

T068 - European court extends its own jurisdiction

The letter by distinguished British lawyers defending the European Court of Justice (5 June 1996) is disingenuous. Upholding what is not in question, namely the need for a strong court, it ignores the basis of the Home Secretary's criticism. This is that by their illegitimate decisions the judges of the ECJ, which is subject to no supervision by any higher court, have unilaterally extended their jurisdiction.

This action is objectionable. The ECJ, aware that its rulings are virtually beyond challenge, has deliberately gone far beyond the literal meaning of the verbal formulas that constrain its powers.

As a parliamentary draftsman and textbook writer, I have spent most of my professional life wrestling with the need, in the interests of democracy, to devise and apply legislative formulas in a way which precisely transmits the legislator's intention. Under the British system, these are scrupulously applied by the court of construction. That is not the ECJ's way.

The Francovich decision, cited by your correspondents, is just one of many examples. By it the ECJ ruled that in certain cases a government which, for whatever reason (good or bad), has failed to implement an EU directive must pay compensation to individual citizens. That tremendously important rule, potentially involving payments out of taxpayers' money totalling many millions of pounds, was never laid down by any EU treaty. It was manufactured out of thin air by the ECJ.

Reproducing a famous dictum by Viscount Simonds when Lord Chancellor (see *Magor & St Mellons RDC v Newport Corpn* [1952] AC 189 at 190), I would describe this long-sustained conduct of the ECJ as 'a naked usurpation of the legislative function under a thin guise of interpretation'. It is time it was stopped.¹

¹ *The Times*, 11 June 1996. (First two paragraphs omitted on publication, being rendered unnecessary by other letters published on the topic.)