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**The European Court of Justice:  
A Vital Agent for European Legal Integration**

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# The European Court of Justice: A Vital Agent for European Legal Integration

Nathalie Rodriguez<sup>1</sup>

*“There is no future for the people of Europe other than in union.” - Jean Monnet*

## I. Introduction

In the establishment of any political or cooperative entity, there must be a regulatory body that ensures the proper compliance of mandatory duties and rights. For the supranational entity that is the European Union (EU), the regulatory body that serves the function of [legal] oversight is the Court of Justice of the European Union (CJEU). The CJEU is the collective name for the judicial branch of the EU; it encompasses three distinct judicial entities, the highest of which is the European Court of Justice (ECJ), which constitutes the EU’s final court of appeal, and the General Court and the Civil Service Tribunal<sup>2</sup>. However, in this analysis of the European judicial system I will be focusing on the highest entity in the CJEU: European Court of Justice (ECJ), and the direct effects it has had on legal and political integration of the EU. To provide context, the ECJ acts similarly to the Supreme Court of the United States (SCOTUS), serving as the final and supreme decider in terms of legal conflict and controversy. Although, the threats to their respective powers and legitimacy are different; both serve as the primary system of coordinating constitutional review and the constitutionalization of politics<sup>3</sup>.

However, given its similarities to SCOTUS, the ECJ is a uniquely “European” entity in that there is no other legal system quite like it, and this uniquely “European” idea is visible in the current legal and political landscape of the EU. If we begin by observing the structure and individuality of the European judicial system, we find that it is one of the earliest entities of the European Union as it was founded with 1952 the primary goal of justly interpreting and applying EU treaties amongst the member states. To this day, following significant European conflict and economic downturn, the ECJ still considered the highest and only actor in the constitutionalization of the Treaties, transforming them into constitutional entities<sup>4</sup>.

The ECJ is unlike other legal systems in that it is heavily integrated in the structural order of the European Union. The accretion of legal and political supremacy by the European Court of Justice (ECJ) is arguably the clearest manifestation of the transfer of sovereignty from nation-

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<sup>2</sup> “European Union Law: EU Court System.” *LibGuides*, libguides.law.illinois.edu/EU/court-system.

<sup>3</sup> Maican, Ovidiu-Horia. “Usa Supreme Court Of Justice And European Court Of Justice (Comparison), by OvidiuHoria Maican.” *Perspectives of Law and Public Administration*, Societatea De Stiinte Juridice Si Administrative (Society of Juridical and Administrative Sciences), 1 Jan. 1970, ideas.repec.org/a/sja/journal/v6y2017i1p136-141.html.

<sup>4</sup> Baquero Cruz, J, The Changing Constitutional Role of the European Court of Justice, *International Journal of Legal Information*, Volume 34, Issue 2, 2006, p. 223.

states to a supranational institution that has inadvertently led to further regional and legal integration.

## II. Structure and Theory of the ECJ

The early origins of the EJEU, and thus the ECJ, can be traced back to the inherently principle goal of the EU: preventing another war on the European continent. As a means of providing a just interpretation of future laws and treaties, the ECJ was created. The composition of the ECJ consists of twenty-eight judges, one from each of the Member states; and these judges are appointed by the consent of the government of their respective Member states for a term of six years, which can be renewed. The ECJ can sit as a full court, as a Grand Chamber of 13 judges, or in smaller chambers of three to five judges<sup>5</sup>. In most instances, the ECJ sits in smaller chambers. Larger chambers are reserved for special types of cases, such as when a Member State is a party to the litigation.

To expand on the idea of just legal interpretation, the ECJ has a uniquely “European” structure to prevent legal and political controversy. Without the ECJ, the EU would not be the supranational entity with a significant international standing that it is today, as the EU would have never solely furthered legal integration and cooperation to the extent to which the ECJ has. An example of this is seen the uniform legal code set forth by the ECJ that prevents member states from being legally autonomous. This is an integral factor of the ECJ that has united all EU member states under a common cause.

The image of law is that it unites all of the European member states under a common legal system, making it vital for European Integration. The court thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of European Union Law<sup>6</sup>. This ease of maintaining individuality while also uniting under a common European Cause, allowed for further European integration.

