

Interview with Pierre Pescatore: Europe's international courts (Luxembourg, 12 November 2003)

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[Pierre Pescatore] There is a kind of North-South axis in Europe, and along it are three courts: the International Court of Justice in The Hague, the European Court of Justice in Luxembourg and then, further South, the European Court of Human Rights in Strasbourg. People clearly find it difficult to distinguish between them. The European Court of Justice is frequently confused with either the more southerly court, the Court of Human Rights, or the more northerly court, the International Court of Justice. But the three have very different features.

I shall start with the International Court of Justice. It has jurisdiction solely in relations between states, whereas the European Court of Justice has jurisdiction over the Community, but its jurisdiction is much broader because it encompasses both the Member States and the Community institutions, as well as protecting the interests of individuals. Consequently, it is much more deeply integrated with the legal system of the Member States. And then we have the Strasbourg Court: it has a particular mandate, namely to ensure respect for human rights by those countries that have ratified the European Convention on Human Rights — and there are a great number of them now that Europe has extended eastwards. There must be in the region of 50 states now. There were a lot of them even during my time at the Court of Justice.

The functions of the Strasbourg Court and of our own Court of Justice have frequently been confused, particularly since the European Court of Justice has been required to give rulings on the guarantee of fundamental rights in the Community. My view has always been quite clear here: it seems to me that, as a kind of successor in international law, the Community is bound at least by the substantive provisions of the European Convention on Human Rights. Consequently, an action against the Community in the field of human rights can perfectly well be brought before the Strasbourg Court. That actually happened in the case of the European elections, when Gibraltar was excluded. It seemed that the matter could not be referred to the European Court of Justice, as it related to primary law over which it has no jurisdiction, and so someone brought an action before the Strasbourg Court and won. It now appears that the view in Strasbourg is that the Community has definitely taken over the Member States' obligations under the European Convention on Human Rights. Consequently, my own view has always been, and continues to be, that in itself the guarantee of fundamental rights plays only a marginal role within the Community system.

I did a computer search. The results were that, of all that could be said concerning the guarantee of fundamental rights within the Community system, over a 50-year period, only three cases emerged that raised a real problem with possible human rights implications, particularly in terms of competition law. Investigations and searches in the field of competition law may impinge on human rights. No further instance could be found. That is why I believe that it would be much more sensible to acknowledge that there has been this effect of succession and that if an individual complains that his fundamental rights have not been respected by a Community institution, he can bring an action before the Strasbourg Court. And I know that a case is currently pending before that Court concerning the fact that a party may not respond to the Advocate General's opinion in proceedings before the European Court of Justice. The situation is that the Advocate General stands up and has the last word and the parties have no right of reply. That is inconsistent with the adversarial principle. That case is pending, and it is perfectly possible that the Strasbourg Court might rule that the office of Advocate General is not compatible with Article 6 of the European Convention regarding the right to a fair hearing. That could happen, so each of those courts should be left to play its particular role. The Hague Court rules on disputes between states; the Strasbourg Court specialises in human rights; and the Court that lies between them, the European Court of Justice, has a different responsibility — it must ensure respect for Community law.