The Contribution of the ECJ to the European Legal Order

The Court of Justice has contributed significantly to the Community legal system. Its creative case-law has remedied any shortcomings in the basic Treaties by supplementing and clarifying the provisions thereof.

Acknowledgment of basic principles, such as the direct applicability of Community law

Van Gend en Loos (1963)

The Dutch administrative tribunal, in a reference under Article 267 TFEU (ex. 234 EC), asked the ECJ whether Article 38 TEU (ex. 25) of the Treaty has an internal effect. In other words, whether the nationals of Member States may, on the basis of the Article in question, enforce rights which the judge should protect. The ECJ held that the Treaty is more than an agreement creating only mutual obligation between the contracting parties. Union law not only imposes obligations on individuals but also confers on them legal rights. These rights would arise not only when an explicit grant is made by the Treaty, but also through obligations imposed, in a clearly defined manner, by the Treaty on individuals as well as on Member States and the Community institutions. The text of Article 38 TEU sets out a clear and unconditional prohibition, which is not a duty to act but a duty not to act. This duty is imposed without any power on the States to subordinate its application to a positive act of internal law. The prohibition is perfectly suited by its nature to produce direct effects in the legal relations between the Member States and their citizens.

The primacy of Community law over national law

Costa v. ENEL (1964)

This case involved an alleged conflict between a number of Treaty provisions and an Italian statute nationalizing the electricity company of which the defendant, Signor Costa, was a shareholder, but here the Italian law was later in time than the Treaty provision. On being brought before the Milan tribunal for refusing to pay his bill, Signor Costa argued that the company was in breach of EU law. The defendants argued that the Italian Act nationalizing the electricity company was later in time than the Italian Ratification Act, that incorporating EU law, and therefore took priority. The Court referred the matter to the ECJ. The ECJ concluded that the reception, within the laws of each Member State, of the provisions having a Union source, and more particularly of the terms and of the Spirit of the Treaty, has as a corollary the impossibility, for the Member State, to give preference to a unilateral and subsequent measure against a legal order accepted by them on a basis of reciprocity. Such measure cannot be inconsistent with that legal system. The executive force of Union law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objective of the Treaty. The obligations undertaken under the Treaty establishing the Union would not be unconditional, but merely contingent, if they could be called into question by subsequent legislative acts of the signatories. It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be over-ridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Union itself being called into question. The transfer, by Member States, from their national orders in favour of the Union order of rights and obligations arising from the Treaty, carries with it a clear limitation of their sovereign rights upon which a subsequent unilateral law incompatible with the aims of the Union cannot prevail.

This case is a significant contribution to European integration. On the basis of these

principles, individuals may invoke Union law before national courts and seek the non-application of any national law which is contrary to Union law.

Since at the time there was no written catalog of fundamental rights in the Treaties, and in order to safeguard the primacy and uniform application of Union law, the Court was obliged to establish a system for the protection of those rights on the basis of the general principles of Union law. Starting from the constitutional traditions common to the Member States and international instruments for the protection of human rights, the Court ensured the safeguarding of fundamental rights in the field of application of Union law.

Stauder Case (1969)

Here the applicant was claiming entitlement to cheap butter provided under a Community scheme to persons in receipt of welfare benefits. He was required under German law to divulge his name and address on the coupon which he had to present to obtain the butter. He challenged this law as representing a violation of his fundamental human rights (equal treatment). The ECJ, on reference from the German Court on the validity of the relevant Community did not require the recipient's name to appear on the coupon. This interpretation, the Court held, contained nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.

Internationale Handelsgesellscheft case (1970)

Here the ECJ went further, it asserted that respect for fundamental rights forms an integral part of the general principles of law protected by the Court – such rights are inspired by the constitutional traditions common to Member States. One point to note

here is that the ECJ is not comparing EC law with national law but with the principles of international law which are embodied in varying degrees in the national constitutions of Member States. A failure to make the distinction between general principles of international law which the Community legal order respects and national law proper could erode the doctrine of supremacy of Community law vis-à-vis national law. This judgment can be taken as implying that only rights arising from traditions common to the Member States can constitute part of EC law.

To ensure the complete effectiveness of Community legislation and the protection of the rights of individuals, the Court has declared that the national authorities are financially liable, where a breach of Community law is attributable to the Member States, and must pay damages.

