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# ВІД ЄВРОПЕЙСЬКОЇ ТРАДИЦІЇ ДО ЛАТИНОАМЕРИКАНСЬКОЇ РЕАЛЬНОСТІ: НА ШЛЯХУ ДО ВСТАНОВЛЕННЯ РОЛІ ГЕНЕРАЛЬНОГО АДВОКАТА У СУДІ АНДСЬКОЇ СПІЛЬНОТИ

## FROM EUROPEAN TRADITION TO LATIN AMERICAN REALITY: TOWARD ESTABLISHING THE ROLE OF ADVOCATE GENERAL IN THE COURT OF JUSTICE OF THE ANDEAN COMMUNITY

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**Abstract** | This article examines the figure of the Advocate General at the Court of Justice of the European Union (CJEU) and assesses its potential incorporation into the Court of Justice of the Andean Community (TJCA). Through a comparative analysis, it explores the functions, contributions, and institutional guarantees that characterize the Advocate General in the European context, highlighting its role in ensuring jurisprudential coherence, the development of law, and the legitimacy of supranational adjudication. The article also analyzes the historical, political, and budgetary factors that explain the absence of this figure in the Andean system, such as the defense of national sovereignty, the economic-commercial bias of integration, and the financial constraints of the Andean Community (CAN). Building on the existing legal framework of Andean law, it identifies the normative and procedural mechanisms required to introduce an Advocate General within the TJCA and argues that its adoption would strengthen the principle of homogeneity, the unity of the legal order, and the transparency of the decision-making process. Finally, it contends that this figure would enhance the TJCA's judicial dialogue with the CJEU and other international courts, thereby consolidating the confidence of Member States and legal practitioners in the regional integration system.

**Keywords:** Advocate General, Court of Justice of the Andean Community, institutional reform, integration law, judicial legitimacy, judicial dialogue.

**Анотація** | У цій статті розглядається інститут Генерального адвоката при Суді Європейського Союзу (ЄС) та оцінює його потенційне включення до Суду Справедливості Андського Співтовариства (ССАС). Шляхом порівняльного аналізу вона досліджує функції, внески та інституційні гарантії, що характеризують Генерального адвоката в європейському контексті, висвітлюючи його роль у забезпеченні єдності судової практики, розвитку права та легітимності наднаціонального судочинства. Стаття також аналізує історичні, політичні та бюджетні чинники, що пояснюють відсутність цього інституту в Андській системі, такі як захист національного суверенітету, економічно-комерційний ухил інтеграції та фінансові обмеження Андського Співтовариства (АС). Спираючись на чинну правову базу Андського права, вона визначає нормативні та процедурні механізми, необхідні для запровадження Генерального адвоката у ССАС, і стверджує, що його прийняття посилить принцип єдності, єдність правового порядку та прозорість процесу прийняття рішень. Нарешті, вона стверджує, що цей інститут посилить судовий діалог ССАС із ЄС та іншими міжнародними судами, тим самим зміцнюючи довіру держав-членів та юристів-практиків до регіональної інтеграційної системи.

**Ключові слова:** Генеральний адвокат, Суд Андської спільноти, інституційна реформа, право інтеграції, судова легітимність, судовий діалог.

## I. Introduction

Regional integration in Latin America has made significant progress in recent decades, and the CAN has established itself as one of the most stable frameworks for economic and legal cooperation<sup>1</sup>. In this context, the TJCA plays an essential role in the uniform interpretation and application of the Cartagena Agreement and its complementary legal instruments. However, unlike other supranational jurisdictions, such as the CJEU, the TJCA lacks an internal mechanism allowing for an independent legal analysis prior to the deliberations of judges. This absence limits the systematization of legal criteria, reduces consistency in the case-law and affects transparency in judicial reasoning. Faced with this situation, the figure of the Advocate General of the CJEU emerges as an inspiring model, as it issues independent Opinions on cases, bringing clarity, consistency and technical depth to the decision-making process. The European experience shows that their intervention strengthens the unity of the legal order, fosters the development of case-law and strengthens institutional legitimacy.

This article aims to provide a detailed analysis of the figure of the Advocate General at the CJEU, identify its contributions to European case-law, and explore the possibility of adapting it to the context of the TJCA. Using a comparative approach and a study of normative and procedural feasibility, it seeks to demonstrate how the adoption of this figure could enhance legal coherence, increase transparency, and raise the technical quality of the TJCA's judicial decisions. To this end, the article combines doctrinal analysis, a review of landmark CJEU cases, and an examination of the current legal framework of the CAN to propose a roadmap for implementing the figure of the Advocate General, including criteria for appointment, functions, term of office, and mechanisms for gradual integration into the existing institutional structure. Furthermore, this reflection aims to offer a reference framework that could inspire the eventual transplantation of this figure into other supranational judicial systems where its incorporation has not yet been considered.

The idea for this article arose from an academic exchange with a former judge of the TJCA, held in the framework of an event organized by the *Max Planck Institute for Comparative Public Law and International Law* in Heidelberg (Germany). During that encounter, the author questioned why the figure of the Advocate General had not yet been incorporated into this supranational court, despite being expressly provided for in its founding treaty. The explanation offered at the time - namely, that the number of cases

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<sup>1</sup> Pedraza, J. H., «Comunidad Andina: 50 años por el camino de la integración», *Revista Peruana de Derecho Internacional*, May - August 2019 No. 162, p. 137.

before the TJCA was 'limited'<sup>2</sup> - was particularly striking to the author, as it seemed to underestimate both the multiple functions and the potential of this figure. Years later, this exchange regained relevance during a discussion on the CAN held with two Advocates General of the CJEU, within the framework of an institutional meeting in Luxembourg, in which the absence of an Andean equivalent was noted. In this context, the present article is conceived as a contribution aimed at deepening the understanding of this figure, whose presence has now become essential within the EU's supranational judicial system.

## II. The Advocate General at the Court of Justice of the European Union

### 1. Legal basis

The Advocate General's figure is one of the most unique and characteristic features of the CJEU. Its legal basis can be found in Article 19 of the Treaty on European Union (TEU), which lays down the general role of the CJEU as guarantor of the uniform interpretation and application of EU law, and in Article 252 of the Treaty on the Functioning of the European Union (TFEU), which specifically regulates its designation and the essential conditions of its status.

### 2. Status, appointment and rotation/permanence system

According to Article 253 TFEU, Advocates General are appointed by common accord of the governments of the Member States for a renewable term of six years. Before their appointment, the suitability of candidates is assessed by the panel provided for in Article 255 TFEU, composed of former members of the CJEU and jurists of recognized standing, which issues an opinion on each candidate's ability to perform the duties of judge or Advocate General. This procedure reflects the institutional balance characteristic of European integration: on the one hand, it ensures the direct participation of the Member States in the appointment of these high offices; on the other, it guarantees that, once appointed, Advocates General enjoy full independence in the exercise of their duties. In practice, some have served several consecutive terms, thereby providing the CJEU with continuity and valuable accumulated experience. Eligible for the position are individuals whose independence is beyond doubt and who either meet the qualifications required for the highest judicial offices in their respective countries or are jurists of recognized competence.

In terms of appointment, the organization of the Advocates General combines a system of permanent appointments with another of rotating appointments. At present, the CJEU has eleven Advocates General. Of these, five correspond permanently to the Member States with the greatest demographic and political weight<sup>3</sup>, while the remaining six are distributed among the other Member States through a periodic rotation mechanism. This system seeks to reconcile the institutional stability derived from the continuous presence of certain States with the principle of equality among the others, ensuring that all countries have, at different times, the opportunity to provide an Advocate General. As the CJEU has delegated certain powers to its General Court (the first instance jurisdiction) to hear requests for preliminary rulings in specific matters, within the framework of the recent reform of the judicial system, provision has also been made for the appointment of three judges of that jurisdiction who will serve as Advocates General, which underscores the importance of this figure for the development of case-law<sup>4</sup>.

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<sup>2</sup> García Brito, G., «El rol del Tribunal de Justicia de la Comunidad Andina», *Comentario Internacional*, 2020., No. 20, p. 194, explains that the number of cases was initially small, but points out that between 2007 and 2019 there was an exponential increase in requests for preliminary rulings. In this respect, in the opinion of the author of this work, the absence of Advocates General before the TJCA is no longer justified.

<sup>3</sup> Some Member States always have an Advocate-General at the CJEU. Until 2013, only the four major founding states (Germany, France, Italy and Spain) had a permanent job. Poland was incorporated following the enlargement of the EU and the institutional adjustment of the Treaty of Nice/Lisbon.

<sup>4</sup> Kühn, W.M., 'The upcoming reform of the judicial system of the European Union', *europarättslig Tidskrift*, 2024, No. 1, p. 99, analyses the scope of the reform as regards the appointment of Advocates-General before the General Court.

With regard to their status, the TFEU expressly equates the Advocates General with the judges of the CJEU in terms of independence, immunities, and obligations. This means that they may not receive instructions from any government, institution, or party to the proceedings, and that they must maintain the same impartiality and objectivity required of the judges. This parallelism is not a mere formal detail: it emphasizes that the Advocates General are not simply advisers or auxiliary officials, but genuine European magistrates invested with their own institutional mission. Consequently, they are authorized to intervene at the hearing<sup>5</sup> and to ask any questions they deem necessary to clarify the legal and factual aspects of the case, just like the reporting judge or the other members of the chamber<sup>6</sup>. They also enjoy the same protocol rank as the judges, and the so-called First Advocate General - elected every three years by their peers - even holds a rank higher than that of some judges with greater seniority. In this context, it is worth emphasizing that the Advocates General do not participate in the election of the President of the CJEU, despite being members of the institution, which reinforces their independence and autonomy from the college of judges.

The First Advocate General is responsible for assigning pending cases among the members of the college, taking into account each one's workload and ensuring compliance with certain basic rules, such as the prohibition on Advocates General participating in cases related to their countries of origin, which could call their impartiality into question<sup>7</sup>. It should be noted, however, that the function of the First Advocate General is not limited to the distribution of cases but also includes specific procedural prerogatives, among them the authority to propose to the CJEU the reexamination of cases for which no appeal exists, when there is «a serious risk to the unity or coherence of Union law,» in accordance with Article 256(2) TFEU.

