Leading Cases of the CJEU
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Part II
General principles of EU law I

Structure of Colloquium II

- General Principles of EU law
- Relevant case law of the CJEU
- Discussion session
Part II
General principles of EU law I

Structure

- Direct effect
- Supremacy
- Implementation
- Pre-emption
- Exterritoriality
Part II
General principles of EU law II

Outline

- Conferral of powers
- Sincere cooperation
Part II
General principles of EU law

Outline

- Historical background
- Definition
- Legal basis
- Relevant case law
Principle of Direct Effect of EU law

- Doctrine of direct effect applies to all binding EU law
  - EU Treaties, Charters of Fundamental Rights, general principles, secondary legislation, and international agreements
- Provisions of EU law – sufficiently clear, precise & justiciable – can be invoked and relied on by individual before national courts
  - No need for interposition of domestic legislation to give to such EU provisions the force of law
Principle of Direct Effect of EU law

- Relevant cases pertaining to direct applicability of EU law
  - Case 26/62, *Van Gend en Loos*
  - Case 57/65, *Lütticke II*
  - Case 28/67, *Molkerei-Zentrale*
  - Case 13/68, *Salgoil*
Facts

- Van Gen en Loos imported a quantity of products (P) from DE to NL
- It was charged with an import duty due to passage of P from DE to NL
- Dutch authorities re-classified the imported chemicals based on new findings related to their qualities
- The effect of placing P under another heading was the rate of customs duties increased
- A Dutch importer of P who found the imposition of higher customs duties was contrary to Art. 12 EEC Treaty (i.e., direct effect)

Art. 12 of the EEC Treaty

“Member States shall refrain from introducing, as between themselves, any new customs duties on importation or exportation or charges with equivalent effect and from increasing such duties or charges as they apply in their commercial relations with each other”
Case 26/62, Case Van Gend en Loos v Netherlandse Administratie der Belastingen

Question
May a stand-still provision (like Art. 12) of the EEC Treaty create rights which a citizen of a MS may rely on a before a national court?

Reasoning of the Court
Yes!

- EEC constitutes a new legal order of international law benefiting the MS having limited their sovereign rights albeit within limited fields
- Community law imposes obligations & confer rights on MS and nationals
- Such rights arise are granted not only by the Treaty but also by reason of obligations which the Treaty imposes upon the MS, individuals and Institutions
- If, with the entry into force of the EEC Treaty the same P is charged with a high rate of duty & reclassified under a more highly taxed heading - illegal under Art. 12 thereof
Part II
Principle of Supremacy EU law

➢ No formal basis in the EU Treaties
➢ Developed through the case law of the CJEU
➢ National courts are must give immediate effect to EU law of whatever rank
➢ Any EU provision prevails over any provision of national law including the national constitutions
Case 6/64, Costa v ENEL

Article 101(1) of the Rome Treaty
Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the common market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

Art. 102 of the Rome Treaty
Where there is reason to fear that the adoption or amendment of a provision laid down by law, regulation or administrative action may cause distortion within the meaning of Article 101, a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall recommend to the States concerned such measures as may be appropriate to avoid the distortion in question.

Facts

- Plaintiff, a shareholder in a privately owned Italian electricity company considered the Italian State’s nationalisation of electricity industry contrary to Italian Constitution and EEC Treaty
- Conflict arose from the plaintiff’s non-payment of an electricity bill
- Under the Italian Constitution only the Constitutional Court could rule on matters pertaining to constitutionality of Italian laws
- Italian Constitutional Court found the plaintiff’s claim adding that the Italian judge would have to apply the national laws even though it might have been found to be contrary to Rome Treaty
Case 6/64, Costa v ENEL

**Question**
Can a national statute, adopted subsequent to membership of the EC (now, Union) take precedence over the laws of the Community (now, Union)?

**Reasoning of the Court**

No!

- EEC Treaty has created its own legal systems. EEC Treaty has became an integral part of the national legal systems. National courts are obliged to apply it.
- EU law had therefore to be accorded primacy flowing from the agreement made by the Member States when they joined the Community (now, Union).
- Member States transferred powers to the Community Institutions ‘real powers stemming from a limitations of sovereignty’, hence, limited their sovereign rights.
Principle of Supremacy of EU law

- Relevant cases
  - Case 106/77, The Italian Finance Administrative v Simmenthal
  - Case 149/79, Officier van Justitie v van Haaster
  - Case 149/79, Commission v Belgium
Implementation of EU law

- Member States are primarily responsible for the implementation of the binding acts of the Institutions of the Union

- Article 291(1) TFEU
  “Member States shall adopt all measures of national law necessary to implement legally binding Union acts”
Case 102/79, Commission v Belgium

Article 189(3) EEC Treaty
“A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods”

Facts
- Belgium failed to implement timely twelve Art. 10 Directive whilst it did not consider this as a breach of Community law (Art. 189 (3) EEC Treaty.
- Barrier to intra-Community trade aimed to being removed by the Directive did not exist in Belgium due to an administrative practice imposing less stricter conditions on import than the directives
- Belgium government considered all eleven directives to be of direct application, hence, no need to issue national legal acts for implementation
Case 102/79, Commission v Belgium

Reasoning of the Court

Yes!

