



CVRIA



The Court of Justice:

Case-law



**THE COURT OF JUSTICE OF THE EUROPEAN UNION
IN THE LEGAL ORDER OF THE UNION**

Foreword

For the purpose of European construction, certain States (now 28 in number) concluded treaties creating first the European Communities and then a European Union, with institutions that adopt laws in specific areas.

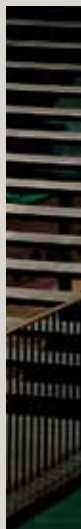
With the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union acquired legal personality and took over the powers previously conferred on the European Community. *Community law* has therefore become *European Union law*, including all provisions adopted in the past by virtue of the Treaty on European Union in the version prior to the Treaty of Lisbon. In the following presentation, the term 'Community law' will, however, be used when referring to the case-law of the Court of Justice before the Treaty of Lisbon entered into force.




The Court of Justice of the European Union is the **judicial institution of the European Union**. It is made up of three courts: the Court of Justice, the General Court and the Civil Service Tribunal. Its main task is to examine the legality of European Union measures and ensure the **uniform interpretation and application of European Union law**.

Through its case-law, the Court of Justice has identified an obligation for administrations and national courts to apply European Union law in full within their sphere of competence and to protect the rights conferred on citizens by that law (**direct application of European Union law**), and to disapply any conflicting national provision, whether before or after the European Union provision (**primacy of European Union law over national law**).

The Court has also recognised the principle of the **liability of Member States for breach of European Union law** which, first, plays an important part in consolidating the protection of the rights conferred on individuals by European Union provisions and, secondly, may contribute to more diligent application of those provisions by Member States. Infringements committed by Member States are thus likely to give rise to obligations to pay compensation which may, in some cases, have serious repercussions on their public funds. Moreover, any breach of European Union law by a Member State may be brought before the Court and, where a judgment finding such an infringement is not complied with, the Court can order payment of a periodic penalty and/or a fixed sum. Nevertheless, in the event of a failure to notify the Commission of measures transposing a directive, a financial penalty may, on a proposal from the Commission, be imposed by the Court of Justice at the stage of the first judgment finding a failure to fulfil obligations.





— The Court of Justice also works in conjunction with the national courts, which are the ordinary courts applying European Union law. Any national court or tribunal which is called upon to decide a dispute involving European Union law may, and sometimes must, submit questions to the Court of Justice for a preliminary ruling. The Court must then give an interpretation or review the legality of a rule of European Union law.

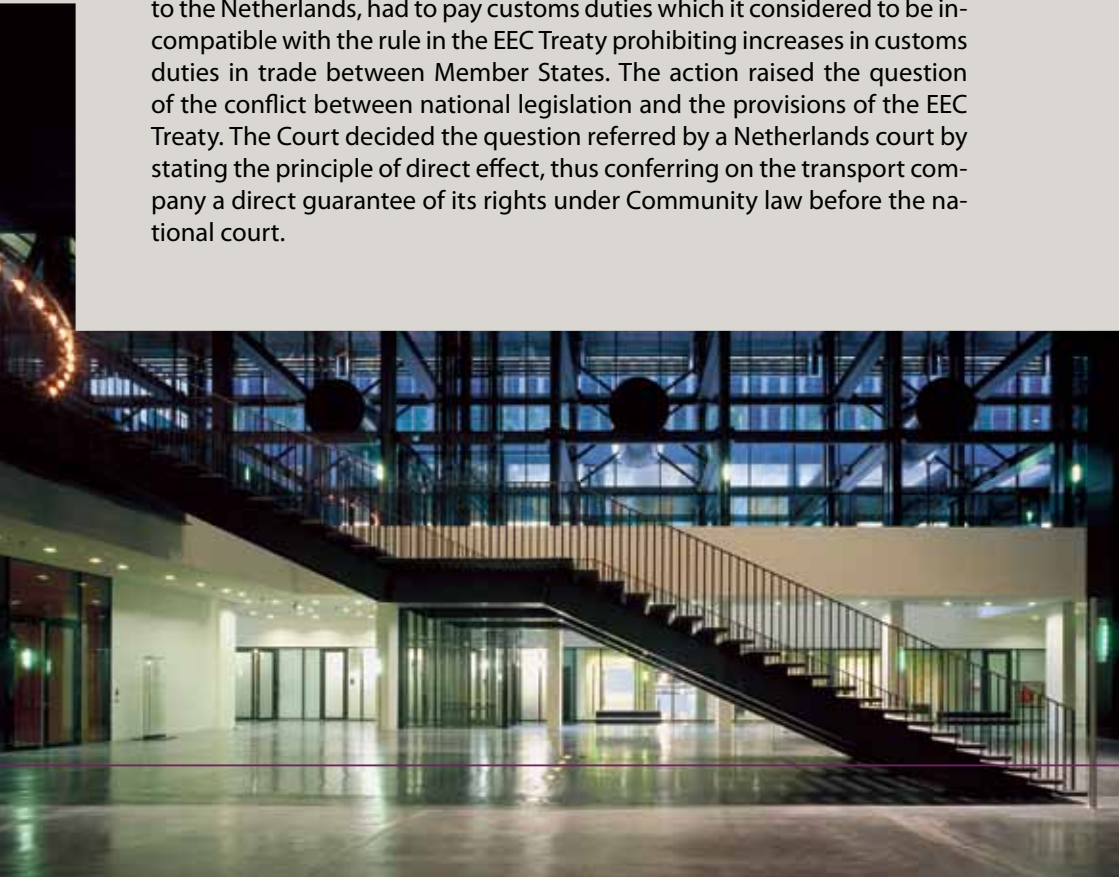
The development of its case-law illustrates the Court's contribution to creating a legal environment for European citizens by protecting the rights which European Union legislation confers on them in various areas of their daily life.



