

European union law- (problem question)



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To recover damage against an employer charging that the UK has failed to follow EC directives, one must bring suit against the UK itself. The EC Treaty is very clear that member states are obligated by the concept of direct effect, to comply with member community law in their own internal laws whether in written legislation or during civil proceedings, which applies in both Andrew and Boris' cases. European Court of Justice ruled that EU regulations are binding "in their entirety," and that a member state cannot choose to implement them piecemeal. The EC has set a set redundancy pay schedule yet all EU countries severance plans vary. Certainly, there has been no enforcement of the minimal redundancy directive by the ECJ.

Because 'a directive shall leave to national authorities the choice of form and methods' and always requires national implementation which can lead to different implementation methods in different member states (UK Redundancy, 2003), Andrew, who worked for an emanation of the state, might have better positioning than Boris, who worked for a private entity. EC/EU law takes priority over the law of Member States if there is inconsistency between them. If in any respect British law is incompatible with applicable European Community law, then an individual who suffers loss as a result may be able to claim compensation from the British government due to state liability. This result is unlikely for Boris coming from the private sector both because the British government normally goes to considerable trouble to ensure that British law conforms with EC directives and because the British Courts will resolve any ambiguity in the wording of a British statute in a way which is consistent with EC law. The courts will also interpret British law in a way which is consistent with applicable EC law unless the wording of the British provision makes this impossible. Nevertheless, there

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are several examples of cases in which British law has been held to be unenforceable because it is inconsistent with EC Directives (European Communities Act, 2005).

Sr Francovich sued the Italian government on the grounds that he had suffered loss as a result of the governments failure to implement EC Directive 80/987 (" on the approximation of the laws of Member States relating to the protection of employees in the event of insolvency of their employer"). He was employed by a company in between January 1983 and April 1984. The employer went bankrupt owing him some 6m lire (approx £3,000) pay. He obtained judgment against the employer in the local court but, with the employer bankrupt, could not recover the money. He sued the Italian government for damages for the governments failure to implement an EC/EU Directive which would have eliminated (or reduced) his loss. The local court in Vicenza referred questions to the ECJ and the final result was that the Italian government was ordered to pay compensation to Francovich (Francovich v Republic of Italy, 2005).

A directive can be directly effective. However in practice, direct effect in relation to directives is less important than the related concept of indirect effect in which member states are bound to implement directives as the directives are laid out. State courts are also bound to interpret state laws in a manner that conform with directives. According to the ECJs opinion, state courts are required to guarantee substantial protection of rights enumerated in EU directives.

Works Cited

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