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Theoretical approach of the main means of appeals in the European procedural law

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ABSTRACT

Knowledge and understanting the means of appeals lodged before the courts of the European Union, limited only to the points of law, are very important taking into accout the modality to control a judgment delivered by an inferior court exists since ancient times, being governed among others, by the Larin principle: *res judicata pro veritate accipitur*. In the following we will examine, in general, the judicial control of the judgments and orders delivered by the General Court and by the Civil Service Tribunal, as a specialized tribunal on civil servant issues, but also the *sui generis* means of appeals and the extraordinary means of reviews of the judgments and orders. We shall mention that all of them are exercised in accordance with the Rules of Procedure of the European courts and the Statute of the Court of Justice of the European Union. Another aspect to be mentione is that the judjments of the Court of Justice cannot be challenged to another court, as they remain final and irrevocable.

Key words: Treaty of Lisbon, European courts, means of appeals, *sui generis* means of appeals, extraordinary remedies.

INTRODUCTION

In general, judicial review represents a significant aspect of any judicial system (national, European or international) operating under the rule of law and fundamental rights. It allows the individuals to protect their rights and their legitimate interests, it maintains the balance between the judicial, political and social spheres and it provides for the courts proper means necessary for consistent application of law (Türk 2010).

In particular, procedural law, different from substantive law, comprises a set of rules governing how all the aspects of the cases (e.g.: criminal, civil, administrative, financial, labour) are conducted, including the events that might occur before, during and after the trial, irrespective of national judicial system (German, French, British, Spanish etc.) we are referring to. These rules can also be unique to certain categories of law, where, for example, bankruptcy, maritime or patent courts often have their own rules for conducting litigations. Finally, a dispute is proving its efficiency only when the rules of procedure are efficiently applied, by taking all the necessary measures and paying attention to all the complex aspects of a judicial system.

At European Union level, the procedural rules governing the disputes brought before the European courts are strictly applied, since the main targets are: to make sure that the European Union law is implemented in the same manner in all the

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EU Member States, to ensure the effective and uniform application of the European legislation and to prevent divergent interpretations by the national courts.

Bearing in mind the abovementioned, our study analyses a part of the rules governing the European legal system, more precisely those rules which allow the party (e.g. European institutions, bodies, agencies and offices, Member States or individuals and legal entities) who wishes to obtain a cancellation or modification of a judgment already delivered by an inferior European court, to refer the case to a superior or to the same European court, by using one of the following "judicial instruments": the appeal; the *sui generis* means (the judgment by default and the complaint when the court failed to adjudicate on a specific head of claim or costs), as exceptions from the common procedure, and the exceptional review procedures (third – party proceedings and revision), as a possibility offered by the European legislator to the parties to request the withdrawal of the contested judgment / decision and to proceed with a new trial.

On the contrary, the European procedural rules governing criminal proceedings will not be analysed in this paper, because of the followings reasons: first of all, these proceedings are dealing with cases which can occur in the field of visas, asylum, immigration and extradition, or related to the free movement of persons; secondly, at European Union level, currently, the creation of a unique European Criminal Law Code is under debate, which represents a complex and difficult task to be accomplished and an unpopular issue to a certain extent, taking into account that there are 28 Member States' judicial systems which have to harmonize their national substantial and procedural criminal law systems, especially when new competences in the area of judicial cooperation in criminal matters and law enforcement cooperation have been given to the European Union through the Treaty of Lisbon.

To sum up, the paper will examine the most relevant aspects of the means of appeal lodged before the European courts in Luxembourg, explaining the categories of the judgments / decisions that can be appealed, the legal effects obtained and other technical aspects, without giving important role to the impact of the European Union law upon the national procedural rules, to the relationship between the national and the European courts or to the effects of the judgments delivered by the European courts' judgments upon the Member States' legal systems.

THE APPEAL BROUGHT BEFORE THE EUROPEAN COURTS

According to European Procedural Law, the appeal represents the mean by which the parties (e.g.: institutions, bodies, organs, agencies and offices of the European Union, Member States, or individuals and legal entities) may request to the Court of Justice or General Court[1], as the case may be, the cancellation of a judgment or decision, whenever it is consider to be illegal. Furthermore, in order to admit and appeal, it must be *"scrupulously reasoned"*, meaning that a system which comprises at least two levels of judicial protection increases the legitimacy of the judgments rendered by its courts, offering a high standard of quality of the legal protection in the same time (Lenaerts et al. 2006).

In accordance with the general rules on appeal stipulated in Article 256 TFEU para.1 the *"decisions given by the General Court* […] *may be subject to a right of* ***appeal to the Court of Justice*** […]*"* in *"the actions or proceedings referred to in articles*

[1] The General Court (former Court for First Instance) has been created by Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities (88/591/ECSC, EEC, Euratom), as amended, having as principal aim to strength the judicial guarantees to individuals through the establishment of the second level of judicial authority. The General Court is an independent Court attached to the Court of Justice of the European Union.

263, 265, 268, 270 and 272, with the exception of those assigned to a specialised court [...] *and those reserved in the Statute for the Court of Justice"*, while the judgments given by the Civil Service Tribunal, in the first instance, **can be challenged with appeal** to the General Court, based on Article 270 TFEU, limited only on *"points of law, in the conditions and within the limits laid down by the Statute"*, such as: grounds of lack of competence of the General Court / Civil Service Tribunal; a breach of procedure before it which adversely affects the interests of the appellant; the infringement of the European Union law by the General Court / Civil Service Tribunal.

Also, it should be noticed that once the new courts have been established in 1989 (General Court), respectively in 2004 (Civil Service Tribunal), this situation determined a fundamental redesign of the competences given to the three courts in Luxembourg, by assigning the second grade of jurisdiction as courts of appeal for two of them, more specific for the Court of Justice and the General Court (Gyula 2010, Lenaerts et al. 2006). On the other side, the judgments and the orders delivered by the Court of Justice shall remain final and irrevocable, because this court *"doesn't know these means, as it judges in first and last instance"* (Fuerea 2002).

