OUZHOU YITIHUA JINCHENGZHONG OUZHOU FAYUAN DE ZUO YONG

欧洲一体化进程中欧洲法院的作用

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中文提要

第二次世界大战结束至今，以西欧为主的欧洲国家掀起或加入了一场联合欧洲的运动，目的在于实现永久的和平和欧洲的复兴，一般称之为欧洲一体化或欧洲一体化运动。迄今为止，中外学者普遍认为欧洲一体化的动力包括多种合力，它们共同作用的结果自始至终决定了一体化的方向和速度。问题是，在推动欧洲一体化进程的诸多合力中是否应当包括欧洲法院的作用？如果包括，又该如何对它作出合理的评价？本文试图在系统考察和研究的基础上提出自己的一得之见。

欧洲一体化历经了半个多世纪，依次出现了致力于这一运动的欧洲煤钢共同体、欧洲共同体和欧洲联盟等国际组织。在这些国际组织中，先后产生了一个或几个司法机构。出于这样的原因，关于欧洲一体化主要司法机构的表述一直比较混乱。本书沿用了中外比较流行的“欧洲法院”这一概念，只是对其内涵重新作了界定。在本书中，所谓欧洲法院指欧洲煤钢共同体、欧洲共同体和欧洲联盟等国际组织中的主要司法机构，随着欧洲一体化的进展，它分别经历了欧洲煤钢共同体法院、欧洲共同体法院和欧洲联盟法院三个不同的历史阶段。

欧洲一体化的发展表明，欧洲法院的存续和欧洲一体化的进程两者之间存在十分清晰的辨证互动关系。一方面，欧洲法院本身即是欧洲一体化的产物，欧洲一体化对欧洲法院的变迁产生了

巨大影响，另一方面，欧洲法院又在很大程度上推动了欧洲一体化的纵深进展。这种辨证互动关系决定了在欧洲一体化的进程中欧洲法院的作用。纵观欧洲法院建立以来的积极作为，它显然带有司法主动主义的倾向。欧共体/欧盟采取三权分立体制，通过严格的立法程序创造出一套新的法律体系。欧洲法院行使司法权以维持欧共体/欧盟的法律秩序。法官在解释法律时常常逾越条约范围，不顾条约文义及立法原意而根据欧共体/欧盟的需要作出判断，创立新的法律原则，其价值观有明显的政策立场。但是，在一定历史条件下，欧洲法院的所作所为则蒙上了司法自制主义的色彩。它的判例法并非总是一以贯之，法官推翻先前的判决也不乏其例。欧洲法院表现出的貌似矛盾的两种倾向正是欧洲法院和欧洲一体化两者之间辨证互动关系的生动反映。欧洲一体化的深度和广度从根本上制约着欧洲法院作用的力度和程度，欧洲法院作用的发挥不能脱离一体化的实际。本书认为，在欧洲一体化的进程中，欧洲法院逾越了国际法院和国内法院的传统职能，发挥了一种非典型的作用。在很大程度上，欧洲法院的司法活动和具有前瞻性的造法工作乃至决策功能推动了欧洲一体化的进展。然而，欧洲一体化的历史和现实不但限定了欧洲法院作用的具体内容，而且使之在不同的历史阶段表现出鲜明的特点。

本书拟将《尼斯条约》生效前欧洲法院对欧洲一体化的作用分成三个阶段来加以考察：即欧洲煤钢共同体法院的作用（1952—1958）、欧洲共同体法院的作用（1958—1993）和欧洲联盟法院的作用（1993—2003）。最后，本书试对《尼斯条约》进行述评并对欧洲法院的前景作出展望。

在第一个历史阶段，现代意义上的欧洲一体化运动真正启动，欧洲法院的作用开始显现。1951 年 4 月 18 日，致力于战后重建的西欧六国签订了建立欧洲煤钢共同体的《巴黎条约》。1952 年

