FOUNDATIONS OF EUROPEAN COMMUNITY LAW pdf

1: The Foundations of European Union Law - Trevor Hartley - Oxford University Press

The Foundations of European Union Law provides an impressively clear and easily understood account of the constitutional and administrative law of the EU. Hartley examines the institutions, the Union legal system and the major constitutional issues before moving on to the area of administrative law and remedies including the workings of the European Court and the Court of First Instance.

This paper endeavours to shed light on this question. It proposes that one aspect of the relationship between the two doctrines is that the doctrine of supremacy is a condition precedent [3] for the doctrine of direct effect. Given the significance of the two principles it is interesting to note that both have been judicially created by the European Court of Justice and are not laid down in the treaties founding the European Community. Direct effect and supremacy determine the status of Community law in relation to member state law. In a nutshell, direct effect of Community law means that citizens are able to enforce their rights deriving from Community law in member state courts. The doctrine of supremacy of Community law ensures that where Community law and member state law are incompatible, the former will prevail. In order to demonstrate that supremacy is a condition precedent for direct effect, an analysis of the two doctrines will be conducted in the first part of this paper. This will include their creation by the European Court of Justice, their scope of operation and a discussion of the relevant case law. Subsequently, the interrelationship between the two concepts will be examined. It will be shown that it was not coincidental that the European Court of Justice pronounced the principles of direct effect and supremacy in two consecutive years, but that the two concepts are logically connected. The doctrine of supremacy is a condition precedent for the doctrine of direct effect. The doctrine of direct effect of Community law Ordinary international treaties [4] can only have an effect in the domestic legal order of a contracting state if the signatory performs some act to introduce the treaty contents into its legal order. Adoption means that the treaty provisions as such are declared operative in the municipal order, while in the case of transformation treaty law is transformed into domestic law. The former occurs in countries that take a monist approach to international law. They regard international law as part of their national legal system. The second approach is taken in dualist countries where international law is categorised as separate from the domestic legal order. In both cases citizens of signatories cannot rely on treaty provisions in proceedings in national courts unless the treaty was first introduced into the domestic legal system. The European Court was faced with a situation where a Dutch company sought to invoke Community law in proceedings against the Dutch customs authorities in a Dutch tribunal. It had to decide whether Community law gave direct protection to individuals in national courts. Contrary to Advocate General Romer, [13] the European Court took the view that a provision is not prevented from having direct effect merely because it is addressed to member states and does not expressly confer rights on private individuals. Independently of the legislation of member states, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the Community. This obligation was not qualified by any reservation and its implementation was not conditional upon any legislative measure to be enacted under national law. As a result, where member states introduced or increased customs duties contrary to Article 12, any interested individual might challenge such duties before the competent national courts, which were required to give effect to the Treaty. In the subsequent case of Simmenthal [18] the Court explained the full implications of the concept of direct effect. These provisions are therefore a direct source of rights and duties for all those affected thereby, whether member states or individuals, who are parties to legal relationships under Community law. This consequence also concerns any national court whose task it is as an organ of a member state to protect, in a case within its jurisdiction, the rights conferred upon individuals by Community law. According to Toth it is of such great importance because: It enables legal provisions of an extraneous, ie Community origin automatically to penetrate into and form an integral part of national law. It ensures the full and uniform application of Community law in all the

