

Press release

Twelve things everyone should know about the European Court of Justice

by Hugo Brady

The European Court of Justice is poorly understood by outsiders, despite its many controversial rulings. Based on interviews with EU judges, European and national officials and respected Court-watchers, a new CER report looks beyond the jargon to examine what the ECJ does, how it works and what motivates its most prominent legal minds.

The report tackles the sensitive issue of whether the ECJ has imposed an undemocratic 'government by judges' on Europe, as well as its impact on immigration, foreign policy, criminal justice, social policy and human rights. The report finds that most of the time the Luxembourg-based Court is an enormous asset for national governments. The ECJ has helped to force open European markets, uphold the rule of law across borders and defend the rights of the individual on numerous occasions. Its judges have also proved a calming influence during the eurozone crisis.

But the ECJ also needs reform commensurate with its expanding powers and a rapidly-growing caseload. Minor changes would improve its connectedness to the outside world and the transparency of proceedings before EU judges. These should include the publication of the exact legal arguments at stake in each individual case and a visiting programme for national parliamentarians.

More radically:

- ★ The European Commission wins 90 per cent of its legal battles before the ECJ. The Commission should be allowed to take national governments before their own courts, rather than the ECJ. In most cases, domestic courts in EU member-states have excellent records of applying EU rules correctly. This move would reduce the Court's workload and help to end the perception that the Commission always plays a 'home match' against governments in Luxembourg.
- ★ National constitutional courts should be given the right to object formally to ECJ interpretations of the Union's Charter of Fundamental Rights, if, say, two-thirds of them disagree with the Court. The ECJ would have to take these 'yellow cards' seriously but would not be bound by them. This would open a badly-needed dialogue between the ECJ and the national constitutional courts, which tend to view the Luxembourg Court as an interloper.
- ★ Groups of concerned citizens should be able to petition the ECJ to strike down European regulations and seek restitution, if a particular EU law or decision has proved harmful. This could be done through the EU's Ombudsman or MEPs in the European Parliament, who have the right to bring cases to Luxembourg. A dose of 'popular legalism' might go some way to alleviating concerns about the Union's distance from everyday voters and the sense that the rules governments make in Brussels are irreversible.

About the author:

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Notes for editors:

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