
Jos Hoevenaars has taken on an ambitious task. He intends to explain who goes to court in Europe, and why. Considering that there is wide-ranging agreement that the Union was – and
continues to be – built on law, and that the ECJ plays a pivotal role in the functioning of the Union, the question is most relevant. Hoevenaars notes that the influential precedential function of the Court has led scholars to conclude that EU law gives individuals and civil society a stake in the European legal order. There is a growing focus on individual rights, which are considered to enable the empowerment of individuals. This narrative is tested in the author’s study, which provides a sociological analysis of the Court. Hoevenaars asks who the individuals are that can be found at the Court. He focuses on the preliminary reference system. The novelty of his analysis is the focus: he looks at the actors, the litigants at the ECJ. The central research question is formulated clearly from the very beginning: “To what extent can EU law in general and specifically the preliminary reference procedure be considered an opportunity for empowerment and who is (most) likely to use it?” (p. 5). In all the research done on the structure, content and purpose of EU law, such down-to-earth questions have rarely been asked.

It is made clear in the introduction that the aim of the book is to describe Euro-litigation. The study attempts to understand the preliminary reference procedure from the ground up, focusing on the position of the individual within litigation dynamics (p. 13). Although the method is descriptive, the book is not void of critical analysis. Hoevenaars is, above all, engaged in dismantling a myth. He wants to show whether there is truth in the claim that the preliminary reference system is a tool for the empowerment of individuals.

The research is empirical, which here means that Hoevenaars has gathered case material for close scrutiny, and has interviewed parties involved in litigation. The method is qualitative rather than quantitative, because the expressed aim is to consider the material with a microscope, not to seek overarching explanations of possible long-term patterns. This choice of methodology may have its strengths and weaknesses, but it is used coherently throughout the book. The most obvious limitation is that the fairly small number of cases, as well as the narrow focus on the individual litigants, does not allow for general description of any structural trends in the procedure. Whether the process is fair, or inclusive, or even open to individuals, are issues that cannot receive an in-depth answer within the confines of this study. The perspective is micro, and macro-level issues are only touched upon in passing. Nevertheless, the book has a lot to say about litigation at the ECJ. The cases are from the Netherlands but the book still gives a fairly comprehensive picture of the people who go to court in the EU.

The study is divided into four parts. The second and third parts present the empirical study, whereas parts one and four envelope it with theory and discussion. In the second part, the book puts the main question: who goes to court in Europe and why? As may be expected, a simple answer is not provided. Hoevenaars considers various parties and engages in a discussion of their different motives and aims. He also draws up a typology of Dutch litigants. An important distinction that emerges from the analysis is the difference between litigants who are acting in their own interest, compared to those who aim to serve more collective interests. Certain cases are pushed for a preliminary reference procedure solely on the basis of their potential to serve broader interests, and the preliminary reference is sought for transformative aims. By following the development of a few such cases, Hoevenaars illustrates how they are strategically formed.

In Hoevenaars’ material over half of the cases involve active parties that are not the official litigant. Without the close-up that the study offers, the reality of such cases would look rather different because the third parties’ role would remain hidden. In some cases the third party, usually working for a collective interest, is responsible for the legal action to begin in the first place. Hence the author argues that superficial analysis of EU case law may hide the realities of the litigation.

Overall, this book is a valuable addition to scholarship on EU law. Due to its method and purpose, it stands out from the mass of literature on the Union’s legal structure, and much of the existing literature on the preliminary reference system. There is no overabundance of research on Union procedural law. Much of what there is focuses on the legal rules of procedure before the ECJ. By taking a sociological perspective of the Court, Hoevenaars is able to explain some of the realities of litigation from the point of view of the litigants. The work could fairly be associated with the legal realist tradition, if one had to categorize it. The author’s analysis shows that there are various kinds of parties in preliminary reference cases and that they share neither
the same aims nor the same resources. Such cases have the potential to shape the law, and sometimes the stakes are high for everyone involved. When a court makes a reference, the case transforms into a matter of significance for many parties. Member States have advantages because of their procedural position before the Court; they also occasionally employ strategies to avoid preliminary reference proceedings to the ECJ. These findings may not be surprising as such, but the book illustrates them convincingly by looking at what actually happens at the Court, as well as behind the scenes.

The Commission’s strong role also comes clearly to the fore. Hoevenaars quotes studies indicating that the Commission has a high success rate before the Court, and reaffirms this finding. The Commission’s potential success means, among other things, that from a private litigant’s perspective it is advantageous to gain the Commission as an ally. Through his case studies, Hoevenaars shows some of the ways in which litigants have sought to mobilize the Commission to take their side. The book also explains that the Commission is generally hesitant to lend its aid to private parties when their interests go against the interests of the Member States. However, the Commission does occasionally influence developments outside the courtroom. The Commission may, for instance, solicit experts to help a litigating party, as in the Self-Employed Tax Deductions case (C-440/08, Gielen).

Hoevenaars offers some conclusions, of which the most interesting is his attempt to re-position the individual in EU law. The legal system is occasionally described as a field of opportunities for the individual to receive justice especially against Member States. The book demonstrates that from the parties’ point of view, the preliminary reference system is indeed a powerful mechanism. It can provide opportunities for claiming rights, as well as transforming the law in Europe or in Member States. However, the extent to which the system can be harnessed is limited. The emancipatory functions of EU law are thus recognized, and shown to work occasionally, but should not be exaggerated.

Through his micro-analysis, Hoevenaars argues that we should be critical of the preliminary reference procedure as a legal opportunity for individuals to assert their rights. Their ability to use the procedure depends on overcoming structural barriers and can be hampered by the unequal distribution of legal agency. The duration of the process is also a factor that can make the procedure seem more a burden than a possibility from the individual litigant’s point of view. The amount of resources required and the need to employ experts also emerges as a key factor, clearly affecting the picture of the preliminary reference system as an empowering system for everyone. Hoevenaars’ aim is to show that we need to take a closer look at EU litigation. That will show that some of the myths around EU law are false, or at least misguided. He argues that the superficial analysis usually performed on ECJ case law does not show the realities of the litigation. One can agree with this claim, even though it is evident that various levels of analysis are employed for different purposes. It may still be useful to concentrate on the macro, even if the micro is important as well. Both, however, are needed for a full picture, which leads to the conclusion that the book is most certainly a valuable addition to research on EU law. It is likely to be of use to everyone either teaching or studying the field. The lucid presentation, as well as the fluent use of English, make it a pleasurable read.

Susanna Lindroos-Hovinheimo
Helsinki