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The European Court of Justice

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The Court of Justice of the European Communities

The Court of Justice of the European Communities (ECJ) is the judicial institution of the European Union. It was set up under the European Coal and Steel Community in 1952, is based in Luxembourg and deals with disputes as well as upholding the Treaties of the European Union.

The Court's Main Role

The ECJ ensures that the legislation of the European Union is interpreted and applied in the same way in all EU countries, so that the law is equal for everybody. It ensures, for example, that national courts do not give different rulings on the same issues.

The Court also makes sure that EU Member States and institutions do what the law requires. The Court has the power to settle legal disputes between EU Member States, EU institutions, businesses and individuals.

In summary, the ECJ's jurisdiction includes:

• Ruling on references from national courts on how to interpret Community law;

• Reviews of the legality of the actions of the Council, the European Parliament and the Commission;

• Infringement proceedings brought by the Commission against Member States, when they have failed to uphold Community law;

• The submission of legal opinions on whether or not agreements between the Community and other states and international organisations are compatible with EC treaties; and

• Individual citizens can bring proceedings against EU institutions before the European Court.

Court Officials

The court is composed of one judge per Member State, so that all 25 of the EU's national legal systems are represented. For the sake of efficiency, however, the Court rarely sits as the full court. It usually sits as a 'Grand Chamber' of just 13 judges or in chambers of five or three judges.

In addition, there are eight Advocate Generals whose role is to present publicly and impartially reasoned opinions on cases brought before the Court. France, Germany, Italy, Spain and the United Kingdom each appoint one Advocate General, the others being appointed on a rotation basis from the rest of the Member States.

Judges and Advocate Generals on the ECJ must have the qualifications to be appointed to the highest national courts in their Member States or they may be juris consults (academic lawyers). Their independence must be beyond doubt. This means that once they are appointed, the may not hold any other office of an administrative or political nature and they may not engage in any occupation, paid or unpaid. Judges and Advocate Generals are appointed by joint agreement of the Governments to the Member States. They have a renewable term of six years.

Court Workload

Since its creation in 1952, right at the start of European integration with the creation of the European Coal and Steel Community, the ECJ has had many thousands of cases brought before it. It sits and hears cases throughout the year. In 2004, the Court concluded 665 cases, a significant increase on the 494 cases brought to a close the previous year.

Before 1989, it dealt with cases referred to it by the Commission, Member States or national courts, which needed a ruling on the applications of EU law. But in that year, it also became a “Court of First Instance” – in other words, it was empowered to hear certain categories of cases such as those on competition law, breach of commercial policy or social policy or disputes concerning EU staff regulations. The Court of First Instance helps the Court of Justice to cope with the large number of cases and it offers citizens a better legal protection. Decisions of the Court of First Instance may be appealed to the ECJ. The Court of Justice and the Court of First Instance each have a President chosen by their fellow judges to serve for a renewable term of three years.

A relatively new judicial body, the European Civil Service Tribunal has been set up to adjudicate in disputes between the European Union and its civil service. This tribunal is composed of seven judges and is attached to the Court of First Instance.

Legal Actions

The European Court of Justice upholds the Treaties and ensures that European law is interpreted and applied in the same way across the EU through various forms of legal action. The four most common types of case are:

• References for a preliminary ruling;

• Actions for failure to fulfil an obligation;

• Actions for annulment; and

• Actions for failure to act.

Procedures for Preliminary Ruling

To avoid differences of interpretation of EU law by national courts, the preliminary ruling procedure allows cooperation between national courts and the EJC. If a case comes before a national court that involves an interpretation of an EU law and there is a doubt, it must refer the question to the ECJ. The ECJ will then make a decision as to how the law should be interpreted or applied and will send that decision to the national court who must then apply that decision to the case before it.

Procedures for Failure to Fulfil an Obligation The Commission or a Member State may commence proceedings at the ECJ to force a Member State to comply with EU law. If the ECJ decides that the Member State in question is at fault, the Member State must rectify the situation without delay.

Proceedings for Annulment

A Member State, the Commission, the Council of the European Union or the European Parliament may request the annullment or cancellation of an EU law. This may happen if an EU institution enacts a law that conflicts with EU Treaties. If the ECJ agrees that the disputed law is contrary to the Treaties, it will declare the law null and void. Private individuals may also bring proceedings for annulment to the court – see more below.

Actions for Failure to Act

The Treaty requires the European Parliament, the Council and the Commission to make certain decisions under certain circumstances. If they fail to do so, Member States, other Community institutions and (under certain conditions) individuals or companies can lodge a complaint with the Court so as to have this failure to act officially recorded.

