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The Role of The European Court of Justice in Creation of the Principles of Supremacy and Direct Effect

1. Introduction

In 1957 six original Member States, France, Germany, Italy, Belgium, The Netherlands and Luxemburg signed the Treat of Rome, which created the European Economic Community (EEC). On the same day the countries signed second Rome Treaty, which was the beginning of Euratom.

The previous step to create European Union was the Treaty of Paris in 1951 which formed European Coal and Steel Community (ECSC)¹.

The Treaty of Rome made institutions which created legal rules concerning particular branches. The most important institution, formed in 1957, is European Court of Justice. It consists of 27 judges and 8 Advocates General, all of whom are prominent personalities from Member States:

“The Judges and Advocates General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized

¹ See: Weatherill S., *Cases and Materials on EC Law*.

competence; they shall be appointed by common accord of the governments of the Member States for a term of six years.”².

The main aim of European Court of Justice is to control the legality of communions acts, to assume uniform interpretation of acts and to apply the communions law. The scope of duties and the meaning of the court was not contained in the treaty of Rome but it evolved through decisions about the disputes of EC law can, and in some cases is obliged, direct itself to European Court of Justice with prejudicial questions. To understand the meaning of European Court we need to refer to the primary rules laid down in practice. The most important one is the direct effect of EC law in Member States. The authority of the principle is the case of “Van Gend en Loos”³ from 1963. The direct effect means that in some circumstances an individual can directly rely on provisions of European Community law in National Courts. The second important rule is a principle of supremacy which means that in the face of a conflict EC law is prior to national law. The authority of this principle is the case of “Costa v. ENEL”⁴ from 1964. One of last principles which had crucial impact on the role of the ECJ is state liability laid down by the case of Francovich⁵ in 1991. The principle means that if a Member State breaches European Law is to obliged to pay damages to the subject that was damaged. In next paragraphs I will try to analyse the principles and their role in the development of European Court of Justice.

² Treaty of European Union, art. 223 (ex. art. 167).

³ Case 26/62 Van Gend en Loos v. Nederlandse Administratie der Belastingen [1963].

⁴ Case 6/64 Costa v Ente Nazionale per l’Energia Elettrica (ENEL) [1964].

⁵ Case C-6/90 & C-9/90 Francovich and Others v. Italy [1991].

2. Direct Effect

As I have mentioned before, the main principle which governs EC law was not directly expressed in the Rome Treaty, but was created in practice.

The following concepts are connected with the principal of the direct effect:

- horizontal direct effect
- vertical direct effect

Besides explaining the concepts I will try to answer questions about which EC law provisions have the direct effect. The authority of the principle of the direct effect is a case of Van Gend en Loos. The plaintiff who was an importer had not paid a custom. Member States between which he transported the goods increased the tariff which was against EC law. Van Gend en Loos sought to rely on article 12 (now 25) of the EC Treaty. The article prevented such customs between Member States which belong to the European Economic Community. Finally, European Court of Justice stated that individuals can directly rely on EC law in national courts:

“The Community constitutes a new legal order of international law for the benefit of which States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a

clearly, defined way upon individuals as well as upon the Member States and upon the institutions of the Community.”⁶.

This case was an example of the vertical direct effect, which means that individuals can fall back on rights deriving from EC law only in case of a dispute with a Member State. Another example, however, the one of the horizontal direct effect is when an individual relies on EC law provisions against the other individual. This concept was created by the *Marshall I*⁷ case. Ms Marshall was dismissed from her post at Southampton Area Health Authority because she was over 60. It was a breach of EC Directive 76/207⁸. The plaintiff thought that the directive created rights for individuals to rely on this provision between other individuals (horizontal direct effect). The final statement of the ECJ was that the Southampton Area Health Authority was a public institution and in this case the directive has the vertical direct effect. On the other hand, the Court pronounced judgment that there is the possibility of the horizontal direct effect of the directive:

“...according to article 189, the binding nature of a Directive, which constitutes the basis for the possibility of relying on the Directive before national courts, exists only in relation to ‘each Member State to which it is addressed’. It follows that a Directive may not of itself impose obligations on an individual and that a provision of a Directive may not be relied upon as such against such a person”⁹.

⁶ Case *Van Gend en Loos* ..., *op. cit.*, at 12.

⁷ Case 152/84 *Marshall v. Southampton AHA* [1986].

⁸ Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

⁹ Case *Marshall* ..., *op. cit.*, at 48.

We can state that in some circumstances directives have the direct effect. These conditions are:

- directive must be clear, precise and unconditional,
- implementation's date must have passed – it was in Ratti¹⁰ case,
- a defendant must be a public body or an “emanation of the state”.

The Van Duyn v. Home Office¹¹ case is also very important in the development of the principle of the direct effect. It concerns the fact that British Home Office refused Ms Van Duyn to enter the territory of UK as she was a member of the Scientology Organization. The claimant stated that this was against the Directive 64/222¹² article 3 as a Member State can refuse permission only on the grounds of public policy, public security or public health. Although she lost the case, the Court said:

“... confers on individuals rights which are enforced by them in national courts of a Member State and which the national court must protect.”¹³

Regulations are EC law provisions which should have automatic direct effect without the need for further implementation. Article 249 (ex. 189) says that a regulation is:

“general application ... binding in its entirety and directly applicable in all Member States”¹⁴.

¹⁰ Case 148/78 *Pubblico Ministero v. Ratti* [1979].

¹¹ Case 41/74 *Van Duyn v. Home Office* [1974].

¹² Council Directive 64/222/EEC of 25 February 1964 laying down detailed provisions concerning transitional measures in respect of activities in wholesale trade and activities of intermediaries in commerce, industry and small craft industries.

