



Court of Justice of the European Union

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Orders of the Court in Cases C-684/20 P
Sharpston v Council and Conference of the Representatives of the
Governments of the Member States and C-685/20 P Sharpston v Council
and Conference of the Representatives of the Governments of the Member
States

Press and Information

The Court of Justice confirms the dismissal of two actions for annulment brought by Ms Eleanor Sharpston, seeking a finding that the premature end of her mandate as Advocate General by virtue of the withdrawal of the United Kingdom of Great Britain and Northern Ireland was unlawful

The General Court did not err in holding that acts adopted by the representatives of the governments of the Member States are not subject to judicial review by the EU Courts

In 2005, on the nomination of the Government of the United Kingdom, the representatives of the governments of the Member States appointed Ms Eleanor Sharpston, the appellant, to the Court of Justice to serve as an Advocate General for the remaining term of her predecessor's mandate, that is until 6 October 2009. Her mandate was renewed, for the period from 7 October 2009 to 6 October 2015, and then from 7 October 2015 to 6 October 2021.

On 29 January 2020, the Conference of the Representatives of the Governments of the Member States adopted the Declaration on the consequences of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union for the Advocates General of the Court of Justice of the European Union ('the declaration at issue'). In that declaration, it noted that, since the United Kingdom had initiated the procedure laid down in Article 50 TEU to withdraw from the European Union, the Treaties would cease to apply to it as from the date of entry into force of the Withdrawal Agreement.¹ It also noted that, therefore, the mandates of the members of institutions, bodies, offices and agencies of the Union who were nominated, appointed or elected in relation to the United Kingdom's membership of the European Union would end on the date of the withdrawal.

The Conference of the Representatives of the Governments of the Member States stated that it followed that the permanent post of Advocate General which was assigned to the United Kingdom² would therefore be integrated in the rotation system among the Member States for the appointment of Advocates General. It noted that, in accordance with the protocol order, the next eligible Member State would be Greece.

On 2 September 2020, by decision of the representatives of the governments of the Member States appointing three Judges and an Advocate General to the Court of Justice³ ('the decision at issue'), the appellant's successor, Mr Athanasios Rantos, was appointed to the post of Advocate General at the Court of Justice from 7 September 2020 to 6 October 2021.

By her two actions, brought, before the General Court of the European Union, on 7 April 2020 and 4 September 2020, respectively, Ms Sharpston sought partial annulment of the declaration at issue

¹ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement'), approved by Council Decision (EU) 2020/135 of 30 January 2020 (OJ 2020 L 29, p. 1), and entered into force on 1 February 2020.

² By Declaration on Article 252 TFEU regarding the number of Advocates General in the Court of Justice annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon.

³ Decision (EU) 2020/1251 of the Representatives of the Governments of the Member States of 2 September 2020 appointing three Judges and an Advocate General to the Court of Justice (OJ 2020 L 292, p. 1).

and annulment of the decision at issue, in so far as it concerns the appointment of Mr Rantos to the post of Advocate General at the Court of Justice for the period from 7 September 2020 to 6 October 2021.

By two orders of 6 October 2020, the General Court dismissed those two actions for annulment as inadmissible and manifestly inadmissible, respectively.⁴

By her two appeals, Ms Sharpston asked the Court of Justice to set aside the two orders under appeal. She maintained, in essence, that the General Court had erred in law in dismissing, first, as inadmissible her application for partial annulment of the declaration at issue and, secondly, as manifestly inadmissible her application for annulment of the decision at issue, on the ground that they were adopted by the representatives of the governments of the Member States acting as such and not by the Council.

Upholding the orders under appeal, the Court of Justice dismisses the two appeals as being in part manifestly inadmissible and in part manifestly unfounded.

Findings of the Court of Justice

First, the Court of Justice notes that it follows from the wording of Article 263 TFEU that acts adopted by representatives of the governments of the Member States, acting not in their capacity as members of the Council but as representatives of their government, and thus collectively exercising the powers of the Member States, are not subject to judicial review by the EU Courts. The relevant criterion thus applied by the Court of Justice to exclude the jurisdiction of the EU Courts to hear and determine a legal action brought against such acts is therefore that relating to their author, irrespective of their binding legal effects.

According to the Court of Justice, it is clear that a broad interpretation of the authors of the acts to which Article 263 TFEU refers, as maintained by the applicant, would be contrary to the intention of the authors of the Treaties, reflected by that article, whose scope is limited solely to acts of EU law adopted by the institutions, bodies, offices and agencies of the European Union, to exclude acts that it is for the Member States to adopt, such as decisions to appoint members of the EU Courts from judicial review by the Court of Justice.

The Court of Justice notes that it is also immaterial whether the representatives of the governments of the Member States acted within the framework of the Treaties or of other legal sources, such as international law.

Consequently, the Court of Justice considers that the General Court did not commit any error in noting that it follows from Article 263 TFEU that acts adopted by representatives of the governments of the Member States, acting not in their capacity as members of the Council of the European Union or of the European Council but as representatives of their government, and thus collectively exercising the powers of the Member States, are not subject to judicial review by the EU Courts.

Next, examining the appellant's ground of appeal alleging that the EU Courts should nevertheless consider that they have jurisdiction to assess the legality of the declaration at issue and the decision at issue, on the ground that the former contains a decision of the representatives of the governments of the Member States finding, *ultra vires*, that her mandate as Advocate General ended prematurely and that, as regards the latter, the withdrawal of the United Kingdom from the European Union did not have the effect of terminating the appellant's mandate as Advocate General, the Court of Justice considers however that analysis cannot be upheld, since the declaration at issue and the decision at issue cannot, in any event, be regarded as having been

⁴ Order of the General Court of 6 October 2020, *Sharpston v Council and Conference of the Representatives of the Governments of the Member States*, [T-180/20](#), and order of the General Court of 6 October 2020, *Sharpston v Council and Representatives of the Governments of the Member States*, [T-550/20](#).

adopted by an institution, body, office or agency of the European Union referred to in Article 263 TFEU.

Furthermore, the Court of Justice finds that the declaration at issue and the decision at issue cannot be regarded as containing a decision having legal effects adversely affecting the appellant, in so far as they purportedly decided on the premature end of her mandate as Advocate General or indeed, as regards the latter, that it is based on such a decision. The Court finds in that regard that the declaration at issue merely took note of the consequences necessarily entailed by the United Kingdom's departure from the European Union.

The Treaties having ceased to be applicable to the United Kingdom on the date of its withdrawal, that is 1 February 2020, by virtue of Article 50(3) TEU, that State is not longer, as from that date, a Member State. It follows, as stated in the eighth paragraph of the preamble to the Withdrawal Agreement that the ongoing mandates of all members of institutions, bodies and agencies of the Union who were nominated, appointed or elected in relation to the United Kingdom's membership of the European Union ended automatically on that date.

Consequently, the General Court cannot be criticised for not having considered that it had jurisdiction to assess, first, the legality of an alleged decision of the representatives of the governments of the Member States finding that the appellant's mandate had ended prematurely and, secondly, the legality of the decision at issue.

Unofficial document for media use, not binding on the Court of Justice.

The full text of the orders ([C-684/20 P](#) and [C-685/20 P](#)) is published on the CURIA website.

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