The inclusion of the figure of the Advocate General in the TFEU itself carries great constitutional significance. It is not a secondary innovation that could have been created through internal regulations, but rather an integral element of the European judicial design, conceived from the outset to ensure the technical quality and transparency of judicial work. In this sense, the presence of the Advocate General is a defining feature that distinguishes the CJEU from other international courts, where judicial deliberation usually takes place exclusively among judges without an independent instance of prior reflection.

### 3. Functions and procedural dynamics

In accordance with Article 252 of the TFEU, the CJEU is «assisted» by the Advocates General, a notion that will be examined in greater detail in this paper. Their principal mission consists in presenting, in the cases assigned to them, written, public, and reasoned Opinions in which they conduct an exhaustive legal analysis of the issues raised in the dispute and formulate a concrete proposal for its resolution<sup>8</sup>. A specific linguistic regime applies to these Opinions<sup>9</sup>. Although they are not binding on the CJEU, the Opinions of the Advocate General perform essential functions, widely recognized by both doctrine and judicial practice, which may be summarized as follows:

- **Interpretative and systematizing function:** They contribute to the creation, consolidation, and clarification of legal principles that guide the case-law of the CJEU.
- **Function of unity and coherence:** They ensure that EU law is applied uniformly across all Member States, reinforcing the consistency of the European legal order.

<sup>5</sup> It should be noted, in significant detail, that the Advocate General joins the courtroom and leaves it at a different door than judges, a gesture which symbolises and highlights their independence from them.

<sup>6</sup> Brüggemann, J., *Die Rechtsstellung des Generalanwalts am Gerichtshof der Europäischen Union*, Hamburg 2023, p. 260.

<sup>7</sup> Kokott, J., *Anwältin des Rechts - Zur Rolle der Generalanwälte beim Europäischen Gerichtshof*, Referat im Rahmen der Vortragsreihe «Rechtsfragen der Europäischen Integration», Bonn 2006, p. 6.

<sup>8</sup> Article 252(2) TFEU defines the function of the Advocate General as «to make, with complete impartiality and independence, reasoned submissions on cases which, in accordance with the Statute of the CJEU, require his intervention».

<sup>9</sup> French is the working language of the CJEU, so the judgments are originally drafted in this language and then translated into the other official languages of the EU. The Advocate General, on the other hand, has the power to draw up his Opinion in the official language of his choice - either the official language of his country of origin or the language of his choice for professional reasons - which are subsequently translated.

- **Function of transparency and legitimacy:** Being public, the Opinions allow the legal community and the public to access the reasoning accompanying judicial decisions, thereby strengthening the democratic legitimacy of the CJEU.
- **Function of procedural efficiency:** The Advocate General's detailed technical analysis facilitates the judges' work, enabling them to address the cases before them with greater speed and rigor. In addition, the Advocates General are consulted beforehand in the adoption of important procedural decisions—such as whether to hold a hearing, request clarifications from the parties, or decide on the intervention of third parties—underscoring their central role in the internal dynamics of the CJEU.
- **Innovative function:** The Advocates General often anticipate novel legal solutions, exploring interpretative avenues that have, on occasion, marked turning points in the evolution of EU law.

The procedural dynamic that defines the role of the Advocate General is characterized by one essential feature: their exclusion from the judges' final deliberation. Once their Opinions have been delivered, their participation in the procedure is formally concluded, ensuring that their analysis retains a genuinely autonomous and impartial character. This institutional design prevents any possible influence of the CJEU's internal discussions on their views and guarantees that the judicial body benefits from a «second institutional voice» distinct from that of the judges.

It is worth noting that every deliberation begins with a decision by the chamber on whether or not to follow the Opinion of the Advocate General<sup>10</sup>, a decision that depends on the weight and soundness of the reasoning put forward<sup>11</sup>. Likewise, the Advocates General are not bound by the Opinions of their counterparts in related cases when drafting their own Opinions, which allows them to develop their legal reasoning independently. This independence enriches the judicial debate and enables the judges to consider alternative approaches before adopting their final decision.

As a general rule, the Advocate General delivers an Opinion in cases of particular significance or those that raise unprecedented legal questions<sup>12</sup>. In some instances, the Opinions may focus exclusively on the most complex aspects of the case before the CJEU (*conclusions ciblées*). The decision on whether the Advocate General will intervene rests with the «general meeting,» a body composed of all members of the CJEU (judges and Advocates General) which decides both on the allocation of the case to a specific chamber and on the relevant procedural matters, such as holding hearings or formulating questions to the parties involved<sup>13</sup>.

In the past, the Advocate General's Opinions were read in full during the oral hearing, allowing the parties and the public present to hear firsthand the complete development of the proposed legal analysis. However, for reasons of procedural economy and in view of the high volume of cases handled by the CJEU, this practice has gradually been replaced by an abbreviated reading during the hearing. At present, only the operative part of the Opinion—that is, the Advocate General's proposed solution—is read aloud at the hearing<sup>14</sup>. The full text of the Opinion is published the same day on the CJEU's website, ensuring its accessibility and maintaining the transparency of the procedure.

Empirical studies confirm that, in a high percentage of cases, the CJEU adopts all or part of the Advocate General's Opinions. Scholarship often cites a convergence rate of around 80%<sup>15</sup>, although it is difficult to establish an entirely precise figure. Even in cases where the CJEU does not follow them, these Opin-

<sup>10</sup> Szipunar, M., 'The Advocate General in the judicial architecture of the EU Court of Justice', *Europäische Zeitschrift für Wirtschaftsrecht*, 2022, No. 24, p. 1144.

<sup>11</sup> Kühn, W. M., «Reflexiones sobre una posible convergencia regional con la participación de la Comunidad Andina y del Mercosur. Lecciones de la experiencia integracionista europea», *Revista General de Derecho Europeo*, 2015, No. 36, p. 37

<sup>12</sup> Brüggemann, J., *Die Rechtsstellung des Generalanwalts am Gerichtshof der Europäischen Union*, Hamburg 2023, p. 301.

<sup>13</sup> Čapeta, T., «Seventy years of Advocates General at the Court of Justice of the European Union», *Leiden Europa Lecture*, p. 7.

<sup>14</sup> Clément-Wilz, L., *La fonction de l'avocat général près la Cour de justice*, Bruselas 2011, p. 532.

<sup>15</sup> Kokott, J., 'Der EuGH als Motor des europäischen Integrationsprozesses?', *JuS-Kurzinterview* (Gustav-Radbruch-Forum 2018), p. 577, speaks of a percentage of more than 86 %, according to the internal statistics of the cabinet.

ions acquire notable doctrinal and academic value, as they are frequently cited in textbooks, case-law commentaries, and even in subsequent judicial decisions. Often, when the CJEU does follow the Advocate General's Opinion, the judgment expressly incorporates elements of the reasoning advanced therein. Conversely, when the Court diverges from such Opinions, it seldom refutes them directly, instead constructing its reasoning autonomously.

#### 4. Compliance with the due process principle

Since the Advocate General's Opinions constitute an independent and non-binding view intended to guide the CJEU in its interpretative function—and have no direct legal effects on the procedural situation of the parties—they cannot be subject to appeal by those who disagree with their content. Any attempt to challenge them in this regard must be deemed inadmissible, as consistently confirmed by the CJEU's case-law<sup>16</sup>. Nevertheless, the parties have a specific mechanism to safeguard their right of defense: the possibility of requesting the reopening of the oral phase of the proceedings, as provided for in Article 83 of the Rules of Procedure of the CJEU. Such reopening is appropriate, among other circumstances, when the Advocate General, in their Opinions, introduces new elements or addresses issues that were not debated during the hearing. In this way, a balance is maintained between the functional independence of the Advocate General and respect for the adversarial principle in the European judicial process.

The European Court of Human Rights (ECtHR), based in Strasbourg, has confirmed the compatibility of the figure of the Advocate General of the CJEU with the due process guarantees enshrined in Article 6 of the European Convention on Human Rights (ECHR). In the case **Emesa Sugar N.V. v. the Netherlands**<sup>17</sup>, the ECtHR held that the impossibility of challenging the Advocate General's Opinions does not violate the adversarial principle, given that such Opinions are non-binding, are presented at a public hearing, and are based on the arguments previously put forward by the parties. Complementarily, in **Kress v. France**<sup>18</sup> - although referring to the commissaire du gouvernement before the Conseil d'État - the ECtHR clarified that the participation of a body providing an independent and non-decisional legal analysis may be compatible with a fair trial, provided that transparency and the separation of functions are safeguarded.

In **Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands**<sup>19</sup>, the ECtHR further explored this issue and concluded that the impossibility of responding to the Advocate General's Opinions before their oral presentation does not infringe the adversarial principle. This is because the Rules of Procedure of the CJEU provide compensatory mechanisms - such as the reopening of the oral phase when new or decisive elements are introduced - that ensure procedural balance between the parties. Thus, the ECtHR reaffirmed that the EU judicial system, including the figure of the Advocate General as a «second institutional voice,» offers a level of protection equivalent to that required by the ECHR and is fully compatible with the European system of human rights protection.

Consequently, the Advocate General is conceived as an impartial auxiliary of the CJEU, entrusted with enriching the legal debate and safeguarding the general interest of EU law, without taking part in judicial deliberation. Therefore, the absence of a right to reply to their Opinions does not undermine procedural fairness, provided that the parties have the opportunity to present their arguments fully and that the final decision rests exclusively with independent and impartial judges.

#### 5. The cabinet of an Advocate General

At the CJEU, the so-called *référéndaires* (law clerks or legal secretaries) are highly qualified jurists who form part of the legal support staff assisting both the judges and the Advocates General. Their work

<sup>16</sup> CJEU, Order of 4 February 2000, *Emesa Sugar* (C-17/98, EU:C:2000:69).

<sup>17</sup> ECtHR, judgment of 13 January 2005, *Emesa Sugar N.V. v. the Netherlands*, Application No. 62023/00.

<sup>18</sup> ECtHR, judgment of 7 June 2001, *Kress v. France*, Application No. 39594/98.

