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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 office of the Advocate General at the Court of Justice of the European Union and evaluates the case for its incorporation into the Court of Justice of the Andean Community. Using comparative analysis, it delineates the functions, contributions, and institutional guarantees that define 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 further analyses the historical, political, and budgetary reasons for the absence of this office in the Andean system, including national sovereignty concerns, the economic-commercial emphasis of integration, and the Andean Community's financial constraints. Drawing on the existing Andean legal framework, it identifies the normative and procedural mechanisms required to introduce an Advocate General within the Court of Justice of the Andean Community. The article argues that such adoption would strengthen homogeneity, the unity of the legal order, and the transparency of decision-making. Finally, it contends that this reform would enhance judicial dialogue between the Court of Justice of the Andean Community, Court of Justice of the European Union and other international courts, thereby consolidating member state and legal practitioner confidence in the regional integration system.

Keywords: Advocate General; Court of Justice of the Andean Community; institutional reform; integration law; judicial legitimacy; judicial dialogue; European Union.

ОТ ЕВРОПЕЙСКОЙ ТРАДИЦИИ К ЛАТИНОАМЕРИКАНСКОЙ ДЕЙСТВИТЕЛЬНОСТИ: К ВОПРОСУ ОБ УЧРЕЖДЕНИИ ИНСТИТУТА ГЕНЕРАЛЬНОГО АДВОКАТА ПРИ СУДЕ АНДСКОГО СООБЩЕСТВА

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Аннотация. Исследуется институт генерального адвоката при Суде Европейского союза и рассматривается целесообразность его внедрения в систему Суда Андского сообщества. С помощью сравнительно-правового анализа раскрываются функции, значение и гарантии, характеризующие институт генерального адвоката в европейской правовой системе. Особое внимание уделяется его роли в обеспечении единообразия судебной практики, развитии права и укреплении легитимности наднационального правосудия. Рассматриваются историко-политические и бюджетные причины отсутствия данного института в андской системе, включая опасения государств-членов относительно ограничения национального суверенитета, преимущественно экономико-торговую направленность интеграционных процессов и финансовые ограничения Андского сообщества. С опорой на действующую нормативно-правовую базу андской интеграции выявляются правовые и процессуальные механизмы, необходимые для учреждения института генерального адвоката при Суде Андского сообщества. Обосновывается тезис о том, что введение данного института

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будет способствовать обеспечению однородности и единства правопорядка, а также повышению транспарентности процесса принятия судебных решений. Утверждается, что подобная реформа поспособствует налаживанию судейского диалога между Судом Андского сообщества, Судом Европейского союза и другими международными судебными органами, укрепит доверие государств-членов и юридического сообщества к региональной интеграционной системе.

Ключевые слова: генеральный адвокат; Суд Андского сообщества; институциональная реформа; интеграционное право; легитимность правосудия; судейский диалог; Европейский союз.

Introduction

Regional integration in Latin America has advanced significantly in recent decades, with the Andean Community (CAN) emerging as one of the region's most stable frameworks for economic and legal cooperation [1, p. 137]. Within this architecture, the Court of Justice of the Andean Community (TJCA) plays an essential role in uniformly interpreting and applying the Cartagena agreement and its complementary instruments. However, unlike other supranational courts, such as the the Court of Justice of the European Union (CJEU), the TJCA lacks an internal mechanism allowing for an independent legal analysis prior to judicial deliberations. This gap impedes the systematisation of legal criteria, reduces jurisprudential consistency and diminishes transparency in judicial reasoning. The CJEU's Advocate General offers a compelling model: by issuing independent opinions, Advocates General bring clarity, coherence, and technical depth to the decision-making process. European experience demonstrates that such intervention strengthens legal unity, fosters jurisprudential development, and enhances institutional legitimacy.

This article analyses the role of the Advocate General at the CJEU, identifies its contributions to European case-law, and explores its potential adaptation to the TJCA. Through comparative analysis and assessment of normative-procedural feasibility, it demonstrates how instituting an Advocate General could enhance legal coherence, increase transparency, and raise the technical quality of the TJCA's decisions. The study combines doctrinal review, analysis of landmark CJEU rulings, and examination of the CAN's legal framework to propose a structured implementation roadmap. This roadmap specifies appointment criteria, functions, terms of office, and integration mechanisms. The article also offers a reference framework that may guide the transplantation of this office into other supranational judicial systems where it has not yet been considered.

At an event hosted by the Max Planck Institute for Comparative Public Law and International Law in Heidelberg (Germany), when questioned why the Advocate General – expressly authorised in the TJCA's founding treaty – remains unimplemented, a judge from the TJCA present at the said event cited the court's «limited» caseload[1]. This justification was striking, as it appeared to understate this institution's multiple functions and potential. Years later, a discussion with two CJEU Advocates General in Luxembourg revived this exchange and highlighted the absence of an Andean equivalent. This article, therefore, deepens understanding of an institution now essential to the EU's supranational judicial system.

The Advocate General at the Court of Justice of the European Union

Legal basis. The Advocate General is among the CJEU's most distinctive institutional features. Its legal basis derives from Art. 19 of the Treaty on European Union (TEU), which establishes the CJEU's role in safeguarding the uniform interpretation and application of EU law, and Art. 252 of the Treaty on the functioning of the European Union (TFEU), which governs the designation, status, and essential functions of the advocates general.

Status, appointment and rotation (permanence) system. Article 253 of the TFEU provides that member state governments appoint Advocates General by common accord for renewable six-year terms. Before appointment, the panel established under Art. 255 of the TFEU – comprising former CJEU members and jurists of recognised standing – assesses each candidate's suitability to perform the duties of judge or Advocate General and issues an opinion. This procedure reflects the Union's institutional balance, characteristic of European integration: member states participate directly in appointments, while appointees enjoy full independence once in office. In practice, several advocates general have served consecutive terms, providing the CJEU with continuity and accumulated expertise. The position requires individuals whose independence is beyond doubt and who either qualify for the highest judicial offices in their respective countries or possess recognised legal competence.

The CJEU currently employs eleven advocates general under a combined system of permanent and rotating appointments. Five positions are permanently allocated to member states with the greatest demographic

[1] As G. García Brito explains, the number of cases was initially small, but 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 [2, p. 194].

and political weight[2], while the remaining six rotate periodically among other member states. This system balances institutional stability – through continuous representation by certain states – with the equality principle, ensuring all countries can periodically appoint an Advocate General. Following recent judicial reforms, the General Court (the first-instance jurisdiction) now hears preliminary ruling requests in specific matters. Consequently, three General Court judges serve as advocates general when required, underscoring the office's importance for the development of the case-law[3].

Regarding status, the TFEU expressly equates advocates general with CJEU judges in respect of independence, immunities, and obligations. They may not receive instructions from any government, institution, or party, and must maintain the same impartiality and objectivity required of judges. This structural parallelism is not merely formal: it confirms the advocates general are not advisers or auxiliary officials but full European magistrates vested with a distinct institutional mandate. They may intervene at hearings[4] and pose questions necessary to clarify legal and factual issues, exercising the same prerogatives as the reporting judge or chamber members [4, p. 260]. They also hold equivalent protocol rank to judges, and the First Advocate General – elected triennially by peers – ranks above certain more senior judges. Significantly, the advocates general do not participate in electing the CJEU President, reinforcing their independence and institutional autonomy from the judicial college.