12 月,欧洲煤钢共同体法院正式成立,这是是欧洲法院的第一个形态。尽管欧洲煤钢共同体法院从一开始就具有区别于其他国际司法组织的特征,它只不过是以一种针对欧洲一体化政治机构的司法救济手段而出现的。因此,欧洲煤钢共同体法院不是欧洲一体化的决策机构,它所拥有的权限非常狭小,成员国并不希望它在以后的一体化过程中产生重要的影响。但是,《巴黎条约》的签署者显然没有预见到,欧洲煤钢共同体法院将会为捍卫他们开始建造的欧洲大厦发挥独特的作用。这一时期,欧洲煤钢共同体法院对欧洲一体化的贡献主要有两点,一是对尚未成形的共同体法进行司法解释,二是弥补了共同体法律救济制度的缺陷。通过这些行动,欧洲煤钢共同体法院既奠定了自己在共同体机构中的地位,同时也开始加入了促进欧洲一体化的过程。

在第二个历史阶段,欧洲一体化运动继续在艰难曲折中向前迈进,欧洲法院的作用的发挥进入黄金时期。1957 年 3 月,西欧六国签订了《罗马条约》,建立了欧洲经济共同体和欧洲原子能共同体,同时,它们还签订了《关于欧洲共同体(复数)的某些共同机构的公约》,该公约规定三个共同体共同拥有一个共同的法院,即通称的欧洲共同体法院,这是欧洲法院历史上的第一次改革,也是欧洲法院的第二个形态。欧洲共同体及其关于法院的议定书规定了欧洲共同体法院的组成及其管辖权。欧洲共同体法院在人员组成、法官和检察官的任职资格以及诉讼程序等方面基本上沿袭了欧洲煤钢共同体法院的模式,法院的职责也一如既往,但关于法院管辖权的规定则更加详细具体,表现出欧洲经济共同体和欧洲原子能共同体条约无论在内容还是在形式上都更加成熟。1986 年的《单一欧洲法案》虽然将欧洲政治合作首次纳入了法律机制,但排除了欧共体法院在欧洲政治合作范围内的管辖权,使得欧共体法院首次享有部分条约的解释权。此外,《单一欧洲法案》修改了

《罗马条约》关于法院组织的规定，决定在欧共体法院之下设立欧洲初审法院，这是欧洲法院历史上的第二次改革。这一时期，欧洲共同体法院对欧洲一体化的作用可以归结为两个方面：一是欧洲共同体法院通过其创造性的司法解释完成了欧洲共同体法律体系的宪法化，使欧共体法真正成为一种比较完整的法律体系；二是欧洲共同体法院在特定的环境下发挥了司法、造法乃至决策等"非典型"的功能，从而成为共同市场建设的动力之一。

在第三个历史阶段，欧洲一体化运动取得了令人瞩目的成就，欧洲法院的作用有"弱化"的趋势，但继续推动了一体化的进展。1992 年 2 月 7 日，欧共体 12 个成员国在荷兰的马斯特里赫特签订了建立欧洲联盟的《马斯特里赫特条约》，据此，欧洲共同体升格为欧洲联盟，欧洲一体化由旧的经济联合走向政治、经济的多元一体化联合。1997 年 10 月 2 日，欧盟 15 个成员国签订了《阿姆斯特丹条约》，该条约在保留《马斯特里赫特条约》战略目标的基础上，又补充了新的条款和内容。欧洲联盟建立后，欧共体法院转变为欧洲联盟法院（简称欧盟法院），这是欧洲法院的第三个形态。由于欧洲联盟是成员国经过激烈的讨价还价而达成妥协的结果，欧盟基础条约企图通过欧盟的立法机构来推进欧洲一体化，欧盟法院的管辖权在欧盟体制下发生了新的变化。一方面，在成员国已经放弃其国家主权的领域，欧盟法院继续享有完全的、强制性的司法管辖权，另一方面，欧盟法院的管辖权形式上扩展到三个共同体以外的领域，涉及司法和内务合作、更紧密的合作（closer cooperation）和基本人权保护等内容。总体上看，欧盟法院的权限虽然较欧共体法院有所扩张，但主要局限于第一支柱的范围内，而且，欧盟法院在新近一体化的领域实现其管辖权面临种种困难和挑战。面临欧洲化过程（Europeanization process）中日益彰显的矛盾和分歧，欧盟法院在大多数活动中表现出一种不断加强的司法自制主义的倾