Francovich Case (1991)

A group of ex-employees were seeking arrears of wages following their employers' insolvency. Their claim was based on an EC directive which required Member States to provide for a guarantee fund to ensure the payment of employees' arrears of wages in the event of their employers' insolvency. They thus took action against the state basing one of their arguments on the fact that Italy was in breach of its Community obligations in failing to implement the directive. The Court held that where, as here, a State had failed to implement an EC directive it would be obliged to compensate individuals for damage suffered as a result of its failure to implement the directive if certain conditions were satisfied.

The Court of Justice has had to take decisions on the demarcation of the Community's powers and responsibilities. In its judgment of 31 March 1971 in the

Commission/Council case concerning an international agreement on road transport (ERTA 22/70), the Court established the principles of parallel internal and external powers, according to which the power to define a common policy implies the power to conclude international agreements in this sphere. The system of internal Community measures is linked to its external relations (Opinion 1/76 of 26 April 1977). The Court hereby acknowledges the principle of the evolutionary nature of Community powers and responsibilities in external relations.

As well as the extensive interpretation of provisions relating to Community powers and responsibilities, the Court monitors the exercise of powers by the Member States under the Treaties. Accordingly, the way in which the States use their powers to derogate from the provisions relating to freedom of movement are subject to other Treaty rules and to legal scrutiny (judgment of 28 October 1975 in the Rutili case, 36/75) and cannot be used to reserve certain policy areas to the jurisdiction of the Member States.

Simmenthal (1978)

In this case it was held that every national court must apply Community law in its entirety and must accordingly set aside any provision of national law which may conflict with it.

This case-law has strengthened the European Union

The importance of the Court's case-law as a source of law is also evident in relation to Community policies. The Court had to define the concepts in the Treaty establishing the European Community (EC) such as 'measures having equivalent effect' to quantitative restrictions on imports (Article 28) or 'concerted practices' between undertakings and the 'dominant position' within the common market in the field of competition

(Articles 81 and 82).

With regard to the free movement of goods, the Court has extended the scope of Article 28. It deemed that 'measures having equivalent effect' to quantitative restrictions on imports to be 'any measure capable of directly or indirectly, actually or potentially hindering intra-Community trade' (judgment of 11 July 1974 in the Dassonville case, 8/74). In the Cassis de Dijon case (judgment of 20 February 1979 in the Rewe-Zentral case, 120/78), the Court established the principle whereby 'goods lawfully manufactured and marketed in a Member State', in accordance with the fair and traditional rules and methods of production of that country, should be admitted into any other Member State without restriction (principle of mutual recognition of national regulations). Nevertheless, the Court excluded from the scope of Article 28 any national law prohibiting resale at a loss, providing that it was applicable to all relevant traders operating in the national territory and providing that it was applicable to the marketing of national products and of those from other Member States (judgment of 24 November 1993 in the Keck and Mithouard case, C–267 et C–268/91).

The judgment of 4 December 1974 in the Van Duyn case (41/74) confirmed the direct applicability of free movement of workers (Article 39 of the EC Treaty). In the Bosman ruling of 15 December 1995 (C–415/93), the Court found that free movement of workers constituted a fundamental freedom in the Community system and declared that Article 39 was contradictory to the application of rules laid down by sports associations whereby football clubs might field only a limited number of professional players who were citizens of other Member States.

In the judgment of 21 June 1974 in the Reyners case (2/74), the Court ruled that

Article 43 of the EC Treaty (right of establishment) included a ban on discrimination on grounds of nationality which might be directly invoked by individuals. The direct effect of freedom to provide services was acknowledged by the Court in the judgment of 3 December 1974 in the Van Binsbergen case (33/74).

Article 141 of the EC Treaty (principle of equal pay for male and female workers for equal work) was interpreted as a provision, conferring on individuals rights which they might invoke directly before the courts (judgment of 8 April 1976 in the Defrenne case, 43/75).

Since it was established, the Court of Justice's overall activity has been nothing but positive. Its case-law has enabled integration to proceed, whilst safeguarding the 'acquis communautaire' (the body of Community legislation adopted to date) and making the European Community into a 'Community based on the rule of law' (judgment of 23 April 1986 in the Les Verts case, 294/83).