Regarding the Court of Justice we highlight that, in addition to what we have already said, this court represents one of the four institutions[2] which was initially created, acting as *"the judicial body"* (Rosenberg 1991) of the former European Communities (presently European Union).

Referring to the categories of the judgments / decisions which can be appealed, according to the Treaty on the Functioning of the European Union and the Rules of Procedure of the European courts, an appeal can be lodged by an interested party in the following situations:

- before the Court of Justice against the judgments delivered in first instance by the General Court and before the last one against the judgments and orders delivered by the Civil Service Tribunal, in first instance;
- before the Court of Justice or the General Court against the decisions when the General Court or Civil Service Tribunal, as the case may be, are *"disposing of the substantive issues in part only or are disposing of a procedural issue concerning a plea of lack of jurisdiction or inadmissibility"*, in accordance with Article 56 of the Statute of the Court of Justice and Article 9 of Annex I to the Statute of the Court of Justice concerning European Union Civil Service Tribunal[3]. On the contrary, the applicant cannot file an appeal against that part of a judgment / decision of the General Court when it considers unnecessary to rule on an objection of inadmissibility, taking into account that the requests shall be dismissed on the merits and not on facts (Lenaerts et al. 2006);
- against the decisions delivered in the *sui generis* means and exceptional review procedures (Gyula 2002);
- against the decisions suspending the acts of the Council, European Commission or the European Central Bank imposing a financial obligation on the individuals or legal entities with observance of Article 299 TFEU (Lenaerts et al. 2006).

[2] The European Commission, the European Parliament and the Council.

[3] Case T-60/92 Muireann Noonan v Commission, judgment of 28 March 1996, published in European Court Reports–Staff Cases 1996, see http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61992TJ0060%2801%29 (Accessed 02 March 2014). In this case, the General Court only declared the application admissible; C-383/99 P Procter & Gamble Company v Office for Harmonisation in the Internal Market (OHIM), judgment of 20 September 2001, published in OJ C 3/05.01.2002, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:003:0009:0010:EN:PDF (Accessed 02 March 2014).

In the end, there are isolated cases when the decisions can be appealed, for example, those delivered in the cases when the application to intervene in the original dispute, formulated by the intervener, was dismissed (Article 57 of Statute of the Court of Justice) or those concerning either the suspension of a measure taken by an European institution (Article 278[4] TFEU) or the suspension of the necessary interim measures provided for in Article 279[5] TFEU (Article 39 para. 1 of Statute) etc.

A special situation exists when a decision has been given in the absence of the defendant, in which case the appeal can be lodged only against the second decision that is adopted following the application to set aside (also known as "opposition") lodged by the defendant. Regarding the latest aspect, the doctrine (Gyula 2002) raised the following question: Can the decision given in the original dispute, in which the defendant was absent, be appealed by him / her, by jumping over the trial of the opposition? Answering to this question, we share the opinion (Gyula 2002) that if the Rules of Procedure of the Civil Service Tribunal do not provide for this opportunity, then no appeal against such decision should be lodged by the absent defendant in the original dispute bearing in mind the Latin principle: *ubi lex non distinguit nec Nos distinguere debemu*[6]. The reason that stays behind this allegation is that the defendant cannot appeal a decision which is not enforceable to him/her, but only a decision that shall take effects to him/her.

With respect to applicants, they are regulated by Article 56 para.2 of the Statute of the Court of Justice which states clearly that an appeal: *"may be brought by* ***any party***[7] *which has been unsuccessful, in whole or in part, in its submission*[8]*"*, while *"****the interveners****, other than the Member States and the institutions of the Union, may bring such an appeal only where the decision of the General Court directly* [and independently] *affects them"* in conjunction with the provisions of Article 9 para. 2 Annex I to the Statute of the Court of Justice, and in all the cases when such decision has violated their rights by dismissing the application to intervene in the original dispute, without waiting for original parties to lodge the appeal (Gyula 2002)[9].

Furthermore, according to Article 56 paragraph 3 of the Statute of Court of Justice and excepting the cases filed by the European civil servants *"an appeal may* [invariably] *be brought by* ***Member States and institutions of the Union*** *which did not intervene in the proceedings before the General Court* […]" or in the cases when the decisions of the first *No* instance did not affect them directly, meaning that they become interveners with a view to comply with the European legal order (Gyula 2010, Lenaerts et al. 2006)[10].

[4] Article 278 TFEU *"Actions brought before the Court of Justice of the European Union shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended"*.

[5] Article 279 TFEU *"The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures"*.

[6] Where the law does not distinguish, neither should we distinguish.

[7] We are referring to the individuals and legal entities, Member States, institutions, bodies, agencies and offices of the European Union.

[8] Case C-383/99 P Procter & Gamble Company v Office for Harmonisation in the Internal Market (OHIM), judgment of 20 September 2001, published in OJ C 3/05.01.2002, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:003:0009:0010:EN:PDF (Accessed 02 March 2014).

[9] Article 9 para 2 of the Annex I of Statute of the Court of Justice.

[10] Case C-434/98 P. Council of the European Union v Silvio Busacca and Others and Court of Auditors of the European Communities, judgment of 5 October 2000, published in European Court reports 2000, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998J0434:EN:HTML (Accessed 02 March 2014).

In the light of the previous paragraph, it is worth taking into consideration that the Court of Justice, one of the European institutions as stipulated in Article 13 TEU[11], through the Advocate-General cannot file an appeal against the judgment delivered in the first instance by the General Court due to its neutral position to the parties in the litigation, but also due to the Advocate-General's position who *"acting with complete impartiality and independence",* makes *"in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement*" (Article 252 para.2 TFEU).

As for the claims for which an appeal can be lodged before the Court of Justice, in accordance with the provisions of the Statute of the Court of Justice[12], an appeal shall be limited only to the *"points of law*[13]*"* based on: *"the grounds of lack of competence of the General Court; a breach of procedure* [...] *which adversely affects the interests of the appellant as well as the infringement of Union law* [by the General Court]*"* and shall not concern *"the facts"*. In this context, the Court of Justice shall have the opportunity to review the legality of such decisions, to remedy the errors of law and, implicitly, to give all the guarantees of coherence of the European legal order and a uniform interpretation of the European Union law (Lenaerts et al. 2006). On the contrary, an appeal cannot be lodged against the taxes and the costs of the trial or against the party obliged to pay the costs of the trial[14], otherwise the appeal will be declared inadmissible. Similar situation can be met as concern the appeals brought before the General Court against the decisions of the Civil Service Tribunal.