- Each Directive has provision requiring MS to take appropriate implementing measures under national law
- ‘Appropriate’ is meant that national laws of the same legal force must be adopted.
- Direct effect of Directives recognised by the Court in specific circumstances is a minimum guarantee – cannot justify a MS non-implementation of a Directive
Implied Powers
Case 22/70, Commission v Council

**Art. 210 EEC Treaty**
“The Community `shall have legal personality”

**Facts**
- The Commission requested the annulment of Council’s proceedings on the negotiations & conclusion by the MS of the Draft European Road Transport Agreement (ERTA)
- The COM claimed that the power to negotiate & conclude international agreements relevant to the transport sector was vested in the Union not the MS
- *Treaty included no express provision to that effect*
Reasoning of the Court

Yes!

- Powers of external relations arise not only from an explicit attribution by a specific provision of the Treaty.

- Such powers may equally flow from other Treaty provisions & from measures adopted by Institutions of the Union within the framework of those provisions.

Question

May an external relations power be implied in so far as an an internal power exists & has been applied by the Institutions of the Union?
Methods of interpretation
Case 246/80, *Broekmeulen v Huisarts Registratie Commissie*

**Facts**
- Broekmeulen, a Dutch national, educated in Belgium (B) was entitled to practice general medicine in B based on his medical diploma alone.
- General Practitioners Registration Committee in NL declined to register his medical diploma.
- Under Dutch law, registration of Dutch nationals was dependant upon a year’s training in general medicine.
- National of other MSs holding recognised diploma are not subject to the same conditions.

**Legal basis**
Directive 75/362 concerning the mutual recognition of diplomas.
Question
Is reverse discrimination legal in these circumstances?

Reasoning of the Court

No!

- Right of establishment & freedom to provide services - fundamental to the system set up by the Community - would not be fully realised if MS were able to deny the benefit of provisions of Union law to those other nationals having availed themselves of one or more of these rights & who have attained the professional qualifications mentioned in Directive 75/62
Art. 4(3) TEU
The Duty of Sincere Cooperation

‘The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union’

  e.g. Case C-45/07, Commission v. Greece; C-246/07, Commission v. Sweden, etc.).
Institutional Framework of the European Union

### EU Institutional Framework

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Preliminary Ruling
Article 267 TFEU: ex Article 234 TEC, ex Article 177 Treaty of Rome)

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;
(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

→ Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

→ Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

→ If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay
Preliminary Ruling

Article 267 TFEU establishes a preliminary ruling mechanism which aims to avoid divergences in the interpretation of EU law that the national courts have to apply and seeks to ensure this application by making available to national courts a means of eliminating difficulties which may be occasioned by the requirement of giving EU law its full effect within the framework of the judicial systems of the EU Member States.

Case C-104/10 Patrick Kelly v Uni. College Dublin, para. 60
(reference for a preliminary ruling)
Preliminary Ruling

The system established by Article 267 TFEU with a view to ensuring that European Union law is *interpreted uniformly* throughout the Member States *institutes direct cooperation* between the CJEU and the national courts using a procedure which is completely independent of any initiative by the parties

*Case C 210/06, Cartesio, para. 90*
Preliminary Ruling

1. Raising a question of EU law
   → Under National Procedural Autonomy, it is only required for national procedural law to treat EU law the same as national law (principle of equivalence) and to make EU legal rights not excessively difficult to exercise (principle of effectiveness).

   → Who raises the question before the CJEU? The party(ies) to a dispute, the national authority, or the CJEU?

   ➔ Van Schijndel and Van Veen
Preliminary Ruling

- Raising a question of EU law

  - Is mainly the responsibility of national courts in assessing the question when it is raised. It is not up to the parties, not up to the CJEU.
    - Case C-312/93, Peterbroeck

  - Hence if a national authority with proper legal authority finds that it needs to refer a question, this will not be reviewed by the CJEU
    - Case 26/62 Van Gend

  - Likewise, the facts of the case will not be assessed by the Court of justice
    - Case 6/64 Costa

  - The question raised must be one that is justiciable before the courts and one raised by the national authority
    - Case C 40/08 Asturcom.

  - CJEU does not answer an hypothetical question.
Preliminary Ruling

➢ Raising a question of EU law

“Moreover, the Court has already held that the system established by Article 267 TFEU with a view to ensuring that EU law is interpreted uniformly throughout the Member States institutes direct cooperation between the CJEU and the national courts by means of a procedure which is completely independent of any initiative by the parties.

In that regard, the system of references for a preliminary ruling is based on a dialogue between one Court and another, the initiation of which depends entirely on the national court’s assessment as to whether a reference is appropriate and necessary”

Case C-104/10 Patrick Kelly
Preliminary Ruling

➢ Referable questions

→ Whether the Member State body is referring a question that is relevant to the outcome of the dispute at issue.
→ ‘Acte clair’ doctrine, first articulated in Case C-283/81, CILFIT

→ Questions of EU law, can concern all acts of EU law:
  → The EU Treaties (i.e., TEU & TFEU)
  → Legislative acts (EU Regulation, EU Directive, EU Decision)
  → Non-legislative acts (Delegated and implementing acts)
  → International treaties, with the Council decisions that ratified them
  → Recommendations (Case 322/88 Grimaldi)
Preliminary Ruling

➢ Referable questions

As preliminary rulings must concern the interpretation or the validity of EU, *can such a procedure concern the compliance of national law with EU law?*
Preliminary Ruling

Referable questions

→ The CJEU has repeatedly maintained a clear distinction between respective roles of EU courts and national courts. Supposedly, it focusses on (the interpretation and the validity of) EU law, and does not consider national law

→ BUT

→ The CJEU seeks to provide guidance, and often goes very far in that respect