FUNDAMENTAL PRINCIPLES ESTABLISHED BY CASE-LAW

— In its case-law starting with *Van Gend & Loos* in 1963, the Court has introduced **the principle of the direct effect** of Community law in the Member States, which now enables European citizens to rely directly on European Union provisions before their national courts.

— The transport company *Van Gend & Loos*, importing goods from Germany to the Netherlands, had to pay customs duties which it considered to be incompatible with the rule in the EEC Treaty prohibiting increases in customs duties in trade between Member States. The action raised the question of the conflict between national legislation and the provisions of the EEC Treaty. The Court decided the question referred by a Netherlands court by stating the principle of direct effect, thus conferring on the transport company a direct guarantee of its rights under Community law before the national court.



- In 1964, the *Costa* judgment established **the primacy** of Community law over domestic law. In that case, an Italian court had asked the Court of Justice whether the Italian law on nationalisation of the production and distribution of electrical energy was compatible with certain rules in the EEC Treaty. The Court introduced the principle of the primacy of Community law, basing it on the specific nature of the Community legal order, which is to be uniformly applied in all the Member States.
- In 1991, in *Francovich and Others*, the Court developed another fundamental concept, **the liability of a Member State** to individuals for damage caused to them by an infringement of Community law by that State. Since 1991 European citizens have therefore been able to bring an action for damages against a State which infringes a Community rule.
- Two Italian citizens – who were owed pay by their insolvent employers – had brought actions for a declaration that the Italian State had failed to transpose Community provisions protecting employees in the event of their employers' insolvency. On a reference from an Italian court, the Court stated that the directive in question was designed to confer on individuals rights which they had been denied as a result of the failure to act of the State which had not implemented the directive. The Court thus opened up the possibility of an action for damages against the State itself.

THE COURT IN THE LIFE OF EUROPEAN CITIZENS



Of the thousands of judgments given by the Court, the majority, particularly preliminary rulings, clearly have important consequences for the daily life of European citizens. Some of these judgments are cited below as examples from the most important areas of European Union law.

Free movement of goods

Since the *Cassis de Dijon* judgment in 1979 on the principle of **free movement of goods**, traders may import into their country any product coming from another country within the European Union, provided that it was lawfully manufactured and marketed there and that there is no overriding reason relating, for example, to the protection of health or the environment to prevent its importation into the country of consumption.