In order to be admissible by the courts in Luxembourg, the grounds of appeal must be concise, precise and clear, and can be solved by the courts regardless the order in which they have been mentioned in the application initiating an appeal. It is also important that these claims should be written in detail in order to identify the grounds for cassation of the contested judgment in an easy way, because it is not enough only to write them, briefly (Gyula 2002).

Regarding the grounds of appeal[15] which are regularly invoked by the interested party, we can mention:

1. The procedural errors, in which case several conditions must be met in order to be admitted by the European court:

a. the applicant shall demonstrate that his/her interests have been affected, directly and substantially by misapplication of certain rules

[11] Article 13 TEU stipulates that *"The Union's institutions shall be* [...] *the Court of Justice of the European Union"*.

[12] Articles 58 and Article 11 of the Annex I of Statute of the Court of Justice.

[13] Case C-362/95 P Blackspur DIY Ltd, Steven Kellar, J.M.A. Glancy and Ronald Cohen v Council of the European Union and Commission of the European Communities, judgment of 16 September 1997, published in European Court reports 1997, see http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61995J0362 (Accessed 02 March 2014); Case C-174/97 P. Fédération française des sociétés d'assurances, Union des sociétés étrangères d'assurances, Groupe des assurances mutuelles agricoles, Fédération nationale des syndicats d'agents généraux d'assurances, Fédération française des courtiers d'assurances et de réassurances and Bureau international des producteurs d'assurances et de réassurances vs. Commission, order of 25 March 1998, published in European Court reports 1998, see http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61997O0174&lg=en (Accessed 02 March 2014).

[14] Article 58 para.2 of the Statute of the Court of Justice; Case C-39/00 Services pour le groupement d'acquisitions SARL v Commission of the European Communities, order of 13 December 2000, published in European Court reports 2000, see http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=62000O0039 (Accessed 02 March 2014).

[15] Article 168 para.1 letter d) of the Rules of Procedure of the Court of Justice; Article 194 para. 1 letter e) of the Rules of Procedure of the General Court.

of procedure, except those which are not the base of the solution adopted by the court or those who have been tacitly accepted by the applicant during the original dispute (Gyula 2010);

b. the procedural error brought a serious prejudice to the applicant' interests, meaning that not any prejudice is likely to justify the interest for the appellant to file an appeal against the judgment delivered by the European court.

2. Infringement of the European Union law represents a ground of appeal which is frequently raised by the appellants[16]. By *"infringement of European Union law"* one can understand the primary and the secondary European law, the general principles of law (e.g.: proportionality, legal certainty, the right to judicial protection, the principle of equal treatment or non-discrimination, the protection of fundamental rights or - the rights of defence etc.) recognised by the Court of Justice, through the decades from the 1950s to 2000s.

Given that in many cases, the real intention of the applicant is to obtain a new assessment of evidence in front of the Court of Justice, either when he/she either did not have enough time to provide evidence in the original dispute or when he/she did not provide the useful and sufficient evidence to assure the successful of the dispute (Gyula 2010), the Court of Justice shall dismiss the appeal for this reason. In the absence of any provisions of the Rules of Procedure which may clarify this issue, we consider that the Court of Justice can apply a fine for this negative attitude of the applicant.

Eventually, an appeal cannot modify the subject-matter of the litigation lodged initially before the General Court or Civil Service Tribunal[17], meaning that the parties shall present the same final conclusions as those presented before the first instance[18]. If the applicant modifies the subject-matter of the litigation, intentionally, or introduces a different form of this subject-matter (for example, related to pleas that have not been raised in front of the General Court), the Court of Justice has the obligation to dismiss the appeal. The reason is that this new plea would determine the Court of Justice not only to review the decision of the General Court but also to carry out additional inquiry and assessment of evidence, ending with a new decision, different from that rendered by the General Court.

As for the term of appeal[19] against the decisions rendered by the General Court and the Civil Service Tribunal, as general rule, it is **two months from the notification date of the decisions** "*in accordance with Article 278 or 279 or the fourth paragraph of Article 299 of the Treaty on the Functioning of the European Union or Article 157 or the third paragraph of article 164 of the EAEC Treaty*" or **from the notification date of the decisions** of the General Court ordering, among others: suspension

[16] Case C-271/13 P Rousse Industry AD v European Commission, Appeal brought on 16 May 2013 by Rousse Industry AD against the judgment of the General Court (Fourth Chamber) delivered on 20 March 2013, published in OJ C 207/52 of 20.7.2013, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:207:0031:0032:EN:PDF (Accessed 02 March 2014).

[17] Article 170 of the Rules of Procedure of the Court of Justice; Article 195 para.2 f the Rules of Procedure of the General Court.

[18] Case C-341/00 Conseil national des professions de l'automobile, Fédération nationale des distributeurs, loueurs et réparateurs de matériels de bâtiment-travaux publics et de manutention, Auto Contrôle 31 SA, Yam 31 SARL, Roux SA, Marc Foucher-Creteau and Verdier distribution SARL v Commission of the European Communities, order of 5 July 2001, published in European Court reports 2001, see http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=62000O0341&lg=en (Accessed 02 March 2014).

[19] Article 56 and Article 9 of the Annex I of Statute of the Court of Justice.

of a measure taken by an institution of European Union (Article 278 TFEU); suspension of the necessary interim measures provided for in Article 279 TFEU or suspension of the enforcement of the decision (Article 299 para. 4 TFEU).

Notwithstanding from the above rule, the Statute of the Court of Justice[20] regulates **a special term of appeal,** that can be filed by any person to the Court of Justice or to the General Court, as appropriate, of "***two weeks*** *from the notification of the decision dismissing the application*" to intervene in the original dispute.

