

The UK, ECJ and European Court of Human Rights

The European Court of Justice of the European Union

Facts and Figures

- The workload of the ECJ has increased from 79 cases in 1970 to over 2,000 in 2010.
- In 2010, the ECJ passed 95 judgements against member states for failing to fulfil their obligations, including 4 against the UK.
- In 2010, the ECJ completed 574 cases.
- The General Court dealt with 2,463 cases in 2010.

The Supreme Court is the highest court of appeal in the United Kingdom. However, The Court must give effect to directly applicable European Union law, and interpret domestic law so far as possible consistently with European Union law. It must also give effect to the rights contained in the European Convention on Human Rights. *SC must abide by EU law in judging*
Under the Treaty on the Functioning of the European Union (article 267), The Court must refer to the European Court of Justice (ECJ) in Luxembourg any question of European Union law, where the answer is not clear and is necessary for it to give judgment.

In giving effect to rights contained in the European Convention on Human Rights, The Court must take account of any decision of the European Court of Human Rights in Strasbourg. No national court should "without strong reason dilute or weaken the effect of the Strasbourg case law" (Lord Bingham of Cornhill in *R (Ullah) v Special Adjudicator* [2004] UKHL 26).
An individual contending that his Convention rights have not been respected by a decision of a United Kingdom court (including The Supreme Court) against which he has no domestic recourse may bring a claim against the United Kingdom before the European Court of Human Rights.

The Court of Justice of the European Union enforces EU law. In areas covered by EU law, it is the highest court in the EU, outranking national supreme courts. Its judgements can affect both member states and individuals, and it is the referee between member states, institutions and individuals in disputes relating to EU law.

History

first name of the European Union → important thing = coal + steel
The ECJ was set up under the Treaty of Paris (1951) to implement the legal framework of the European Coal and Steel Community (ECSC). When the European Community was set up under the Treaty of Rome (1957), the ECJ became its court. When the European Union was created under the Maastricht Treaty (1992), the ECJ's powers were again expanded to cover the broader legal remit of the EU. The Lisbon Treaty (2007) again extended the ECJ's remit to include, among other areas, Justice and Home Affairs, as well as renaming the courts the 'Court of Justice of the European Union'. The number of cases sent to the ECJ has grown dramatically since the institution was established. As a result, a Court of First Instance (CFI) was set up in 1989 to assist by dividing the workload. The Court of First Instance was renamed the 'General Court' in the Lisbon Treaty. In addition to this the Civil Service Tribunal was set up in 2005 to adjudicate in disputes between the EU and its civil service. All three Courts are based in Luxembourg.

How does the ECJ work?

The Court is made up of one judge from each member state, supported by eight Advocates-General, who deliver legal opinions on each case. All members of the Court are nominated by their national governments and serve for six-year terms. Cases are usually heard before chambers of three to five judges, with full *plenary sessions* only being held for exceptional cases. The Court has a President, currently Vassilios Skouris,

who was elected by all the Court judges in 2003. Unlike the United States Supreme Court, ECJ judges do not serve for life and there is no record of dissenting opinions.

The Court's jurisdiction in EU law falls mainly in: failure of a member state or EU body to fulfil its treaty obligations, or the judicial review of laws passed by EU bodies and preliminary rulings on cases handed up by national courts. The General Court works alongside the ECJ, although it is an independent court. Its primary role is to hear all actions brought by individuals, while the ECJ focuses on institutional disputes and those between member states.

The ECJ makes its rulings binding on nations and citizens via the principles of EU law known as **Direct Effect**, which the court established in the case of Van Gend en Loos vs. Nederlandse in 1963, and **Supremacy**, established in the case of Costa v ENEL in 1964. Through these principles it has gained powers that were previously the reserve of nation states. [For example, in the case of the Commission vs. France (1997), the ECJ ruled that member states have to instruct their national police forces to enforce EU law. In the French case this meant using the police to ensure the free movement of goods.] Through such actions the ECJ subtly changes the relationship between nation states and the EU. In the majority of cases, such rulings favour giving powers to the EU.