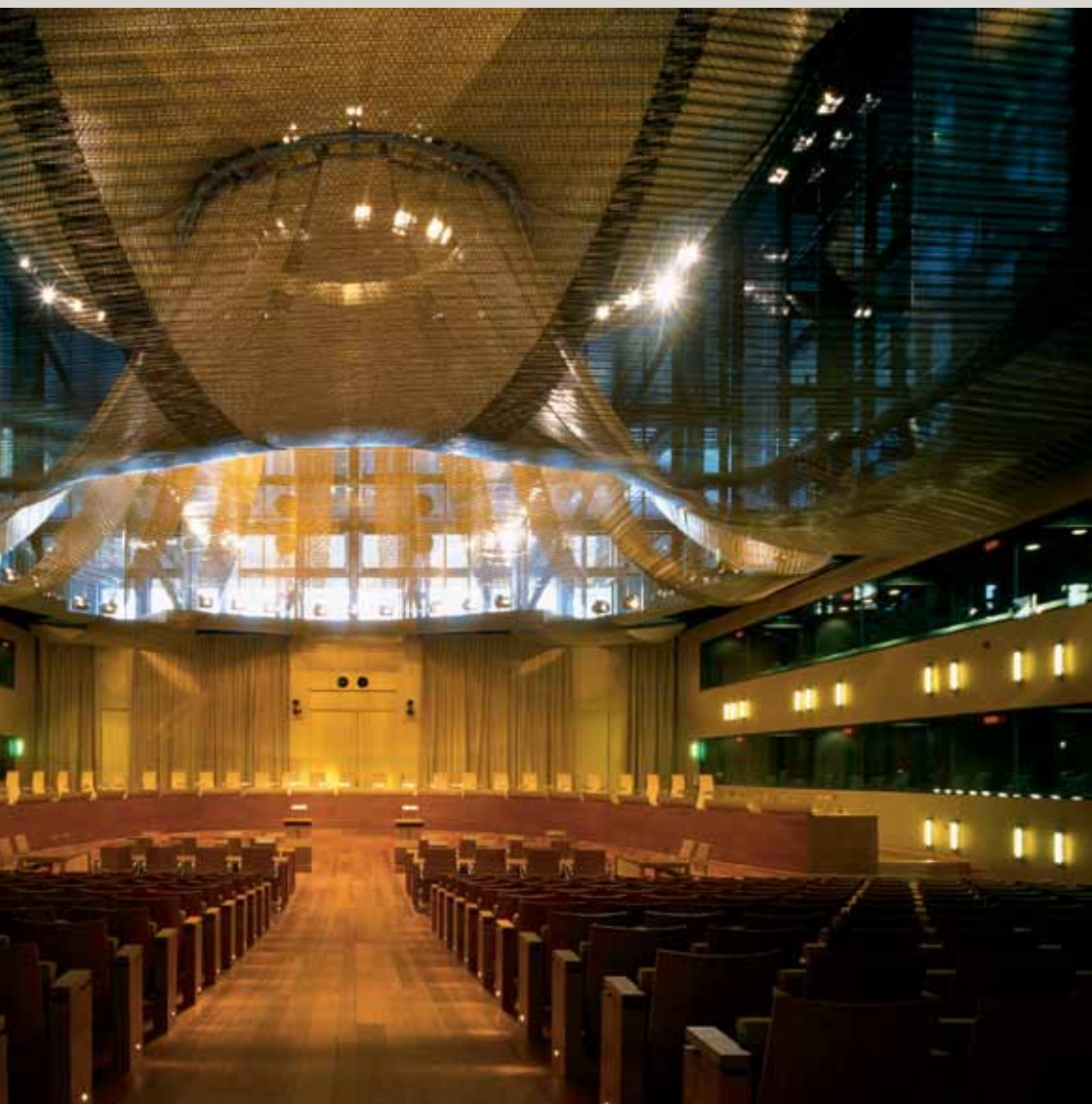


Freedom of movement of persons

Many judgments have been given in the field of **freedom of movement of persons**.

- In the judgment in *Kraus* (1993), the Court held that the situation of a Community national who holds a postgraduate academic title, which was awarded in another Member State and facilitates access to a profession or the pursuit of an economic activity, is governed by Community law, even as regards the relations between that national and his Member State of origin. Accordingly, if a Member State can make use of that title in its territory subject to an administrative authorisation, the authorisation procedure must be intended solely to verify whether the title was properly awarded.

- One of the most well-known cases in this field is *Bosman* (1995), in which the Court gave a ruling on a reference from a Belgian court on the compatibility of rules of football federations with freedom of movement of workers. It stated that professional sport is an economic activity whose exercise may not be hindered by rules governing the transfer of players or restricting the number of players who are nationals of other Member States. That principle was extended in subsequent judgments to the situation of professional sportsmen from third countries which had entered into an association agreement (*Deutscher Handballbund*, 2003) or a partnership agreement (*Simutenkov*, 2005) with the European Communities.



Freedom to provide services

A judgment of 1989 on **freedom to provide services** concerned a British tourist who was assaulted and seriously injured in the Paris metro. On a reference from a French court, the Court held that, as a tourist, he was the recipient of services outside his country and was covered by the Community law principle of non-discrimination on grounds of nationality. He was therefore entitled to the same compensation as a French national could claim (*Cowan*).

In cases referred by the Luxembourg courts, the Court declared that national provisions having the effect that an insured person cannot obtain reimbursement of the cost of dental treatment on the ground that it was given in another Member State constitute an unjustified restriction on **freedom to provide services** (*Kohll*, 1998), and that refusal to reimburse costs related to the purchase of spectacles abroad is regarded as an unjustified restriction on **free movement of goods** (*Decker*, 1998).

The Court has also held that legislation that makes reimbursement of hospitalisation costs in another Member State subject to the acquisition of prior authorisation and that provides that such authorisation must be refused in certain situations constitutes an obstacle to the freedom to provide hospital medical services. However, such a system of authorisation could be justified where identical treatment or treatment having the same degree of effectiveness is offered in the national territory of the insured person (*Smits and Peerbooms*, 2001).