<sup>19</sup> ECtHR, judgment of 20 January 2009, *Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands*, Application No. 13645/05.

is essential to ensuring the technical soundness, internal coherence, and clarity of the legal reasoning produced by the CJEU. The cabinet of each member of the CJEU generally consists of between three and five *référéndaires*, who may come from academia, national or supranational administrations, private legal practice, or the judiciary. Their familiarity with various national legal systems and their command of several official EU languages enable them to operate effectively in an international environment where diverse legal traditions converge. Given their high level of expertise and experience, it is not uncommon for some *référéndaires*, after years of service as legal advisers, to be appointed as judges or Advocates General at the CJEU, thereby contributing to continuity and the accumulation of institutional knowledge within European case-law<sup>20</sup>.

Within the cabinets of the Advocates General, the *référéndaires* play a central role in drafting the Opinions - the fundamental documents in which the Advocate General independently and comprehensively analyzes the legal questions raised in each case<sup>21</sup>. Their work begins with in-depth legal and doctrinal research, including the review of applicable European legislation, prior case-law of the CJEU, and, in many instances, comparative or international law, with the aim of providing additional perspectives and identifying solutions tested in other systems<sup>22</sup>. This stage ensures that the Advocate General's arguments are rigorously substantiated and that each case is situated within a broad interpretative framework.

Subsequently, the *référéndaires* collaborate in drafting the Opinions, ensuring that the presentation is clear, coherent, and legally rigorous. They organize arguments logically, highlight relevant precedents, and propose interpretative structures that facilitate understanding both within the CJEU and among external legal practitioners. They also prepare analytical notes and summaries that integrate case-law, regulatory background, and possible alternative lines of interpretation, providing a comprehensive overview of the matter.

The *référéndaires* also coordinate the flow of information within the CJEU, maintaining contact with the judges' teams and administrative services to ensure consistent and coherent case handling. Their involvement guarantees that all relevant issues are identified and that legal arguments are thoroughly grounded before the Advocate General formulates their final Opinion. As legal advisers, the *référéndaires* perform a specialized technical support function, taking responsibility for the preliminary analysis of the cases assigned to them and formulating recommendations that guide the Advocate General in fulfilling their institutional mission.

Although the formal responsibility and signature of the Opinions belong to the Advocate General, the work of the *référéndaires* is decisive for the technical quality, interpretative coherence, and clarity of the document. Thanks to their assistance, the Advocate General can focus on critical evaluation, the strategic orientation of legal reasoning, and the formulation of innovative solutions, while the *référéndaires* ensure that the argumentation is systematic, comprehensive, and legally sound. In sum, the *référéndaires* constitute the operational core of legal support that enables the Advocate General to perform effectively their functions of analysis, interpretation, and guidance in the development of the CJEU's case-law.

## 6. Historical evolution and impact on case-law

The origin of the figure of the Advocate General can be traced back to the French tradition of the *commissaire du gouvernement*, an official of the *Conseil d'État* (Council of State) responsible for independently presenting a legal analysis of administrative cases<sup>23</sup>. Despite what its name might suggest, this official did not represent the government; rather, they prepared and publicly presented an independent

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<sup>20</sup> Jacobs, F., «Reflections of an Advocate General: 1988-2006», *Shaping EU Law the British Way: UK Advocates General at the Court of Justice of the European Union*, Oxford 2022, p. 569.

<sup>21</sup> Ruiz-Jarabo Colomer, D., «La función del Abogado General del Tribunal de Justicia de las Comunidades Europeas», *Iniciación a la práctica en derecho internacional y derecho comunitario europeo*, Madrid, 2003, p. 369

<sup>22</sup> Sharpston, E., «Comparative Legal reasoning (overt and covert) in the Work of the Advocate General», *The Italian Influence on European Law: Judges and Advocates General (1952-2000)*, Oxford 2024, p. 251.

<sup>23</sup> Bobek, M. «A Fourth in the Court: Why are there Advocates-General in the Court of Justice?», *The Cambridge yearbook of European legal studies*, 2012, vol. 14, p. 535.

Opinion (*conclusions*) intended to guide the judicial decision. These Opinions were not binding but exerted significant influence by bringing clarity, systematization, and coherence to legal reasoning. Drawing inspiration from this model, the drafters of the 1951 Treaty of Paris introduced the figure into the Court of Justice of the European Coal and Steel Community (ECSC), aware that the new supranational jurisdiction required a mechanism capable of ensuring both interpretative coherence and the visibility of its legal foundations.

Although inspired by an institution originating in a national legal system, the European Advocate General acquired distinctive features from the outset: they enjoy the same status as judges in terms of independence and immunity, and their mission is focused on contributing to the development of an autonomous legal order of the EU. Thus, the figure represents a legal transplant adapted to the supranational level, which over time has become an indispensable element for the technical quality, legitimacy, and coherence of the CJEU's jurisprudence. More than seventy years of activity before the Court have allowed the Advocate General to acquire distinctive characteristics, clearly differentiating the office from its national antecedent.

According to a widely accepted interpretation, the figure of the Advocate General was conceived to compensate for the absence of dissenting opinions in the CJEU model<sup>24</sup>. The decision not to allow separate opinions responded to the objective of safeguarding the unity, coherence, and authority of the emerging Community legal order, avoiding the risk that judicial fragmentation could undermine the institution's legitimacy. This choice, however, limited the possibility of publicly reflecting the diversity of legal perspectives within the Court. In this context, various scholars have observed that the Advocate General largely performs a substitutive function for the dissenting opinion<sup>25</sup>. Their Opinions, presented publicly and independently, restore balance by offering an external manifestation of interpretative plurality without diminishing the binding force of the judgment. Thus, although they do not constitute dissenting opinions in the strict sense, they act as their functional equivalent, providing the legal community with a critical and complementary perspective that has decisively contributed to the development of European jurisprudence<sup>26</sup>.

Over time, the institution has evolved in parallel with European integration itself. In its early decades, the number of Advocates General was small, and their intervention was reserved for cases of greater complexity or political relevance. However, as the integration system expanded its competences and the judicial body received an increasing number of cases, the participation of Advocates General became more generalized and their status consolidated. Today, although not every case requires an Opinion, the range of matters in which they intervene covers areas as diverse as economic freedoms, competition, fundamental rights, procedural law, and the EU's external relations.

The influence of the Advocates General on the evolution of European case-law has been decisive. A few paradigmatic examples illustrate this point:

- In **Rewe-Zentral AG (120/78, *Cassis de Dijon*)**, Advocate General *Capotorti* introduced the notion of «mandatory requirements,» which could justify national restrictions on trade within the common market. His Opinion enabled the Court to establish the principle of mutual recognition, ensuring that products lawfully marketed in one Member State could circulate freely in others, except in duly justified cases. The clarity and systematization of *Capotorti's* reasoning were adopted almost in their entirety by the CJEU, thereby consolidating a fundamental interpretative framework for free trade within the EU<sup>27</sup>.

<sup>24</sup> Laffranque, J., «Dissenting Opinion in the European Court of Justice - Estonia's possible contribution to the democratization of European Union judicial system», *Juridica international*, IX (2004), p. 18.

<sup>25</sup> Tesauro, G./Circolo, A., «Saturno che divora i suoi figli. The Corte di giustizia conferma la legittimità della decadenza dell'avvocato generale Sharpston», *Rivista Eurojus*, 2020, No. 4, p. 197

<sup>26</sup> Jacobs, F., «Reflections of an Advocate General: 1988-2006», *Shaping EU Law the British Way: UK Advocates General at the Court of Justice of the European Union*, Oxford 2022, p. 572.

<sup>27</sup> Opinion of Advocate General *Capotorti* delivered on 16 January 1979 in Case 120/78 (*Rewe-Zentral*), EU:C:1979:3.

- In **Keck and Mithouard (C-267/91 and C-268/91)**, Advocate General *Van Gerven* proposed distinguishing between «selling arrangements» and «product requirements,» preventing the principle of free movement of goods from being applied too rigidly. The Court adopted this distinction, defining the scope of Article 34 TFEU and consolidating the doctrine governing measures that affect product marketing, thus preserving the balance between European integration and national legislative autonomy<sup>28</sup>.
- The **Bosman case (C-415/93)** marked a milestone in the regulation of professional sports. Advocate General *Lenz* argued that transfer rules for football players unjustifiably restricted the free movement of workers. His Opinion detailed how sports contracts and national restrictions were incompatible with EU law, and the CJEU fully adopted his reasoning, establishing a historic precedent that transformed the regulation of professional football in Europe<sup>29</sup>.
- In **Promusicae (C-275/06)**, Advocate General *Kokott* opined that the directive on privacy and electronic communications should be interpreted as not preventing Internet service providers from disclosing the identity of users who shared copyright-protected material. The Court followed her Opinion, establishing a balance between the protection of intellectual property and the fundamental rights of users<sup>30</sup>.
- Advocate General *Ruiz-Jarabo Colomer's* Opinion in **Advocaten voor de Wereld (C-303/05)** constitutes a doctrinal reference for understanding the principle of mutual recognition in criminal matters and the scope of the European Arrest Warrant (EAW). In his analysis, *Ruiz-Jarabo Colomer* argued that the EAW framework is fully compatible with the principle of legality in criminal law and with the fundamental rights enshrined in the EU legal order, while emphasizing that the abolition of double criminality verification for certain serious offenses is a legitimate choice of the EU legislature, aimed at strengthening mutual trust among Member States. He also stressed that the EAW does not undermine national sovereignty but rather operates within an area of freedom, security, and justice in which the Member States have accepted a high degree of judicial cooperation. This Opinion, rich in doctrinal content, illustrates the Advocate General's role as a guarantor of the compatibility between the integrative drive and the protection of fundamental rights, helping to consolidate mutual trust as a cornerstone of the European criminal justice area<sup>31</sup>.
- In **Viking Line (C-438/05)**, Advocate General *Poiares Maduro* crafted a careful balance between the freedom of establishment and workers' right to collective action. His Opinion was key to the Court's adoption of a nuanced approach that recognized social rights as compatible with economic freedoms and provided concrete criteria for assessing similar conflicts in the future<sup>32</sup>.
- Advocate General *Trstenjak's* Opinion in **Domínguez (C-282/10)** represent a major doctrinal contribution to understanding the horizontal effect of fundamental rights in EU law. By defining the right to paid annual leave as a general principle of EU law, she proposed its possible invocation in disputes between private parties, while cautioning that such applicability should be limited to rights defined with sufficient clarity, precision, and unconditionality, so as to safeguard legal certainty. This approach - combining teleological and comparative reasoning with a concern for systemic coherence and predictability - highlights the Advocate General's role as a guarantor of the doctrinal coherence of the EU legal order and as a driving force behind its jurisprudential evolution<sup>33</sup>.
- The **Google Spain case (C-131/12)** constitutes another paradigmatic example. Advocate General *Jääskinen* supported the implementation of the «right to be forgotten,» proposing clear criteria for

<sup>28</sup> Opinion of Advocate General Van Gerven delivered on 28 April 1993 in Joined Cases C-267/91 and C-268/91 (Keck and Mithouard), EU:C:1993:160.

