

## Contribution made by the case-law of the Court of Justice of the European Communities

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## The contribution made by the case-law of the Court of Justice of the European Communities

The Court of Justice has contributed significantly to the Community legal system. Its creative case-law has remedied any shortcomings in the basic Treaties by supplementing and clarifying the provisions thereof.

Acknowledgement of basic principles, such as the direct applicability of Community law (judgment of 5 February 1963 in the *Van Gend en Loos* case, 26/62) and the primacy of Community law over national law (judgment of 15 July 1964 in the *Costa/ENEL* case, 6/64), has constituted its most significant contribution to European integration. On the basis of these principles, individuals may invoke Community law before national courts and seek the non-application of any national law which is contrary to Community law.

Since there is no written catalogue of fundamental rights in the Treaties, and in order to safeguard the primacy and uniform application of Community law, the Court was obliged to establish a system for the protection of those rights on the basis of the general principles of Community law. Starting from the constitutional traditions common to the Member States and international instruments for the protection of human rights, the Court ensures the safeguarding of fundamental rights in the field of application of Community law (judgments of 12 November 1969, 29/69, in the *Stauder* case and of 17 December 1970 in the *Internationale Handelsgesellschaft* case, 11/70).

To ensure the complete effectiveness of Community legislation and the protection of the rights of individuals, the Court has declared that the national authorities are financially liable, where a breach of Community law is attributable to the Member States, and must pay damages (judgment of 19 November 1991 in the *Francovich* case, C-6/90 and C-9/90).

The Court of Justice has had to take decisions on the demarcation of the Community's powers and responsibilities. In its judgment of 31 March 1971 in the *Commission/Council* case concerning an international agreement on road transport (AETR 22/70), the Court established the principles of parallel internal and external powers, according to which the power to define a common policy implies the power to conclude international agreements in this sphere. The system of internal Community measures is linked to its external relations (Opinion 1/76 of 26 April 1977). The Court hereby acknowledges the principle of the evolutionary nature of Community powers and responsibilities in external relations.

As well as the extensive interpretation of provisions relating to Community powers and responsibilities, the Court monitors the exercise of powers by the Member States under the Treaties. Accordingly, the way in which the States use their powers to derogate from the provisions relating to freedom of movement are subject to other Treaty rules and to legal scrutiny (judgment of 28 October 1975 in the *Rutili* case, 36/75) and cannot be used to reserve certain policy areas to the jurisdiction of the Member States (judgment of 9 March 1978 in the *Simmenthal* case, 70/77). This case-law has strengthened the Community.

The importance of the Court's case-law as a source of law is also evident in relation to Community policies. The Court had to define the concepts in the Treaty establishing the European Community (EC) such as 'measures having equivalent effect' to quantitative restrictions on imports (Article 28) or 'concerted practices' between undertakings and the 'dominant position' within the common market in the field of competition (Articles 81 and 82).

With regard to the free movement of goods, the Court has extended the scope of Article 28. It deemed that 'measures having equivalent effect' to quantitative restrictions on imports to be 'any measure capable of directly or indirectly, actually or potentially hindering intra-Community trade' (judgment of 11 July 1974 in the *Dassonville* case, 8/74). In the *Cassis de Dijon* case (judgment of 20 February 1979 in the *Rewe-Zentral* case, 120/78), the Court established the principle whereby 'goods lawfully manufactured and marketed in a Member State', in accordance with the fair and traditional rules and methods of production of that country, should be admitted into any other Member State without restriction (principle of mutual recognition of national regulations). Nevertheless, the Court excluded from the scope of Article 28 any national law

prohibiting resale at a loss, providing that it was applicable to all relevant traders operating in the national territory and providing that it was applicable to the marketing of national products and of those from other Member States (judgment of 24 November 1993 in the Keck and Mithouard case, C-267 et C-268/91).

The judgment of 4 December 1974 in the Van Duyn case (41/74) confirmed the direct applicability of free movement of workers (Article 39 of the EC Treaty). In the Bosman ruling of 15 December 1995 (C-415/93), the Court found that free movement of workers constituted a fundamental freedom in the Community system and declared that Article 39 was contradictory to the application of rules laid down by sports associations whereby football clubs might field only a limited number of professional players who were citizens of other Member States.

In the judgment of 21 June 1974 in the Reyners case (2/74), the Court ruled that Article 43 of the EC Treaty (right of establishment) included a ban on discrimination on grounds of nationality which might be directly invoked by individuals. The direct effect of freedom to provide services was acknowledged by the Court in the judgment of 3 December 1974 in the Van Binsbergen case (33/74).

Article 141 of the EC Treaty (principle of equal pay for male and female workers for equal work) was interpreted as a provision, conferring on individuals rights which they might invoke directly before the courts (judgment of 8 April 1976 in the Defrenne case, 43/75).

Since it was established, the Court of Justice's overall activity has been nothing but positive. Its case-law has enabled integration to proceed, whilst safeguarding the 'acquis communautaire' (the body of Community legislation adopted to date) and making the European Community into a 'Community based on the rule of law' (judgment of 23 April 1986 in the Les Verts case, 294/83).