Similarly, the Court has ruled that national legislation which does not guarantee a person insured under the national social security scheme, who has authorisation for hospitalisation in another Member State, a level of payment analogous to that which he would have received if he had been hospitalised in the Member State of affiliation gives rise to an unjustified restriction on the freedom to provide services (*Vanbraekel*, 2001).



Equal treatment and social rights

An air hostess brought an action against her employer on the grounds of discrimination in the pay she received compared with her male colleagues who did the same work. On a reference from a Belgian court, the Court held in 1976 that the Treaty rule requiring **equal pay for men and women for equal work** had direct effect (*Defrenne*).

In its interpretation of the Community rules on **equal treatment for men and women**, the Court has played a part in protecting women against dismissal linked to pregnancy. A woman who was unable to continue work because of difficulties connected with her pregnancy was dismissed. In 1998 the Court held that that dismissal was contrary to Community law. Dismissal of a woman during pregnancy for absences linked to pregnancy-related illness is unlawful discrimination on grounds of sex (*Brown*).

In order to ensure **the protection of the health and safety of workers**, workers must have paid annual leave. In 1999 BECTU, a British trade union, challenged United Kingdom legislation which denied that right to workers on short-term contracts on the ground that it was incompatible with a Community directive on the organisation of working time. The Court held that **the right to paid annual leave** is a social right directly conferred on every worker by Community law and that no worker may be denied that right (*BECTU*, 2001). The Court has also ruled that a worker does not lose his right to paid annual leave which he has not taken owing to illness and must therefore be compensated for the annual leave that he has been unable to take (*Schultz*, 2009).





Fundamental rights

- By holding that **respect for fundamental rights** is an integral part of the general principles of law it safeguards, the Court has made a considerable contribution to improving the standards of protection of those rights. In this respect it has looked to the constitutional traditions common to the Member States and to international treaties on the protection of human rights, on which the Member States have collaborated or which they have signed, in particular the European Convention on Human Rights. Since the entry into force of the Treaty of Lisbon, it has applied and interpreted the Charter of Fundamental Rights of the European Union of 7 December 2000, to which the Treaty of Lisbon accords the same legal standing as the Treaties.
- After numerous terrorist attacks on the police, police officers in Northern Ireland began carrying fire-arms. However, on the grounds of public safety women police officers were not authorised to carry fire-arms (on the basis of a certificate issued by the competent minister which could not be challenged before the courts). As a result, no full-time contracts in the Northern Ireland police were offered to women. On a reference from a United Kingdom court, the Court held that excluding any power of review by the courts of a certificate issued by a national authority runs counter to the principle of **effective judicial control** which may be relied upon by all persons who consider themselves wronged by discrimination on grounds of sex (*Johnston*, 1986).



European citizenship

- In respect of **European citizenship**, which the Treaty establishes for every Member State national, the Court has stated that such citizenship entails the right to reside in another Member State. Accordingly, a minor who is a Member State national, is covered by sickness insurance and has available to him or her sufficient resources also has that right to reside. The Court noted that Community law does not require the child itself to have the necessary resources and that refusal to grant at the same time to its mother, who is a third-country national, a right to reside would render redundant the child's right to reside (*Zhu and Chen*, 2004).
- In the same judgment the Court stated that, even where the purpose of acquiring the nationality of a Member State is to obtain for a third-country national a right of residence pursuant to Community law, it is not permissible for a Member State to restrict **the effects of the grant of the nationality** of another Member State.
- The Court of Justice has also confirmed that students from one Member State, moving to continue their studies in another Member State, have the benefit of the rights granted to European citizens. Thus, students, lawfully residing in and having shown a certain degree of integration in the society of the host Member State, may be entitled to receive assistance covering subsistence costs granted by that Member State (*Bidar*, 2005).
- However, Community law does not preclude national legislation from laying down objective conditions that are not excessive as regards integration in the society of a host Member State. Thus, a requirement of a five-year prior period of residence is regarded as being compliant with Community law (*Förster*, 2008).



Air transport

- European Union law provides that, if a flight is cancelled, passengers are entitled to compensation from the air carrier. However, the carrier is not required to pay compensation if it can prove that the cancellation is due to extraordinary circumstances which could not have been avoided even if all reasonable steps had been taken.
- In a judgment in 2008, the Court held that technical problems found during maintenance of aircraft or caused by defective maintenance did not as such constitute 'extraordinary circumstances'. Consequently, an air carrier cannot, as a general rule, refuse to compensate passengers following cancellation of a flight due to technical problems with the aircraft (*Wallentin-Hermann*, 2008).
- In 2009, the Court decided that passengers on delayed flights, if they reach their final destination three hours or more after the expected arrival time, can, in the same way as passengers on cancelled flights, claim a lump-sum payment as compensation from the airline, unless the delay was due to extraordinary circumstances (*Sturgeon*, 2009).



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