The First Advocate General assigns pending cases among the college members, considering individual workloads and enforcing fundamental rules, including the prohibition against advocates general hearing cases connected to their countries of origin to safeguard impartiality [5, p. 6]. Beyond case distribution, the First Advocate General exercises specific procedural prerogatives, including the authority to propose case review where no appeal lies, when «a serious risk to the unity or coherence of union law» arises under Art. 256(2) of the TFEU.

Embedding the office of Advocate General in the TFEU has constitutional significance. It is not an ancillary device that could be created by internal rules, but a structural element of the union's judicial design, intended to ensure the technical quality and transparency of adjudication. The Advocate General distinguishes the CJEU from other international tribunals, where judicial deliberation typically occurs exclusively among judges without independent preliminary assessment.

Functions and procedural dynamics. Article 252 of the TFEU states that the CJEU is «assisted» by advocates general. The contours of that assistance are examined below. The Advocate General's principal mission is to deliver written, public, and reasoned opinions in assigned cases. These opinions provide exhaustive legal analysis of disputed issues and propose concrete resolutions[5]. A specific linguistic regime governs these opinions[6]. Although not binding on the CJEU, Advocate General opinions fulfil following essential functions widely recognised by both doctrine and judicial practice:

- interpretative and systematising function (the opinions create, consolidate, and clarify legal principles guiding CJEU case law);
- unity and coherence function (they ensure uniform application of EU law across member states, reinforcing consistency in the European legal order);
- transparency and legitimacy function (as public documents, the opinions make accessible the reasoning that informs judicial decisions, thereby strengthening the CJEU's democratic legitimacy);
- procedural efficiency function (the Advocate General's detailed technical analysis facilitates judicial deliberation, enabling judges to decide cases with greater speed and rigour; advocates general are consulted in advance on key procedural matters – such as scheduling hearings, requesting clarifications from the parties or authorising third-party interventions – underscoring their central role in the CJEU's internal operations);
- 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 characterised by one essential feature: their exclusion from the judges' final deliberation. Once the opinion is delivered, the Advocate General's participation formally ends. This institutional design preserves the autonomy and impartiality of the analysis and prevents CJEU internal discussions from influencing their views, while providing the court with a distinct «second institutional voice».

Notably, each deliberation opens with the chamber's decision whether to follow the Advocate General's opinion [6, p. 1144], a determination that turns on the weight and cogency of its reasoning [7]. Likewise, advocates

[2]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).

[3]The scope of the reform as regards the appointment of advocates general before the General Court is analysed in [3, p. 99].

[4]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.

[5]Article 252(2) of the 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».

[6]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.

general are not bound by their counterparts' opinions in related cases. They develop their reasoning autonomously. This independence enriches the judicial debate and enables the court to consider alternative approaches before delivering judgment.

The Advocate General typically delivers an opinion in cases of particular significance or those raising novel legal questions [4, p. 301]. In some matters, the opinion addresses only the most complex issues (*conclusions ciblées*). The «general meeting» – comprising all CJEU members (judges and advocates general) – decides whether an Advocate General will intervene. This body also allocates cases to chambers and determines procedural matters, such as scheduling hearings or formulating questions to the parties [8].

Historically, opinions were read in full at the hearing, allowing parties and the public to hear the complete 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 [9, p. 532]. The full text is published the same day on the CJEU's website, ensuring accessibility and procedural transparency.

Empirical studies confirm that the CJEU adopts all or part of advocates general's opinions in a high percentage of cases. Scholarship often cites a convergence approximately 80 %[7] rate, though precise quantification proves difficult. Even when the CJEU departs from them, these opinions retain significant doctrinal and academic value, as scholars and subsequent courts frequently cite them in textbooks, commentaries, and judgments. When the CJEU follows the Advocate General's opinion, it often expressly incorporates elements of that reasoning in its judgment. Conversely, when the court diverges from such opinions, it seldom refutes them directly, instead constructing its reasoning autonomously.

Compliance with the due process principle. Advocate general's opinions provide independent, nonbinding guidance to the CJEU on legal interpretation. As they lack direct legal effect on parties' procedural positions and are not judicial decisions, parties cannot appeal their content. The CJEU's case law[8] confirms that challenges to opinions on these grounds are inadmissible. Nevertheless, the parties may safeguard their right of defence through a specific mechanism: requesting the reopening of the oral phase under Art. 83 of the Rules of Procedure of the CJEU. Reopening may be warranted, inter alia, where the Advocate General's opinion introduces new elements or addresses issues not debated at the hearing. This mechanism balances the Advocate General's functional independence with the adversarial principle.

The European Court of Human Rights (ECtHR) has likewise held that the institution of the Advocate General is compatible with the fair-trial guarantees in Art. 6 of the European convention on human rights. In Emesa Sugar N. V. against the Netherlands[9], the ECtHR held that the inability to challenge the Advocate General's opinions does not violate the adversarial principle, since such opinions are non-binding, presented at public hearings, and based on parties' existing arguments. Similarly, in Kress v. France[10] – concerning 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 is compatible with a fair trial, provided transparency and the separation of functions are maintained.

In Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U. A. against the Netherlands[11], the ECtHR concluded that preventing parties from responding to the Advocate General's Opinion before its oral presentation does not infringe the adversarial principle. The CJEU's Rules of Procedure provide compensatory mechanisms – such as reopening the oral phase when the opinion introduces new or decisive elements – that ensure procedural balance between the parties. Thus, the ECtHR reaffirmed that the EU judicial system, including the Advocate General as a «second institutional voice», provides protection equivalent to the ECHR and aligns fully with the European human rights framework.

Accordingly, the Advocate General serves as an impartial auxiliary of the CJEU, tasked with enriching the legal debate and safeguarding the general interest of EU law, without taking part in judicial deliberation. The absence of a right to reply to the Advocate General's opinions does not undermine procedural fairness, provided that the parties enjoy full opportunity to present arguments and that independent and impartial judges retain exclusive decision-making authority.

The cabinet of an Advocate General. At the CJEU, *référendaires* (legal secretaries or law clerks) are highly qualified jurists who assist both the judges and the advocates general. Their work ensures the technical soundness, internal coherence, and clarity of the CJEU's legal reasoning. Each member's cabinet typically comprises three to five *référendaires* drawn from academia,

[7] According to the internal statistics of the cabinet J. Kokott speaks of a percentage of more than 86 %. See: *Kokott J.* Der EuGH als Motor des europäischen Integrationsprozesses? // C. H. Beck : website. URL: https://rsw.beck.de/docs/librariesprovider51/nldocs/nl_jus_kurzinterview_kokott.pdf?utm_source=chatgpt.com (date of access: 08.09.2025).

[8] CJEU order of 4 February 2000, Emesa Sugar in case C-17/98. EU:C:2000:69.

[9] ECtHR judgment of 13 January 2005, Emesa Sugar N. V. against the Netherlands. Appl. No. 62023/00.

[10] ECtHR judgment of 7 June 2001, Kress v. France. Appl. No. 39594/98.