<sup>29</sup> Opinion of Advocate General Lenz delivered on 20 September 1995 in Case C-415/93 (Bosman), EU:C:1995:293.

<sup>30</sup> Opinion of Advocate General Kokott delivered on 18 July 2007 in Case C-275/06 (Promusicae), EU:C:2007:454.

<sup>31</sup> Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 12 September 2006 in Case C-303/05 (Advocaten voor de Wereld), EU:C:2006:552.

<sup>32</sup> Opinion of Advocate General Poiares Maduro delivered on 23 May 2007 in Case C-438/05 (International Transport Workers' Federation and Finnish Seamen's Union), EU:C:2007:292.

<sup>33</sup> Opinion of Advocate General Trstenjak delivered on 8 September 2011 in Case C-282/10 (Dominguez), EU:C:2011:559.

when search engines must remove personal information. The Court followed his Opinion, establishing a legal and technical framework that balanced freedom of information and data protection, decisively influencing Internet privacy case-law<sup>34</sup>.

- In **Gauweiler (C-62/14)**, Advocate General *Cruz Villalón* concluded that the European Central Bank's public debt purchase program, known as Outright Monetary Transactions (OMT), was compatible with EU law, provided that certain limits were respected. The CJEU adopted his Opinion, validating the legality of the OMT and reinforcing the ECB's autonomy within monetary policy<sup>35</sup>.
- Finally, in **Czech Republic v. Poland (C-121/21)**, Advocate General *Pikamäe* concluded that Poland had violated EU law by extending the authorization for lignite extraction without conducting an environmental impact assessment and without properly notifying the Czech Republic. *Pikamäe* emphasized that environmental assessment is essential to ensure transparency and allow neighboring States to exercise their rights of participation and protection. His Opinion underlines the importance of cross-border cooperation and compliance with EU environmental standards in projects with significant transboundary effects<sup>36</sup>.

These and many other cases show how the Advocates General have been true architects of European jurisprudence. Often, their Opinions have introduced arguments that the CJEU has not immediately adopted but that have been embraced in subsequent decisions or have inspired legislative reforms. In this regard, legal scholarship frequently emphasizes that the Advocates General play not only a technical but also a creative role, guiding the progressive development of EU law.

Experience demonstrates that the Advocates General not only enrich legal reasoning but also offer the CJEU the opportunity to explore alternative interpretations, open doctrinal debates, and project case-law toward the future. As doctrine has noted, the figure of the Advocate General strengthens the coherence, legitimacy, and innovative capacity of EU law, making it a distinctive feature of the European judicial model.

Consequently, the Advocate General can be considered a pivotal institution: not part of the collegiate body of judges, yet not an external observer either. They occupy an intermediate position, providing the CJEU with an impartial analysis that simultaneously enriches academic and legal debate beyond the confines of the proceedings<sup>37</sup>. Thanks to this uniqueness, the model of the Advocate General has attracted attention in other supranational and regional contexts, giving rise to proposals for institutional transplantation.

## 7. Comparison of the Advocate General with other figures in national judicial systems

For the general public, and even for professionals trained in certain legal traditions, the figure of the Advocate General of the CJEU may prove unfamiliar. It is certainly a unique institution within the supranational judicial landscape<sup>38</sup>, the function of which may, however, be analysed in the light of other national and international figures carrying out independent legal advice and ensuring consistency in the interpretation of the law. There are comparable institutions in various legal systems, although it is not possible to identify a precedent which is an exact predecessor to the function performed by the European Advocate General.

- In **France**, the most direct precedent for Advocate General is the former *commissaire du gouvernement* of the *Conseil d'État*, whose function is governed by the *Code of Administrative Justice (CJA)*.

<sup>34</sup> Opinion of Advocate General Jääskinen 13 May 2014 in Case C-131/12 (Google Spain and Google), EU:C:2013:424.

<sup>35</sup> Opinion of Advocate General Cruz Villalón delivered on 14 January 2015 in Case C-62/14 (Gauweiler), EU:C:2015:7.

<sup>36</sup> Opinion of Advocate General Pikamäe delivered on 3 February 2022 in Case C-121/21 (Czech Republic v Poland) (Mine de Turów), EU:C:2022:74.

<sup>37</sup> Capeta, T., «Seventy years of Advocates General at the Court of Justice of the European Union», *Leiden Europa Lecture*, p. 5, explains that, while the main addressees of the Advocates General's opinion are the judges sitting in the chamber deciding the case, the academy has always been its second largest audience.

<sup>38</sup> Kokott, J., *Anwältin des Rechts - Zur Rolle der Generalanwälte beim Europäischen Gerichtshof*, Referat im Rahmen der Vortragsreihe «Rechtsfragen der Europäischen Integration», Bonn 2006, p. 2.

Article L.7 gives it the task of presenting publicly, and in full independence, its views on the legal issues of cases brought before it, without participating in the deliberation. Article R.122-5 provides that their appointment is to be made by decree, on a proposal from the Minister of Justice, and provides for a term of office of ten years, which may exceptionally be extended for one year, as a guarantee of impartiality and renewal. Article R.123-24 also specifies its consultative role at the meetings of the *Conseil d'État* in matters falling within its competence, emphasising its technical and not decision-making role. This official prepares written and public Opinion that comprehensively examine the legal aspects of administrative disputes, not on behalf of the government, but with the aim of guiding the judicial decision. In order to avoid misunderstandings about alleged government representation, its name was replaced in 2009 by *rapporteur public*. The functional independence and publicity of their Opinions was a direct source of inspiration for the creation of the figure of the Advocate General of the CJEU, as noted above<sup>39</sup>.

- In **Germany**, the *Vertreter des öffentlichen Interesses* plays a specific role in administrative and administrative matters. Their intervention is provided for, for example, in § 35 of the Code of Federal Administrative Procedure (*Verwaltungsgerichtsordnung, VwGO*), as well as in sectoral regulations governing certain procedures for the protection of the public interest<sup>40</sup>. The main role of this representative is to ensure that courts receive specialised legal analysis when discussing issues affecting the public interest, especially in complex or socially relevant cases. The *Vertreter des öffentlichen Interesses* acts independently of the executive and makes objective observations on the correct application of the law, assessing both the facts and the applicable legislation. Unlike a public prosecutor, he does not pursue punitive interests and does not represent the administration directly, but is intended to guide the court in order to ensure consistency and legal rigour in the interpretation of the legislation. Although its scope is more limited and sectoral than that of the Advocate General of the CJEU, it shares the role of providing clarity and predictability to judicial reasoning, especially in areas where technical and regulatory complexity is high.
- In **Spain**, the *fiscales* (prosecutors) intervening before the Supreme Court and the Constitutional Court perform functions conceptually comparable to those of the Advocate General of the CJEU, by issuing independent Opinions that guide the judicial decision and contribute to the coherence of the legal system. Before the Supreme Court, its action is regulated by the *Organic Law on the Judiciary* and the *Organic Statute of the Public Prosecutor's Office*, which establish its duty to promote legality, protect the general interest - in accordance with Article 124 of the *Spanish Constitution* - and ensure the correct interpretation of the rules, by intervening in appeals on a point of law, criminal proceedings of constitutional relevance and conflicts of jurisdiction. Before the Constitutional Court, they submit Opinions on constitutional complaints, conflicts of jurisdiction and questions of particular constitutional relevance. Although their Opinions are not binding, they give decisive guidance to the court and contribute to the harmonisation of national and European case-law. Its work also includes advice on procedural matters, such as the admission of appeals, the determination of the competent board or the need to hold public hearings, strengthening the formal consistency of the proceedings. In short, Spanish prosecutors perform an independent legal advisory

<sup>39</sup> Ruiz-Jarabo Colomer, D., «La función del Abogado General del Tribunal de Justicia de las Comunidades Europeas», *Iniciación a la práctica en derecho internacional y derecho comunitario europeo*, Madrid, 2003, p. 359, stresses that, despite functional similarities, there are significant differences between the two categories. Thus, while the *commissaires du gouvernement* participate in the deliberations of the *Conseil d'État* - albeit without the right to vote - the Advocates General of the CJEU do not intervene in judicial deliberation, which reinforces the autonomy of their analysis. Another relevant difference lies at the time of the proceedings: the *commissaire du gouvernement* is aware of the draft judgment drawn up by the Judge-Rapporteur before issuing his Opinion, while at the CJEU the Opinion of the Advocate General is presented publicly before deliberation commences, while preserving its independent character. Similarly, in the *Conseil d'État*, the Opinion of the *commissaire du gouvernement* is generally the only procedural step of the hearing, whereas the Advocate General delivers his Opinion after hearing the observations of the parties at the hearing, provided that the hearing has been opened. Finally, the Advocates General's Opinions are published in the Official Reports of the Court of Justice of the European Union - preceding the judgment - while those of the *Commissaire du Gouvernement* are not officially published.

<sup>40</sup> Schilling, T., «Zum Recht der Parteien, zu den Schlußanträgen der Generalanwälte beim EuGH Stellung zu nehmen», *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 2000, No. 3, p. 395

function combining technical analysis and defending the general interest, conceptually approaching the Advocate General of the CJEU, albeit within a national framework and subject to the institutional hierarchy of the Public Prosecutor's Office, unlike the full functional autonomy of the European Advocate General.

