

<b>Institution: UNIVERSITY OF BIRMINGHAM</b>
<b>Unit of Assessment: C20 Law</b>
<b>Title of case study:</b> Securing Access to Justice and Effective Dispute Resolution in the European Union
<p><b>1. Summary of the impact</b> (indicative maximum 100 words)</p> <p>The law has been influenced by the research described below on access to justice and effective dispute resolution in the EU. That research has been cited frequently by Advocates General (AG) in the European Court of Justice (ECJ) and helped bring about a Treaty change that took effect in 2009. It underpinned evidence submitted to the House of Lords EU Committee which was substantially endorsed in reports published in 2011 and 2013. Through its impact on the EU's quest for an appropriate standing test in annulment actions and a court structure that delivers effective judicial protection, the research has benefited individuals and businesses affected by EU policies and the EU itself by promoting the rule of law.</p>
<p><b>2. Underpinning research</b> (indicative maximum 500 words)</p> <p>Published between 1995 and 2012, the underpinning research was conducted by Anthony Arnall, who has been a law professor at the University of Birmingham since 1992. Facilitated by Birmingham's Institute of European Law and staff seminar programme, the research comprises two monograph chapters, three articles and two chapters in edited collections (outputs R1 – R6 below). It examined:</p> <ul style="list-style-type: none"> <li>• the extent to which private applicants should be able to challenge EU acts directly before the ECJ;</li> <li>• how to reconcile reform of the EU's court structure to accommodate the growing case load with ensuring effective dispute resolution.</li> </ul> <p>These questions have important implications for the rights of individuals and business entities and governance more generally.</p> <p>The principal Treaty mechanism for challenging the validity of EU acts is the action for annulment. The extent to which private applicants should have standing to bring such actions has long been controversial, the ECJ traditionally taking a strict view of the relevant Treaty provision. Observing that in other respects the ECJ had construed that provision liberally (R2), Arnall drew on developments in national legal systems, human rights and the notion of citizenship to argue for a radically relaxed standing test of 'whether the applicant has been adversely affected by the contested act' (R1). He pointed out that in certain specific contexts, such as competition, State aid and dumping, the ECJ had accepted that its general approach should be modified to counter obvious injustice. Case C-309/89 <i>Codorniu v Council</i> [1994] ECR I-1853 suggested that the ECJ might be willing to extend that modified approach. However, old habits soon re-emerged, leading Arnall to call for a Treaty change (R3). The debate came to a head in Case C-50/00 P <i>UPA v Council</i> [2002] ECR I-6677, where, after citing much of Arnall's work, AG Jacobs proposed a new standing test of 'substantial adverse effect' on the interests of the applicant. However, the ECJ reaffirmed the traditional test and asserted that any change to the position would indeed require a Treaty change. It later overturned a controversial decision of the General Court in which a more relaxed standing test had been applied. A provision relaxing the standing rules was eventually included in the Treaty on the Functioning of the EU adopted at Lisbon. Arnall's later work (R5 and R6) examined the background to the new provision and considered its implications.</p> <p>Over roughly the same period, attempts were made to mitigate the effects of the growth in the case load of the ECJ. Arnall's work in this area explored the implications of the establishment of the General Court; the limits initially imposed on its jurisdiction; and procedural reforms. As the jurisdiction of the General Court grew and the most obvious case management changes were introduced, Arnall argued that the reputation of the General Court was now secure enough to enable more radical steps to be contemplated, including more adventurous enlargement of its jurisdiction (R4 and R5).</p>
<p><b>3. References to the research</b> (indicative maximum of six references)</p> <p>R1) Anthony Arnall, 'Private applicants and the action for annulment under Article 173 of the EC</p>

## Impact case study (REF3b)

- Treaty' (1995) 32 *Common Market Law Review* 7-49. [available from HEI on request or at <http://www.kluwerlawonline.com/abstract.php?area=Journals&id=COLA1995002>]
- R2) Anthony Arnall, 'The action for annulment: a case of double standards?' in David O'Keefe and Antonio Bavasso (eds), *Judicial Review in European Law (Liber Amicorum in Honour of Lord Slynn of Hadley)* (Kluwer, 2000) 177-190 [available from HEI on request]
- R3) Anthony Arnall, 'Private applicants and the action for annulment since *Codorniu*' (2001) 38 *Common Market Law Review* 7-52. [available from HEI on request or at <http://www.kluwerlawonline.com/abstract.php?area=Journals&id=322590>]
- R4) Anthony Arnall, 'Modernising the Community Courts' (2000) 3 *Cambridge Yearbook of European Legal Studies* 37-63. [doi:10.5235/152888712802859240]
- R5) Anthony Arnall, *The European Union and its Court of Justice* (Oxford University Press, 2<sup>nd</sup> ed, 2006) chapters 3 and 5. [available from HEI on request]
- R6) Anthony Arnall, 'The European Court of Justice after Lisbon' in Martin Trybus and Luca Rubini (eds), *The Treaty of Lisbon and the Future of European Law and Policy* (Edward Elgar Publishing, 2012) 34-54. [available from HEI on request]

As evidence of research quality items 1-5 were returned to previous RAEs.

#### 4. Details of the impact (indicative maximum 750 words)

Arnall's work has had impact on EU primary and secondary law and the evolution of case law. It has been of benefit to businesses and individuals affected by EU measures through helping to secure access to justice and effective dispute resolution. Because this reinforces the rule of law, it has also been of benefit to the EU itself since this is one of the values on which it is founded.