Organisation of the Court’s Work

Cases are submitted to the registry and a specific Judge and Advocate General are assigned to each case. The procedure that follows is in two stages: first a written and then an oral phase. At the first stage, all the parties involved submit written statements and the judge assigned to the case draws up a report summarising these statements and the legal background to the case.

Then comes the second stage – the public hearing. Depending on the importance and complexity of the case, this hearing can take place before a chamber of three, five or thirteen Judges, or before the full Court. At the hearing, the parties’ lawyers put their case before the Judges and the Advocate General, who can question them. The Advocate General then gives his or her opinion, after which the judges deliberate and deliver their judgement.

Since 2003, Advocate Generals are required to give an opinion on a case only if the Court considers that this particular case raises a new point of law. Nor does the Court necessarily follow the Advocate General's opinion.

Private Individuals and the ECJ

Perhaps surprisingly, private individuals are also allowed to bring proceedings to the Court to have an EU law annulled if it affects them directly and individually. This can't be done lightly or frivolously and the individual needs to have legal representation. They do not need to go through their national courts first to bring proceedings to the ECJ. However, there's a stiff penalty if the court decides against the complainant. If they lose the case, they may be liable to pay the costs of both sides. On the other hand, if they win, the EU pays costs and the law will be declared null and void throughout the European Union.

Josep Borrel Fontelles, President of the EP, on the left, and Vassilios Skouris, President of the Court of Justice of the EC

Informations on ECJ Judgments

Judgements of the Court are decided by a majority and pronounced at a public hearing. Dissenting opinions are not expressed. Decisions are published on the day of delivery. Judgments of the ECJ are available online at: http://europa.eu.int/cj/de/content/juris/index.htm

Not to be Mixed Up!

Sometimes, the many expressions at the European level are confusing. Important to note is that the European Court or the Court of the European Union have nothing to do with the European Court of Human Rights (ECHR). The ECHR is situated in Strasbourg, France and is therefore often called 'Strasbourg Court'. This Court has nothing to do with the EU. The ECHR is an institution of the Council of Europe and was created to systematise the hearing of human rights complaints from Council of Europe Member States. The Court's mission is to enforce the Conventions for the protection of human rights and fundamental freedom.

Rule of Law

The European Union is based on the rule of law. This means that everything that it does is derived from treaties, which are agreed on voluntarily and democratically by all Member States. The most important treaties are:

• Treaty of Nice – signed on 26 February 2001, entered into force on 1 February 2003. It dealt mostly with reforming the institutions so that the Union could function efficiently after its enlargement to 25 Member States;

• Treaty of Amsterdam – signed on 2 October 1997, entered into force on 1 May 1999. It amended and renumbered the EU and EC Treaties. Consolidated Versions of the EU and EC Treaties are attached to it. The Treaty of Amsterdam changed the articles of the Treaty of the European Union;

• Treaty of the European Union – which was signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. The so-called "Maastricht Treaty" changed the name of the European Economic Community to simply "the European Community". It also introduced new forms of cooperation between Member State governments – for example on defence, and in the area of Justice and Home Affairs;

• Treaty of Rome – established the European Economic Community (EEC), signed in Rome on 25 March 1957, and entered into force on 1 January 1958. The Treaty establishing the European Atomic Energy Community (Euratom) was signed at the same time and the two are therefore jointly known as the Treaties of Rome; and

• Treaty establishing the European Coal and Steel Community – was signed on the 18 April 1951 in Paris and entered into force on 23 July 1952. It expired on 23 July 2002.

From these treaties (or the EU´s primary law) derive what we call 'secondary law'. This includes three types of legislation:

• Regulations - these become directly part of the national law of the Member States, with no further legal act being required by the Member States;

• Directives - these have to be implemented by national laws; and

• Decisions - these address a specific problem and can apply only to specified states.

Fight for Simplified EU Law

In October last year, the European Commission took steps to modernise EU legislation and cut unnecessary red tape and over-regulation. It presented a three-year programme to simplify the thousands of existing pages of EU legislation (the "acquis communautaire", which is translated

in all EU languages) adopted since 1957. The Commission will repeal, codify, recast or modify 222 basic legislations (all in all more than 1,400 related legal acts) in the next three years. It kicks off with the most heavily regulated sectors, such as cars, waste and construction – and other sectors as foodstuffs (including the notorious EU directive on bananas and cucumbers), cosmetics, pharmaceuticals or services will follow soon. Commission President Josè Manuel Barroso said: “Simpler EU legislation is one of the main elements of our better regulation programme. It will boost the competitiveness of our companies.”

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