- In **Belgium**, the *Cour de cassation* is supported by the *parquet général*, composed of the *procureur général*, the *premier avocat général* and several *avocats généraux*, whose powers are detailed in Articles 142 to 151 of the *Code of Justice (Code judiciaire)*. These judges, who are part of the Public Prosecutor's Office but enjoy functional independence, have the task of ensuring the correct interpretation of the law, the protection of public order and the preservation of the unity of case-law. In appeal proceedings, the *avocats généraux* submit written and oral Opinions analysing the legal issues raised and proposing a solution to the court. Such Opinions are not binding but have significant persuasive influence as they provide a comprehensive and objective analysis of the dispute. In addition, its findings are public, which enhances the transparency of the process and allows the legal community to know the reasoning behind the decisions of the High Court. Their role is, to a large extent, comparable to that of the Advocates General of the CJEU or to that of the French *Commissaires du Gouvernement*, in that they seek to ensure that case-law remains consistent and that the law is applied uniformly throughout the territory. In this regard, the *avocats généraux* play an essential role in consolidating legal certainty and strengthening the legitimacy of the *Cour de cassation* as the supreme guarantor of the correct application of the law in Belgium.
- In the **Netherlands**, the *Advocaat-Generaal* of the *Raad van State* performs partially similar functions. Its intervention focuses on delivering independent legal Opinions (*conclusies*) in complex administrative proceedings, especially when a question of law arises that requires case-law developments or systematic interpretation. Although their Opinions are not binding, they provide the court with a technical and doctrinal perspective that contributes to the quality and consistency of the final decision. Netherlands law (*Wet op de Raad van State*) and institutional practice define their competences, underlining that they must act independently and objectively, assessing the facts and applicable law before the court takes its decision. These Opinions often include comparative references to other European jurisdictions, enriching the interpretative approach and promoting further harmonisation in the literature.
- In **Italy**, the *Avvocato Generale* acts before the *Corte di Cassazione* as part of the *Procura Generale*, performing an institutional function exclusively in the interest of the law. Their intervention consists of providing independent legal submissions in civil and criminal proceedings, particularly in cases involving complex issues or questions of interpretative importance. In civil matters, these submissions may take the form of written opinions (*pareri*), while in criminal matters they are expressed through oral arguments in court. These opinions and submissions, which are not binding on the judges, contribute to the uniform interpretation of the law and to the technical coherence of judicial decisions, especially in proceedings before the *Sezioni Unite*. Unlike in other systems, *Avvocati Generali* do not participate in administrative courts such as the *Tribunali Amministrativi Regionali* or the *Consiglio di Stato*, which have their own independent structures. Although there is no specific organic law governing the *Corte di Cassazione*, the role of the *Avvocato Generale* is recognised under Article 363 of the Italian Code of Civil Procedure, which provides that the Attorney General may intervene «in the interest of the law» when the purpose is not to protect individual rights but to ensure the correct interpretation of the legal system. This legal analysis - public, reasoned, and independent - strengthens the institutional legitimacy of the Court and enriches the doctrinal debate within the Italian judicial system.
- In **the United States of America**, the figure comparable to the Advocate General of the CJEU is the *Solicitor General*, governed mainly by Articles 505 and 511-518 of Title 28 of the U.S. Code. Appointed by the President and confirmed by the US Senate, he represents the federal government before the Supreme Court and sometimes before courts of appeal. In addition to litigation, it advises the executive on the admissibility of appeals and decides which cases should be defended,

submitting public and reasoned submissions and orally defending the government's position<sup>41</sup>. Although it is part of the executive, its role goes beyond government defence, acting as a technical guide to legal interpretation, which bears similarities with the role of the Advocate General in the CJEU by providing an independent analysis and facilitating the coherence of the legal order.

These comparisons show that, although each figure forms part of a specific institutional context, they converge on two essential aspects: first, the provision of an independent legal analysis guiding judges; second, the contribution to the coherence, legitimacy and quality of the legal system. In this regard, the Advocate General of the CJEU represents a supranational synthesis of these traditions, adapted to the needs of a judicial system seeking unity of interpretation without abandoning the plurality of approaches<sup>42</sup>.

### III. The Advocate General's contributions to the Court of Justice of the European Union

The Advocate General's role is not limited to being an observer in the process, but has made a decisive contribution to the strengthening and consolidation of the EU judicial system. Their contributions are expressed at various levels - case-law, institutional and procedural - and have been recognised both by academic writers and by judicial practice.

#### 1. Interpretative and systematising function

The first role played by the Advocate General can be described as interpretative and systematising. Its findings provide the Court with a coherent interpretative framework to avoid partial or isolated interpretations of EU law. To that end, the Advocate General relies in an integrated manner on methods of grammatical, systematic and teleological interpretation, while incorporating general principles, legislative history, settled case-law and even references of comparative or international law where they are relevant<sup>43</sup>. The scope of this exercise goes beyond the specific case, since it contributes to the construction of legal categories, application criteria and interpretative schemes that guide both European judges and national legal operators in future situations. This reduces uncertainty, strengthens predictability of decisions and consolidates the dogmatics of EU law. However, this interpretative function should be kept within precise limits: it does not replace judicial deliberation and cannot lead to theoretical drafting that is unrelated to the legislative text and the structural principles of the European legal order.

#### 2. Unity and consistency function

A second dimension is the function of unity and coherence. The Advocate General helps to ensure that the case-law of the CJEU remains consistent both vertically, that is to say, with regard to the founding principles of the Union and previous case-law itself, and horizontally, as regards the harmonisation of lines of case-law in different branches of European law. In that regard, the Advocate General identifies the common criteria, identifies the points of tension between different decisions and proposes solutions of practical consistency which make it possible to preserve the coherence of the system as a whole. The immediate effect is to reduce divergences between national legal systems and to increase legal certainty for individuals and administrative authorities. However, the search for unity must not become a petrification of the law, so that judicial innovation and adaptation to new contexts remain possible.

<sup>41</sup> Cordray, M./Cordray, R., «The Solicitor Generals changing role in Supreme Court litigation», *Boston College Law Review*, 2010, p. 1326; McConnell, M., «The rule of law and the role of the Solicitor General», *Loyola of Los Angeles Law Review*, 1987, vol. 21, p. 1105.

<sup>42</sup> Szpunar, M., «The Advocate General in the judicial architecture of the EU Court of Justice», *Europäische Zeitschrift für Wirtschaftsrecht*, 2022, No. 24, p. 1145.

<sup>43</sup> Faircloth Peoples, L., «The use of foreign law by the Advocates General of the Court of Justice of the European Communities», *Syracuse Journal of International Law and Commerce*, 2008, p. 225, points out that the comparative law analysis may include regulations of non-EU Member States, such as those of the United States, especially in the field of competition law.

### 3. Transparency and legitimacy function

The third role is transparency and legitimacy. The Advocate General's Opinion, being public, reasoned and accessible, makes the explanatory route leading to a certain interpretation visible. This strengthens accountability and encourages the acceptance of judicial decisions by litigants, national judges and public Opinion<sup>44</sup>. This function has a pedagogical dimension, as it translates the technical complexity of European law into understandable and structured analyses, without abandoning rigour. By even showing the discarded options and the criteria justifying a given interpretative choice, the Opinions raise the level of traceability and external control of judicial reasoning. This transparency contributes to the legitimacy of the CJEU, without this implying that the Opinions are binding or capable of being challenged independently. At the internal level, the combination of a doctrinal, case-law and comparative analysis, together with the clarity and precision of his Opinion, is a decisive factor enabling the judges of the CJEU to assume with confidence the legal reasoning of the Advocate General, thereby giving their judgments a more legitimate support.

On certain occasions, the CJEU may follow substantially the Advocate General's Opinion as to the outcome of the dispute, but may omit some of the arguments or considerations developed therein. This omission may be motivated by a number of reasons, such as the desire to limit the *ratio decidendi* to what is strictly necessary to resolve the case, the intention to avoid *obiter* pronouncements on non-essential issues, or the desire to maintain a certain degree of institutional prudence in politically sensitive areas. In those circumstances, the Opinion of the Advocate General acquires added value for the understanding of the case by providing a broader and more systematic account of the legal issues involved, allowing legal commentators and legal practitioners to reconstruct the complete interpretative context of the judgment<sup>45</sup>.

### 4. Procedural efficiency function

The fourth function is procedural efficiency. The Advocate General not only intervenes in more complex or legally important cases, but also helps to focus deliberation on the decisive issues of the dispute. Its Opinions make it possible to rule out ancillary arguments, clarify the points of discussion and order the questions referred for a preliminary ruling or for annulment. This optimises judicial remedies, reduces deliberation times and improves the quality of the CJEU's final motivation. Even when judges do not fully follow the Opinions, the mere fact of having a thorough analysis of possible avenues of argument increases the internal efficiency of the decision-making process. However, efficiency must not be achieved at the expense of both the adversarial and the rights of the defence, which is why the case-law allows the oral procedure to be reopened if the Advocate General addresses in his Opinion questions which were not debated at the hearing.

As stated above, the Advocate General is called upon to rule on procedural issues of particular relevance, which reinforces his role as guarantor of the proper administration of justice. Its powers include giving an Opinion on the appropriateness of using simplified resolution procedures, such as the adoption of decisions by way of an order, in cases where the question of law raised has already been settled clearly and repeatedly by the CJEU. This scenario corresponds to the *acte clair* doctrine, formulated by the CJEU

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<sup>44</sup> Clément-Wilz, L., *La fonction de l'avocat général près la Cour de justice*, Brussels 2011, p. 972, explains that, by contributing to the foundation, consolidation, readjustments and consistency of case-law, and by giving substance to the transparency brought about by the public nature of their conclusions, the Advocates General have fuelled the process of justification, which is crucial for public acceptance of the role of the Supreme Court to be assumed by the CJEU. They have thus participated in the standing of both the case-law and the CJEU itself.

<sup>45</sup> Trstenjak, V., «The impact of the DCFR on the case law of the CJEU», *Europäisches und internationales Privatrecht. Festschrift für Christian von Bar zum 70. Geburtstag*, Hg. v. Helmut Grothe Peter Mankowski, Munich 2022, p. 398, points out that CJEU judgments may appear succinct or vague for a lawyer from the German legal family, especially as regards their reasoning. The author therefore recommends always reading the Advocate General's Opinion in order to better understand the judgments, as they contribute to a better understanding of the arguments put forward by the CJEU.

in **CILFIT (283/81)**<sup>46</sup>, which laid down the criteria under which a national court may refrain from referring a question for a preliminary ruling. This doctrine has been accepted, with certain adaptations, by the TJCA, highlighting the methodological convergence between the two judicial systems. In addition, the Advocate General intervenes in the assessment of the exceptional admissibility of appeals in areas where there has already been a double review of legality (by the Boards of Appeal of European Agencies and the General Court), proposing their revision only where this is essential to safeguard the unity and coherence of the EU legal order. Thus, the Advocate General is the true guardian of the legality and integrity of the European legal system.

