

ARTICLE 263 TFEU: ACTION FOR ANNULMENT (JUDICIAL REVIEW)

The **European Court of Justice** has the jurisdiction to review **legislative acts** of EU institutions. (Art 263 TFEU)

Art 263 TFEU distinguishes between three types of applicants:

- **Paragraph 2: Privileged applicants** (i.e. Member States, the European Parliament, Council and Commission). They can always bring an action for judicial review.
- **Paragraph 3: Semi-privileged applicants** (Court of Auditors, the European Central Bank and the Committee of the Regions). They are partly privileged because they may solely bring review proceedings 'for the purpose of protecting their prerogatives' (Textbook, 363).
- **Paragraph 4: Non-privileged applicants** (i.e. legal and natural persons) can bring action for judicial review, but they are subject to more stringent conditions in terms of satisfying the legal standing requirement.

Time Limit (*Art 263 TFEU*)

- Claims must be made within 2 months after the act was addressed/a regulation was enacted, etc. Otherwise, they will be dismissed.

1. Is there a reviewable act? (*Art 263(1) TFEU*)

- The act in question must be from the EU Institutions, and it does not cover international agreements made by Member States on their own – this is outside the scope of the ECJ's jurisdiction.
- Per *ERTA*, 'the Court has embraced a wide teleological definition of which acts may be reviewed.' (Textbook, 358)

2. Are there any legitimate grounds of review the applicant can rely on?

- *Art 263(2) TFEU* cites four grounds:
 1. 'lack of competence',
 2. 'infringement of an essential procedural requirement',
 3. 'infringement of the Treaties or any rule of law relating to their application'
 4. 'misuse of powers'
- Formal grounds of review: 1, 2, 4
- Residual ground of review: 3, assess the proportionality principle (*Art 5(4) TEU*)

Note: These revision charts are useful for a general overview of how you should approach problem questions. However, these are not intended to give you a full understanding on the matter. You should always read the textbook and relevant authorities to ensure you do your best in a problem question. Any references made to R Schuetze, European Union Law (2nd edn) CUP 2018 will henceforth be referenced as 'Textbook'.

3. Does the applicant have legal standing before the ECJ?

- Privileged applicants always have standing.
- Semi-privileged applicants can bring standing to protect their prerogatives.
- Non-privileged applicants can challenge
 - An act addressed to the applicant
 - An act addressed to another person, but it is of the applicant's direct and individual concern
 - A regulatory act which is of direct concern (*Microban v Commission* [2011] ECR II-7679) and does not need implementing measures. (*Case T-58/10 Inuit v Parliament and Council* [2011] ECR II-5599)

You would also need to consider: direct concern and individual concern for non-privileged applicants.

“Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by a reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed.”

(*Case 25/62 Plaumann v Commission* [1963] ECR 95 at 107)