Having in mind the lack of any explicit procedural provisions, we share the viewpoint of the doctrine (Gyula 2002) that the terms of appeal aforesaid cannot be prolonged, due to the peculiarity of this mean of appeal, while disrespecting the terms by the interested party shall determine the rejection of the appeal by the court.

On the other side, the doctrine did not examine the character of the term of appeal for which reason we consider that it is imperative and peremptory, meaning that its breaching will lead to the forfeiture of the interested party from the right to exercise this mean, so that the unchallenged decision will remain irrevocable on the date of expiring the term of appeal.

Regarding the cases when the term of appeal can be rightfully suspended, neither the doctrine nor the European procedural provisions stipulate these cases, directly or indirectly and in a clear manner. As a result, we consider that the Rules of Procedure should stipulate those situations *expressis verbis*, but only in the benefit of individuals and legal entities, whenever one or more of the following situations occur:

- death of individuals;
- opening the judicial reorganization and bankruptcy of legal entity based on a final decision rendered by a national court of the legal entity concerned;
- death of the advocate who assists or represents the party in the dispute;
- intervention of any fortuity situation, as an unforeseeable and unavoidable event such as: natural disasters (e.g. flood, fire, earthquake), state of siege, state of war or state of emergency and which is beyond the control of individuals to lodge this mean within the term of appeal.

A basic condition to trial an appeal in good conditions is represented by the preliminarily admissibility of the application, which will be considered as filed "*by lodging* [it] *at the Registry of the Court of Justice or of the General Court"*. Whenever it is lodged directly to the Registry of the General Court or the Civil Service Tribunal, the said court *"shall immediately transmit to the Registry of the Court of Justice* [or the General Court, as the case may be], [the entire documentation] *in the case at first instance and, where necessary, the appeal"*. Furthermore, the application initiating an appeal shall be drafted in the language of the case used in the judgment delivered by the General Court or Civil Service Tribunal which is appealed against by the interested party (Gyula 2010)[21].

In other way of saying, an appeal shall meet the same formal requirements as those required for the written application, and shall contain: *"the name and address of the appellant; a reference to the decision of the General Court* [or Civil Service Tribunal] *appealed against; the names of the other parties to the relevant case before the General Court; the pleas in law and legal arguments relied on, and a summary of those pleas in law; the form of order sought by the appellant* [including] *the date on which the decision appealed against was*

[20] Article 57 para.1 and Article 10 of the Annex I of Statute of the Court of Justice.

[21] Article 167 para.2 of the Rules of Procedure of the Court of Justice; Article 193 of the Rules of Procedure of the General Court.

served on the appellant[22]*"*. In addition, for an easy identification of the case, we consider that it is better if the applicant would also add the number of the file lodged before the first instance as well as the number of the decision appealed against.

If the appeal is not lodged in compliance with the aforementioned elements, the *"Registrar* [...] *prescribe*[s] *a reasonable time-limit* [period] *within which the appellant is to put the appeal in order* [and if he/she] *fails* [to do so] *the Court of Justice, after hearing the Judge-Rapporteur and the Advocate General* [or the General Court, as the case may be] *shall decide whether the non-compliance with that formal requirement renders the appeal formally inadmissible*[22]*"*.

Responding to the application initiating an appeal, *"any party* […] *having an interest in the appeal* […] *may submit a response* [containing the name and the address of the party that submitted it; the date when the application was notified; the status of the file; the pleas in law and legal arguments relied on and the form of order sought] *within two months* [which] […] *shall not be extended*[23]*"* by the court, no matter the reason invoked by the interested party, as a measure to avoid a possible delay in lodging this response and to conduct the judicial proceedings with celerity.

The procedure of trial the appeal itself is provided for, in detail, both by the Statute of the Court of Justice[24] and the Rules of Procedure of the European courts, according to which *"where an appeal is brought* [….] *the procedure before the Court of Justice shall consist of a written part and an oral part"*, which can be eliminated in conditions strictly established by the court in Luxembourg, after hearing the Advocate-General and the parties, if applicable.

After the trial of the application initiating an appeal and the entire documentation attached to the case, the judges can render one the following solutions (Gyula 2002, Lenaerts et al. 2006)[25]

a. **dismissal of the appeal**, in whole or in part, by the Court of Justice or the General Court, as the case may be, through reasoned order, when the appeal is obviously inadmissible or unfounded, based on the report of the Judge-Rapporteur and after hearing the Advocate-General. On the same occasion, the court shall decide related to the costs, as well. Usually, this decision is taken before opening the oral procedure or at latest until hearing the Advocate-General or the judge in charge with this attribution, in the case of the General Court;

b. **admission of the appeal**, in whole or in part, by the Court of Justice or General Court, as the case may be, in which context several consequences may occur: the decision given in first instance by the General Court or Civil Service Tribunal is dismissed; the dispute either is being tried by the Court of Justice / the General Court itself if the state of proceedings permits so, but i is not obliged to do so or it is referred back to the General Court / Civil Service

Tribunal for judgment, but only regarding the points of law. In the last situation, the proceedings cannot be extended to the written and /or oral procedure; the court will not allow the parties to seek a new form of order; the new plea cannot be raised by the parties, with one exception, namely if the plea is based on matters of law or new facts which were previous unknown by the court.

[22] Article 168 of the Rules of Procedure of the Court of Justice; Article 194 of the Rules of Procedure of the General Court.

[23] Article 172 of the Rules of Procedure of the Court of Justice; Article 198 of the Rules of Procedure of the General Court.

[24] Article 59 of the Statute of the Court of Justice.

[25] Article 61 of the Statute of Court of Justice; Article 181 of the Rules of Procedure of the Court of Justice; Article 208 of the Rules of Procedure of the General Court.

During the trial of the appeal, the third situation may occur where the applicant **withdraws his/her appeal** in the conditions stipulated by the Rules of Procedure.

If, meanwhile, the term for lodging an appeal has expired, the principal effect of the judgment will be the irrevocability, gaining thus *res judicata* status. In addition, the case will be erased from the Registry of cases and the appellant shall pay the costs, except those provoked by the defendant or when the court in Luxembourg orders the parties to share the costs where equity so requires, according to Article 184 para.3 of Rules of Procedure of the Court of Justice.