## 5. Innovative role

Finally, the innovative role of the Advocate General may be noted. As their Opinions are not binding, their Opinions become an area of methodological freedom and explanatory experimentation. This allows it to anticipate evolving lines of case-law, explore new legal categories or integrate elements from different branches of EU law across the board. Innovation does not result in the creation of *ex nihilo* legislation, but in the proposal for interpretative solutions that the CJEU can accept, qualify or even reject, but which always broaden the available narrative repertoire. In doing so, the Advocate General acts as a doctrinal laboratory that fuels the ability to adapt EU law to constantly changing social, economic and technological contexts, while contributing to the legitimacy and resilience of the supranational legal system.

The fact that the Advocate General is called upon to rule on novel legal issues places it at the heart of the process of developing the supranational legal order, raising significant challenges from an intellectual point of view. In order to deal with them, the Advocate General may use the comparative law method, using his knowledge of national legal systems in order to provide solutions to problems which, although novel at EU level, have already been dealt with under the law of the Member States. By bringing these experiences to the field of EU law, the Advocate General plays the role of mediator between national legal traditions and the construction of a coherent common legal order, thus helping to enrich interpretation and strengthen regulatory uniformity<sup>47</sup>.

## IV. The Court of Justice of the Andean Community and the Advocate General

### 1. Normative provision in the Cartagena Agreement and the Statute of the Tribunal

The Cartagena Agreement of 1969, as a constituent part of the Andean integration process, contains general provisions concerning the institutional organisation of the CAN and the principles governing the establishment of its bodies. These include the provision for a judicial system designed to ensure the correct application of Andean law and the uniformity of its interpretation. In fulfilment of this mandate, Member States adopted in 1979 the Treaty establishing the TJCA, in force since 1984, which regulates the composition, powers and functioning of supranational jurisdiction. Article 7 *in fine*, of this legal instrument made it possible for the TJCA to create the position of Advocate General, leaving it to the Statute to determine its number and powers. However, when the Statute of the TJCA was adopted, this provision was apparently not developed, with any reference to this figure being deleted.

Currently, in the current version of the Treaty establishing the TJCA, codified by Decision 472 of the CAN Commission<sup>48</sup>, it is Article 6 *in fine*, which provides for this possibility, which is further developed in Article 142 of the Statute of the Court of Justice of the European Union, now contained in Decision 500 of

<sup>46</sup> CJEU, judgment of 6 October 1982, CILFIT and others (283/81, EU:C:1982:335).

<sup>47</sup> Trstenjak, V., «The impact of the DCFR on the case law of the CJEU», *Europäisches und internationales Privatrecht. Festschrift für Christian von Bar zum 70. Geburtstag*, Hg. v. Helmut Grothe Peter Mankowski, Munich 2022, p. 398, points out that the Advocate General's Opinion may refer to instruments for the harmonisation of civil law, such as the 'Draft Common Frame of Reference', to legal doctrine and may even include a comparative study of various legal systems, in addition to a comparative linguistic analysis.

<sup>48</sup> Official Gazette of Cartagena Agreement No. 483 of 17 September 1999.

the Andean Council of Ministers of Foreign Affairs (CAMRE)<sup>49</sup>, entitled «Advocate General». It follows from this provision that «*the office shall be held by the TJCA when the functional and operational needs of the body so require*». It also provides that «*this function shall be filled in the number of officials required by the institutional activities and the powers and numbers of such officials shall be determined in accordance with Article 6 of the Treaty establishing the TJCA*». However, as mentioned above, to date, no concrete measures have been taken to implement these provisions.

Contrary to what is laid down in the TFEU in relation to the CJEU, where Advocates General have been institutionalised as an essential part of the European judicial model, the design finally adopted at Andean level was formed as a unitary collegiate structure, on which judges concentrate entirely on the deliberation and drafting of decisions. Consequently, the provision contained in the primary law of the CAN may be regarded as a latent legislative clause or, in academic terms, as a '*dormant rule*', the formal validity of which did not result in effective implementation in secondary legislation. This reflects a political and institutional choice for the organic simplification of the TJCA in its early stages, although with the consequence of depriving the system of a figure which, from a comparative perspective, could have contributed to the strengthening of the interpretative coherence and the legitimacy of the Andean judicial system.

## 2. Historical and political reasons for its non-implementation at the Court of Justice of the Andean Community

The absence of the Advocate General in the TJCA may be surprising in the first approach, bearing in mind that the judicial design of the CAN was directly inspired by the supranational European model. As has been pointed out by academic writers, both the institutional structure and its functioning and the legal remedies provided for in the Andean Community legal order - in particular the preliminary ruling mechanism - find their reference in the experience of European integration, although adapted to the specificities of the regional situation<sup>50</sup>. In this regard, the CJEU has established itself as a reference model for the construction of supranational justice. Since the Andean legal system contained legal bases which would have allowed the incorporation of the Advocate General, it could be expected that it would also have been replicated at Andean level. However, as will be seen below, their absence is not due to a regulatory neglect, but to a deliberate institutional design decision, conditioned by the historical and political circumstances that accompanied the CAN's judicial system.

First, **the defence of national sovereignty** was a cross-cutting element that decisively influenced the configuration of the TJCA<sup>51</sup>. During the 1970s and 1980s, CAN Member States were in internal processes of democratic consolidation and redefinition of their state institutions. In this context, there was a marked reluctance towards the creation of supranational bodies that could limit the legislative or judicial autonomy of States. The establishment of an Advocate General, with the power to issue independent and public Opinions capable of influencing the interpretation of Andean law, would have been perceived as an excess of supranationality, incompatible with the political will of governments to maintain close control over the integration process.

Secondly, **the economic and commercial bias** of the Andean project also explains the non-implementation of the figure<sup>52</sup>. The Cartagena Agreement, signed in 1969, prioritised the establishment of a common market, the coordination of tariff policies and the promotion of productive integration. The judicial function was designed in instrumental terms, i.e. as a technical mechanism aimed at resolving disputes arising from the application of economic and trade rules. In that context, it was not considered necessary

<sup>49</sup> Official Gazette of the Cartagena Agreement No. 680 of 28 June 2001.

<sup>50</sup> Kühn, W. M., «La experiencia europea en la aplicación de la doctrina del acto aclarado» al procedimiento de remisión prejudicial: Enseñanzas útiles para su implementación en el sistema jurisdiccional andino», *Revista de la Secretaría del Tribunal Permanente de Revisión*, 2025, Vol. 13, No. 22, p. 1

<sup>51</sup> Mendoza Neyra, Y., «El Tribunal de Justicia de la Comunidad Andina y la singularidad del proceso de integración andino», *Comentario Internacional*, 2020, No. 20, p. 207, points out that at that time member countries were extremely cautious about their sovereignty.

<sup>52</sup> Salgado, G., «El Grupo Andino de hoy: Eslabón hacia la integración de Sudamérica», *Biblioteca Digital Andina*, Quito 1995, p. 30, explained the evolution of the Andean Group's economic policies.

to introduce an additional advisory body to strengthen the interpretative or dogmatic dimension of Andean law. Unlike European experience - where integration had a strong political and legal component from the outset - a pragmatic and limited view of the role of the TJCA prevailed in the Andean region.

Thirdly, **budgetary and administrative constraints** played a key role<sup>53</sup>. The establishment of a figure similar to that of the Advocate General would have required not only the allocation of additional financial resources for his remuneration and work team, but also the creation of support structures for the preparation of legal Opinions. In a scenario where the TJCA itself suffered from logistical constraints and largely depended on Member States' inputs, the addition of new bodies was ruled out as financially unfeasible.

Fourthly, **Latin American procedural tradition** helped shape this exclusion. Unlike French law or Anglo-Saxon systems, where there are figures such as the *commissaire du gouvernement* or the *Solicitor General*, the practice of incorporating independent official Opinions in judicial proceedings was not known in most Andean countries. The judicial function has traditionally been understood as an exclusive monopoly of judges, while the Public Prosecutor's Office has a different role, aimed at defending the general interest in criminal or constitutional matters, but not at the formulation of advisory Opinions in administrative or economic matters. That legal heritage reinforced the idea that the Advocate General's figure was unrelated and difficult to reconcile with the procedural culture of the region.

Finally, attention should be drawn to **the political dynamics of the CAN** in the 1990s, when the reform of its institutional framework was discussed following the creation of the World Trade Organisation and the institutional set-up of Mercosur<sup>54</sup>. During this period, Member States' efforts were geared towards relaxing and adapting integration rules in order to promote economic opening, with initiatives aimed at strengthening the judicial dimension being secondary. While proposals on the desirability of introducing an Advocate General were already being considered in academic doctrine, they never resulted in a political consensus among governments, which continued to regard the TJCA as a strictly technical body and not as an actor with a doctrinal or interpretative projection.

In short, the combination of these factors - the resistance to the transfer of sovereignty, the priority given to the economic dimension over the legal dimension, budgetary constraints, the regional procedural tradition and the lack of political will in institutional reform processes - explains why the figure of the Advocate General was not implemented in the Andean judicial system, despite the fact that the European model offered a well-established benchmark since the 1950s<sup>55</sup>.

### 3. Institutional and political implementation challenges

The incorporation of the Advocate General into the TJCA represents a major structural and functional change, going beyond mere legislative amendment. It aims to strengthen the coherence and quality of Andean law by providing an independent legal advisory mechanism to complement the collegial deliberation of judges. Experience with the CJEU shows that the presence of an Advocate General can make a decisive contribution to the systematisation of interpretative criteria, to transparency in legal arguments and to the consolidation of regulatory uniformity.

<sup>53</sup> Castellanos Peñafiel, L., *Los límites de la actividad jurisdiccional del Tribunal de Justicia de la Comunidad Andina*, Quito 2007, p. 23; TJCA, *Propuestas para el fortalecimiento del sistema andino de resolución de controversias*, Document sent on 20 January 2021 to the Council of Foreign Affairs Ministers, the CAN Commission, the High Level Group set up by Decision 843 of 29 April 2019 and the Secretary-General of the CAN, p. 2, this document refers to the causes of the budgetary deficit of this court since 2008.