向。然而,这并不表明欧盟法院从根本上偏离了欧共体法院的路线,甚至转向了司法自制主义。实际上,欧盟法院仍然是欧洲一体化的动力之一,只不过在新的形式下,欧盟法院推动一体化和挑战成员国的利益日益谨慎。这一时期,欧盟法院对欧洲一体化的作用主要有两点:一是参与了欧洲公民权的建构,二是就 WTO 协定在欧共体内的适用进行了裁决。

2001 年 2 月, 欧盟 15 国签署了《尼斯条约》,2003 年 2 月 1 日,随着爱尔兰的批准,《尼斯条约》正式生效。《尼斯条约》最重要的内容有两个方面:一是对现行的欧盟各机构进行了不同程度的改革,二是对欧盟的决策体制作了重大调整,它们对于欧盟的扩大都是必不可少的。《尼斯条约》对欧洲法院进行了相当广泛的改革,涉及到欧洲法院管辖权的划分和它的具体运作方式等诸多方面,这是欧洲法院历史上的第三次改革。虽然目前对这种改革的效果判断为时尚早,不过从欧洲法院过去的司法实践来推断,在未来的欧洲一体化进程中, 欧洲法院将会一如既往地发挥其特殊的司法功能而成为欧盟建设的开拓者。

Abstract

European nations, mainly the western ones, have started or participated in a movement to make themselves unified ever since the end of World War II, aiming at a permanent peace and European restoration, which is generally called European integration. The scholars of both China and abroad up to now commonly agree to the idea that European integration consists of various kinds of driving forces, which acted interactively and continuously upon the direction and rhythm of the integration. A question occurs, however, that whether the function of European Court takes up one part in theses forces? If positive, how to have a reasonable assessment of its function? This dissertation aims to propose a personal evaluation on it after a systematic observation and research.

The process of European integration has witnessed over half a century during which emerged some international organizations contributing to the integration such as European Carl and Steel Community (ECSC), European Community (EC) and European Union (EU), from which originated several judicial organizations that produced a confusion of the names of these organization. In the dissertation European Court, a comparatively popular one, is employed but with a confine to its containment, that is, it refers to the

major judicial mechanisms in the international organizations like ECSC, EC and EU. With the advancement of European integration, it has successively been named Court of ECSC, Court of EC and Court of EU in three different stages.

The advancement of European integration manifests that there exists a distinctive interrelation and interaction between the existence and development of European Court and the progress of European integration. On one hand, European Court is a product of European integration which exerted a tremendous impact on the developments of the Court, on the other hand, European Court to a large scale promoted European integration to a continuous advancement. It is this interactive relation that decides on the function of European Court in the process of European integration. Looking into the favourable function of European Court since its foundation, we can perceive an obvious tendency of its judicial activism. In EC and EU a system of three powers' separation is executed, and a new series of legal system was established through a strict judicial procedures. A judicial power was practiced by European Court to maintain a legal order among the member nations, while the judges once in while surpass the contracts' limitations in interpreting the laws, and they turned a deaf ear to contracts' implications and the judicial intentions but make their own judgments in terms of the needs of EC and EU to initiate some new legal principles; obviously they kept a value of a policy inclination. Under certain circumstances, however, what EU did is really blurred with judicial restraint, for example, its case law is not consistent, and it is not rear for judges to retreat the previous judgment. These two seemingly contradictory tendencies manifested

in the practice of European Court well reflect the interactive relationship between European Court and European integration, that is, the depth and breath of European integration decides fundamentally on the degree and scale of the Court's function, while the function of European Court cannot be fulfilled beyond the advancement of European integration. The dissertation holds that European Court has surpassed the traditional functions of both international and domestic courts and played a non-typical role. To a large scale, judicial practice of European Court and its pioneering work of legal initiative as far as to its policy-making function promoted the advancement of European integration. The developments and reality of European integration not only limited the substantial functions of European Court but also decided its distinctive features at different time.

This dissertation aims to study European Court's function in European integration in the three stages before the Treaty of Nice came to effect, that is, the function of the Court of ECSC (1952-1958), the function of the Court of EC (1958-1993) and the function of the Court of EU (1993-2003) and concludes with some comments on the Treaty of Nice and some predictions on the prospects of European Court.

