

The european union legislature law european essay

Law



The doctrine of direct effect is a judicial development of the ECJ (now Court of Justice of the European Union CJEU). Direct effect plays a central role in the EU legal order because of its link with the application and enforcement of EU law in the courts of the national legal systems.[1]Case 26/62 Van Gend en Loos v Nederlandse Administratie der Belastingen[2]was the first leading case which established the right for individuals to enforce their Community rights from EU Treaties on Member States, and set precedent allowing individuals to rely on other sources of EU legislation. In Van Gend,[3]the ECJ set out the criteria which must be satisfied by Member States: i) that it was a clear and unconditional prohibition ii) that it imposed a duty without any discretion given to the Member States iii) that it produced direct effects between Member States and citizens. This criterion is now the main test for the application of direct effect for provisions of EU law. There are two distinctions between directly applicable and direct effect. Directly applicable is where EU law is direct applicably if it is recognised as part of UK law as a result of the European Communities Act 1972. Direct effect is when EU law is directly effective if it can be enforced in a UK court. There are two types of direct effects, horizontal and vertical. The case of Van Gend[4]concerned an individual suing a state which is vertical direct effect. Case 43/75 Defrenne v SABENNA (No. 2)[5]explored whether direct effect could apply to a public body. This case showed that the ECJ had now expanded direct effect to cover public bodies. Thus, it is horizontally effect when EU law is enforceable against private individuals and the State. Article 288 TFEU (ex 249 EC) provides that a regulation is directly applicable in all Member States, and if they meet the test of Van Gend[6]they are directly effective too. Regulations

can be both vertically and horizontally effective. The leading case for Regulations is Case C-93/71 *Leonesio v Italian Ministry of Agriculture*,^[7] in which Italian farmers were able to enforce a Regulation against the Italian state providing for compensation payments that had been subject to delays by the Italian authorities. The CJEU held that the Regulation should not be subject to delays and was immediately enforceable in the national courts.

[8] Under Article 288 TFEU, 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. Directives are not directly applicable, and require further action by the Member State and therefore cannot meet the test for direct effect specified in *Van Gend*.

[9] However, in Case 9/70 *Grad v Finanzamt Traunstein*,^[10] the ECJ ruled that decisions could have direct effect and implied that this also applied to directives.^[11] Case 41/74 *Van Duyn v The Home Office*^[12] confirmed that directives could have direct effect under the following conditions. They must be clear, precise and unconditional, not dependent on any further legislation by the member state and the date of implementation must have passed.

Case 148/78 *Publico Ministero v Ratti* unveiled two reasons why directives enjoyed direct effect. At paragraph 20 " It would be incompatible with the binding effect which Article 189 ascribes to directives to exclude on principle the possibility of the obligations imposed by them being relied on by persons concerned". And at paragraph 22 the court stated, " A member state which has not adopted the implementing measures required by the directive in the prescribed periods may not rely, as against individuals, on its own failure to perform the obligations which the directive entails".^[13] The first part is in

regard to the effectiveness of the Treaty, and how it would undermine its authority not to accommodate an individual's right to rely on EC law, and the second part shows member states cannot rely on their own failure to implement a directive, normally two years, as a defence against an individual relying on its effect. Case 152/84 Marshall v Southampton and South West Hampshire Area Health Authority,[14]the ECJ However, it held obiter, that directives were only capable of vertical direct effect, but not of horizontal direct effect. In other words, an individual could not rely on the provisions of a directive in a claim against another individual or company that was not an organ of the state. In Case C-188/89 Foster v. British Gas, [15]the ECJ (now CJEU) said that a body would be part of the State, if it is subject to the control of the State and has special powers given to it by the State. The principle of indirect effect requires the national courts to interpret national legislation in line with the Directive. This principle was first set out in the cases of Case 14/83 von Colson and Kamann v Land Nordrhein-Westfalen[16]and Case 79/83 Harz v Deutsche Tradax.[17]In von Colson, the ECJ developed the ' von Colson principle'; as national courts are part of the State, an individual can enforce a law from the EU against another individual in a national court. The Case C-106/89 Marleasing SA v La Comercial Internacional de Alimentacion SA[18]judgment extended this principle when it held that the principle could be applied, even if the necessary national legislation had not been introduced to comply with the directive. There is one important limitation to the von Colson principle, that is, a Member State cannot impose criminal liability on an individual, which it could have done had the Directive been implemented as in the Case 80/86 Officier van Justitie

v. Kolpinghuis Nijmegen BV.[19]There is one final method of gaining a remedy based on EU law which is to sue the State because of its failure to implement a piece of legislation where it was obliged to do so; the Case C-6 and 9/90 Francovich v. Italy[20]laid down that remedy. The decision in Francovich provides individuals with a remedy that stems from the breach by the member state of the general obligations in Articles 4(3) TEU and 288 TFEU to comply with EU Law. Hence this adds a remedy for individuals to fill the gap left where EU law provisions have not been implemented by member states or are held not to be directly effective, or because Directives are only applicable vertically. The court held that states could be held liable for non-implementation of directives under three conditions: (i) the objective of the directive must include the conferring of rights for the benefit of the individuals; (ii) the contents of the rights must be identifiable from the directive; (iii) there must be a causal link between the breach and the damage.