¹³ Case *Van Duyn*..., op. cit.

According to Josephine Steiner and Lorne Woods:

“Regulations are thus by their very nature apt to produce direct effect.”¹⁵.

Conditions of the direct effect regulations are that they must confer right upon an individual and just like directives they must be clear, precise and unconditional (Van Gend criteria). The lat EC law provision which I would like to analyse are Treaty Articles. According to Van Gend en Loos case Treaty Articles have vertical direct effect. Another case I would like to mention in the case of Defrenne v. Sabena¹⁶, in which the claimant was an air hostess in Sabena Compay. She brought an action against her employer as she felt discriminated because the company’s male employees received higher wages. The airline company was in breach of article 119 (now 141 EC). All in all, Ms Defrenne won the case and the final statement of ECJ was that the case had horizontal direct effect of Treaty Articles:

“... the prohibition on discrimination between men and women applies not only to the action of public authorities but also extends to all agreements which are intended to regular paid labour collectively, as well to contract between individuals”¹⁷.

To sum up, Treaty articles have both vertical (Van Gend case) and horizontal (Defrenne) direct effect. Moreover, the rule of state liability, which was laid down in 1991 by Frankovich v. Italy¹⁸ case, is connected with the principal of the direct effect. In this case ECJ

¹⁴ Treaty of European Union, art. 249 (ex. art. 189).

¹⁵ Steinem J., Woods L., *Textbook on EC Law*,

¹⁶ Case 43/75 Defrenne v. Sabena [1976].

¹⁷ Case Defrenne, op. cit.

decided that a Member State must be responsible for non-implementation of a Directive. Italy did not implement the Directive for the protection of employees in the case of the employer's insolvency. This negligence caused that Ms Frankovich could not directly rely on the EC provision. European Court of Justice stated that if a Directive is laid down ascertainably from the text of the Directive rights for individuals and there is the connection between the claimant's damages and the non-implementation a Member State must pay compensation. Concluding about the principle of the direct effect, I should mention that the indirect effect of the Directive, which was formulated in Van Colson¹⁹ case, also occurs. The indirect effect means that national courts are under the obligation to interpret the national law in a way to make the EC law more efficient.

3. Supremacy

The second principle, which has influence on the meaning and development of European Court of Justice is supremacy. In the event of conflict between the national law and EC law, the second one is supreme. Generally, we can say that EC law has more power than national law. The concept of supremacy arised in Van Gend en Loos case. There was a conflict between Dutch law and EC law, however, the concept of supremacy was articulated more fully in Costa's case. Flaminio Costa was the shareholder of a company. The undertaking was nationalized and transferred to ENEL²⁰. Mr. Costa did not pay

¹⁸ Case C-6/90 & C-9/90 Frankovich and Others v. Italy [1991].

¹⁹ Case 14/83 Von Colon and Kamann v. Land Nordrhein-Westfalen [1984].

²⁰ In 1962, Italy nationalized its electric power undertakings into a single entity, the National Electricity Board (ENEL).

an electricity bill because he thought that nationalization was against EC Treaty provisions. The claimant won the case and European Court of Justice held very important sentence:

“By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves”²¹.

Costa case was an example of the conflict between the national ordinary law and EC law. Sometimes, constitutional law is against community law. But what would happen if such a situation occurs? Constitutional law is protected by a special court and is more difficult to change than the ordinary law. In *Internationale Handelsgesellschaft*²² case European Court of Justice gave the answer of how to solve the dispute between constitutional law and Community provisions. The court précised more fully the principle of supremacy and held that the rules from the Treaty are an independent source of the law. None of the rules of national law can override law stemming from the Treaties. What is more, all national courts must give full effect to EC law, which was stated in *Simmenthal*²³ case:

²¹ Conclusion of Costa case [1964].

²² Case 11/70 *Internationale Handelsgesellschaft mbH v. Einfuhr und Vorratsselle fur Getreide und Futtermittel* [1970].

²³ Case 106/77 *Amministrazione delle Finanze dello Stato v. Simmenthal SpA* [1978].

“Every national courts must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provisions of national law which may conflict with it, whether prior or subsequent to the Community rule”²⁴.

4. Conclusion

After the Second World War eastern Europe countries, six of whom signed Treaties which caused closer collaboration in economic matters, still want to cooperate together closely, The development of Communities needed also the development of law which could govern all EC countries. The meaning of EC law increased through the practice of ECJ. Its two principles one of the direct effect and the other of supremacy are rarely questioned by national courts. The cases like Costa, Van Gend en Loos or Internationale established stronger position of Community law and European Court of Justice than both Member States law and national courts. In Cost case ECJ held that:

“the law stemming from the Treaty, an independent source of law, could not because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.”²⁵.

²⁴ Judgment of Simmenthal case.

²⁵ Judgment of Costa case.

Having decided to join with European Communities, Member States must implement EC law to the national law. Countries transferred part of their sovereignty to Communities and they consented one the same rules to govern all European Union.

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Abstract

The main aim of the article is to show the role of the European Court of Justice in forming European Community law. Both principles created by the ECJ: supremacy and direct effect are basis to settle relations between regulations of EC law and Member States provisions. According to the principle of supremacy, European Union law is more supreme than national law. The second provision, direct effect, can be divided into vertical and horizontal.

The vertical direct effect states that individuals can directly rely on EC law provisions in dispute with any Member State. However, the horizontal direct effect states that individuals can rely on EC law provisions in dispute with others individuals.

In order to understand the concept of the above stated principles I based my article on ECJ's cases which have strong influence on present shape of supremacy and the direct effect rules.