Address by José Luis da Cruz Vilaça (25 September 1989)

Caption: Address delivered by José Luis da Cruz Vilaça, President of the Court of First Instance, during the solemn hearing of 25 September 1989 on the occasion of the establishment of the Court of First Instance of the European Communities.

Source: Court of Justice of the European Communities. Synopsis of the work of the Court of Justice and the Court of First Instance of the European Communities in 1988 and 1989 and record of formal sittings in 1988 and 1989. Luxembourg: Office for Official Publications of the European Communities, 1990.

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URL: http://www.cvce.eu/obj/address_by_jose_luis_da_cruz_vilaca_25_september_1989-en-d5a7d1dc-8bbe-4e24-8ee3-49057a567ff3.html

Publication date: 22/10/2012

Address by Mr da Cruz Vilaça, President of the Court of First Instance

Mr President and
Members of the Court of Justice,
Your Excellencies,
Ladies and gentlemen,

I should like to start by greeting you, the Members of the Court of Justice, my dear colleagues, and everyone else who has kindly come here to witness this ceremony; in doing so in my mother tongue instead of our common working language, I wish simply to pay homage to the diversity and wealth of European culture, the inspiration of our common institutions, in this Europe of ours, this ‘area imbued with civilization’, as it was described by Ortega y Gasset years before the European Communities were created. [1]

There are ceremonies which, being merely matters of protocol, cease to have any significance as soon as they have taken place.

That certainly cannot be said of today's occasion. Indeed, I do not consider that this sitting can be seen as a merely routine event in the internal life of an institution. Rather, it marks a fundamental change in the Community system of judicial protection which you, Mr President, have quite rightly termed ‘a historic event for the Communities’.

For more than three and a half decades the Communities have had at their disposal only one judicial authority.

The creation of the Court of First Instance, as provided for in the Single European Act, incorporated into that system machinery for two-tier jurisdiction, making available to those to whom Community rules and the decisions of the Community institutions apply - albeit, for the time being, only undertakings and officials employed by the Communities - the possibility of two levels of review in the application of Community law to the disputes to which they are parties.

That in itself gives an idea of the contribution made by that innovation to the consolidation of the Communities as a judicial area.

The Council Decision of 24 October 1988, moreover, expressly mentioned the objectives pursued, referring in its preamble to improving ‘the judicial protection of individual interests’ and maintaining (I would even say reinforcing) ‘the quality and effectiveness of judicial review in the Community legal order’.

The matters so far placed within the jurisdiction of the Court of First Instance will be conducive to the achievement of that reform.

On the one hand, the field of competition between undertakings, in particular large-scale undertakings, within the Community is one in which there is conflict - intense conflict - between powerful opposing interests capable of undermining the very foundations of the economic model which the Treaties are intended to safeguard and which should be strengthened and developed by the achievement of the single market.

On the other hand, the growth of the institutions has given rise to complex organizations in which, today, it is more difficult than it was some years ago to ensure that relations between employees and employers are conducted, within the framework of the Staff Regulations, in such a manner as systematically to prevent disputes from erupting.

Of course, it is always preferable for the institutional machinery designed to reconcile interests and safeguard rights to operate in such a way as to obviate the need for recourse to the expensive and rather traumatic solution of litigation.

But, once a critical level has been reached in the pathology of legal relationships, recourse to the courts may become inevitable and it is then imperative that justice should be rapidly and effectively administered by them.

The contribution intended to be made by the creation of the Court of First Instance is the provision of a more effective response.

For that reason, it is most important that we organize ourselves in such a way as to meet that challenge.

That is the task upon which we embarked virtually on the day on which the decisions appointing the President and the Members of the Court of First Instance came into effect.

With the cooperation of the Court of Justice and its various departments, we then began to set up our Court and the rate at which we have worked has enabled us, at this early stage, to take a number of important administrative decisions, to lay down general guiding principles for our judicial activity and to decide on the establishment of small groups amongst our number which will be responsible for preparing draft Rules of Procedure and for formulating transitional rules enabling us, until our own Rules of Procedure come into operation, to apply, *mutatis mutandis*, the Rules of Procedure of the Court of Justice.

In that connection, I should like to take this opportunity to pay homage to my colleagues who, with me, are now commencing an arduous, but exciting, term of office, and whom it has already been possible to bring together in a close-knit and effective team, establishing personal and working relationships of great trust and cordiality.

Among the Members appointed there are persons with vast experience in the sphere of law and judicial activity, in general, and of Community law and the operation of the Court of Justice, in particular.

