

Introduction

THE EUROPEAN COURT OF JUSTICE

The provision of the treaties making-up the European Union as well as the laws and decisions established thereunder, are applied by either the European Court of Justice (ECJ) or its sister Court, the Court of First Instance (CFI). Both Courts represent the judicial arm of the Community and have played an important role in its development by giving a dynamic interpretation to the provisions of the Treaty. Originally, the ECJ worked alone. However, the Council decided to create the CFI in 1989 to ease its ever-increasing workload.

The ECJ is made-up of fifteen judges and nine advocates general. Both groups are appointed by the member states for a period of six years. The role of the advocates general is to assist the judges of the ECJ by giving their opinion on cases coming before the Court. However, such opinions are only influential in nature and do not bind judges when taking their final decisions. The President of the Court is elected for a period of three years by the judges of the Court. The CFI is also made up of fifteen judges, also appointed for a period of six years. However, this lower Jurisdiction has no advocates general.

One of the principal roles of both Courts is to ensure uniformity in the interpretation and application of EU law. The jurisdiction of the ECJ extends of cases brought by the Community institutions, private individuals, companies, member states and civil servants working for one of the institutions. The CFI also has wide jurisdiction and one of this most important powers is its ability to review decisions taken by the other Community institutions. One of the most important areas coming under this latter heading is its power to rule on decisions adopted by the Commission's competition authority. Judgements of the CFI may be appealed to the ECJ where the appeal concerns a point of law.

The ECJ plays a leading role in ensuring uniformity in the application of EC law throughout the EU by way of a referral mechanism set out in article 234 of the Treaty. Under this provision national courts may refer questions to the ECJ concerning the interpretation to be given to Community law. This mechanism is called a preliminary reference and has proved to be of great importance. Indeed, many of ECJ's most dynamic rulings have been made in connection with an article 234 application. Any national court or tribunal may make a preliminary reference once the requesting forum is considered to perform a judicial function.

The Court will hear an action in the language of the applicant or in the language of the national court in the case of an article 234 referral. Most actions before the ECJ are begun by way of written pleadings in which the parties set out their cases. Once the matter has been joined, i.e. the parties have established the issue at trial, the Court will issue a date for oral hearing, on which date the parties present themselves before the Court and argue the matter orally. Thereafter, the advocate general delivers his opinion which, as we have already noted is only of persuasive value, although it is often followed by the Court. The Court then delivers its judgement, which is translated into the eleven official languages of the Community.

The number of cases before the Court has risen sharply. In 1980 only 130 cases were brought before the ECJ. By January 2000, 896 cases were pending before the ECJ and 732 before the CFI. The result is that the time needed to bring an action before either Court is rising relentlessly. The response of the Courts has been to ask for a change in its rules. Both Courts believe that they need a more streamlined and flexible structure to allow them to respond to their ever-growing workload. In particular, they would like to be given the power to change their own procedural rules. At present, the rules can only be changed by a unanimous decision taken at the level of the Council. They would also like to see special filters installed in order to cut down on their workload. In this regard, they would like national courts to take a more active role in deciding Community law issues. Most commentators seem to agree that some form of change is necessary.