The uniform application of community law

Title: The uniform application of Community law can never be achieved because it is too easy for national courts to decide important points of Community law for themselves. Critically evaluate the above statement.

Introduction

Given that the European Union of 2006 consists of 25 different states, which operate under (more than) [1] 25 different legal systems and court structures based on different heritages and subject to different political and socio-economic pressures it is certainly appropriate to concede that the uniform application of Community law is a *tall order* . That said however, in law it is always dangerous to use the word *never* .

Supremacy of EC Law

It is first worth making the point that all forms of EC law prevail over all forms national law. Cases such as *Van Gend en Loos* [2] and *Costa v ENEL* [3] gave the European Court of Justice the opportunity to make this fundamental principle clear in the early days of the EEC in the 1960s. The sovereignty of EC law, now largely accepted by courts around the EC, underpins the Community's pursuit of the goal of uniform application. As confirmed by cases such as *Defrenne v Sabena* [4] the principle of *direct effect* operates alongside the supremacy rule to facilitate and encourage the uniform application of EC law in the courts of the member states.

Article 234 EC

Article 234 of the Treaty of Rome sets down a procedure vital to the consistent application of Community law. The Article provides:

“ The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of this Treaty

(b) the validity and interpretation of acts of the institutions of the Community and of the ECB;

(c) the interpretation of the statues of bodies established by an act of Council, where those statutes so provide.

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 of Justice 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 of Justice.”

First, it is clear from the above that national courts do not possess the jurisdiction to rule on the validity of acts of the EC institutions. As *Foto-Frost v Hauptzollampt* [5] confirms, all such questions must be referred to the Court of Justice and it is argued that this goes some way to ensure the harmonious application of EC law in the member states.

The Article 234 mechanism ensures that ambiguous questions of EU law can be referred to the Court of Justice for an authoritative answer and its

importance in the EC legal order is hard to overstate. Clearly without such a procedure the courts of the different member states could and almost certainly would resolve issues of EU law slightly and perhaps sometimes wildly differently. Article 234 allows questions to be referred from the lower courts of the member states at the discretion of those courts and importantly it imposes a mandatory duty on the supreme courts in each member state to refer questions of EU law to the European Court. In theory this procedure ensures that EU law is both interpreted and applied in a uniform manner across the Community.

The duty imposed on courts of the last resort to refer questions of EU law to the Court of Justice is obviously important, because there is no further domestic appeal from such courts. The duty was confirmed *inter alia* , in the case *Gaston Schul* [6] .

The *CILFIT* ruling [7] stipulated that the duty to refer under what is now Article 234 [8] did not apply where:

(a) the question of EU law is not relevant to the domestic proceedings;

(b) the provision has already been interpreted by the Court of Justice and the answer is clear even though the circumstances of the current case may not be identical;

(c) the correct interpretation of the law is so obvious as to leave no room for reasonable doubt.

In the early days of the EEC, when the national courts of the member states were still struggling with the notion of a supreme Community law, many decisions in the UK and other member states such as Germany and Italy indicated a more lax approach to the use of what is now the Article 234 procedure. In *HP Bulmer Ltd V Bollinger SA* [9] Lord Denning suggested a reference would only be necessary if it was deemed to be conclusive to a judgment. Such cases do not represent the law today, having been undermined by the definitive *CILFIT* ruling, which has been endorsed and applied in many subsequent rulings: *Intermodal Transports BV v Staatssecretaris van Financiën.* [10]

It should also be noted that the European Court's predisposition towards contextual and purposive interpretation designed to buttress and sometimes even proactively increase the efficacy of EC law is readily apparent in this field. In *Broekmeulen v Huisarts Registratie Commissie* [11] the question was whether the appeal committee of a medical body constituted a " court or tribunal" under the terms of Article 234. The Court of Justice held that it was imperative to ensure the proper functioning of Community law that it should get the opportunity to rule on references from as many forms of body as possible and thus included the committee in question within the notional ambit of " court or tribunal" in the context of Article 234. This general judicial policy, if consistently pursued, bodes well for the harmonious application of Community law.

Concluding Comments

It is submitted that to assert that the uniform application of Community law can never be achieved because it is too easy for national courts to decide important points of Community law for themselves is an unduly negative stance to take. It is undeniably difficult to achieve the perfectly uniform application of Community law in the circumstances in which the EU finds itself, and doubtless as the boundaries of the Union extend, both in geographic and legislative terms, the task of ensuring uniform application will become ever more exacting. However, the legislative mechanisms to guarantee the consistent application of Community law are in place and the Court of Justice has proved itself committed to the role of policing the application of EU law and enthusiastic in the fulfilment of that end. Inevitably teething troubles will persist as legal systems are slow to adapt to change and generally resistant to external reform but as each year passes it is predicted that Community law will enjoy more consistent interpretation and application on the foundations of rigorous jurisprudence delivered by the European Court. Perfect uniformity may never be achieved, but then where in life is perfection possible? Effective uniformity is an achievable end, and it is submitted that EU law will in time achieve this.

THE ENDWORD COUNT: 1132 (word count for answer only – exceeded word limit to account only for the reproduction of Article 234 in full)

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Treaty of Rome (as amended)

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Footnotes

[1] For example in the United Kingdom distinct legal systems operate in England and Wales, Scotland and Northern Ireland.

[2] Case 26/62.

[3] Case 6/64.

[4] Case 43/75.

[5] Case 314/85.

[6] C-461/03.

[7] Case 283/81.

[8] Formerly Article 177 EC.

[9] [1974] Ch 401.

[10] Case C-495/03.

[11] Case 246/80.