[11] ECtHR judgment of 20 January 2009, Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U. A. against the Netherlands. Appl. No. 13645/05.

national or supranational administrations, private practice, or the judiciary. Proficiency in multiple EU languages and familiarity with various national legal systems enable them to operate effectively in an international environment where diverse legal traditions converge. Given their expertise and experience, *référendaires* are often appointed as CJEU judges or advocates general after years of service as legal advisers, thereby ensuring continuity and the accumulation of institutional knowledge within European case law [10, p. 569].

Within the cabinets of the advocates general, *référendaires* play a central role in drafting opinions – the instruments through which the Advocate General independently and comprehensively analyses the legal questions raised in each case [11, p. 369]. Their work begins with in-depth legal and doctrinal research, reviewing applicable European legislation, prior CJEU case law, and often comparative or international law to provide additional perspectives and identify solutions tested in other systems [12, p. 251]. This ensures rigorous substantiation of the Advocate General's arguments and situates each case within a broad interpretative framework.

The *référendaires* then collaborate in drafting the opinions to ensure clarity, coherence, and legal rigour. They organise arguments logically, highlight relevant precedents, and propose interpretative structures comprehensible both within the CJEU and to external legal practitioners. They prepare analytical notes and summaries integrating case law, regulatory background, and potential alternative interpretations, providing a comprehensive case overview.

The *référendaires* also coordinate information flows within the CJEU, liaising with judges' chambers and the administrative services to secure consistent and coherent case handling. Their involvement identifies all relevant issues and establishes a thorough grounding for legal arguments before the Advocate General formulates the final opinion. As legal advisers, the *référendaires* deliver specialised technical support, conduct preliminary case analysis, and formulate recommendations that guide the Advocate General in fulfilling their institutional mission.

Although the Advocate General bears formal responsibility and signs the opinions, the *référendaires'* work proves decisive for technical quality, interpretative coherence, and document clarity. Their assistance enables the Advocate General to concentrate on critical evaluation, the strategic orientation of legal reasoning, and the formulation of innovative solutions, while the *référendaires* ensure systematic, comprehensive, and legally sound argumentation. In essence, the *référendaires* constitute the operational core of legal support that enables the Advocate General to perform their functions of analysis, interpretation, and guidance effectively in the development of the CJEU's case law.

Historical evolution and impact on case law. The Advocate General's origins lie in the French tradition of the *commissaire du gouvernement*, an official within the *Conseil d'État* (Council of State). This official independently presented legal analyses of administrative cases [13, p. 535]. Despite the title, they did not represent the government; rather, they prepared and publicly presented an independent opinion (conclusions) intended to guide the judicial decision. Though non-binding, these opinions exerted significant influence by clarifying, systematising, and lending coherence to legal reasoning. Drawing on this model, the drafters of the 1951 Treaty of Paris introduced the office into the Court of Justice of the European Coal and Steel Community (ECSC), recognising the need for a mechanism to ensure interpretative coherence and transparent legal foundations within the new supranational jurisdiction.

Although inspired by a national institution, the Advocate General acquired distinctive features from the outset. The office-holder enjoys the same independence and immunity as judges and the office is tasked with contributing to the development of the EU's autonomous legal order. The office thus represents a legal transplant adapted to the supranational level that has become indispensable for the technical quality, legitimacy, and coherence of CJEU jurisprudence. Over 70 years of judicial practice, the office has acquired characteristics that clearly distinguish it from its national antecedent.

Scholars widely interpret the Advocate General's office as compensating for the absence of dissenting opinions in the CJEU model [14, p. 18]. Prohibiting separate opinions aimed to safeguard the unity, coherence, and authority of the emerging community legal order, preventing judicial fragmentation from undermining institutional legitimacy. This choice, however, limited public expression of diverse legal perspectives within the court. Accordingly, scholars observe that the Advocate General largely substitutes for dissenting opinions [15, p. 197]. Advocates general's opinions, presented publicly and independently, balance this limitation by manifesting interpretative plurality without diminishing the judgment's binding force. Although not dissenting opinions in the strict sense, they operate as a functional equivalent, offering the legal community a critical and complementary perspective that has significantly shaped European jurisprudence [10, p. 572].

The institution has evolved alongside European integration itself. In its early decades, few advocates general served, and their intervention was reserved for cases of particular complexity or political sensitivity. However, as the integration system expanded its competences and the court's caseload grew, the participation of advocates general became more systematic and consolidated their institutional status. Although not every case requires an opinion, they now intervene across a wide range of fields, including economic freedoms, competition, fundamental rights, procedural law, and the EU's external relations.

Advocates general have decisively shaped the evolution of European case law. Several paradigmatic examples demonstrate this influence:

• in Rewe-Zentral AG, Advocate General introduced the notion of «mandatory requirements» that may

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 systematisation of Advocate General's reasoning were adopted almost in their entirety by the CJEU, consolidating a foundational framework for EU free trade[12];

• in Keck and Mithouard, Advocate General proposed a distinction between «selling arrangements» and «product requirements», to prevent the principle of free movement of goods from being applied too rigidly. The court adopted this distinction, defining the scope of Art. 34 of the TFEU and consolidating the doctrine on measures affecting product marketing. This preserved the balance between European integration and national legislative autonomy[13];

• in the Bosman, Advocate General argued that football player transfer rules unjustifiably restricted the free movement of workers. His opinion detailed how sports contracts and national restrictions contravened EU law. The CJEU fully adopted his reasoning, establishing a historic precedent that transformed the regulation of professional football in Europe[14];

• in Promusicae, Advocate General opined that the e-Privacy Directive does not preclude Internet service providers from disclosing the identity of users who shared copyright-protected material. The court followed her opinion, establishing a balance between intellectual property protection and users' fundamental rights[15];

• in Advocaten voor de Wereld, Advocate General's opinion provided a key doctrinal reference for understanding the principle of mutual recognition in criminal matters and the scope of the European Arrest Warrant (EAW). He argued that the EAW framework decision is compatible with the principle of legality and with the fundamental rights protected in the EU legal order. He regarded dispensing with double criminality verification for certain serious offences as a legitimate legislative choice to strengthen mutual trust among member states. He further 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 in aligning integration with rights protection and in consolidating mutual trust as a cornerstone of the Union's criminal justice area[16];

• in Viking Line, Advocate General crafted a careful balance between the freedom of establishment and workers' right to collective action. His opinion guided the court's nuanced approach, recognising social rights as compatible with economic freedoms and setting concrete criteria for resolving such conflicts[17];

• in Domínguez, Advocate General's opinion significantly advanced doctrine on the horizontal effect of fundamental rights in EU law. She defined the right to paid annual leave as a general principle of EU law, arguing for its possible invocation in disputes between private parties. However, she cautioned that such applicability should be subject to limits that safeguard legal certainty – namely, that the right be sufficiently clear, precise, and unconditional. Her approach, blending teleological and comparative reasoning with systemic coherence, highlights the Advocate General's role in safeguarding doctrinal consistency and driving jurisprudential evolution[18];

• The Google Spain constitutes another paradigmatic example. Advocate General endorsed implementation of the «right to be forgotten», proposing clear criteria for requiring search engines to remove personal information. The court followed his opinion, establishing a legal and technical framework that balanced freedom of information and data protection. This ruling decisively shaped internet privacy jurisprudence[19];

• in Gauweiler, Advocate General concluded that the European Central Bank's public debt purchase programme, known as Outright Monetary Transactions, was compatible with EU law, provided it observed certain limits. The CJEU adopted his opinion, validating the Outright Mondary Transactions' legality and reinforcing the European Central Bank's autonomy in monetary policy[20];

• Finally, in Czech Republic v Poland, Advocate General concluded that Poland had violated EU law by extending authorisation for lignite extraction without conducting an environmental impact assessment and without properly notifying the Czech Republic. He emphasised that environmental assessment is essential to ensure transparency and enable neighbouring states to exercise their participation and protection rights.