Regarding the modality to trial an appeal, the European procedural rules keep the silence. In such context, we consider that certain elements regarding the judgment in first instance (such as: the modality to deliberate and deliver the judgment; the interested persons to lodge a response, reply and rejoinder etc.) can be applied by similarity taking into account that during the appeal *"the judgment shall be delivered in open court*[26]*"*, while the minute or the operative part of the judgment shall be presented in public session.

In addition, *"the original of the judgment* [which can be drafted in the language of the case or in French language and then translated (Gyula 2010)] *is signed* […] *by the Registrar* [and] *shall be sealed and deposited at the Registry* [while] *certified copies of the judgment shall be served on the parties*[27]*"*.

In order to be aware of what means *"the language of the case"* we should distinguish it from *"the working language"* of the European courts by adding some comments. On the one hand, *"the working language"*, which presently is the French language, is used by the staff and translators / interpreters working in the European courts for their daily internal communication and working. If the documents submitted by the parties are not in French, the lawyer-linguists working within the Translation Directorate General[28], belonging to the Court of Justice of the European Union[29], shall translate these documents. The French language is also used by the judges during the deliberations, since the Rules of Procedure of the European courts[30] do not allow the interpreters to be present during this stage, especially when these deliberations *"shall be and shall remain secret"*.

On the other hand, *"the language of the case"* represents the language in which the entire procedure, including the appeal, is conducted before the court (no matter if we are referring to direct actions, preliminary rulings, or cases regarding the civil servants), being regulated by Article 342 TFUE according to which *"the rules governing the languages of the* [Court of Justice of the European Union] *shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations"* and by Article 64 para.1 of the Statute of the Court of Justice stating that *"the rules governing the language arrangements applicable at the Court of Justice of the European Union shall be laid down by a regulation of the Council acting unanimously"*.

[26] Article 118 para.1 of Rules of Procedure of the General Court.

[27] Article 88 para.2 of the Rules of Procedure of the Court of Justice.

[28] The Translation Directorate General is the largest service of the Court of Justice of the European Union with a staff of 924 in 2012, representing 44.7 % of the Court's total staff, see http://curia.europa.eu/jcms/jcms/Jo2_10742/direction-generale-de-la-traduction (Accessed 12 July 2015).

[29] According to Article 42 of the Rules of Procedure of the Court of Justice *"The Court shall set up a language service staffed by experts with adequate legal training and a thorough knowledge of several official languages of the European Union"*.

[30] Article 32 of the Rules of Procedure of the Court of Justice; Article 21 of the Rules of Procedure of the General Court.

In particular, when we are dealing with appeals, the language of the case *"shall be the language of the decision of the* [court, namely General Court or Civil Service Tribunal, as the case may be] *against which the appeal is brought"*, as an exception from the general norms and without prejudice to the provisions enshrined in Article 37 para.2 letter a) of the Rules of Procedure of the Court of Justice.

Despite the fact that, in theory, all 24 official languages of the European Union can be languages of the case, nonetheless, in practice, only few of them are used, namely French and English, out of which French is chosen traditionally. This is explained by the fact that when the European Communities were established in 1957, the majority of the population living in the six founding members[31] was speaking the French language. In the recent years, the trend is to use more the English language, because many lawyers in the Member States which joined European Union in the last three waves of accession[32] studied more English and less French (Gyula 2010).

Finally, any judgment / decision rendered by the Court of Justice or General Court, as the case may be, in the language of the case represents the official version (authentic) which can be translated in other official languages of the European Union[33] and then published in the European Court Reports, with one mention: before being published, the judgment is sent to the judge whose native language is the same with the language of the case in order to correct any errors that may occur during the judgment writing in the French language and translation of it to other languages.

In general, the judgment delivered by the court of appeal produces its effects upon the parties and the interveners, being thus *inter partes* and not *erga omnes*. In addition, an appeal shall not have suspensory effect (in accordance with Article 60 of the Statute of the Court of Justice) (Lenaerts et al. 2006), except when the Court of Justice decides otherwise.

Other effect consists of in divesting the court of appeal, by delivering its judgment, which shall determinate the enforcement of the judgment by the party who won the trial, automatically.

THE *sui generis* MEANS AND THE EXCEPTIONAL REVIEW PROCEDURES

In European Procedural law, compared to the domestic judicial systems of the Member States, the judgments can be appealed through *sui generis* means (namely: the judgment by default, the application to set it aside, also known as opposition and the complaint when the court failed

[31] Belgium, Germany, France, Italy, Luxembourg and the Netherlands.

[32] Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia joined EU at 1 May 2004; Romania and Bulgaria joined EU at 1 January 2007 and, finally, Croatia joined EU at 1 July 2013.

[33] For example: Case C-630/13 P, Appeal brought on 25 November 2013 by Issam Anbouba against the judgment of the General Court (Sixth Chamber) delivered on 13 September 2013 in Case T-592/11 Anbouba v Council, published in OJ C 45/37 of 15.2.2014, where the language of the case is French, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2014:045:0021:0022:EN:PDF (Accessed 02 March 2014); Case C-625/13 P, Appeal brought on 29 November 2013 by Villeroy & Boch AG against the judgment of the General Court (Fourth Chamber) of 16 September 2013 in Joined Cases T-373/10, T-374/10, T-382/10 and T-402/10 Villeroy & Boch AG and Others v European Commission, published in OJ C 39/17 of 8.2.2014 where the language of the case is German, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2014:039:0010:0011:EN:PDF (Accessed 02 March 2014). The languages of the European Union have been established for the first time by Regulation no.1/1958 determining the languages to be used by the European Economic Community, published in OJ L of 17/06.10.1958, which stipulated that *"the languages to be used in the proceedings of the* [European courts] *shall be laid down in* [their] *rules of procedure"* (Article 7). This Regulation has been modified and amended successively in the last years in order to comprise all the official languages of the European Union, so that, following the accession of Croatia to EU in July 2013, there are 24 official languages.

to adjudicate on a specific head of claim or costs) which represent exceptions from the ordinary procedure, taking into account that they combine features of many means of appeal which may be brought before the European courts.

