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CASES ON THE EFFECT OF EU LAW

THE DECISIONS OF THE ECJ

Van Gend en Loos (1963)

The principal question in this case was the question of the direct effects of Article 12, which dealt with customs duty. If the Article was found to be directly effective it would conflict with an *earlier* Dutch law. Under Dutch law, if Article 12 was found to be directly effective it would, under the Dutch constitution, take precedence over domestic law. The reference to the ECJ did not raise the issue of sovereignty directly. Nevertheless, in addition to declaring that Article 12 was directly effective, the ECJ went on to say that "… the Community constitutes a new legal order in international law, for whose benefit the States have limited their sovereign rights, albeit within limited fields."

Costa v ENEL (1964)

This case involved an alleged conflict between a number of Treaty provisions and a later Italian statute nationalising the electricity company. Costa, a shareholder in the electricity company refused to pay an electricity bill, and claimed that the nationalisation was contrary to EC law. The Italian government argued that the Italian statute nationalising the electricity company was later in time than the Italian Ratification Act which incorporated EC law in Italian law. Therefore the Italian court was obliged to apply the domestic law in preference to EC law. The Italian court referred this question of priorities to the ECJ.

The principle of supremacy was clearly affirmed by the ECJ. The ECJ cited *Van Gend*. It also noted that Article 189 indicated that there had been a transfer of powers to the Community institutions and Article 5 underlined States' commitment to observe EC law. The ECJ concluded: "The transfer by the States from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail."

Internationale Handelsgesellschaft (1970)

This case involved a possible conflict between EC regulations and the German Constitution. The applicant argued that the EC regulation should be invalidated due to its conflict with the Constitution. The ECJ rejected any possibility of EC law being judged against national laws, even constitutions. It stated: "… the validity of a Community instrument or its effect within a member State cannot be affected by allegations that it strikes at either the fundamental rights as formulated in that States' constitution or the principles of a national constitutional structure."

Simmenthal (1978)

In this case an Italian judge was faced with a conflict between an EC regulation and Italian laws, some of which were enacted after the

regulation. Under Italian law, domestic legislation contrary to EC law was unconstitutional. However, only the Constitutional Court had jurisdiction to make such a ruling; the ordinary courts could not. The judge referred this issue to the ECJ, which held that:

"every national court 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 provision of national law which may conflict with it, whether prior or subsequent to the Community rule … it is not necessary for the court to request for or await the prior setting aside of such provisions by legislative or other constitutional means."

Factortame (1990)

A group of Spanish fishermen brought a claim before the English courts for an interim injunction to prevent the application of certain sections of the Merchant Shipping Act 1988, which denied them the right to register their boats in the UK, and which the plaintiffs alleged were in breach of EC law. The legality of the MSA 1988 under EC law had yet to be decided under a separate reference to the ECJ. The British courts were being asked to grant an interim injunction against the Crown, pending resolution of the substantive issues, something they were not permitted to do under national law.

Following a reference by the House of Lords asking whether they were obliged to grant interim relief as a matter of EC law, the ECJ pointed out that national courts were obliged, by Article 5, to ensure the legal protection which persons derive from the direct effect of EC law. Moreover:

"It must be added that the full effectiveness of Community law would be just as much impaired if a rule of national law could prevent a court seised of a dispute governed by Community law from granting interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law. It follows that a court which in those circumstances would grant interim relief, if it were not for a rule of national law, is obliged to set aside that rule."

Brassiere du Pechier and ***Factortame (No 4)*** (1996)

See Martin, *English Legal System*, chapter 4.

THE RESPONSE OF THE UK

Macarthys Ltd v Smith (1979)

A man was paid £60 a week for managing a stock room. Four and a half months after he left a woman was appointed in his place at £50 a week. She claimed that she was entitled to equal pay under the provisions of the Equal Pay Act 1970. The Court of Appeal held these provisions only applied where a man and woman were in the same employment at the same time. Comparison was then made to the principle of equal pay for equal work in Article 119 of the EC Treaty, which the ECJ held was not restricted to cases of contemporaneous employment.

Lord Denning used s2(4) ECA 1972 as a rule of construction and construed the Equal Pay Act 1970 to conform with Article 119. His Lordship stated that in construing our statutes we are entitled to look to the EC Treaty as an aid to its construction: and even more, not only as an aid but as an overriding force. If on close investigation it appeared that our legislation was deficient or inconsistent with EC law then it is our bounden duty to give priority to EC law.

Garland v BR Engineering (1983)

This case involved a conflict between s6(4) of the Equal Pay Act 1970 and Article 119. Section 6(4) (which exempts from the equal pay principle provisions relating to death and retirement) had been broadly construed by the Court of Appeal to the detriment of the plaintiff. He therefore sought to rely directly on Article 119. The House of Lords held that s6(4) must be construed to conform with Article 119. Lord Diplock said that it is now a principle of construction of UK statutes, that the words of a statute passed after the EC Treaty has been signed and dealing with the international obligation of the UK, are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligation, and not to be inconsistent with it.

Pickstone v Freemans (1989)

This case involved a conflict between the Equal Pay Act 1970 (as amended by regulations to give effect to obligations arising from a ECJ ruling) and Article 119. The Court of Appeal found the words clear and unambiguous and could not be construed in conformity with EC law, but were prepared to allow a claim based directly on Article 119. The House of Lords chose to interpret the amendments to the EPA 1970 against their literal meaning, even to the extent of reading certain words into the regulations in order to achieve a result compatible with EC law. Lord Keith said the provisions must be construed purposively in order to give effect to the manifest broad intentions of Parliament. In this case it was clear, from evidence from House of Commons debates on the matter, that the regulations had been introduced specifically in order to give effect to EC law.

Factortame (No. 2) (1991)

The House of Lords granted interlocutory orders against the Crown disapplying Part II of the Merchant Shipping Act 1988 and restraining the Secretary of State from enforcing it and related regulations against the Spanish fishermen, pending the final determination by the ECJ of the compatability of these provisions with EC law. This was even though, as a matter of UK law, interlocutory injunctions could not be granted against the Crown. The ECJ later ruled that the conditions imposed by the Merchant Shipping Act 1988 were indeed contrary to EC law. Part II of the Act was amended by delegated legislation in 1989 and then replaced by the Merchant Shipping (Registration, etc) Act 1993.

R v Secretary of State for Employment, ex parte Equal Opportunities Commission (1995)

The House of Lords granted declarations that the differing threshold provisions for full-time and part-time workers' entitlement to unfair dismissal and redundancy payments were incompatible with EC law. The less favourable treatment of part-time workers, the great majority of whom were women, constituted indirect sex discrimination for which there was no objective justification. The UK government was therefore forced to change the law and greatly improve the rights of part-time workers.

Factortame (No 5) (1999)

See Law Report

Macarthys Ltd v Smith (1979)

Lord Denning stated that: “Thus far I have assumed that our Parliament, whenever it passes legislation, intends to fulfil its obligations under the Treaty. If the time should come when our Parliament deliberately passes an Act - with the intention of repudiating the Treaty or any provision in it - or intentionally of acting inconsistently with it - and says so in express terms – then … it would be the duty of our courts to follow the statute of our Parliament. I do not however envisage any such situation … Unless there is such an intentional and express repudiation of the Treaty, it is our duty to give priority to the Treaty."