member states. It increases the legal protection of individuals by ensuring them access to the national courts and remedies in matters governed by Community law. It prevents the application of conflicting national measures to individuals. Had the European Court of Justice not created this doctrine, the European Community would most likely have remained an organisation consisting of European states similar to other international alliances. By creating the doctrine of direct effect the Court of Justice paved the way for a fast and effective European integration and harmonisation of the laws. This has allowed the Community to grow into a closely connected union of European states within only 50 years. Giving Community citizens the possibility to enforce Community law in their domestic courts was a very effective tool to force member states to comply with Community law and to do so in an expedient manner as the Court recognised in Van Gend en Loos. This task falls within the exclusive jurisdiction of the European Court of Justice [25] whose decision on the matter must be regarded as definitive. The Court may restrict this retroactive effect only in exceptional circumstances. The wording of [a provision of Community law] contains a clear and unconditional prohibition which is not a positive but a negative obligation. This obligation, moreover, is not qualified by any reservation on the part of states which would make its implementation conditional upon a positive legislative measure enacted under national law. However, the Court decided in subsequent cases that a clear and unconditional provision could be directly effective whether or not it involved a negative or a positive obligation, provided it did not require the taking of any measure either by the institutions of the Community or by the member states. This is called vertical direct effect. In that case a provision is said to have horizontal direct effect. This comprises Community regulations, directives and decisions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all member states. Unfortunately, the European Court of Justice has never clarified this point and uses the two terms interchangeably. Therefore, the doctrine of direct effect as created by the European Court of Justice would be clearly inconsistent with the Treaties. Although the Court does not seem to pay much attention to the problem, legal writers have found a solution to it and defined direct applicability differently from direct effect. That means that in order to become part of the domestic law of the member states no further act of incorporation on behalf of the states is needed. Accordingly, all regulations are directly applicable. On the other hand, a provision of Community law is directly effective if it fulfils the Van Gend en Loos test. Therefore, the fact that a regulation is directly applicable does not automatically make it directly effective. Community regulations are only directly effective if their wording is clear and precise, they are unconditional and no further act on behalf of the Community institutions or member states is necessary for their coming into force. If they fulfil these criteria they can be invoked vertically or horizontally. In summary, the principle that Community law has direct effect is a creation of the European Court of Justice as the Treaties are silent on the issue. If a legal provision is directly effective it grants individuals rights which must be upheld by the national courts. A provision of Community law is directly effective if it is sufficiently clear and precise, unconditional and leaves no room for the exercise of discretion in the implementation by the member states or Community institutions. Direct effect must be distinguished from direct applicability. The latter concerns the way in which a regulation comes into operation within the member states while the former describes the effects of a Community provision in the national legal systems after it has come into operation therein. The doctrine of supremacy of Community Law The extended application by the Court of Justice of the principle of direct effect, together with the wide scope of the EC Treaty, covering a number of areas normally reserved to national law alone, have led inevitably to a situation of conflict between national and EC law. The EC Treaty is silent on the question of priorities between Community law and national law. In ordinary international law the constitutional rules of a country determine whether international agreements can take precedence over national law. The Court stated that supremacy of Community law was a general principle or doctrine which followed from the very nature of Community law. Mr Costa was a shareholder of Edisonvolta, a firm which had been affected by the nationalisation of the production and distribution of electric energy. In accordance with its nationalisation law, the Italian government had transferred the property of all electricity undertakings to the state owned electricity company ENEL. Mr Costa, having refused to pay an electricity bill issued to him, was summoned before a Court in Milan. In his defence, he submitted that the nationalisation law was contrary to a number of EC Treaty

provisions. The matter was referred for preliminary opinion to the Italian Constitutional Court and simultaneously to the European Court of Justice. The former was of the view that, as the EC Treaty had been ratified by an ordinary law, the provisions of a later conflicting law the nationalisation legislation took precedence over the Treaty. By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply. By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the Community, the member states have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves. The integration into the laws of each member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for the states, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. The executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardising the attainment of the objectives of the Treaty set out in Article 5 2 [now Article 10 2] [49] and giving rise to the discrimination prohibited by Article 7 [now Article 12]. The transfer by the states from their domestic legal systems to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail. Internationale Handelsgesellschaft [53] dealt with a conflict between a Community regulation and fundamental rights guaranteed by the German constitution. The claimant claimed the regulation infringed the principles of freedom of action, disposition, economic liberty and of proportionality which are enshrined in Articles 2 1 and 14 of the German Constitution. The European Court disagreed. In the strongest terms it ruled that the legality of a Community act cannot be judged in the light of national law: Recourse to the legal rules or concepts of national law in order to judge the validity of measures adopted by the institutions of the Community would have an adverse effect on the uniformity and efficacy of Community law. The validity of such measures can only be judged in the light of Community law. In fact, the law stemming from the Treaty, an independent source of law, cannot, because of its very nature, be overridden by rules of national law, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called in question. Therefore, the validity of a Community measure or its effect within a member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of a national constitutional structure. The facts of the case were as follows: Simmenthal imported beef from France to Italy and had to pay a fee for a public health inspection according to an Italian law passed in It was submitted that this law was contrary to the EC Treaty and two Community regulations passed in and The Italian authorities raised in their defence, first, that the Italian law had to prevail because it was later in time and, secondly, that, even if the national law conflicted with Community law, the Italian courts nevertheless had to apply it until such time as it had been declared unconstitutional by the Constitutional Court. The second submission was based on the principle that, according to Italian constitutional law, only the Constitutional Court Corte Costituzionale has the power to determine the constitutionality of Italian laws and declare an unconstitutional law invalid. The European Court held, first, that it was the duty of a national court to give full effect to the Community provisions and not to apply any conflicting provisions of national legislation even if they had been adopted subsequently. Secondly, the Court determined that a lower court should not wait for the national law to be set aside by a constitutional court or the legislature of a member State. With regard to the first issue the Court said: Indeed any recognition that national legislative measures which encroach upon the field within which the Community exercises its legislative power or which are otherwise incompatible with the provisions of Community law had any legal effect would amount to a corresponding denial of the effectiveness of obligations undertaken unconditionally and irrevocably by member states pursuant to the Treaty and would thus imperil the very foundations of the Community. Therefore, although a national court has to apply Community law, the domestic law remains in

