European courts and old people

GRAHAM P. MULLEY

Elderly Care, University of Leeds, Leeds, UK
Address correspondence to: G. P. Mulley. Tel: (+44) 01937 844023, Email: g.mulley@btinternet.com

Abstract

There are two major European Courts, the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR). The ECJ deals with legal matters, mainly involving the interpretation of EU law and ensuring that the law is applied evenly across all 27 EU member states. The ECHR aims to make certain that civil and political rights of citizens in the 46 member states of the Council of Europe are observed. Most cases involving older citizens are about social policy (such as pension arrangements, equality, age discrimination and mandatory retirement). There have been few cases dealing with patients’ rights, long-term care or housing. Referrals of selected cases involving old people should be considered if their rights are not being protected. In this Commentary, there is an account of how these Courts have evolved, together with guidance on whom to refer, to which Court, and when and how referrals should be made.

Keywords: European Court of Justice, European Court of Human Rights, jurisprudence, human rights, social policy

Historical background

Over 55 million people died in the Second World War, most of them Europeans. The memory of the First World War (‘the war to end all wars’) was still fresh in people’s minds. There was a determination to avoid such carnage again [2]. What is more, the Soviet threat was looming and it made sense to have a legal framework that would be acceptable to all European member states, together with a desire to combat discrimination and to develop a free trade Common Market.

The first stage was the European Coal and Steel Community (ECSC) in 1952, which became an institution when the Treaties of Rome became established [3]. This changed into EURATOM, a combination of the European Economic Community and the European atomic energy community. In 1957 the ECSC became the European Court of Justice (ECJ) and later this title was changed again to the Court of Justice of the European Community. For brevity’s sake, we will refer to this Court as the ECJ throughout this commentary.

The ECJ is the final authority on matters of European Community Law, being the highest Court in the European Union (EU) [3]. Its rulings are binding on all the national Courts. It made an impact on hospital doctors in 2000 by decreeing that if a doctor is on call in hospital, then the time on call should be counted as contracted working hours—whether work has been done or not [4].

Structure of the ECJ

The Court has 27 judges, one from each member state. Each one is appointed by the government of each member state and is an acknowledged as a legally qualified expert. The judges elect the President. There are also eight Advocates General, who deliver opinions on all cases. A Registrar has overall administrative and financial responsibility [3]. The Court sits in Luxembourg. It can take 3 years for cases to be considered—partly because the wording of some laws is poor, partly because of the shortage of translators and also because the judges are very busy. There have been
complaints about the glacial progress of the rulings of the ECJ. Because of the sheer number of cases referred, the ECJ is assisted by the Court of First Instance. The staff budget for the ECJ in 2009 was £238 million. Some nation states resent what they see as interference from Luxembourg in their national legal system.

Role of the ECJ
The Court’s main job is to ensure that EU law is being correctly interpreted and applied [3]:

- To investigate whether a member state has failed to implement EU directives.
- To ascertain if a court has exceeded its authority.
- To take referrals from national courts, clarifying the validity or meaning of EU law.
- To hear appeals against rulings by the lower court, the Court of First Instance.

Referrals of old citizens
Given the slow processing of the Court, is it worth referring cases and if so, how does one do this? Doron [2] has done an original piece of work by analysing cases dealing with the legal rights of old people and providing a useful overview of the work of the ECJ in relation to elder citizens. He argues that the ECJ can potentially do much more to protect the rights of old members and have found that the number of referrals of elders is low and not rising, but that the ECJ often judges in favour of the older citizen (this contrasts with many other referrals). He has found that most cases are about social policy—the complexity of pension arrangements, equality, age discrimination, mandatory retirement and home care. Others are about free movement and social security. There is little or nothing on patients’ rights, long-term care at home or in institutions, or housing. The ECJ is becoming increasingly involved in health policies of member nations [5]. The Court provides notes on guidance for referrals for a preliminary ruling [4]. Early referral is advised. Solicitors can advise on whether a claim is worth pursuing.

The author [2] argues that the ECJ could further advance the human rights of elders in Europe. But should the other European Court be the place for human rights cases? Let us consider the European Court of Human Rights (ECHR), the rulings of which have not been investigated in the article by Doron and others.

The European Court of Human Rights
The ECJ deals predominantly with legal matters, the ECHR with human rights topics. The ECHR was set up by the Council of Europe to enforce the European Convention on Human Rights [6]. The ECHR has jurisdiction over 46 member states of the Council of Europe (i.e., the whole of Europe—not just the EU). It sits in Strasbourg and is a Court of last resort. It considered nearly 15,000 cases between 1959 and 2011. Cases are accepted only when they have been considered by the highest Court in the nation state (such as the House of Lords) [6] and often take 2–3 years to be processed. It is important to apply within 6 months of the conclusion of any UK (or other national) court proceedings. The organisation Liberty provides a useful check list to help in referring a case to the ECHR [7]. The relationship between the two Courts has been described as ‘messy and unreliable’ with some overlap between them—the ECJ has developed its own human rights jurisdiction [6].

Many cases can be settled without recourse to the ECJ or the ECHR and litigation should generally be considered as a last resort in protecting the rights of individuals and groups. However, there is potential for championing elderly people’s human rights by invoking the European Courts. Despite the slow rate of the legal process and its cost and complexity, the European Courts could be a helpful ally in helping to improve elderly health and care and defending their human rights.

References

Received 17 January 2013; accepted in revised form 25 March 2013