<sup>54</sup> Fairlie, A., Informe: La Comunidad Andina en búsqueda de convergencias (Informe BID / estudio sobre la CAN), mayo 2022, p. 27; Zubieta Mariscal, F., «La reforma del Tribunal de Justicia de la Comunidad Andina: un reto impostergable», *Iustitia et Pulchritudo*, 2022, No. 1, p. 9.

<sup>55</sup> Toledano Laredo, A., «El Abogado General en el Tribunal Andino y en el Tribunal de Justicia de las Comunidades Europeas», *Revista de Instituciones Europeas*, Vol. 11, No. 3, September-December 1984, p. 810, points out that at the time when the TJCA was set up on 5 January 1984 in Quito, the Advocate General did not yet exist. According to the author, this idea could have arisen during the negotiation of the Treaty establishing the TJCA, as otherwise there would not have been a procedure similar to that of changing the number of magistrates for the creation of the office. However, a pragmatic approach could have led to the opening of the TJCA with a limited number of judges, leaving to the Andean institutions the power to adjust the composition of this supranational court to future needs, without resorting to a new treaty or its parliamentary ratification, thus avoiding the lengthy deadlines that those procedures entail.

However, the creation of this figure entails political and institutional challenges. First, it requires the consensus of the CAN Member States, who should agree on criteria for appointment, number of posts and duration of the mandate. Each country may have different perceptions of the desirability of the figure, and political negotiations will be instrumental in ensuring the formal acceptance and perceived independence of future Advocates General.

Implementation also entails considerable budgetary and administrative requirements. It is necessary to provide resources for the remuneration of Advocates General, the recruitment of auxiliary staff, administrative infrastructure, training programmes and systems for disseminating their Opinions. Financial sustainability must be ensured without compromising the functioning of the TJCA or other institutional bodies of the CAN.

Another key challenge is procedural and organisational adaptation. The incorporation of the Advocate General requires the amendment of internal protocols of the TJCA, including the allocation of cases, the definition of deliberation stages, the interaction with judges and the structuring of the Opinion. It is essential that the figure does not slow down proceedings or create conflicts of jurisdiction, but rather functions as a technical and specialised complement that enriches judicial work.

Institutional and cultural acceptance of the figure is also essential. Judges, lawyers, parties and legal operators must understand that the Advocate General does not replace judicial deliberation, but provides a prior independent analysis that strengthens legal coherence and predictability. This requires institutional training and awareness-raising, as well as dissemination mechanisms to ensure that its findings are known and valued by the Andean legal community.

The so-called 'Andean reengineering', understood as the process of institutional modernisation of the CAN aimed at rationalising its legal system, optimising the functioning of its bodies and strengthening the effectiveness of the integration system, provides a particularly conducive framework for the establishment of the Andean Advocate General.

#### 4. Legislative implementation pathway

The normative procedure for incorporating the Advocate General into the TJCA is explicitly provided for in Article 6 of its Treaty of Establishment. According to this provision, the CAMRE, in consultation with the TJCA, may modify the number of judges and create the position of Advocate General, determining the number and the powers to be established for that purpose in the Statute of the TJCA. This provision therefore establishes a formal and consensual mechanism for introducing the figure, ensuring both the participation of the TJCA and the political approval of the Member States.

In this context, it is particularly significant that the procedure for creating the position has undergone a substantial modification<sup>56</sup>. In its original version (the former Article 7 *in fine*), it was established that the TJCA would submit a «request», that is, exercise its own initiative, which had to be ratified by the Commission of the Cartagena Agreement through a «unanimous decision». Under the current version (Article 6 *in fine*), however, it is the CAMRE that adopts the decision, following «consultation» with the TJCA. Although the current wording allows for various interpretations, it appears that the TJCA has been deprived of the power of initiative initially granted to it at the time of its creation. If this interpretation were correct, the TJCA would have been relegated to a passive role, depending on the will of the CAMRE for the figure of the Advocate General to materialize.

Nevertheless, an interpretation that completely excludes the TJCA's initiative would be incompatible with the interests of Andean integration. Indeed, Article 142 of the current Statute provides that the position of Advocate General «shall be filled by the TJCA at the time when the functional and operational needs of the body so require,» which suggests that the judicial initiative continues to play an essential role in

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<sup>56</sup> Mejía Salazar, A., «Orígenes y trayectoria del Tratado constitutivo del Tribunal de Justicia de la Comunidad Andina», *Tribunal de Justicia de la Comunidad Andina: 1979-2024 - 45 años de creación y 40 años al servicio del derecho y la integración*, Vol. I, Quito 2024, p. 231, explains that the Treaty establishing the TJCA was reformed by the Amending Protocol to the Treaty establishing the Court of Justice to the Cartagena Agreement, signed in the city of Cochabamba (Bolivia) on 28 May 1996. To date, this is the version of the key letter of the TJCA that remains in force.

activating this mechanism. In this sense, it seems reasonable to affirm that no other organ of the CAN is in a better position than the TJCA itself to determine precisely when such needs justify the creation of the position of Advocate General<sup>57</sup>.

Pursuant to this mandate, the first avenue for implementation consists in amending the Statute of the TJCA, currently contained in the aforementioned Decision 500 of the CAMRE. This normative reform must specify essential aspects such as the number of Advocates General, the criteria for appointment, the required level of legal experience, the term of office, and the mechanisms for renewal. Likewise, the Statute must clearly define the functions and competences of the Advocate General, ensuring functional independence and a complementary role within the procedure, without interfering in the judges' deliberation.

In parallel, it will be necessary to develop internal regulations or specific procedural rules governing the practical operation of the Advocates General. This includes the allocation of cases - giving priority to those of particular complexity or legal importance - the preparation of written, public, and reasoned opinions; interaction with the judges during the deliberation phase; and the systematic publication of their opinions to ensure transparency and to serve as an interpretative guide for legal practitioners and scholars.

To facilitate institutional acceptance, implementation could be carried out gradually or through a pilot program, initially appointing one or two Advocates General for selected cases. This phase would allow for assessment of the figure's impact on the coherence and quality of the jurisprudence, adjustment of internal procedures, and the generation of precedents concerning the relationship between judges and Advocates General before definitive implementation.

Finally, the incorporation of this figure requires consensus and coordination among the Member States, which must agree on criteria for selection, rotation, and equitable representation. A rotation system among the Member States would ensure that all countries participate in the appointment of Advocates General, strengthening the legitimacy of the position and guaranteeing a plurality of legal perspectives in the interpretation of Andean law. Likewise, it would be advisable to establish training and dissemination programs so that judges, lawyers, and scholars fully understand the role of the Advocate General and benefit from their opinions. The publication of such opinions would contribute to transparency, interpretative uniformity, and the technical quality of the TJCA's jurisprudence.

## 5. Criteria for appointment, duties and term of office of the future Andean Advocate General

From an institutional point of view, the mechanism for appointing the future Andean Advocate General must guarantee both the democratic legitimacy and the functional independence of the figure. It is therefore proposed that it be appointed unanimously by CAMRE, an intergovernmental body representing the Member States, on the basis of nominations submitted by the governments themselves or by the TJCA itself. Such a procedure would balance political control with judicial autonomy, while allowing for the introduction of transparency standards, such as the publication of nominations and the possibility for the academy to make non-binding comments.

As regards the functions, the Advocate General would be called upon to issue reasoned Opinions in all preliminary rulings, actions for annulment and infringement proceedings, providing the TJCA with an impartial and comprehensive analysis of the legal issues in dispute. Their role would, however, not be limited to procedural assistance: it could also recommend the revision of case-law in cases of contradiction, propose the holding of public hearings in cases of particular importance and act as a catalyst for a doctrinal dialogue between Andean law and other integration systems. It would thus strengthen its profile as a guarantor of consistency and systematic evolution of case-law.

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<sup>57</sup> Toledano Laredo, A., «El Abogado General en el Tribunal Andino y en el Tribunal de Justicia de las Comunidades Europeas», *Revista de Instituciones Europeas*, September-December 1984, Vol. 11, No. 3, p. 815, points out that it is for the institutions of the Cartagena Agreement to determine the time needed to move from theory to practice and to establish the post of Advocate General, in the number and with the powers laid down in the Statute. The author considers it likely that this time will not be distant, as the number of contentious and non-contentious cases brought before the TJCA increases, the need to establish the Advocate General will become more and more pressing.

With regard to the duration of the term of office, a period of six years, renewable once, seems to offer the most appropriate balance between institutional continuity and academic renewal. This duration is the same as that provided for judges of the TJCA in Article 8 of its founding treaty. Too short mandates could limit the ability of the Advocate General to influence the consolidation of lines of case-law, while unlimited renewals could create a risk of «institutional capture». The restriction to a single re-election ensures that the position retains independence and dynamism, avoiding excessive personalisation. It is also recommended that the removal of the Advocate General be possible only for manifest incapacity or serious misconduct, in accordance with the reasons provided for in Article 11 and the procedure laid down in Article 12 of the Statute of the TJCA, with the aim of preserving the autonomy of its function and protecting it from possible political pressure.

## **6. The potential contributions that the Advocate General could make to the Court of Justice of the Andean Community**

Taking into account the current state of the law of the CAN, in particular the existence of a solid body of settled case-law and a wealth of interpretation for a preliminary ruling, the incorporation of the concept of the Advocate General could generate significant legal, institutional and academic material. First, from an interpretative and systematising perspective, the Advocate General would provide detailed, reasoned and reasoned Opinions incorporating general principles of Andean law, relevant precedents and, where appropriate, references to comparative law. Such an approach would reduce interpretative fragmentation and provide judges and legal operators with a coherent framework for resolving complex cases, thereby increasing predictability and legal certainty within the Community system.

Furthermore, in terms of the unity and coherence of the legal order, the Advocate General could act as a guarantor of the harmonisation of criteria, contributing to a uniform interpretation of Andean law between the various Member States. This function is particularly relevant as the TJCA currently lacks an internal independent analysis mechanism similar to that offered by Advocates General in the CJEU, which limits the systematisation and consolidation of case-law criteria.

From the perspective of transparency and institutional legitimacy, the publication of public Opinions would allow the legal argumentation of the TJCA to be accessible to national academics, practitioners and authorities, strengthening trust in the system and its decisions. At the same time, procedural efficiency could be significantly improved, as the intervention of the Advocate General would provide a thorough preliminary analysis of the legal aspects at issue, facilitating the deliberation of judges and contributing to a more expeditious resolution of cases.

