

Presentation of Paper at the International Congress on Current Debates in Social Sciences (CUDES) organized by the Sakarya University in Turkey, 29 September 2020.

oooOOOooo

The Importance of the European Court of Justice

by

Riaan Eksteen* PhD

(Video of Presentation on <https://www.youtube.com/watch?v=THvxTLk2RJU>)

oooOOOooo

The European Court of Justice has maintained its role as chief interpreter of European Union law ever since its establishment. Its mandate has evolved through a series of Treaties. The Treaty of Lisbon is now the definitive treaty governing the EU. It is the pivotal point for European integration.

Judicial independence is a fundamental principle that is safeguarded throughout the EU. Core to the judicial identity of the Union is the ECJ. This Court is one of the most powerful supranational courts in world history. It has an extensive authority that has been clearly achieved and defined. In that process the Court has advanced a major aim of the Union from an early date, namely integration. While it has zealously demonstrated and safeguarded its independence, the ECJ became its main proponent. With the necessary authority the Court extended the parameters and depth of European integration. The ECJ does not define the Union's objectives. It accepts them as defined by the political institutions and the Treaty of Lisbon.

Any discussion of the ECJ requires first of all an understanding of the Court and its place in the structure of the EU. The EU is a political institution. The Court is a complex institution installed in a political system which requires both a legal and a political understanding. Today no student of EU politics can afford to ignore the role of the judiciary — its impact is crucial. In the grand scheme of Union affairs, the ECJ holds a prominent place in the intricate web of EU institutions.

Over six decades the EU has developed into an integrated organisation founded on the constitutional order that the Court has ensured and continued to protect. As guardian of justice the ECJ is guided by the inalienable principle of the rule of law. The ECJ has demonstrated that the rule of law is vital to create and ensure a democratic and equitable Union and to defend its core principles. Throughout its history the Court has held the rule of law to be supreme and the fundamental cornerstone for what the EU stands and wants to promote. The rule of law is, and remains, undeniably sacrosanct for the Union — one EU Foreign Minister once referred to it as the cement for the EU. The ECJ treats the supreme treaty of the EU as the constitutional document of a supranational polity that is based on the rule of law. This concept along with democracy and human rights became dominant in political and legal discourses. That the Court has been able to develop its authority and entrench its influence is perhaps even more relevant today than it was when the ECJ started crafting its own revolution.

Over decades the ECJ has established a framework within which the rule of law is supreme and which has gained respect, recognition and acceptance not only within the EU itself, but, quite significantly, also internationally. The Court has demonstrated that the EU family will be held to account in upholding the rule of law — the indispensable cornerstone of EU democracy and integration as concretised in EU treaties. It is thus the role of the Court to ensure that the rule of law and what flows from its application are respected by and adhered to by all Member States

and their national institutions. Furthermore, not to tolerate any action that will undermine its effectiveness. With that it is ensured that all institutions serve as bastions of democracy and uphold the rule of law which is not a static concept; it is a living instrument.

From the principle of the rule of law flows the other principle that is inextricably part of the Court's existence — judicial review. In any legal system that is based on the rule of law a constituent part is judicial review. The extent to which judicial review is granted and effectively exercised is a key element for the evaluation of any modern legal system. It forms the cornerstone of constitutional law. The EU is no exception. The record of the ECJ shows that the Court has applied judicial review without fail and without fear or favour. Judicial review enables the Court to play a particular important role in this regard whereby it has made certain its authority is seen and recognised. Its treaty interpretation is beyond compare.

The Court has maintained its role as chief interpreter of EU law ever since its establishment. For the ECJ, the purpose of judicial review is not only to determine whether national laws are consistent with European law, but, most importantly, to declare illegal any EU or national law that violates any EU treaty. This resulted in the ECJ establishing the doctrine of EU law supremacy, which in turn created the doctrine of direct effect. Rulings in which these interpretations are rooted have cemented the pillars of the EU's legal order. The political impact of these two maxims has been considerable. They are of profound importance for the EU legal system. They resonate until this day. They are still guiding principles. With them the ECJ laid a firm foundation for a totally new legal order. By employing these two principles the Court entrenched four freedoms of the EU system: freedom of movement of persons, goods, services and capital. These freedoms are now enshrined in the EU as basic tenets. As such they have played a significant role in

the evolution and development of the EU and in the achievement of ambitious common aims among its Member States.

In studying the ECJ and its cases several major themes emerge. One of the more important ones relates to human rights. It lifted the issue of human rights to a global level. It placed fundamental rights at the apex of the EU's edifice. Human rights became the soul of the whole legal order of the EU. In several cases the Court has dealt with crucial aspects of this all-important subject.

The importance of the Court in the political and legal annals of the EU is unmistakable.