Arguments for

- Without the ECJ there would be no way of enforcing the obligations of the European Treaties.
- It allows all European citizens and nations to have equal rights in areas of ECJ jurisdiction.
- Its rulings promote the process of EU integration and protect benefits such as the free movement of goods. → helps EU work together

Arguments Against

- Law is one of the most fundamental aspects of national sovereignty and EU law should not be supreme over national law.

judges of the five in the session disagree

- The ECJ is a slow and cumbersome body that can hinder progress through the time it takes to deliberate cases. → another stage to the legal service
- Imposing European standards on member states challenges a nation's traditional legal practices. → challenging countries' laws own

Quotes

'The [European] Community constitutes a new legal order - the subjects of which comprise not only member states but also their nationals.' - Ruling in Van Gend en Loos versus Nederlandse Administratie de Belastingen, 1963

'Primacy of EU law has existed since we joined the Union [but] European law [only takes precedence where member states have agreed Europe should have a competence] - Tony Blair, British Prime Minister, 2004

'The EU is on the brink of becoming a European Federation by the year 2010. I feel sure that Britain will fall in line.' - Joschka Fischer, German Foreign Minister 1998-2005

Questions

1. Describe the Relationship between the UK Government, UK courts and the ECJ 1
2. Why is this constitutionally controversial?

Taques Delors

1. - UK government creates laws and signs EU treaties
- UK courts interpret UK + EU law
- Courts indicate UK/EU contradictions (legally)
refers back to the UK govt. or Luxembourg.
- ECJ interpret/reviews EU laws + EU laws in respect to UK law.
Direct Effect + Supremacy

What is the European Court Of Human Rights? (13th February 2012)

Facts about ECHR:

- Represents: 800 million people
- Official languages: English and French
- Headquarters: Strasbourg, France
- Upholds European Convention on Human Rights

Judicial independence
Political role
Human rights protection
Civil

It's the Strasbourg-based court that's recently ruled that prisoners should be allowed to vote and that a suspected Al Qaeda terrorist can't be deported from the UK. David Cameron called that last decision "completely unacceptable" and is demanding urgent reform of the European Court of Human Rights. First up, the court has nothing to do with the European Union.

It's part of a totally separate organisation called the Council of Europe, which is made up of 47 European nations. Countries as diverse as Russia, Turkey, Britain, and Armenia are members.

→ non-EU

The Council of Europe was set up after the Second World War following a lot of work in particular by Britain and Winston Churchill. Its focus on human rights came especially in response to the Holocaust when Nazis murdered millions of Jews and other minority groups during World War II. It aims to encourage democracy, integration, human rights, and freedom in Europe.

Every country provides a judge, though their legal training can vary. People can take their own countries to court at the ECHR if they feel their rights have been violated. The court rules on a range of areas - known as articles. Its decisions are legally binding on member nations and the articles cover things like a ban on slavery; peoples' right not to be tortured; and the right for men and women to marry.

Each country sends one judge to the court - but critics argue that there's a problem here because standards of legal training can vary wildly across the continent, leading to claims

some officials are sub-standard. Britain's judge in Strasbourg, Sir Nicolas Bratza QC, currently holds the senior post of President of the Court.

There have been a number of recent rulings that have upset UK Governments. Most recently, in January 2012, the court said that Abu Qatada, once described as "Osama bin Laden's right hand man in Europe," cannot be extradited to Jordan on terrorism charges, because he wouldn't get a fair trial there.

The ECHR protects individuals' right to a fair trial. The court has also threatened action against Britain for not complying with a ruling that said prisoners had to be given the right to vote. Some British politicians are angry they feel they're being told what to do and can't ignore the court.

The UK would face fines if it ignored the rulings. There's also the risk Britain would lose its international standing and reputation. It would be hard for the UK to speak out against international human rights abuses if other countries could point back to how Britain was ignoring its own obligations.

However, Prime Minister David Cameron says reform of the European Court of Human Rights is necessary, because he thinks it wrong the authority of the British Parliament is sometimes being overruled. The PM opposes the call by some of his back-benchers to quit the Council of Europe. The UK is also part of the EU which is committed to joining the Council of Europe as a bloc.

Cameron's #1 priority is to get the UK out of the ECHR
→ the UK is not a member of the ECHR
→ the UK is not a member of the ECHR

Questions

1. How is the constitutional relationship between the UK the ECHR different from the UK's relationship with the ECJ
2. Why has David Cameron suggested the UK's relationship with the ECHR needs reform

Human Rights Act - maybe we don't need the ECHR?