In the first stage, European integration as a movement got started in real sense and European Court began to take on its function. On April 18, 1951, six western European nations aiming at the restoration after the war signed Paris Treaty, declaring the foundation of ECSC; in December of 1952, Court of ECSC was founded, which was the preliminary state of European Court. Court of ECSC, from its

beginning, manifested some features different from those of some international judicial organizations because it came into being originally as a judicial relief means for the political constructions of European integration, as a result, Court of ECSC was not a policy-making body, which enjoyed very limited powers, and moreover, its member nations did not expect it to have an important impact on the progress of European integration. All the sides in Paris Treaty did not foresee, however, that the Court of ECSC would play a unique role in strengthening the huge European building they had established. During the time the major contributions the Court of ECSC made for European integration can be summarized as: first, it provided some judicial interpretations for the immature community laws, and second, it compensated for the defects of the community legal relief system. The Court, with these efforts, firmly laid its position in the Community organizations and made itself involved in the progress of European integration.

In the second historical stage, European integration continued its advancement through difficulties and setbacks, but European Court experienced a golden period of its functional manifestation. In March of 1953, Rome Treaty was signed by the six western European nations, declaring the foundation of both European Economic Community (EEC) and European Atomic Energy Community (EAEC), and simultaneously they signed Convention on Some Common Organizations in European Communities, which provides that the three communities shared a common court, that is, European Community Court (ECC). This was the first reform in the history of European Court and it remained the second state of the Court.

European Community and its protocol on the Court provided the making and jurisdiction of European Community Court. In general, ECC took after the pattern of the Court of ECSC in many aspects such as the locations of its personnel, qualifications for judges and prosecutors, and the lawsuit procedures, moreover, the Court took the same responsibilities as before, but the stipulations on some jurisdictions were more specific, which indicated that they were more mature than those of the Court of EEC and the Court of EAEC either in the form and in the content. The Single European Act passed in 1986 for the first time put the political cooperation into legal mechanism but excluded the jurisdiction of European Community Court in the arena of European political cooperation, whereas provided that ECC enjoyed interpretation rights on some treaties in the Community. Furthermore, the Single European Act also modified the stipulations on the court organizations in Paris Treaty, and provided that a Preliminary European Court be set up under ECC, which remained the second reform in the developments of European Court. In this stage, the roles ECC played in European integration can be summarized into two aspects as follows: on one hand, ECC successfully constitutionalized its legal system by way of some initiative judicial interpretations that rendered ECC laws a substantial legal system; on the other, it played some non-typical roles such as jurisdiction, judicial creation and even policy making, which acted as a motive force in the construction of the common market.

In the third stage, European integration made striking accomplishments but the function of European Court seemed to have taken on a "minimizing" tendency even though it continued its

promotion for European integration. On February 7 of 1992, The Treaty of Maastricht was signed by the 12 member nations of EEC, which marked the foundation of European Union (EU) and consequently it replaced EEC, and from then on, European integration shifted its previous economical unification to the integration of politics, economics and other fields. On October 2, 1997, the Treaty of Amsterdam was signed by the 15 member nations of European Union and some new provisions and articles were added to the Treaty of Maastricht while its strategic goals were still preserved. After the foundation of EU, ECC was transferred into European Union Court (EUC), which was the third state of European Court. Because the birth of European Union was a compromise achieved through a hard bargain between the member nations, some attempts were implied in the fundamental treaty of the Union to promote the European integration through the judicial mechanism of the Union, as a result, the jurisdiction of the European Court was modified under EU. On one hand, in those spheres that the member nations have abstained state sovereignty , the Court proceeded to enjoy a full and compulsory jurisdiction, on the other hand, its jurisdiction extended the domains beyond the three communities, which involved the fields of judicial practice, domestic cooperation, closer cooperation, protection of basic human rights and so on. On the whole, European Court's rights are extended compared with those of ECC but they are only limited to the first aspect of the previous fields, moreover, EUC faced various kinds of troubles and challenges in Europeanization process in executing its jurisdictions. Faced with more and more conspicuous contradictions and diversities, EUC has manifested a tendency of strengthening

judicial restraint, but it does not indicate that EUC has fundamentally strayed away from the course set by ECC and even deteriorated into judicial arbitrariness. As a matter of fact, EUC still remains one of motives for European integration but only in the new circumstances is EUC is more cautious in promoting the integration and challenging the interests of its member nations. In this stage, the major functions of EUC can be summarized into two points as follows: to participate in the reconstruction of civil rights and to have the adjudications for the application of WTO agreements in EEC.