[12]Opinion of Advocate General Capotorti delivered on 16 January 1979 in case 120/78 Rewe-Zentral. EU:C:1979:3.

[13]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.

[14]Opinion of Advocate General Lenz delivered on 20 September 1995 in case C-415/93 Bosman. EU:C:1995:293.

[15]Opinion of Advocate General Kokott delivered on 18 July 2007 in case C-275/06 Promusicae. EU:C:2007:454.

[16]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.

[17]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.

[18]Opinion of Advocate General Trstenjak delivered on 8 September 2011 in case C-282/10 Dominguez. EU:C:2011:559.

[19]Opinion of Advocate General Jääskinen 13 May 2014 in case C-131/12 Google Spain and Google. EU:C:2013:424.

[20]Opinion of Advocate General Cruz Villalón delivered on 14 January 2015 in case C-62/14 Gauweiler. EU:C:2015:7.

His opinion underlined the importance of cross-border cooperation and compliance with EU environmental standards in projects with significant transboundary effects[21].

These and many other cases demonstrate how advocates general have served as architects of European jurisprudence. Their opinions often advance arguments that the CJEU does not adopt immediately but later embraces, or that catalyse legislative reforms. Legal scholarship therefore presents the advocates general as both technical and creative actors who guide the progressive development of EU law.

Experience shows that their submissions enrich the court's reasoning and enable it to test alternative interpretations, open doctrinal debates, and orient case law towards future challenges. As scholars have noted, the office of the Advocate General strengthens the coherence, legitimacy, and innovative capacity of EU law, constituting a distinctive feature of the European judicial model.

Consequently, the Advocate General represents a pivotal institution: distinct from the collegiate body of judges yet integral to the court. The office occupies an intermediate position, providing the CJEU with an impartial analysis that simultaneously enriches academic and legal debate beyond the immediate proceedings[22]. This distinctive model has attracted interest in other supranational and regional contexts, prompting proposals for institutional transplantation.

Comparison of the Advocate General with counterparts in national judicial systems. The role of the Advocate CJEU may appear unfamiliar, particularly to those trained in certain national legal traditions. Although unique within the supranational judicial order [5, p. 2], the office can be understood by reference to analogous national and international institutions that provide independent legal submissions and promote interpretative coherence. Comparable institutions exist, though none constitutes an exact precedent for the European Advocate General's function.

In France, the *commissaire du gouvernement of the Conseil d'État* (renamed rapporteur public in 2009) provides the most direct precedent. The Code of Administrative Justice (CJA) governs this function. Article L.7 tasks the rapporteur public with presenting views publicly and independently on the legal issues raised by cases, without participating in deliberations. Article R.122-5 requires the Minister of Justice to propose candidates for appointment by decree and establishes a ten-year term of office, exceptionally extendable for one year, to guarantee impartiality and renewal. Article R.123-24 further specifies the consultative role of the rapporteur public in meetings of the *Conseil d'État* on matters within its competence, emphasising its technical rather than decision-making function. This official prepares written and public opinions that comprehensively examine the legal aspects of administrative disputes – not on behalf of the government, but to assist judicial decision-making. In order to avoid misunderstandings about alleged government representation, its name was changed in 2009 to *rapporteur public*. The office's functional independence and the public nature of its opinions directly inspired the CJEU's advocates general, as noted above[23].

In Germany, the *Vertreter des öffentlichen Interesses* plays a specific role in administrative and litigation matters. Its intervention is provided for under instruments such as para 35 of the Federal Administrative Court Procedure act (*Verwaltungsgerichtsordnung*), and sector-specific regulations that protect the public interest [16, p. 395]. The representative ensures that courts receive specialised legal analysis in matters affecting the public interest, particularly in complex or socially significant cases. *The Vertreter des öffentlichen Interesses* acts independently and provides objective submission on the correct application of the law, assessing both fact and applicable legislation. Unlike a public prosecutor, they neither pursue punitive aims nor represent the administration; instead, they assist the court to ensure interpretive consistency and legal rigour. Although their remit is more limited and sector-specific than that of the Advocate General of the CJEU, they similarly enhance clarity and predictability in judicial reasoning, especially in technically complex regulatory areas.

In Spain, prosecutors (*fiscales*) intervening before the Supreme Court and the Constitutional Court perform functions conceptually comparable to those of the CJEU Advocate General. They issue independent opinions that guide judicial decisions and contribute to legal system coherence. Before the Supreme Court, the Organic law on the judiciary and the Organic statute of the Public Prosecutor's Office regulate their action and establish

[21]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.

[22]As T. Capeta explains, 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 [8, p. 5].

[23]As D. Ruiz-Jarabo Colomer stresses, despite functional similarities, there are significant differences between the two categories [11, p. 359]. 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 CJEU – preceding the judgment – while those of the *Commissaire du Gouvernement* are not officially published.

their duty to promote legality, protect the general interest – in accordance with Art. 124 of the Spanish Constitution – and ensure correct interpretation of rules. They intervene in appeals on a point of law, criminal proceedings of constitutional relevance and jurisdictional conflicts. Before the Constitutional Court, they submit opinions on constitutional complaints, jurisdictional conflicts and questions of particular constitutional relevance. Although non-binding, these opinions provide decisive guidance to the court and aid in harmonising national and European case law. Fiscales also advise on procedural matters – such as appeal admissibility, competent panel determination, and public hearing necessity – strengthening procedural consistency. In short, Spanish prosecutors perform an independent legal advisory function, combining technical analysis with the defence of the public interest. Conceptually, this approximates the role of an Advocate General at the CJEU, albeit within a national framework and subject to the institutional hierarchy of the Public Prosecutor's Office, unlike the CJEU Advocate General's full functional autonomy.

In Belgium, the *parquet général* supports the *Cour de cassation*. Composed of the *procureur général*, the *premier avocat général*, and several *avocats généraux*, their powers are detailed in Art. 142–151 of the Code of Justice (*Code judiciaire*). These judges belong to the Prosecutor General's Office but enjoy functional independence. They ensure correct legal interpretation, protect public order and preserve the unity of case-law. In appeal proceedings, they submit written and oral opinions analysing the legal issues raised and proposing a solution to the court. While not binding, these opinions carry significant persuasive authority through their comprehensive and objective analysis. Moreover, their publication enhances procedural transparency and enables the legal community to understand the reasoning behind the High Court's decisions. This role largely resembles that of the CJEU advocates general or the French *Commissaires du Gouvernement*, as all ensure consistent jurisprudence and uniform territorial application of the law. Consequently, Belgian *avocats généraux* consolidate legal certainty and reinforce the *Cour de cassation's* legitimacy as Belgium's supreme guardian of lawful application.