Moreover, the innovative role of the Advocate General would be particularly valuable in the Andean context. When dealing with novel or emerging legal issues, it could propose technical and academic solutions that anticipate future problems, incorporating comparative law perspectives and adapting them to the legal reality of the CAN. This role would contribute to the progressive development of Andean Community law, strengthening its autonomy and adaptability.

In short, the introduction of the Advocate General in the TJCA would strengthen the consistency and technical quality of judicial decisions, strengthen the institutional legitimacy of the TJCA and provide the system with an independent legal analysis mechanism that currently does not exist, aligning Andean judicial practice with the standards of the most advanced supranational courts.

## **V. Possible impact on regional integration processes worldwide**

Although there is currently no legal basis for formal cooperation, the Andean Advocate General could become a natural partner of the European Advocates General within the framework of a doctrinal dialogue, participating in their meetings as an observer or invited guest. Such rapprochement would open the door to more intensive academic and technical exchange through the joint publication of opinions and partici-

pation in specialized forums on integration. Likewise, this institutional relationship would foster methodological convergence insofar as the Advocates General decided to harmonize the drafting of their opinions so that they could serve as cross-references for both courts. It should be emphasized that this would not constitute a formal association - since both legal systems are autonomous - but rather an academic and doctrinal partnership.

Such cooperation would represent an opportunity to strengthen North-South judicial dialogue and to enhance the visibility of Andean case-law. There are also precedents underpinning this possibility: the relatively close institutional relationship already maintained by the TJCA and the CJEU, reflected in regular academic and judicial seminars and meetings on regional integration<sup>58</sup>. In addition, there is a certain degree of parallelism between their respective bodies of case-law, particularly in areas such as intellectual property and competition law. Finally, it should not be overlooked that, in certain instances, the TJCA has drawn inspiration from the jurisprudence of the CJEU, even though it is not legally bound by it. In other words, the figure of the Advocate General could become an additional bridge between these two supranational courts.

In this context, it should be recalled that the Advocates General of the CJEU have played a decisive role in the judicial dialogue with the Court of the European Free Trade Association (EFTA) through their independent and reasoned legal analysis, which has made it possible to articulate consistent interpretative criteria applicable to both EU and European Economic Area (EEA) law. Although the EFTA Court does not have its own Advocate General, the opinions of these members of the CJEU facilitate consideration of its jurisprudence within the interpretative framework of EU law, thereby ensuring methodological convergence between the two systems and strengthening the principle of homogeneity within the EEA. Their functional independence and the public nature of their Opinions enable the judges of the CJEU to incorporate, in a balanced manner, solutions adopted by the EFTA Court, enhancing the coherence and legitimacy of the European legal order. The citation of such Opinions in judgments of the EFTA Court<sup>59</sup> demonstrates that their function goes beyond the drafting of internal analyses and has become an active instrument of judicial dialogue, promoting uniformity, legal certainty, and consistency in the application of the law across both systems<sup>60</sup>. Therefore, the creation of an Advocate General within the TJCA could generate a similar academic dialogue, with mutual references between CJEU case-law and the opinions of European Advocates General, who in turn could cite their Andean counterpart.

Furthermore, it should be underscored that a potential decision by the TJCA to introduce the Advocate General would mark a milestone of particular importance in the institutional and procedural development of integration systems worldwide. At present, only the CJEU - and, at least in its founding legal framework, the TJCA itself - have contemplated such a possibility; as far as the author is aware, no other regional integration scheme has undertaken such a project. Although some proposals in other regional courts have aimed at expanding the number of judges or strengthening judicial structures, the creation of an Advocate General has not been specifically envisaged. However, the jurisprudence of some of these bodies occasionally reveals a tendency to address questions of law beyond the immediate subject matter of the dispute, by resorting to techniques such as *obiter dicta*. This is particularly true of the EFTA Court<sup>61</sup>,

<sup>58</sup> Within the framework of interinstitutional cooperation, academic training workshops between the CJEU and the TJCA have been organized on several occasions, with the participation of magistrates, lawyers and technical staff from both institutions. These meetings constitute areas for dialogue and exchange of experience on issues of common interest, such as preliminary ruling interpretation, uniform application of integration law and procedural guarantees. In addition to strengthening the technical capacities of participants, these workshops contribute to building a shared legal culture, fostering methodological convergence between the two jurisdictions and strengthening the principle of consistency in the interpretation of supranational rules.

<sup>59</sup> See EFTA Court, judgment of 28 January 2013, EFTA Surveillance Authority v. Iceland («Icesave»), Case E-16/11, paragraphs 125 and 134; judgment of 22 December 2016, Case E-3/16, Ski Taxi SA and others v Norwegian Government, paragraphs 34 and 58; judgment of 5 September 2025, Case E-7/24, Fjordkraft AS v Norwegian Government, paragraphs 67 and 110.

<sup>60</sup> Baudenbacher, C., 'The EFTA Court, the ECJ, and the Latter's Advocates General - a Tale of Judicial Dialogue', *Continuity and Change in EU Law: Essays in Honour of Sir Francis Jacobs*, Oxford 2008, p. 122.

<sup>61</sup> However, it is particularly significant that the EFTA Court was established without providing for the form of the Advocate General. Burrows, N./Greaves, R., *The Advocate General and EC Law*, Oxford 2007, p. 19, point out that that absence is due to the fact that, in none of the Member States of the European Free Trade Association, there was knowledge or practice of such a figure; it was simply not part of the national legal tradition, which is why it was not considered indispensable for the proper functioning of that court.

which has on several occasions shown a notable interest in developing academic reflections concerning the implementation of the EEA Agreement<sup>62</sup>.

Experience, however, demonstrates that judges are not the most suitable actors for developing extensive academic reflections, as their essential role is to resolve disputes<sup>63</sup>. Their decisions must therefore remain clear and authoritative to ensure their effectiveness and enforceability. More than seventy years after the creation of the CJEU, the choice made by the national delegations to establish two distinct figures with separate functions has proven particularly sound: on the one hand, the Advocate General, entrusted with proposing a solution to the dispute after weighing the various possible approaches; and, on the other hand, the judges, who are responsible for issuing the final decision. The establishment of an Andean Advocate General could thus set a precedent for other supranational courts<sup>64</sup>. Its incorporation would not only enrich the jurisprudence of the TJCA but would also convey a clear message about the institutional maturity of the Andean integration process, reaffirming the supranational vocation of its legal system.

The creation of the Advocate General within the TJCA could also have effects extending beyond the subregional level, particularly in connection with initiatives such as the proposed establishment of a Mercosur Court of Justice<sup>65</sup>. By strengthening the legitimacy and coherence of Andean case-law, this institutional innovation would provide a concrete model for reinforcing the judicial dimension of integration processes. Comparative experience shows that successful mechanisms tend to spread across regional systems, and the figure of the Advocate General could become a model capable of emulation within Mercosur. In this way, the CAN would not only advance the deepening of its own legal system but would also contribute to South-South interinstitutional dialogue and to the strengthening of supranational justice in Latin America, projecting a doctrinal and methodological influence of global significance.

## VI. Conclusions

The analysis carried out in this article makes it possible to draw several conclusions of academic and institutional relevance.

First, although Andean law expressly provides for the role of the Advocate General in the Treaty establishing the TJCA, that provision has not yet been implemented. This situation contrasts with European experience, where the existence of Advocates General has proven to be essential to make the case-law of the CJEU more robust, coherent and legitimate.

Secondly, the argument that the small number of cases pending before the TJCA would justify the inactivity of this provision is insufficient. The added value of the Advocate General does not depend on the volume of litigation, but on its ability to enrich legal arguments, ensure that supranational interest is defended and consolidate more predictable and systematic case-law.

Thirdly, the possible establishment of this figure would strengthen Andean institutions and could constitute a reference point for other international courts of a supranational nature. In this way, the Andean Advocate General would not only have an internal impact on the consolidation of the TJCA, but would also project the CAN as innovative in the comparative law of economic integration.

<sup>62</sup> See EFTA Court, judgment of 13 June 2013, Case E-11/12, Beatrix Koch, Dipl. KFM. Lothar Hummel and Stefan Müller v Swiss Life (Liechtenstein) AG, points 119 et seq., concerning the provisional application of decisions of the EEA Joint Committee pursuant to Article 103 of the EEA Agreement.

<sup>63</sup> Bobek, M. 'A Fourth in the Court: What are there Advocates-General in the Court of Justice?', *The Cambridge yearbook of European legal studies*, 2012, Vol.14, p. 535, highlights the functional differentiation between judges and Advocates General, drawing an analogy with the figures of the verdugo and buffers at the cutting of a monarch. According to its analysis, while the verdugo symbolises the guarantee of government effectiveness, the buffet embodies the safeguarding of prudence in the exercise of power, by offering critical reflections and uncomfortable truths that the sovereign must carefully take into account if it wants to govern wilfully.

<sup>64</sup> Baudenbacher, C., *The EFTA Court 18 Years On - Accomplishments and Challenges* (EFTA Court Spring Conference 2012), p. 24, in his capacity as former President of the EFTA Court, supported a reform providing for the intervention of the Advocate General in relevant cases, since that court does not have its own legal investigation department. It also considered that this reform would contribute to increasing the legitimacy of the EFTA Court.

<sup>65</sup> Kühn, W. M., 'The Draft Protocol on the Creation of the Court of Justice of Mercosur. A New Milestone in the Judicialisation of Regional Integration Law', *Mexican Yearbook of International Law*, 2017, Vol. 17, p. 420, points out that the draft Protocol for the creation of a Mercosur Court of Justice expressly refers to the establishment of the Advocate General for that court.

Fourth, the creation of an Advocate-General in the TJCA would open up a natural area of dialogue with the Advocates General of the CJEU, in the academic and doctrinal key. Such a rapprochement, although not legally formalised, would help strengthen methodological exchange between supranational courts and intensify North-South judicial dialogue, increasing the visibility of Andean case-law at international level.

In short, activating the position of the Advocate General in the Andean system would not only lead to compliance with a pending regulatory provision, but also seize a strategic opportunity to strengthen supranational justice and consolidate the regional integration process. While this project requires political will to be given concrete expression in a CAMRE decision, the TJCA retains the key to its realisation through its power of initiative.

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