## III. Legal Basis and Composition

The legal basis of the ECJ is contained under the Maastricht Treaty, or the Treaty on the European Union, the founding document of the European Union. In this document, there is mention of a “judicial governing body”. It identifies such “judicial governing body” as the Court of Justice of the European Union, and explicitly states its intended founding rights, principles, and structure in Article 19 of the Treaty on the European Union. The inspiration for creating a more united and legally integrated Europe can be seen in the provisions of such article. Refer to Appendix A for complete version of Article 19 (Source: Treaty on the European Union). Amongst

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<sup>5</sup> “European Union Law: EU Court System.” *LibGuides*, libguides.law.illinois.edu/EU/court-system.

<sup>6</sup> “Court of Justice of the European Union.” *European Law Institute*, [www.europeanlawinstitute.eu/membership/institutional-members/court-of-justice-of-the-european-union/](http://www.europeanlawinstitute.eu/membership/institutional-members/court-of-justice-of-the-european-union/).

the sections of Article 19, there is mention of the equal insurance in the interpretation and application of the law in treaties. The court would serve as an impartial mediator in the cases of issues arising between member states to prevent the occurrence of future militaristic or political conflicts, while continuing progress towards European unity and legal integration. In continuing the analysis of Article 19, we can observe in Section 3 that there is mention of the extent to which the ECJ may intervene and interpret Treaties. As per Article 19, Section 3, “The Court of Justice of the European Union shall, per the Treaties: (a) rule on actions brought by a Member State, an institution or a natural or legal person; (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions; (c) rule in other cases provided for in the Treaties<sup>7</sup>.”

The Court of Justice is representative of every EU member state in that it is comprised of 27 judges - one per member state - and eleven advocates general. The role of advocates, in general, is unique to the European Union. The institution of the Advocate General was introduced into the Treaty of Rome under the influence of the French delegation during the preparation of the Treaty. The French were staunchly opposed to allowing individual judges to present dissenting or concurring opinions and instead proposed this be done by an Advocate General, a figure modeled on the French commissaire du government, who offers legal advice to the Conseil d'État on the cases being tried<sup>8</sup>. Initially, there were only two advocate generals, for France and Germany, but today there are eleven, six of these posts are permanently assigned to the larger Member States. Like judges, advocate generals are members of the European Court of Justice; they are appointed, they enjoy immunity, and cannot be removed from office before the end of their six-year term. Unlike judges, however, they only have an advisory role and do not participate in the decision-making on cases<sup>9</sup>.

#### IV. Effects of the ECJ on Regional and Legal Integration

The ECJ has successfully allowed for further European integration by establishing its guiding principles of supremacy and supranationalism. Supranationalism is an international organization, or union, whereby member states transcend national boundaries or interests to share in the decision-making and vote on broader grouping issues<sup>10</sup>. The ECJ has exceptionally demonstrated this principle in EU law's uniformity and respect for EU tradition and treaties. The judges' primary objective is to extend European law and utilize their authority to interpret it for the wellbeing of the entire EU; however, we must realize the extent to which judges represent the wishes and benefits of their state. It must be understood that the judge's power is not solely based on the letter of the EU's treaties but rather depends critically on the continuing acquiescence of national governments<sup>11</sup>. Although each of the individual judges represent their country's ideals, there are restrictions and limits in place to prevent outright bias. As a result, the Court's judicial activism is constrained by the reactions they anticipate from member governments to their

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<sup>7</sup> *Information Guide Court of justice of the European Union*. aei.pitt.edu/74891/1/Court\_of\_Justice.pdf.

<sup>8</sup> *Role of Advocates General at the CJEU - Think*

*Tank*, www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\_BRI%282019%29642237.

<sup>9</sup> *Ibid.*

<sup>10</sup> “Supranational Organizations.” *United Nations Economic and Social Commission for Western Asia*, 15 Jan. 2016, www.unescwa.org/supranational-organizations.