As for the **judgment by default**, according to the Statute of the Court and the procedural provisions[34], in all the cases when the defendant *"after having been duly summoned, fails to respond to the application in the proper form and within the time-limit prescribed* [in the reply]*, the applicant may apply to the court for judgment by default"*, while this application is notified to the defendant (Peñarrubia Iza and López López 2000).

Once the written procedure is completed, the court (Court of Justice / General Court) shall decide the date for opening the oral procedure relating to the application, in the absence of the defendant, as a sanction applied to him/her for not observing the procedural rules, hearing also the conclusions of the Advocate General and analyzing, in the same time, whether: the application initiating the procedure is admissible or not; the formalities have been complied with; the conclusions of the applicant are well founded or not. Their validity is verified only briefly and regarding the state of facts, whilst the legal grounds shall be analysed in detail (Gyula 2002, Lenaerts et al. 2006).

In addition, the court shall hear the applicant's claims and rule on the admissibility of the written application as well, in which situation shall decide, if necessary, to conduct preparatory inquiry (Voican et al. 2000, Fuerea 2002, Gyula 2010).

The decision rendered in a case when the defendant has been absent is final and can be challenged by him/her *"within one month from the date when it was notified"* (Voican et al. 2000, Fuerea 2002) through an application to set aside a default judgement *"which must be lodged in the form prescribed by"* the Rules of Procedures. In this context, *"the objection shall not have the effect of staying enforcement of the judgment by default unless the Court of Justice decides otherwise"* (article 41 of the Statute of the Court of Justice). If the application to set aside is filed by the defendant by disregarding the imperative term of *"one month"*, then the court shall reject the application, as a sanction applied to defendant.

Bearing in mind the aforementioned, one can notice that this application is a genuine written application which must comply with the general requirements provided for in the Rules of Procedure of the European courts (Lenaerts et al. 2006), because the defendant requires either for the annulment of the judgment rendered *in absentia* or the admission of his/her claims formulated against the applicant (Gyula 2002, Fuerea 2002).

After the notification of this application, the court sets the date until when the other party may submit written comments, and the procedure will be carried out by general rules, no matter the European court before which the case was lodged.

Nevertheless, the court may decide to suspend the enforcement of the judgment until the trial of the opposition lodged by the defendant, in accordance with the provisions of the Rules of Procedure.

Referring to the judgment by default, we share the opinion according to which the court *"may transfer over the applicant the risk of changing the judgment following the file of an application to set aside a default judgment, in which context it would condition the enforcement of such judgment by lodging a bail by the applicant, whose amount and modalities are determined"* taking into account certain circumstances (Gyula 2002). If the opposition filed by the defendant is rejected or if he/she does not file such application, the bail will be returned to the applicant.

Lastly, if an application to set aside a default judgment lodged in term by the defendant is

[34] Article 41 of the Statute of Court of Justice; Article 152 of the Rules of Procedure of Court of Justice; Article 123 of the Rules of Procedure of General Court; Article 121 of the Rules of Procedure of Civil Service Tribunal.

dismissed by the court, then the default judgment remains in force and cannot be challenged again with another opposition (Gyula 2002), but it can be contested with appeal. On the contrary, if the court admits the application, then the judgment setting aside the judgment by default remains in force (Lenaerts et al. 2006) while the original of this judgment shall be annexed to the original of the judgment by default and a note of the judgment on the opposition shall be made on the margin of the judgment by default's original (Gyula 2002).

In order to avoid the excessive use of this *sui generis* mean and since the European legislation keeps the silence related to it, we consider that the defendant is allowed to bring into play this mean only one time.

THE COMPLAINT WHEN THE COURT[35] FAILED TO ADJUDICATE ON A SPECIFIC HEAD OF CLAIM OR COSTS

(Voican et al.2000, Lenaerts et al. 2006)[36] represents the second *sui generis* mean, that might be lodged by any interested party [(e.g.: applicant, defendant, intervener (an institution, an agency, a body or office of the European Union, an individual or legal entity)] *"within a month after delivery of the judgment* [or the decision] *or service of the order"* in order to supplement the said judgment/ decision in all the cases when *"the court* [omitted by mistake] *to give a decision on a specific head of claim or on costs"*, meaning that the court rendered *minus petitia*.

In contrast, insomuch as the Rules of Procedure of the General Court and Civil Service Tribunal[37] do not mention anything, we consider that these provisions should be modified and amended, by allowing the two courts to rule not only on the dispute's costs but also on a specific claim, which should be decisive and different from other claims, according to the doctrine (Ştefănescu 1979, Gyula 2010).

Through the Registry, the application is notified to the opposite party in the dispute and the *"president shall prescribe a period within which that party may submit written observations"*. *"After these observations have been submitted, the Court shall, after hearing the Advocate General* [or General Court / Tribunal] *decide both on the admissibility and on the substance of the application*[38] *"* (Ştefănescu 1979) in order to stop parties to suffer too much the consequences of an error committed by an European court when rendered its first judgment (Ştefănescu 1979).

In order to be admissible, the complaint shall meet the same formal conditions as for the application to set aside a default judgement, taking into account that both of them are *sui generis* means. The application will also be admissible when the court omitted, by its error, to give a decision on a specific head of claim or on costs from the original judgment.

Although the procedural rules of the General Court and Civil Service Tribunal keep the silence in the matter, from our standpoint, the decision can be appealed in the same way as the original judgment that has been the object of the complaint.

[35] The Court of Justice, the General Court and the Civil Service Tribunal.

[36] Article 155 of the Rules of Procedure of Court of Justice; Article 165 of the Rules of Procedure of General Court; Article 123 of the Rules of Procedure of Civil Service Tribunal; Case T-50/89 Jürgen Sparr v. Commission, order of 11 March 1990, published in European Court Reports 1990, see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61989TO0050:EN:PDF (Accessed 02 March 2014).

[37] Article 165 para.1 of the Rules of Procedure of General Court; Article 123 of the Rules of Procedure of Civil Service Tribunal.