In February of 2001,the Treaty of Nice was signed by the 15 member nations, and on February 1, 2003, the Treaty came into effect after being legally approved by Ireland. The most important content lies in two aspects, that is, to have a respective reform of the present organization of EU and to have a large scale of adjustment of EU's policy making mechanism, which are essential to the extension of EU. In terms of the Treaty of Nice, an extensive reform has been carried out in European Court, which involves many aspects such as division of jurisdiction of European Court , the manipulation of these jurisdiction and so on. This is the third reform in the developments of European Court. It is still far to assess the effects of this reform but it is proper to infer, taking the past judicial practice of European Court, that it will become a pioneer in the process of European integration by way of playing a unique judicial role continuously.

序

半个多世纪以来，欧洲法院在欧洲一体化的曲折进程中无疑发挥了重要作用。细而析之，欧洲法院因行使着仲裁的司法职能，从而成为《巴黎条约》和《罗马条约》以来的基础条约及其精神的有力捍卫者，这一点受到了中外学者从不同的角度和视野发表的论著充分的肯定，但在欧洲法院的动力作用上，也就是说能否把欧洲法院称作欧洲一体化的“发动机”或“引擎”之一上，学者们的看法相去甚大。对于这样一个重大问题，方国学的这部著作做了专门的研究，并提出了并非简单的肯定结论。因此，本书的出版应该视为在这一问题中乃至欧洲一体化研究中的有益探讨。作者于2001年考入南京大学欧盟研究所攻读博士学位不久，就决定选取欧洲法院与欧洲一体化的辩证关系作为自己的学位论文选题。在三年的时间里，他广泛搜集了大量材料，如期完成了论文写作和答辩，并且获得了国内有关专家的一致好评。展现在读者面前的这本专著就是国学在其博士论文的基础上修改增删而成的。在本书付梓之际，作为指导老师，我倍感欣慰，以此序酬之。

此书有很多特色，但就其总体而言，首先应当视为系统研究欧共体/欧盟制度和欧洲治理的又一本力作。作为区域一体化组织的一种典型，欧盟区别于其他区域性国际组织的一个鲜明特点就是其机构的制度化。早在欧洲一体化之初，为了欧洲煤钢共同体的顺利运作，《巴黎条约》在三权分立的基础上设立了一整套机

构。这套机构包括决策机构、仲裁和监督机构两大类，前者由高级机构（High Authority）、特别部长理事会（The Special Council of Ministers）和共同议会（Common Assembly）组成，后者指欧洲煤钢共同体的法院（Court of Justice）。特别部长理事会和高级机构相当于立法机构，享有主要的立法权；而高级机构还享有最高行政执行权的类似政府的机构；共同议会仅有咨询权和监督权；司法权为作为司法机构的欧洲法院所专司。

这样的制度在以后的《单一欧洲法》、《马约》、《阿约》和《尼约》等基础条约中屡经修正，但基本框架和基本原则不变，并演变为现今欧盟的五大机构，即欧盟理事会、欧委会、欧洲议会、欧洲法院和审计院。法学界往往把这五大机构再分为政治性机构和非政治性机构两大类：前者包括欧委会、理事会和欧洲议会；后者是欧洲法院和审计院。

对欧共体/欧盟机构的研究无疑对是欧洲一体化研究领域中的重要组成部分，因为欧共体/欧盟的运作有赖于一系列的机构。作者在重点论述欧洲法院结构和职能演变的过程中，呈现了从欧共体到欧盟的整个发展进程，其中不乏作者对某些问题的独到见解。

当然，相对于整个欧洲一体化的进程研究来说，对欧共体/欧盟各机构的专门研究尚有待加强。在这样的背景下，本书对欧洲法院进行的专门研究并对它的功能提出了有创见的诠释，其学术意义不言而喻。

分析和研究欧洲法院的功能无疑具有重要的意义。这不仅是因为欧洲法院在对人和对物的管辖权方面的广泛性是其他任何司法机构所望尘莫及，在国际司法体制中独树一帜，而且有利于我们认识欧共体/欧盟作为一个区域性国际组织的独特性，即在不同的决策领域中以不同的程度兼具政府间合作和超国家性的