Some of my colleagues have worked for a number of years in the Court of Justice, others have appeared before it as lawyers or agents of the Member States, others have distinguished themselves as advocates, teachers or senior civil servants or have held the highest judicial offices in their countries of origin, often in close contact with Community law or with economic and commercial law in general.

I myself had the honour, for almost three years, of serving as an Advocate General in the Court of Justice of the European Communities.

All these factors reassure me regarding the ability of our Court to satisfy the requirements deriving from the ‘important judicial functions’ which are entrusted to us and to respond appropriately.

In particular, it should be borne in mind that in view of the fact that the jurisdiction vested in the Court comprises ‘certain classes of action or proceeding which frequently require an examination of complex facts’, it will be advisable for us to adopt procedural rules which are particularly suited to the specific exigencies of that situation.

In my view, this calls for the adoption of very flexible machinery whereby, in each case, the Court will be able from the outset to undertake the appropriate preparatory measures and inquiries, without however opening the door to procedural congestion liable to prejudice the clarity of the evidence and the rapidity with which justice is administered.

In addition, it will be necessary to adopt appropriate rules governing all those matters to which special conditions apply in the Court, as in the case, for example, of the number and composition of the Chambers, the criteria for appointing Advocates General and the basis on which the full Court is to be constituted. Two sets of principles will govern the choices to be made: on the one hand, the defence of the rights of litigants and the quality of the judicial services to be provided and, on the other, procedural economy and expedition. Those principles will point the way towards the solutions to be adopted.

We shall of course also take account of the views and suggestions emanating from the legal and judicial spheres of the various Member States with respect to the functioning of the Court. We shall endeavour as far as possible to fulfil their legitimate expectations and optimize the working conditions relating to the protection of the parties to the proceedings.

We are aware of the fact that we ourselves shall have to work for a period - which we hope will be as short as possible - under temporary and, in various respects, unsatisfactory logistical conditions, a situation which will make itself felt, as is natural, more severely in the present phase when the Court is being set up and starting to function.

We shall nevertheless use all the means at our disposal to deal as rapidly as possible with the actions already assigned to us and to ensure that cases are disposed of with sufficient dispatch to prevent any backlog building up.

We are alert to the ‘signs of the times’, to the need to keep our methods, our procedures and our structures under constant review.

And, when the time comes, we shall be ready to embrace such new areas of jurisdiction as may be attributed to us, in particular cases relating to trade protection measures concerning dumping or aid or indeed any other type of matter in relation to which the intervention of the Court of First Instance may be considered appropriate.

This moment does not mark the end of an era in European judicial history, but rather a stage along the road towards the ultimate maturity of the judicial system of the Communities. And the most logical course is that the Community judicial authority should move forward in step with the progress achieved in constructing the Community, providing the support which, in any modern society, is required for the healthy functioning and the very survival of its judicial institutions.

In that way, the new institutional personality of the Court of Justice will be progressively strengthened and, in addition, the specific identity of the Court of First Instance as part of that institution will take shape. The latter's natural destiny, like that of any living organism, is to develop and bloom.

In that regard it should be remembered that in the period prior to the Court's inception a wide range of ideas and plans were put forward regarding the profile of the institution. However, wise reasoning prevailed in the choice ultimately made, even though some traces of outmoded thinking have survived in certain aspects of the Statute of the Court; we shall not fail to draw attention, in due course, to the problems thereby created.

The Council has nevertheless set up a true court, empowered to discharge its functions with full impartiality and independence, making it, from the outset, part of a veritable ‘Community judicial authority’.

The Court of First Instance will therefore have the responsibility of giving judgment on the basis of facts which it will determine conclusively. The Court of Justice, will, in such cases, discharge the function of a supreme court, a role which is particularly suited to its nature and position within the Community institutional system.

We shall also share with the Court of Justice a complex of support facilities which will bring us, even from the physical point of view, close to each other. We shall thus share the experience, within the same institution, of embarking upon a task which promises to be exciting.

We are not, therefore, alone in the ‘cold universe’ of Community law.

And if we are now ‘being born’, we are not being born without a past. Our collective memory is in the case-law of the Court of Justice; we shall remain loyal to the fundamental values which have inspired it and we shall contrive to add to it the contribution of our own experience.

And now the ship is to set sail.

Where is it bound? That is what we shall discover as we ‘unravel the secret of the waves’.

And perhaps it is timely to remember the words of the poet, Fernando de Pessoa:

‘The dream is this, to discern the invisible shapes
of the hazy distance and, through subtle
shifts of hope and will,
to seek on the cold line of the horizon
a tree, a beach, a flower, a bird, a fountain,
the well-earned rewards of Truth.’

[1] This paragraph of the address was also delivered in Portuguese.