

W201 The Individual and the State

European Courts

Do you know the difference between the **ECHR** (European Court of Human Rights) and the **ECJ** (European Court of Justice)?

The **ECHR** sits at Strasbourg and deals with breaches of the European Convention on Human Rights. Countries subscribing to the European Convention (a treaty) are members of the Council of Europe and include many more countries than just the EU. Each state sends one judge to the court and its judgements are binding in international law. Prior to the Human Rights Act 1998 UK courts were not obliged to follow its decisions but they were treated as persuasive in the event of ambiguity. Now the Human Rights Act is in force legislation will be interpreted in accordance with the Convention (and presumably its jurisprudence also) “**so far as it is possible to do so**” Section 3 Human Rights Act 1998.

Under Section 2 of the Human Rights Act 1998 decisions of the ECHR are persuasive authority only. The House of Lords could theoretically decide not to follow the ECHR but has said they will not do this without good reason. In the event of a conflict lower courts must follow the Lords not the ECHR - **Kay v Lambeth** 2006 Lords.

If you want to enforce a human right (and have exhausted any remedy in the UK courts) you go to the ECHR at Strasbourg. The UK government is bound to give effect to any ECHR ruling in international law so normally parliament would be asked by the government to change the law.

If a member country ignores human rights it can be suspended. Russia was threatened with suspension over its human rights record in Chechnya in 2000.

The **ECJ** sits in Luxembourg and is the legal branch of government of the European Union (EU). The EU has 27 members at present (making it a narrower grouping than the Council of Europe). Each member sends one judge to the Court. It enforces EU law. EU law deals with the free movement of people goods and services. EU law is contained in Treaty provisions regulations and directives. Any which are “clear precise and unconditional” have direct effect. (Directives only have vertical direct effect against the state after the date when they should be implemented.) EU law is part of UK law by virtue of Section 2 (1) of the European Communities Act 1972 - a gateway provision – and Section 2 (4) which provides that all UK law “**shall be construed and have effect subject to**” EU law.

The words “**shall be construed**” allow courts to interpret UK legislation to comply with EU law using a purposive approach (**Pickstone v Freemans** 1989 Lords, **Litster v Forth Dry Dock** 1989 Lords, **Webb v EMO** 1993 Lords).

The words “**have effect subject to**” EU obligations under **s.2(1)** enables courts to set aside inconsistent national legislation which conflicts with directly effective EU law (interim injunction preventing government from applying a statute **ex p. Factortame** 1990 Lords).

Under Section 3 of the European Communities Act 1972 UK courts are bound to follow decisions of the ECJ.

UK courts can refer cases to the ECJ for an opinion on a point of EU law (Article 177 now 234). An individual can bring a direct action against a government in a national court but it can only reach the ECJ by an Article 177 (now 234) reference.

In **Factortame No 2** 1991 Lords it was accepted that European law took precedence over national law (in accordance with an ECJ ruling).

Many cases from the ECJ involve obscure trade or employment regulations. In contrast others involve cases of discrimination connected with employment which can affect people’s everyday lives.