In the Netherlands, the *Advocaat-Generaal* of the *Raad van State* performs comparable functions. They deliver independent legal opinions (*conclusies*) in complex administrative cases requiring jurisprudential development or systemic interpretation. Though non-binding, these Opinions provide essential doctrinal and technical perspectives, enhancing final decisions' quality and consistency. Dutch law (*Wet op de Raad van State*) and institutional practice define their competence, emphasising that they must act independently and objectively, assessing the facts and applicable law before the court decides. Opinions frequently include comparative references to other European jurisdictions, enriching interpretation and promoting harmonisation in academic commentary.

In Italy, the *Avvocato Generale* at the *Corte di Cassazione* (Court of Cassation) operates within the *Procura Generale* exclusively in the interest of the law. They provide independent legal submissions in high-stakes civil and criminal cases involving complexity or significant interpretative questions. In civil matters, submissions typically take the form of written opinions (*pareri*). In criminal matters, they are presented as oral argument in court. Although non-binding on the court, these opinions and submissions promote the uniform interpretation of the law and enhance the doctrinal coherence of judicial decisions, particularly 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 no specific organic law governs the *Corte di Cassazione*, Art. 363 of the Italian Code of Civil Procedure recognises the role of the *Avvocato Generale* by providing that the Attorney General may intervene «in the interest of the law» – not to protect individual rights, but to ensure the correct interpretation of the legal order. This public, reasoned, and independent legal analysis strengthens the court's institutional legitimacy and enriches doctrinal debate within the Italian judicial system.

In the United States, the closest analogue to the CJEU Advocate General is the Solicitor General, whose office is governed principally by sections 505, 511—518 of title 28 of the United States Code. Appointed by the President and confirmed by the US Senate, the Solicitor General represents the federal government before the Supreme Court and, at times, the federal courts of appeals. Beyond litigation, it advises the executive on the admissibility of appeals and determines which cases the government should defend, filing public, reasoned briefs and presenting oral argument [17, p. 1326; 18, p. 1105]. Although part of the executive, the office's role transcends mere government defence by providing authoritative guidance to legal interpretation. This function resembles that of the CJEU Advocate General – through independent analysis that promotes coherence in the legal order.

These comparisons show that, although each office operates within a distinct institutional context, they converge on two essential aspects: first, they provide independent legal analysis to guide judges; second, they contribute to the coherence, legitimacy, and quality of the legal system. The CJEU Advocate General thus represents a supranational synthesis of these traditions, adapted to serve a judicial system that seeks unity of interpretation without abandoning the plurality of approaches [6, p. 1145].

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

Advocates General do not merely observe proceedings but have made decisive contributions to strengthening and consolidating the EU judicial system. They contribute at multiple levels – jurisprudential, institutional, and procedural – and both academic scholarship and judicial practice recognise their significance.

Interpretative and systematising function. The Advocate General's first role may be characterised as interpretative and systematising. Their opinions provide the court with a coherent interpretative framework to avoid partial or isolated interpretations of EU law. To that end, the Advocate General integrates grammatical, systematic, and teleological methods, draws on general principles, legislative history, settled case-law, and, where relevant, comparative and international law[24]. This exercise extends beyond the instant case: it shapes legal categories, criteria for application, and interpretative schemes that guide both European Union courts and national courts, administrations, and practitioners. It reduces uncertainty, enhances the predictability of decisions, and consolidates the doctrinal coherence of EU law. However, this function has clear limits: it cannot replace judicial deliberation or lapse into theorising detached from the legislative text and the structural principles of the EU legal order.

Unity and coherence function. A second dimension is to promote unity and coherence. The Advocate General safeguards coherence both vertically (adherence to EU founding principles and precedent) and horizontally (harmonising jurisprudence across EU legal domains). They identify common criteria, map tensions among decisions and propose practicable solutions that preserve systemic coherence. Consequently, divergent national interpretations diminish and legal certainty for individuals and authorities increases. Yet the pursuit of unity must not ossify the law, judicial innovation and adaptation to new contexts must remain possible.

Transparency and legitimacy function. The third role concerns transparency and legitimacy. The Advocate General's opinions are public, reasoned and accessible; they make visible the reasoning that leads to a given interpretation. This strengthens accountability and encourages acceptance of judicial decisions by litigants, national judges and public opinion[25]. This function has a pedagogical dimension, rendering EU law's technical complexity into structured, intelligible analysis without sacrificing rigour. By revealing the discarded options and justifying each interpretative choice, the opinions enhance the traceability and external scrutiny of judicial reasoning. This transparency strengthens the CJEU's legitimacy, though it does not render the opinions binding or independently challengeable. Internally, the combination of a doctrinal, case-law and comparative analysis, together with the clarity and precision of the opinion, is a decisive factor which enables the CJEU's judges to adopt the Advocate General's legal reasoning with confidence, thereby reinforcing the legitimacy of their judgments.

When the CJEU substantially adopts an opinion's outcome while omitting certain arguments, motivations may include confining the *ratio decidendi* to the essentials of case resolution, avoiding *obiter dicta* on peripheral matters, or exercising institutional prudence in politically sensitive areas. In those circumstances, the opinion gains added value: it offers a broader and more systematic treatment of the legal issues, enabling scholars and practitioners to reconstruct the full interpretative context of the judgment[26].

Procedural efficiency function. The fourth function is procedural efficiency. The Advocate General intervenes in complex or legally important cases and focuses deliberation on the decisive issues. Their opinions enable the court to discard ancillary arguments, clarify the points in dispute, and order the questions in preliminary rulings or annulment actions. This optimises judicial remedies, reduces deliberation times and improves the quality of the CJEU's final reasoning. Even partial adoption of an opinion's analysis increases decision-making efficiency by thoroughly mapping argumentative pathways. Efficiency, however, must not compromise the adversarial principle or the rights of the defence. Case-law therefore permits reopening oral procedures when opinions address undebated issues.

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 whether to employ simplified procedures, such as disposing of a case by order, where the question of law raised has already been clearly and consistently settled by the CJEU. This scenario reflects the *acte clair* doctrine articulated in CILFIT case[27], which established the criteria under which a national court may refrain from making a preliminary reference. National courts

[24]As L. Faircloth Peoples points out, 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 [19, p. 225].

[25]As L. Clément-Wilz explains, 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 [9, p. 972]. They have thus participated in the standing of both the case-law and the CJEU itself.

[26]As V. Trstenjak points out, 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 [20, p. 398].

[27]CJEU judgment of 6 October 1982, in case 283/81 CILFIT and others. EU:C:1982:335.

have accepted this doctrine, with certain adaptations, highlighting the methodological convergence between judicial systems. In addition, the Advocate General assesses the exceptional admissibility of appeals in areas subject to a double review of legality (by European agencies' boards of appeal and the General Court), proposing revision only where essential to ensure 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.

