

Handout N^o 6

Principle of Supremacy

1. dichotomy of EC law and national law: which to prevail?
2. directly effective international law:
 - incorporation into domestic law (monist ↔ dualist)
 - hierarchical order foreseen in the constitution
3. Development in EC law
 - a) *van Gend en Loos* (case 26/62): conflict between Art. 25 EC and *earlier* Dutch law → “Community constitutes new legal order... for whose benefits the States have limited their sovereign rights”
 - b) *Costa v ENEL* (case 6/64): conflict between EC Treaty and *subsequent* Italian law
 - c) *Internationale Handelsgesellschaft mbH* (case 11/70): conflict between EC regulation and German constitution
 - d) reasoning of the ECJ: *nature* and *purposes* of the Community → States
 - freely signed the Treaty,
 - agreed to Art. 10 EC,
 - created institutions with law making power
 - institutionalised control
 - e) *Simmenthal* (case 106/77): conflict between Art. 28 EC and *subsequent* Italian law → EC law takes priority over national law at once
 - f) *Factortame* (C-213/89): conflict between *putativ* Community right and British law → legal protection must be ensured (even if under national law no remedy is foreseen)

Principle of direct applicability/direct effects

greatest possible level of protection before national courts

1. Doctrine of direct effect
 - a) Direct applicability ↔ direct effect (giving rise to rights and obligations which individuals may enforce before their national courts)
 - b) Treaty provisions
 - *van Gend en Loos*
 - *Alfons L"utticke* (case 57/65): not only ‘standstill’ provisions but also positive obligations
 - all basic principles relating to free movement of goods and persons, competition law, discrimination on the grounds of sex and nationality
 - criteria:
 - sufficiently clear and precise
 - unconditional
 - leave no room for the exercise of discretion in implementation
 - vertically (*van Gend*) and horizontally (*Defrenne* (case 43/75))
 - c) Regulations
 - d) Directives
 - direct effect: *Grad v Finanzamt Traunstein* (case 9/70) directive required amendments in VAT, decision required application to transport from date of entry into force; *van Duyn v Home Office* (case 41/74): right of entry refused, Dir 64/221 allows only for reasons of public policy (based exclusively on personal conduct, here the reason was arguably the conduct of Scientology), public security and public health
 - no direct effect before expiration of time-limit for implementation
 - vertical

- horizontal

2. Principle of indirect effect

- “instead” of horizontal direct effect: MS (and all its authorities) are required by Art. 10 EC to take all appropriate measures to ensure fulfilment of their Community obligations → courts are obliged to interpret national law in such a way as to ensure that the objectives of the directive are achieved;
- Limit:
 - where such an interpretation leads to the imposition on an individual of an obligation laid down by a directive which has not been transposed
 - where it has the effect of determining or aggravating on the basis of the directive and in the absence of a law the liability (in criminal law) of persons who act in contravention of that directive's provisions

3. State liability

- *Francovich v Italy* (C-6 & 9/90)
 - directive involves rights conferred on individuals
 - content of those rights can be identified on the basis of the provisions of the directive
 - causal link between the State's failure and the damage suffered by the affected persons
- applicable to all domestic acts and omissions, legislative, executive and judicial, in breach of Community law
 - the rule of law infringed must be intended to confer rights on individuals
 - the breach must be sufficiently serious (manifest and grave excess of discretion limits)
 - causal link between the breach of the obligation resting on the State and the damage sustained by injured parties

National Courts

1. effectiveness
2. equivalence (non-discrimination)

General principles of law

‘Unwritten’ law of the Community – serving as aid to interpretation, to challenge Community action, to challenge MS action, to support a claim for damages – based on Art. 230, 288(2), 220 EC

1. Fundamental human rights

- *Internationale Handelsgesellschaft mbH*: FHR protected under EC law
- ECJ adheres to ECHR in the context of a matter of EC law and considers the EUCFR as indicative

2. Administrative justice

- a) Proportionality
- b) Legal certainty

- principle of legitimate expectations (*August T'opfer & Co. GmbH* (case 112/77)) requires
 - encouragement of a reasonable expectation
 - reliance on that expectation
 - loss resulting from the breach of that expectation
- principle of non-retroactivity (distinguish judgments and legislative acts)

c) Procedural rights

- right to a hearing
- duty to give reasons
- right to due process
- protection against self-incrimination

3. Equality

4. Subsidiarity