<sup>11</sup> Garrett, Geoffrey. “*The Politics of Legal Integration in the European Union.*” *International Organization*, vol. 49, no. 1, 1995, pp. 171–181. *JSTOR*, www.jstor.org/stable/2706870. Accessed 27 Sept. 2020.

decisions<sup>12</sup>. From the court's and judges' perspective, the best decisions are those that both expand European law and enhance the Court's reputation for constraining powerful member government. The Court creates many opportunities for individuals to participate in the construction of the community legal system, while also contributing to European Integration because of the lack of obstacles faced on integrating.

This idea of oversight is essential in that it establishes checks and balances on the ECJ, allowing it to judge cases about the EU's entirety fairly. The way that the ECJ exerts its autonomy over the EU member states is unique in that it involves a considerable amount of distinctiveness from other EU institutions. The first way this is done is through activism, specifically judicial activism. It is argued that the ECJ has "constitutionalized" the Treaty of Rome as the foundations for the integrated European community and has established itself as a separate and high-standing agency free from politics. This is because policymakers view the law as technical, and the ECJ couches its judgments in apolitical terms<sup>13</sup>. A second approach to how the ECJ exerts its influence and is an integration agent is through legalism. The ECJ operates neutrally and only serves as a system of resolving disputes. This neutrality allows the ECJ to effectively govern and enforce treaties by all the EU member states. This role of impartiality is consistent with the initial founder's view of the ECJ. Lastly, the thought of intergovernmental and multi-level governance positively influences the ECJ's autonomy over the EU. This idea refers to the fact that the judges of the ECJ have the best interests for all the EU member states, and that they wouldn't do something that would violate this, and if they were to do this, other entities check the powers of the ECJ. ECJ rulings reflect the interests of the member states and do not run contrary to them. If they did, member states would hold the power of sanction over the ECJ through the revision of the Treaty, altering the structure and role of the Court<sup>14</sup>.

Another form of oversight the ECJ has implemented and ultimately led to the strengthening and expanding of European integration is preliminary ruling procedure<sup>15</sup>, provided in Article 267 of the Treaty on the Functioning of the European Union (TFEU). The preliminary reference procedure is used when a national court or tribunal refers a question of EU law to the ECJ for preliminary ruling so as to enable the national court, on receiving that ruling, to decide the case before it. This is comparable to the Supreme Court in the U.S. as it challenges national laws. Like the Supreme Court, the preliminary ruling is a final determination of EU law, with no scope for appeal. This additional system of oversight is indicative of the member states' enhanced usage of judicial cooperation used by the national courts to strengthen their role in national legal hierarchy (Kelemen and Schmidt, 2012). It is duty of the Member State courts to determine, in accordance with their discretion, whether a question of Community law needs to be answered in order to reach a decision (Lenz, 1994). This situation worked as an incentive to the national lower courts to refer cases to the ECJ through the preliminary ruling system (Alter, 2001). The law establishment in the EU institutions has the same effect in all circumstances in all Member States and therefore it ensures that integration will not only last, but also be developed.

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<sup>12</sup> *Ibid.*

<sup>13</sup> Parrish, Richard. *Sports Law and Policy in the European Union on JSTOR*, pgs. 80-83, [www.jstor.org/stable/j.ctt155jc4s](http://www.jstor.org/stable/j.ctt155jc4s).

<sup>14</sup> *Ibid.*

<sup>15</sup> SARTORIO, DOMITILLA. *The European Court of Justice: a Catalyst for European Integration*. Royal Holloway University of London, 2015, [www.edlupt.eu/images/Rise/rise-2015-04\\_3.pdf](http://www.edlupt.eu/images/Rise/rise-2015-04_3.pdf).

Such mechanisms of oversight allow the ECJ to be an overarching entity within the European Union.

## V. Conclusion

The European Court of Justice (ECJ) is an example of an agency of the European Union that has been crucial in the present and future advancement of the EU and its uniform legal and political integration. Without a uniform standard, legal code for all EU member states, each state would be autonomous and self-serving. One can even argue that if it were not for the European Court of Justice, the EU would not be supranational entity it is today. Using an extensively detailed foundational treaty, the ECJ has effectively represented the EU member states and the EU; and has allowed for the further growth and expansion of the EU as an international entity.

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