Innovative role. Finally, the innovative role of the Advocate General may be noted. Since the opinions are not binding, they constitute a space for methodological freedom and explanatory experimentation. This enables the Advocate General to anticipate evolving lines of case-law, explore new legal categories, or integrate elements from different branches of EU law comprehensively. Their innovation does not create law *ex nihilo*, but proposes interpretative solutions. While the CJEU may accept, qualify or reject these solutions, they invariably broaden the available interpretative repertoire. In this capacity, the Advocate General functions as a doctrinal laboratory, enhancing EU law's adaptability to evolving social, economic and technological contexts, and contributing to the legitimacy and resilience of the supranational legal system.

When called upon to rule on novel legal issues, the Advocate General occupies a central position in developing the supranational legal order, facing significant intellectual challenges. To meet these, the Advocate General may deploy the comparative method, drawing on their knowledge of national legal systems to propose solutions to problems that, although novel at EU level, have already been addressed under member state law. By bringing these experiences to EU law, the Advocate General mediates between national legal traditions and the construction of a coherent common legal order. This role enriches interpretation and strengthens regulatory uniformity[28].

The Court of Justice of the Andean Community and the Advocate General

Normative provision in the Cartagena agreement and the Statute of the tribunal. The Cartagena agreement of 1969, as a constituent instrument of the Andean integration process, contains general provisions for the institutional organisation of the CAN and the principles governing its bodies. This includes a judicial system to ensure correct application of Andean law and uniform interpretation. Fulfilling this mandate, member states adopted in 1979 the Treaty establishing the TJCA, which entered into force in 1984. This treaty regulates the composition, powers and functioning of the supranational jurisdiction. Article 7, in fine, of that instrument authorised the TJCA to establish the office of Advocate General, with the Statute to determine its number and powers. However, when adopting the TJCA Statute, member states omitted all reference to this office.

The current codified version of the Treaty establishing the TJCA (Decision 472 of the CAN Commission[29]) contains this enabling provision in Art. 6 in fine. Article 142 of the TJCA Statute (now contained in Decision 500 of the Andean Council of Ministers of Foreign Affairs (CAMRE)[30], titled Advocate General, develops this further. It states that «the office shall be held by the TJCA when the functional and operational needs of the body so require». It further 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, to date, no concrete measures have implemented these provisions.

By contrast with the TFEU framework for the CJEU, where advocates general are institutionalised as an essential part of the European judicial model, the Andean design ultimately adopted a unitary collegiate structure in which judges alone deliberate and draft decisions. Consequently, the provision in CAN primary law constitutes a latent legislative clause or, in academic terms, a «dormant rule»: formally valid but never effectively implemented in secondary legislation. This reflects a political and institutional choice for organic simplification of the TJCA in its early stages, at the cost of dispensing with an office which, from a comparative perspective, could have strengthened the interpretative coherence and legitimacy of the Andean judicial system.

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 initially appear surprising, given that the CAN's judicial design drew direct inspiration from the supranational European model. As scholars have observed, both the institutional structure and functioning of the Andean Community legal order – particularly the preliminary ruling mechanism – reference the European integration experience, albeit adapted to regional specificities [21, p. 1]. In this regard, the CJEU has established itself as a reference model for constructing supranational justice. Since the Andean legal system

[28]As V. Trstenjak points out, 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 [20, p. 398].

[29]Decision 472 // Official Gazette of Cartagena Agreement : website. URL: https://www.comunidadandina.org/DocOficialesFiles/Gacetas/gace483.pdf (date of access: 08.09.2025).

[30]Decision 500 // Ibid. URL: https://www.comunidadandina.org/DocOficialesFiles/Gacetas/GACE680.PDF (date of access: 08.09.2025).

contained legal bases permitting incorporation of the Advocate General, one might have expected replication at Andean level. However, as discussed below, this absence does not reflect a regulatory omission, but a deliberate institutional design choice, conditioned by the historical and political circumstances surrounding the CAN judicial system.

Firstly, the defence of national sovereignty was a pervasive concern that decisively influenced the TJCA's configuration[31]. During the 1970s and 1980s, CAN member states were undergoing internal processes of democratic consolidation and state institutional redefinition. This context fostered marked reluctance towards establishing supranational bodies that might constrain states' legislative or judicial autonomy. Establishing an Advocate General, empowered to issue independent public opinions capable of shaping the interpretation of Andean law, would likely have been viewed as excessive supranationality, incompatible with governments' political will to maintain close control over the integration process.

Secondly, the economic and commercial focus of the Andean project also explains the non-implementation of this office[32]. The Cartagena agreement, signed in 1969, prioritised the establishment of a common market, coordination of tariff policies and promotion of productive integration. The judicial function served instrumental purposes: a technical mechanism for resolving disputes arising from economic and trade rules. Member states deemed it unnecessary to introduce an additional advisory body to strengthen Andean law's interpretative or doctrinal dimension. Unlike the European experience – where integration had a strong political and legal component from the outset – a pragmatic and limited view of the TJCA's role prevailed in the Andean region.

Thirdly, budgetary and administrative constraints proved decisive[33] [24, p. 23]. Establishing an office equivalent to the Advocate General would have required not only additional financial resources for remuneration and support staff, but also new structures for preparing legal opinions. Where the TJCA itself faced logistical constraints and depended largely on member state inputs, states ruled out adding new institutions as financially unfeasible.

Fourthly, Latin American procedural tradition shaped this exclusion. Unlike French law or Anglo-Saxon systems, where figures such as the *commissaire du gouvernement* or the *Solicitor General* operate, most Andean countries lacked any practice of incorporating independent official opinions in judicial proceedings. Judges have traditionally monopolised the judicial function, whilst the public prosecutor's office performs a distinct role: defending the general interest in criminal or constitutional matters rather than formulating advisory opinions in administrative or economic disputes. This legal heritage reinforced perceptions that the Advocate General remained alien and difficult to reconcile with the region's procedural culture.

Finally, the political dynamics within the CAN in the 1990s were also relevant, when member states discussed reforming its institutional framework following the creation of the World Trade Organisation and Mercosur's institutional configuration [25, p. 27; 26, p. 9]. During this period, member states prioritised liberalising and adapting integration rules to promote economic openness; initiatives to strengthen the judicial dimension were secondary. Although the academic literature has long debated the desirability of introducing an Advocate General, governments failed to reach a political consensus. They continued to view the TJCA as a purely technical body rather than an institution with a doctrinal or interpretative role.

In sum, these factors – resistance to transferring sovereignty, prioritisation of the economic over the legal dimension, budgetary constraints, regional procedural traditions, and limited political will for institutional reform – explain why the office of Advocate General was not established in the Andean judicial system. Since the 1950s this persisted despite the European model providing a well-established benchmark[34].

Institutional and political implementation challenges. The incorporation of the Advocate General into the TJCA represents a major structural and functional reform, extending beyond a mere legislative amendment. The office would strengthen the coherence and quality of Andean law by furnishing an independent legal advisory mechanism to complement judicial collegial deliberation. CJEU experience indicates that advocates general can decisively systematise interpretative criteria, enhance the transparency of legal reasoning, and consolidate regulatory uniformity.

