibility for the Court to supervise a uniform interpretation and application of EU law in all Member States.

Additionally, it should be noted that the Court's jurisdiction extends now to the European Union Law as a whole, unless the Treaties provide otherwise. Regarding visas, asylum, immigration and other policies related to free movement of persons (in particular, judicial cooperation in civil matters and the recognition and enforcement of judgments), any national court or tribunal - not just the higher courts - can now turn to the Court for a preliminary ruling. Moreover, the Court has jurisdiction to decide on the measures taken for reasons of public order in the context of border controls. In addition, it should be reminded that the Charter of Fundamental Rights of the European Union has become a legally binding instrument placed at the same level of hierarchy of norms as the Treaties, a situation that also gives the Court jurisdiction in the matter.

Yet another important contribution of the Lisbon Treaty, was the formal establishment of the Urgent Preliminary Ruling Procedure in that particular domain, via the article 267 paragraph 4 of the Treaty on the Functioning of the European Union. Because the matters that constitute the area of freedom, security and justice are often characterized by a certain urgency,

as they relate to individuals in precarious situations, it was important for our Court to be entrusted with the authority to act within the shortest possible time.

The Court has proven up to the expectations, since on all occasions, we managed to provide the answer in less than three months.

When I mentioned in the beginning the interest of the Court in the domain, I had also in mind statistics: 367 cases pertaining to the area of freedom, security and justice were lodged at the Court, 19 of which were dealt with via urgency procedures. The majority of the cases concern obviously preliminary rulings, which was to be expected since, by design, this is a domain prompt for collaboration amongst the Court of justice on the one hand and national jurisdictions on the other, in what we call “judicial dialogue”.

Let me though turn towards the future. What myself and moreover the Court are looking forward to, as an outcome of the conferences, are the perspectives concerning the possible extensions to the role of the Court to come. Take for example the initiative to establish a European Public Prosecutor. Leaving aside interrogations that could be brought forth because of the proposals to follow a specific legislative procedure, questions arise concerning judicial review, for which a procedure "sui generis", a quasi-preliminary ruling is recommended on the

basis of Article 86, paragraph 3 of the Treaty on the Functioning of the European Union. This means that the request will be submitted by the Prosecutor himself, to be considered at the same level as a national jurisdiction.

Similarly, pulling from the European Commission's adoption of a new framework for addressing systematic threats to the rule of law in the Member States - that will be complementary to infringement procedures and to the so-called "Article 7 procedure" of the Lisbon Treaty - it appears that one of the options examined is to expand the role of the Court of Justice of the European Union in any future mechanism on the matter. Currently, the Court of Justice of the European Union can only examine whether the procedural rules of Article 7 TEU have been adhered to. Apparently it is suggested to go further, by creating a new specific procedure to enforce the rule of law principle of Article 2 TEU in a Member State by means of an infringement procedure brought by the Commission or another Member State before the Court of Justice of the European Union.

Now in terms of calendar, the next few weeks and months will be of paramount importance for the area and consequently the role of the Court.

The third of the European Council's five-year programmes - the Stockholm one - and the related Commission Action Plan will

come to an end on the (1st) first of December 2014. On the political level, strategic guidelines for legislative and operational planning in the area of freedom, security and justice, to succeed to the three programmes, will be needed.

Further - irrespectively of the consequences to consider following the United Kingdom opt-out - the end of the transitional period of five years, which will expire on the same date, will see the Court assume full jurisdiction over the matter and, in particular, will lift current limitations to the judicial control over the “third pillar” police and criminal policies, meaning more particular that the Commission will have the power to launch infringement proceedings in relation with 130 police and criminal justice measures which were adopted before the Treaty of Lisbon.

The end of the transitional period could thus have a significant impact on the workload of the Court, sooner rather than later. It is thus a key issue that the Court the Presidencies and the Member States keep under constant review the workload of the Court with a clear commitment to react timely before the workload has an adverse effect on the effectiveness and efficiency of the Court.

It is not irrelevant to all those efforts, that the Court maintains a steady level of preparedness for all future perspectives. The constant effort to adapt the procedural rules of all the

jurisdictions, but also the proposals for reforming the Institutions' structure - currently focusing on reinforcing the capacity of the General Court in view of arming it with the extra resources as a result of its broad acceptance by the European citizens and corporate world - are signals of the importance we attribute both to a respected role for the present, as well as to the future competences that the European Union Legislator might wish to entrust upon the European judge.

And if for once I can assure you of the willingness of the Court to face challenges, I should also point on the necessity to provide the means for a coherent, independent and efficient European judiciary.

But at this stage I think that I should free the floor for the important debates that you have planned, wishing you a productive round of sessions and looking forward to the conclusions of this first conference and of the ones to come.

Thank you for your attention