The ECJ's case law on standing came under renewed attack in the 1990s by Arnall and other scholars, some of whom were cited alongside Arnall by AG Stix-Hackl in Case C-312/00 P *Commission v Camar* [2002] ECR I-11355, 11371 (n.15). Arnall's 1995 and 2001 articles (R1 and R3), as well as the book chapter published in 2000 (R2), were cited in *UPA* by AG Jacobs, one of the ECJ's longest-serving and most influential Advocates General. He described Arnall's 2001 article as 'one of the fullest and most authoritative recent studies' on the subject (para 100 of the Opinion). The ECJ's decision in that case led to discussion in the Convention on the Future of Europe on whether (and if so how) the standing rules should be changed. A provision having that effect was included in the Treaty Establishing a Constitution for Europe. Following the failure of that Treaty, the provision concerned was incorporated in the Treaty on the Functioning of the EU, which took effect on 1 December 2009. The relevant paragraph had never previously been amended. The General Court acknowledged that the new provision 'pursues an objective of opening up the conditions for bringing direct actions...' (Case T-262/10 *Microban v Commission*, judgment of 25 October 2011, para 32). However, in Case C-583/11 P *Inuit and Others v European Parliament and Council*, judgment of 3 October 2013, the Court of Justice construed the new provision narrowly. Its judgment is likely to attract criticism from academics and legal practitioners and lead to pressure for further reform.

Arnall's work on the EU's court structure prompted an invitation in 2010 to submit evidence (both written and oral) on the workload of the ECJ to the House of Lords EU Committee. His **evidence was cited extensively in the Committee's report**, *The Workload of the Court of Justice of the European Union*, published on 6 April 2011 (see source 1 below). The Committee endorsed Arnall's view that the relationship between the ECJ and the national courts should be safeguarded (written evidence, para 21; report, para 108) and that access to the case law in a language that all EU citizens could understand reinforced the legitimacy of both the ECJ and the General Court (oral evidence, QQ 15-19; report, para 68). The Committee agreed with Arnall that the Member States and the other institutions should be receptive when the ECJ suggested changes to its procedural rules (oral evidence, Q 35; report, para 91). Following a suggestion by Arnall (written evidence, para 14) and other witnesses, the Committee recommended an increase in the number of Judges of the General Court (report, para 136).

The Committee's report was welcomed by the British Government (source 2) and the European Commission (source 3). The report was debated in the House of Lords on 17 October 2011 (source 4).

The Committee visited the Union Courts in November 2010 and received evidence from a number of members. On 28 March 2011, the ECJ submitted to the European Parliament and the Council under Article 281 TFEU a package of requests, including one for an increase in the number of Judges of the General Court. The European Parliament and the Council gave partial effect to those proposals in August 2012 with the adoption of Regulation 741/2012 (source 5). They acknowledged the 'continuing need to tackle delays arising from the heavy workload of the General Court' (see preamble, Regulation 741/2012), but by the end of 2012 it was apparent that agreement on increasing the number of Judges was some way off.

The Committee therefore decided to conduct a follow-up enquiry and sought the views of the witnesses to the original enquiry on intervening developments. In February 2013, Arnull submitted a response suggesting a more economical way in which the problem might be resolved, and arguing that there was a compelling case for increasing the number of Advocates General in the ECJ. In its report published on 29 April 2013, the Committee rejected the first suggestion (source 6, para 69) but acknowledged that it had some support in the UK Government and other Member States (paras 14 and 17). **The Committee endorsed several other points made by Arnull** and quoted figures he had supplied on cases concerning the Area of Freedom, Security and Justice (paras 44 and 45). It recommended that the Government should support an increase in the number of Advocates General (paras 48-51). On 25 June 2013, the **Council adopted a decision increasing the number of Advocates General** from eight to nine in July 2013 and then to eleven in October 2015 (source 7). Progress in other areas depends on the Member States.

The work described here is therefore shaping developments at case law, legislative and Treaty level. It is helping to reinforce access to justice for all natural and legal persons and contributing to improvements in the governance of the EU through its influence on the EU's evolving mechanisms of dispute resolution. **This is of direct benefit to individuals and businesses because of the extent to which Union law may affect their rights and obligations.**

##### 5. Sources to corroborate the impact (indicative maximum of 10 references)

- [1] *The Workload of the Court of Justice of the European Union* (House of Lords European Union Committee, Session 2010-11, 14<sup>th</sup> Report, HL Paper 128). Evidence available at <http://www.parliament.uk/documents/lords-committees/eu-sub-committee/CourtofJustice/CJEUoewe.pdf> (accessed 28 October 2013).
- [2] <http://www.parliament.uk/documents/lords-committees/eu-sub-committee/CourtofJustice/GovtRespons14thReportTheWorkloadofCourtofJusticeof%20theEU.pdf> (accessed 28 October 2013).
- [3] (<http://www.parliament.uk/documents/lords-committees/eu-sub-committee/CourtofJustice/CommissionResponsetoWorkloadofCourtofJustice.pdf> (accessed 28 October 2013).
- [4] Hansard (House of Lords Debates), Volume 731, columns 80-95 (17 October 2011).
- [5] Regulation 741/2012 amending the Protocol on the Statute of the Court of Justice of the European Union and Annex I thereto, OJ 2012 L228/1.
- [6] *Workload of the Court of Justice of the European Union: Follow-Up Report* (House of Lords European Union Committee, Session 2012-13, 16<sup>th</sup> Report, HL Paper 163). Evidence available at <http://www.parliament.uk/documents/lords-committees/eu-sub-committee/FollowupworkloadCJEU/CJEU-Follow-upWrittenOralevidence290413.pdf> (accessed 28 October 2013).
- [7] Council Decision of 25 June 2013 increasing the number of Advocates-General of the Court of Justice of the European Union, OJ 2013 L179/92.