However, establishing the office presents significant political and institutional challenges. First, member states must reach consensus on appointment criteria, the number of posts, and mandate duration. Member states may hold divergent views on the desirability of the institution, and political negotiations will be

[31]As Y. Mendoza Neyra points out, at that time member countries were extremely cautious about their sovereignty [22, p. 207].

[32]The evolution of the Andean Group's economic policies was explained by G. Salgado Peñaherrera [23, p. 30].

[33]Propuestas para el fortalecimiento del sistema andino de resolución de controversias [Electronic resource] // Court of Justice of the Andean Community : website. URL: https://www.tribunalandino.org.ec/wp-content/uploads/2021/01/Resumen_Ejecutivo.pdf (date of access: 08.09.2025).

[34]As A. Toledano Laredo points out, at the time when the TJCA was set up on 5 January 1984 in Quito, the Advocate General did not yet exist [27, p. 810]. 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.

crucial to securing formal acceptance and the perceived independence of future advocates general.

Implementation further demands substantial budgetary and administrative resources. The member states must allocate funding for remuneration, auxiliary staff recruitment, administrative infrastructure, training programmes, and systems for disseminating opinions. They must ensure financial sustainability without compromising the TJCA's functioning or that of other CAN institutional bodies.

Procedural and organisational adaptation constitutes another critical challenge. Incorporation would require amending the TJCA's internal protocols, including case allocation, deliberation stages, judge interaction mechanisms, and opinion structure. The institution must enhance rather than impede proceedings, functioning as a specialised technical complement that enriches judicial work without creating jurisdictional conflicts.

Institutional and cultural acceptance of this office 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 the Andean legal community recognises and values the Advocate General's findings.

The Andean reengineering process – a programme of CAN institutional modernisation designed to rationalise the legal system, optimise institutional functioning, and strengthen integration effectiveness – offers a suitable avenue for establishing an Andean Advocate General.

Legislative implementation pathway. Article 6 of the Treaty of establishing the TJCA explicitly provides the normative procedure for incorporating an Advocate General. This provision empowers the CAMRE, following consultation with the TJCA, to modify the number of judges and create the position of Advocate General. CAMRE determines the number of posts and defines the Advocate General's powers within the TJCA Statute. The provision thus supplies a formal, consensual mechanism for introducing the office, ensuring both the TJCA's participation and the member states' political approval.

Significantly, the procedure for creating the office has undergone substantial modification[35]. The original version (former Art. 7 in fine) provided that the TJCA would submit a «request» – that is, exercise its own initiative – which required ratification by the Commission of the Cartagena agreement through a «unanimous decision». Under the current version (Art. 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 office of the Advocate General to materialise.

Nevertheless, an interpretation wholly excluding TJCA initiative conflicts with Andean integration interests. Article 142 of the current TJCA Statute provides that the court shall fill the office of Advocate General «at the time when the functional and operational needs of the body so require». This implies judicial initiative continues to play a vital role in activating the mechanism. Reasonably, no other CAN organ occupies a better position than the TJCA itself to determine precisely when such needs justify creating the office of Advocate General[36].

Pursuant to this mandate, the first avenue for implementation is to amend the TJCA Statute, currently set out in CAMRE Decision 500. This normative reform must specify essential aspects such as the number of Advocates General, their appointment criteria, the requisite legal qualifications and experience, term duration, and renewal mechanisms. Furthermore, the statute must clearly define the Advocate General's functions and competencies, ensuring functional independence and a complementary procedural role without interfering in judicial deliberation.

In parallel, internal regulations or specific procedural rules will be required to govern the practical operation of the advocates general. These should address case allocation – prioritising matters of particular complexity or legal significance – the preparation of written, public and reasoned opinions, interaction with judges during the deliberation phase, and the systematic publication of opinions to ensure transparency and provide interpretative guidance for legal practitioners and scholars.

To facilitate institutional acceptance, implementation could proceed gradually or through a pilot programme, initially appointing one or two advocates general for selected cases. This phase would allow assessment of the office's impact on jurisprudential coherence and quality, adjustment of internal procedures, and the development of precedents governing relations between judges and advocates general before full implementation.

Finally, incorporating this office requires consensus and coordination amongst member states, who must

[35] As A. R. Mejía Salazar explains, the Treaty establishing the TJCA was reformed by the Amending protocol to the Treaty establishing the TJCA 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 [28, p. 231].

[36] As A. Toledano Laredo points out, 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 [27, p. 815]. 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.

agree on criteria for selection, rotation, and equitable representation. A member state rotation system would ensure all countries participate in appointments, strengthening the position's legitimacy and guaranteeing plural legal perspectives in interpreting Andean law. Establishing training and dissemination programmes is also advisable to ensure judges, lawyers, and scholars fully understand the Advocate General's role and benefit from their opinions. Publishing these opinions will enhance transparency, interpretive uniformity, and the technical quality of the TJCA's jurisprudence.

Criteria for appointment, duties and term of office of the future Andean Advocate General. From an institutional perspective, the appointment mechanism for the future Andean Advocate General must secure both democratic legitimacy and the functional independence of the office. CAMRE, representing the member states, should therefore appoint the Advocate General unanimously. Nominations could originate from member state governments or the TJCA itself. This procedure balances political oversight with judicial autonomy while permitting transparency standards, such as publishing nominations and allowing non-binding academic commentary.

Concerning functions, the Advocate General would issue reasoned opinions in all preliminary rulings, annulment actions, and infringement proceedings. This provides the TJCA with impartial, comprehensive legal analysis. The role would not be confined to procedural assistance: the Advocate General could also recommend revising case-law in the event of contradictions, propose public hearings in matters of particular importance, and catalyse doctrinal dialogue between Andean law and other integration systems. This strengthens their position as guarantors of jurisprudential consistency and systematic evolution.

As to duration of tenure, a six-year term, renewable once, offers the most appropriate balance between institutional continuity and academic renewal. This aligns with the term provided for TJCA judges under Art. 8 of the founding treaty. Excessively short mandates would limit the Advocate General's ability to influence the consolidation of jurisprudential lines, whilst unlimited renewals would risk «institutional capture». Restricting re-appointment to a single renewal ensures that the position retains independence and dynamism whilst avoiding excessive personalisation. Removal should only occur for manifest incapacity or serious misconduct, following Art. 11 and 12 of the TJCA Statute. This safeguards functional autonomy against political pressure.

Potential contributions of the Advocate General to the Court of Justice of the Andean Community. Given the current state of CAN law, particularly the solid body of settled case-law and extensive preliminary ruling jurisprudence, incorporating an Advocate General could generate significant legal, institutional and academic benefits. First, from an interpretative and systematising perspective, the Advocate General would provide detailed, reasoned opinions incorporating general principles of Andean law, relevant precedents and, where appropriate, references to comparative law. This approach would reduce interpretative fragmentation and provide judges and legal practitioners with a coherent framework for resolving complex cases. Consequently, it would enhance predictability and legal certainty within the community system.

Furthermore, regarding legal order unity and coherence, the Advocate General could guarantee criteria harmonisation. This would foster uniform interpretation of Andean law across member states. This function proves particularly significant as the TJCA currently lacks an independent internal analysis mechanism comparable to Advocates General in the CJEU – a limitation hindering case-law systematisation and consolidation.