[38] Article 155 of the Rules of Procedure of Court of Justice; Article 165 of the Rules of Procedure of General Court; Article 123 of the Rules of Procedure of Civil Service Tribunal.

In the disputes brought before the courts of the European Union, the judgments can be also appealed with third-party proceedings and revision, which **are exceptional review procedures** because of their special nature. Thus, by using these means the parties have the possibility to ask for the court that delivered the contested judgment to dismiss its own judgment or decision and to render a new decision, with the observance of the conditions stipulated in the Statute of the Court of Justice and the Rules of Procedures of the European courts.

Starting from this point, it is important to clarify that these exceptional reviews procedures do not imply a new trial before a higher-level court, as it happens in the case of appeal.

Without calling into question the principle *res judicata pro veritate accipitur,* **the third-party proceedings**[39] represents one of the two exceptional reviews procedures, which can be submitted exclusively by the third parties, in exceptional circumstances and *"in the cases and the conditions* [stipulated] *in the rules of procedure"*, against the decisions delivered by the courts of the European Union or *"to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights*[40]*"* (Ştefănescu 1979, Fuerea 2002, Gyula 2010, Hartley 2007), especially when the third parties do not have the possibility to participate in the original dispute (Lenaerts et al. 2006, Gyula 2010, Peñarrubia Iza and López López 2000), because of reasons beyond of their willingness.

In order to file an application for third-party proceedings the contested judgment should bring serious damages to the rights of the third parties (Lenaerts et al. 2006, Gyula 2010). Thus, it is not enough for these parties to have a legitimate interest to protect[41], but the prejudice suffered by them should be resulted from the content or the motivation of the judgment, in which situation the European court will analyse from case to case, in a serious manner, if their rights have been prejudiced or not.

As for the category of the third parties who can submit such application, this category is wide and includes the European institutions, bodies, offices and agencies, Member States as well as individuals and legal entities[42].

On the contrary, an application to bring third-party proceedings is considered to be inadmissible when it is introduced by the intervener who participated in the original dispute or by the legal entities who, nonetheless, had the possibility to intervene as interveners in the original dispute, but from reasons non-imputable to them did not participate in the dispute (Gyula 2002). Furthermore, if the third parties did not have good and solid reasons for justifying their failure to intervene in the original case, then this application will be rejected as inadmissible (Lenaerts et al. 2006). Instead, such an application shall be admissible if it is lodged only by the parties who, theoretically, could take part in the original dispute, but practically were not present in the litigation as interveners, for various reasons.

On the other hand, individuals and legal entities cannot intervene in the disputes provided for in Articles 258 and 259 TFEU, having as main object the failure of the Member States of the European Union to fulfil an obligation under the Treaties, by lodging an application initiating third-party proceedings even when they have been prejudiced in their rights (Lenaerts et al. 2006), for one reason,

[39] In French is well known as *"la tierce opposition"*.

[40] Article 42 of the Statute of the Court of Justice.

[41] Article 157 para.1 letter b) of the Rules of Procedure of Court of Justice; Article 167 para.1 letter b) of the Rules of Procedure of General Court; Article 125 para.2 letter b) of the Rules of Procedure of Civil Service Tribunal.

[42] Article 42 of Statute of the Court of Justice.

specifically, this type of disputes implies only the EU Member States and the European Commission, as guardian of the Treaties.

According to the Rules of Procedure (Ştefănescu 1979, Lenaerts et al. 2006)[43], in order to be admitted by the court, as a general rule, an application to bring third-party proceedings should meet the same formal conditions and shall respect the same procedural terms, as in the case of written application, including supplementary mentions regarding: *"the judgment* [the order or the decision] *contested; the* [legal reasons why] *that judgment* [the order or the decision] *is prejudicial to the rights of the third party; the reasons for which the third party was unable to take part in the original case"* and shall be also supported by relevant documents.

Furthermore, the application must be *"made against all the parties to the original"* dispute, while the term to submit such application is *"two months of the publication"* of the contested judgment in the Official Journal of the European Union, according to the provisions stipulated in the Rules of Procedure of the European courts. We consider that failure to comply with such term will determine the court to reject the application.

Upon the request of the third party, the court may suspend the enforcement of the contested judgment, but only for justified reasons.

Analysing the application lodged by the third party, the court may take one the following solutions: **admission**, in which case the judgment appealed shall be modified accordingly or **dismissal,** in which situation the judgment can be appealed in the same conditions as the contested one. At the end of the proceedings *"the original of the judgment in the third-party proceedings shall be annexed to the original of the contested judgment"* in accordance with the Rules of Procedure of the European courts.

The revision[44], allowing an opportunity for changing a judgment after a "new" fact has come to light, except the preliminary rulings since no parties to such proceedings exist (Lenaerts et al. 2006), serves as the second exceptional review procedure, and not as a variety of the appeal, regulated by the Rules of Procedure of the European courts (Fuerea 2002, Gyula 2010)[45]. This procedure can be lodged by the interested party against the final judgment or decision rendered by the European courts in Luxembourg. Thus, a new trial of the original dispute is required whenever *"the court expressly recording the existence of a* [new] *decisive factor"* having *"a determined influence* [and which] *was unknown to the court and to the party claiming the revision* [...] *before the rendering of the final decision"*, from reasons non-imputable to parties (Gyula 2002, Hartley 2007)[46].

In the European doctrine (Fuerea 2002, Gyula 2010, Lenaerts et al. 2006) it was stated that a number of conditions have to be satisfied in order to admit an application for revision, as follows: new circumstances or facts which existed prior to the judgment / decision rendered must be discovered; the previous facts, unknown to the court or to the party because of reasons beyond of their willingness, should have decisive influence, being thus a *"decisive factor"* for the outcome of the case, and should be able to change the judgment / decision rendered; the previous facts on which the application for revision is based must have occurred at the time when the judgment or decision was given and not later than this moment. On the contrary, for

[43] Article 157 of the Rules of Procedure of Court of Justice; Article 167 of the Rules of Procedure of General Court; Article 125 of the Rules of Procedure of Civil Service Tribunal.

