

Introduction to the International Dimensions of Law





RUB

Chapter 4 | Lesson 3

European Law | Supremacy & Direct Effect of EU Law & Member State Liability

Supremacy of EU Law

Flaminio Costa/ENEL, ECJ 15.7.1964, Case 6/64, [1964] ECR 1251

Facts:

- Italian Republic: production and distribution of electricity was nationalised
- ENEL
- Flaminio Costel: lawyer and shareholder of public limited company Edisonvolta saw Artt 102 TEC (now Art 177 TFEU), 93 (108), 53 (repealed) and 37 (37) infringed by the nationalisation law

Decision of the CJEU (preliminary reference procedure (Art 267 TFEU))

- Definition of the relationship between EU law and the national law of the Member States:
 - **Primary** and **secondary EU law** form an autonomous legal order, which enjoys **supremacy** of application also over later enacted national law

Direct Effect of EU Law

Van Gend&Loos, ECJ 5.2.1963, Case 26/62, [1963] ECR 1.

Facts:

- Company Van Gend&Loos imported urea-formaldehyde from Germany to Netherlands in Sept. 1960 and were charged with **8%** ad valorem duty (Einfuhrzoll) according to the “Tariefbesluit” (in force since March 1960)
- Within the “Tariefbesluit 1947“, which was applicable when the EEC (now TFEU) entered into force, only a tariff of **3%** was permitted
- Van Gend&Loos saw Art 12 TEC (now Art 30 TFEU) infringed because of the increased ad valorem duty with the “Tariefbesluit 1960“
- Art 12 TEC prohibited the levying of new custom duties and the increase of old tariff rates between Member States

Direct Effect of EU Law

Van Gend&Loos, ECJ 5.2.1963, Case 26/62, [1963] ECR 1.

Decision of the ECJ (preliminary reference procedure (Art 267 TFEU))

- The judgment of the ECJ established the principle of direct effect of EU law
- The provisions of EU law which establish rights and duties for private persons do not have to be implemented specially by the Member States in respect of national law
 - **rights are directly enforceable in national law**
 - **Conditions for the direct applicability of EU law**
 - the provision must grant an unconditional, precisely formulated right to the individual
 - the provision must not grant a sphere of discretion to the Member State applying it
 - the provision does not necessitate any further implementation measures by a Member State

Direct Effect

- ‘effet utile’ of EU law – ‘effet-utile-interpretation’
- teleological method of interpretation
- the ECJ interprets EU law so as for it to develop the greatest possible effect in the attainment of the aims envisaged by the ECJ

Member State Liability

Francovich, ECJ 19.11.1991, combined Cases C-6/90 and C-9/90, [1991] ECR I-5357

Facts:

- The Italian Government was obliged to implement EU Directive 80/987 about the minimum protection of employees in the event of insolvency of their employer until Oct. 1983
- Directive 80/987: Member States should ensure that unsatisfied claims of employees to remuneration payment could also be satisfied after the insolvency of the employer
- Italy had not implement the Directive in time

Member State Liability

Francovich, ECJ 19.11.1991, combined Cases C-6/90 and C-9/90, [1991] ECR I-5357

Facts:

- Andrea Francovich successfully proceeded against the company he had worked for because of outstanding salary payments, but the execution was without success due to the inability of the company to pay
- Francovich brought an action against the Italian state for the establishment of one of the guarantees for his salary named in the Directive, alternatively for compensation

Member State Liability

Francovich, ECJ 19.11.1991, combined Cases C-6/90 and C-9/90, [1991] ECR I-5357

Decision of the ECJ (preliminary reference procedure (Art 267 TFEU))

- A Member State can not rely on non-implementation against an individual whereas an individual can
- A Directive which intends to confer unconditional and precise rights upon individuals develops **direct effect** against Member State (**vertical direct effect**) but not against private persons (no horizontal direct effect)

Member State Liability

Francovich, ECJ 19.11.1991, combined Cases C-6/90 and C-9/90, [1991] ECR I-5357

Decision of the ECJ (preliminary reference procedure (Art 267 TFEU))

- The vertical direct effect of a Directive against a Member State results in the **liability for damage**, caused by the non-implementation of a Directive in breach of the Member State's Duty to implement it
- Right to compensation for damages enforceable against a non-implementing Member State accrues to an individual whose rights are supposed to be granted by a Directive

Member State Liability

Francovich, ECJ 19.11.1991, combined Cases C-6/90 and C-9/90, [1991] ECR I-5357

Decision of the ECJ (preliminary reference procedure (Art 267 TFEU))

- **Conditions for the claim of Member State liability:**

- Directive intends to grant rights for individuals
- These rights must be precisely definable
- Causal connection between the non-implementation of a Member State and the damage suffered by the individual
- The infringement of EU law by a Member State must present a 'qualified breach' (evident infringement)