From a transparency and institutional legitimacy perspective, publishing public opinions would make the TJCA's legal reasoning accessible to national academics, practitioners, and authorities. This accessibility strengthens system trust and confidence in decisions. Simultaneously, procedural efficiency could improve significantly. The Advocate General's intervention would provide thorough preliminary legal analysis, facilitating judicial deliberation and contributing to expedited case resolution.

Moreover, the Advocate General's innovative role holds particular value in the Andean context. In addressing novel or emerging legal issues, the Advocate General could propose technically sound, scholarly solutions that anticipate future challenges, incorporating comparative-law perspectives tailored to the legal reality of the CAN. This role would contribute to Andean Community law's progressive development, enhancing its autonomy and adaptability.

In sum, introducing the Advocate General to the TJCA would enhance the consistency and technical quality of judicial decisions, reinforce institutional legitimacy, and establish an independent legal analysis mechanism currently absent from the system, thereby aligning Andean judicial practice with the standards of leading supranational courts.

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 a doctrinal dialogue framework, 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 participation in specialised forums on integration. This institutional relationship would foster methodological convergence if the

advocates general harmonised the drafting of their opinions to serve as cross-references for both courts. This would not amount to a formal association – since both legal orders are autonomous – but to an academic and doctrinal partnership.

Such cooperation would strengthen North – South judicial dialogue and enhance the visibility of Andean case-law. Several precedents support this possibility. The TJCA and the CJEU already maintain a relatively close institutional relationship, demonstrated through regular academic and judicial seminars and meetings on regional integration[37]. Their case-law also displays notable parallelism, particularly in intellectual property and competition. Significantly, the TJCA has on occasion drawn inspiration from CJEU jurisprudence, despite not being legally bound by it. Advocates general could thus serve as an additional bridge between these two supranational courts.

Advocates general of the CJEU have played a decisive role in judicial dialogue with the Court of the European Free Trade Association (EFTA). Through independent, reasoned legal analysis, they have articulated consistent interpretative criteria applicable to both EU and European Economic Area (EEA) law. Although the EFTA Court has no Advocate General, CJEU advocates general's opinions facilitate consideration of EFTA Court jurisprudence within the EU law interpretative framework. This process ensures methodological convergence and reinforces the principle of homogeneity within the EEA. The functional independence and public nature of their opinions enable CJEU judges to incorporate EFTA Court solutions in a balanced manner, enhancing the coherence and legitimacy of the European legal order. Citations of these opinions in EFTA Court judgments[38] demonstrate their function extends beyond internal analysis. They actively promote judicial dialogue, uniformity, legal certainty, and consistent application of law across both systems [29, p. 122]. Accordingly, establishing the office of Advocate General within the TJCA could foster a comparable academic dialogue, prompting mutual cross-references between CJEU case-law and the opinions of its advocates general, who could in turn cite their Andean counterpart.

Furthermore, a potential decision by the TJCA to introduce the Advocate General would represent a milestone in the institutional and procedural development of global integration systems. At present, only the CJEU – and, at least in its founding legal framework, the TJCA – have contemplated such an office; to the author's knowledge, no other regional integration scheme has undertaken this project. Other regional courts have proposed increasing the number of judges or strengthening institutional structures, but none has specifically envisaged creating an Advocate General. Nevertheless, the jurisprudence of some regional courts occasionally reveals a tendency to address questions of law beyond the immediate subject matter of the dispute, employing techniques such as *obiter dicta*. The EFTA Court[39] exemplifies this approach, having demonstrated considerable interest in developing academic reflections on the implementation of the EEA Agreement[40].

Experience demonstrates, however, that judges are not ideally suited to developing extensive academic reflections, as their essential role remains dispute resolution[41]. Their decisions must therefore remain clear and authoritative to ensure their effectiveness and enforceability. More than 70 years after the CJEU's creation, the choice by the national delegations to establish two distinct offices with separate functions has proved sound: the Advocate General proposes a solution after weighing competing approaches, while the judges issue the final decision. Establishing an Andean Advocate General could set a precedent for other supranational courts[42]. Its incorporation would not only enrich the

[37]Within the framework of interinstitutional cooperation, academic training workshops between the CJEU and the TJCA have been organised 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.

[38]See: EFTA Court judgment of 28 January 2013 in case E-16/11EFTA Surveillance Authority v Iceland («Icesave»), paras 125, 134 ; EFTA judgment of 22 December 2016 in case E-3/16 Ski Taxi SA and others v Norwegian Government, paras 34, 58 ; EFTA judgment of 5 September 2025 in case E-7/24 Fjordkraft AS v Norwegian Government, paras 67, 110.

[39]However, it is particularly significant that the EFTA Court was established without providing for the form of the Advocate General. N. Burrows and R. Greaves, 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 [30, p. 19]. 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.

[40]See: EFTA Court judgment of 13 June 2013 in 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 Art. 103 of the EEA Agreement.

[41]As M. Bobek highlights, the functional differentiation between judges and advocates general, drawing an analogy with the figures of the executioner and the jester at the court of a monarch [13, p. 535]. According to its analysis, while the executioner symbolises the guarantee of government effectiveness, the jester 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 wisely.

[42]In his capacity as former President of the EFTA Court C. Baudenbacher 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 [31, p. 24]. It also considered that this reform would contribute to increasing the legitimacy of the EFTA Court.

TJCA's case-law but also signal the institutional maturity of the Andean integration process, reaffirming the supranational vocation of its legal system.

Establishing the office of Advocate General within the TJCA could also have effects beyond the subregional level, notably in relation to initiatives such as the proposed Mercosur Court of Justice[43]. This institutional innovation would strengthen the legitimacy and coherence of Andean case-law, providing a concrete model for reinforcing the judicial dimension of integration processes. Comparative practice shows that successful mechanisms tend to spread across regional systems, and the Advocate General could likewise be emulated in Mercosur. In doing so, the CAN would not only deepen its own legal system, but would also contribute to South – South inter-institutional dialogue and reinforce supranational adjudication in Latin America, projecting doctrinal and methodological influence of global reach.

Conclusions

This analysis yields several conclusions of academic and institutional relevance.

Firstly, although Andean law expressly provides for the office of Advocate General in the Treaty establishing the TJCA, this provision remains unimplemented. This contrasts with European experience, where the Advocates General have proved essential in making the CJEU's case-law more robust, coherent and legitimate.

Secondly, the limited caseload before the TJCA does not justify inaction. The Advocate General's added value does not depend on caseload, but on the capacity to enrich legal reasoning, uphold the supranational interest, and consolidate more predictable and systematic case-law.

Thirdly, establishing this office would strengthen Andean institutions and could provide a reference point for other supranational courts. It would not only consolidate the TJCA internally, but also position the CAN as an innovator in the comparative law of economic integration.

Fourthly, creating an Advocate General at the TJCA would enable academic and doctrinal dialogue with CJEU advocates general. Although not legally formalised, such a rapprochement would enhance methodological exchange between supranational courts, intensify North – South judicial dialogue, and increase the international visibility of Andean case-law.

In sum, activating the office 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. Although political will, expressed through a CAMRE decision, is necessary for implementation, the TJCA holds the key to its realisation through its power of initiative.

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