[44] In French is also known as *"la révision"*.

[45] Article 159 of the Rules of Procedure of Court of Justice; Article 169 of the Rules of Procedure of General Court; Article 127 of the Rules of Procedure of Civil Service Tribunal.

[46] Article 44 para.1 of the Statute of the Court of Justice.

example: the measures adopted by the European Commission to enforce a contested judgment or the situation when the party being aware of existence of the facts, by mistake or other reason, omitted to invoke these facts in front of the court that rendered the judgment cannot be considered as decisive facts and the subsequent jurisprudence of the European courts cannot serve as new facts (Lenaerts et al. 2006).

In order to open the revision on the grounds concerning the contested judgment or decision, the court shall proceed to an examination of admissibility of the application, *in camera,* after hearing the Advocate General and taking into account the written observations made by parties (Gyula 2010, Lenaerts et al. 2006), and, if it is admissible, a new judgment shall be delivered in accordance with the procedural provisions and "*without prejudice to its decision on the substance*". This decision is likely to find, specifically, the existence of a new fact, recognizing the characters which allow the opening of the revision.

As for the moment when an application for revision may be lodged, the European procedural provisions[47] stipulate that it must be *"made within three months of the date on which the facts on which the application is founded came to the applicant's knowledge"* but no later than *"the lapse of 10 years from the date of the judgment"* or decision (article 44 para.3 of Statute of the Court of Justice). From our viewpoint the term of 10 years, calculated from the delivery of a judgment or decision, is a limitation term, meaning that any overcoming of this term shall determinate the loss of the right by the interested party to file the revision.

In order to be admissible, the application for revision must comply with the general requirements for the written applications and shall indicate: *"the judgment* [or decision] *contested; the points on which the judgment* [or decision] *is contested; the facts on which the application is based; the nature of the evidence to show that there are facts justifying revision of the judgment* [or decision]*"* and finally shall be supported by the appropriate documents (Ştefănescu 1979)[48]

Furthermore, *"the application* [for revision] *must be made against all parties to the case in which the contested judgment* [or decision] *was given"* and *"may be filed only by those who have participated in the original dispute as a party"*, in accordance with article 44 of the Statute of the Court of Justice. Although the doctrine considered that *"it must be prevented the possibility for the intervener to invoke reasons for revision about which, for the party in the original dispute, the limitation period has already occurred"* (Gyula 2010), we consider that the European provisions, which are not dealing with this issue yet, should allow the intervener to file the application in the same conditions as the interested party, whenever he/she considers that the fact of which he/she was aware, subsequently, has a decisive influence for the dispute.

Finally, *"the original of the revising judgment shall be annexed to the original of the judgment revised. A note of the revising judgment shall be made in the margin of the original of the judgment revised*[49]*"* and the new judgment shall be notified to the parties.

Since the European procedural provisions do not mention anything, from our standpoint the revising judgment can be challenged with appeal, in the similar conditions as the contested judgment or decision.

[47] Article 159 of the Rules of Procedure of Court of Justice; Article 169 of the Rules of Procedure of General Court.

[48] Article 159 of the Rules of Procedure of Court of Justice; Article 169 of the Rules of Procedure of General Court; Article 127 para.2 of the Rules of Procedure of Civil Service Tribunal.

[49] Article 159 para.7 of the Rules of Procedure of Court of Justice; Article 169 of the Rules of Procedure of General Court.

CONCLUSIONS

A better knowledge of the role that means of appeal have for every judicial system, including for the European Union determined an in-depth research of them within this paper, taking into consideration the Latin principle of *res judicata pro veritate accipitur*.

Thus, the appeal cannot be understand without analysing the main components of it, as follows: the notion; the modalities to lodge an appeal; the general and special terms; the principles categories of judgments and decisions that can be appealed by the interested parties; the applicants and the grounds of appeal.

Investigating this mean of appeal we became aware of the fact that only the judgments and decisions of the General Court and Civil Service Tribunal can be challenged with appeal, whilst the judgments delivered by the Court of Justice remain final and irrevocable, as the court in Luxembourg *"doesn't know these means of appeal, as it judges in the first and last instance"*.

Whenever the court does not take into consideration the defendant defences or failed to adjudicate on a specific head of claim or costs, the interested party can use one of the *sui generis* means (the judgment by default and the complaint). The specificity of these means, as exceptions from the ordinary procedure, consists in combining the characters of many means which can be brought before the Court of Justice. In addition, these means can be used in the conditions provided for by the Rules of Procedure of the European courts.

Finally, the Statute of the Court of Justice and the Rules of Procedure are regulating specific conditions for lodging exceptional review procedure (the third-party proceedings and the revision) as possibilities for the interested parties to ask for the court that delivered the contested judgment or decision to withdraw it and to proceed to a new trial. We consider that this option given in the hands of the interested parties is fair since every new, relevant and unknown fact prior to the delivery of the judgment or decision, may determine a different solution on behalf of the European court.

RESUMO

Conhecimento e compreensão dos meios de recursos interpostos perante os tribunais da União Europeia, limitados apenas aos pontos de Lei, são muito importantes cosiderando que a forma para avaliar uma decisão proferida por um tribunal de instância inferior existe desde os tempos antigos, sendo regida entre outros, pelo princípio Latino: *res judicata pro veritate accipitur*. No que se segue iremos analisar, em geral, o controle jurídico dos acórdãos e despachos proferidos pela Corte Geral e pelo Tribunal de Serviço Civil, como um tribunal especializado em questões civis de funcionário público, mas também o meio *sui generis* de recursos e meios extraordinários de revisões de julgamentos e despachos. Devemos mencionar que todos eles são exercidos em conformidade com o Regimento de Procedimento dos tribunais europeus e dos Estatutos do Tribunal de Justiça da União Europeia. Outro aspecto a ser mencionado é que as decisões do Tribunal de Justiça não podem ser contestados por outro tribunal, uma vez que são finais e irrevogáveis.

Palavras-chave: Tratado de Lisboa, tribunais europeus, formas de apelações, meios *sui generis* de apelações, remédios extraordinários.

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