existence. The ERTA case [63] concerned a challenge to an international road transport agreement to which the Community was a party. The Court held that once the Community, in implementing a common policy, lays down common rules, member states no longer have the right, individually or collectively, to enter into contracts with non-member states which impose obligations affecting these common rules. Where the Community concludes a treaty in pursuance of a common policy, this excludes the possibility of a concurrent authority on the part of the member states. The only exception to this rule is where a member state is under an obligation stemming from an international agreement which the member state has entered into before it became a party to the relevant Community Treaty. This rule cannot be found in any of the Treaties but has been proclaimed with great emphasis by the European Court. It applies irrespective of the nature of the Community provision, whether founding Treaty, Community act or agreement with a non-member State, and the nature of the national provision, be it the constitution, a statute or subordinate legislation.

FOUNDATIONS OF EUROPEAN COMMUNITY LAW pdf

2: European Union law - Wikipedia

The Foundations of European Community Law is renowned as a highly reliable and authoritative text valued by students and practitioners alike. Providing a clear and in-depth account of the constitutional and administrative law of the EC, Hartley examines the institutions, the Community legal system.

Democratic ideals of integration for international and European nations are as old as the modern nation-state. In the Renaissance , medieval trade flourished in organisations like the Hanseatic League , stretching from English towns like Boston and London , to Frankfurt , Stockholm and Riga. These traders developed the lex mercatoria , spreading basic norms of good faith and fair dealing through their business. In , the Protestant Reformation triggered a hundred years of crisis and instability. Martin Luther nailed a list of demands to the church door of Wittenberg , King Henry VIII declared a unilateral split from Rome with the Act of Supremacy , and conflicts flared across the Holy Roman Empire until the Peace of Augsburg guaranteed each principality the right to its chosen religion cuius regio, eius religio. The Treaty of Westphalia , which brought peace according to a system of international law inspired by Hugo Grotius , is generally acknowledged as the beginning of the nation-state system. Even then, the English Civil War broke out and the tensions did not fully end until the Glorious Revolution of , by Parliament inviting William and Mary of Orange from Holland to the throne, and passing the Bill of Rights In William Penn , a Quaker from London who founded Pennsylvania in North America, argued that to prevent ongoing wars in Europe a "European dyet, or parliament" was needed. The Treaty of Rome , signed in Musei Capitolini was the first international treaty that envisaged social, economic and political integration, within limited fields, for nation-states. To "save succeeding generations from the scourge of war, which twice.. Also, the Council of Europe , formed by the Treaty of London , adopted a European Convention on Human Rights , overseen by a new transnational court in Strasbourg in It established an Assembly now the European Parliament to represent the people, a Council of Ministers for the member states, a Commission as the executive, and a Court of Justice to interpret the law. Although Stalin died in and the new general secretary Nikita Khrushchev had denounced him in , [17] Soviet tanks crushed a democratic Hungarian Revolution of , and repressed every other attempt of its people to win democracy and human rights. The EU evolved from the Coal and Steel Community of 6 member states, to a union of 28 member states in A referendum in the UK of Based on the Spaak Report of , it sought to break down all barriers to trade in a common market for goods, services, labour and capital, and prevent distortion of competition and regulate areas of common interest like agriculture, energy and transport. Spain also applied and was rejected as it was still led by the Franco dictatorship. The same year, the Court of Justice proclaimed that the Community constituted a "new legal order of international law". Shortly after, de Gaulle boycotted the Commission, which he believed was pressing supranationalism too far. The Luxembourg compromise in agreed that France or other countries could veto issues of "very important national interest", particularly relating to the Common Agricultural Policy , instead of making decisions by " qualified majority ". Norway had rejected joining in a referendum , while the UK confirmed its membership in a referendum. In , the European Parliament had its first direct elections, reflecting a growing consensus that the EEC should be less a union of member states, and more a union of peoples. The Single European Act increased the number of treaty issues in which qualified majority voting rather than consensus would be used to legislate, as a way to accelerate trade integration. This revealed the depths of corruption and waste. These elections, in which anti-communist candidates won a striking victory, inaugurated a series of peaceful anti-communist revolutions in Central and Eastern Europe that eventually culminated in the fall of communism. In November , protestors in Berlin began taking down the Berlin Wall , which became a symbol of the collapse of the Iron Curtain , with most of Eastern Europe declaring independence and moving to hold democratic elections by Since , anti-austerity protests have flared across Europe, particularly in Athens , Greece, demanding the European Central Bank and Commission upholds social and economic rights. The Treaty of Maastricht renamed the EEC as the " European Union ", and expanded its powers to include a social chapter , set up a European Exchange Rate Mechanism , and limit government spending. The UK initially opted out of the social

provisions, and then monetary union after the Black Wednesday crisis where speculators bet against the pound. Sweden, Finland and Austria joined in , but Norway again chose not to after a referendum , instead remaining part of the European Economic Area , abiding by most EU law, but without any voting rights. A newly confident EU then sought to expand. First, the Treaty of Nice made voting weight more proportionate to population two Irish referenda rejected, but then accepted this. Second, the Euro currency went into circulation in Fourth, in a Treaty establishing a Constitution for Europe was proposed. This "Constitution" was largely symbolic, but was rejected by referenda in France and the Netherlands. Most of its technical provisions were inserted into the Treaty of Lisbon , without the emotive symbols of federalism or the word "constitution". Also in , Bulgaria and Romania joined. Over to , because of the subprime mortgage crisis in the United States, and the developing global financial crisis European banks that had invested in derivatives were put under severe pressure. In turn, the Eurozone crisis developed when international investment withdrew and Greece, Spain, Portugal, and Ireland saw international bond markets charge unsustainably high interest rates on government debt. Eurozone governments and staff of the European Central Bank believed that it was necessary to save their banks by taking over Greek debt, and impose " austerity " and " structural adjustment " measures on debtor countries. This exacerbated further contraction in the economies. In , Croatia entered the EU. Proposals have not yet been adopted to allow it to initiate legislation, require the Commission to be from the Parliament, and reduce the power of the Court of Justice. The European Commission has the initiative to propose legislation. The " European Council " rather than the Council , made up of different government Ministers is composed of the Prime Ministers or executive presidents of the member states. It appoints the Commissioners and the board of the European Central Bank. The European Court of Justice is the supreme judicial body which interprets EU law, and develops it through precedent. It can also decide upon claims for breach of EU laws from member states and citizens.

3: European Foundation Centre

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Provisions for the amendment of the statutes or articles of incorporation Provisions for the dissolution of the entity Tax status of corporate and private donors Tax status of the foundation Some of the above must be, in most jurisdictions, expressed in the document of establishment. Others may be provided by the supervising authority at each particular jurisdiction. Europe[edit] There is no commonly accepted legal definition in Europe for a foundation. There is a proposal for a European Foundation, a legal form that would be recognised throughout Europe, see European Foundation Project. Foundations in civil law[edit] The term "foundation," in general, is used to describe a distinct legal entity. Foundations are often set up for charitable purposes , family patrimony and collective purposes. In some jurisdictions, a foundation may acquire its legal personality when it is entered in a public registry, while in other countries a foundation may acquire legal personality by the mere action of creation through a required document. Unlike a company, foundations have no shareholders , though they may have a board, an assembly and voting members. A foundation may hold assets in its own name for the purposes set out in its constitutive documents, and its administration and operation are carried out in accordance with its statutes or articles of association rather than fiduciary principles. The foundation has a distinct patrimony independent of its founder. Finland[edit] Foundations in Finland must have state approval and register at the National Board of Patents and Registration within six months from its creation. France[edit] There are not many Foundations in comparison to the rest of Europe. States representatives have a mandatory seat in the Board. A foundation should not have commercial activities as its main purpose, but they are permitted if they serve the main purpose of the foundation. There is no minimum starting capital, although in practice at least is considered necessary. A German foundation can either be charitable or serve a private interest. Charitable foundations enjoy tax exemptions. If they engage in commercial activities, only the commercially active part of the entity is taxed. A family foundation serving private interests is taxed like any other legal entity. There is no central register for German foundations. Only charitable foundations are subject to supervision by state authorities. Family foundations are not supervised after establishment. All forms of foundations can be dissolved, however, if they pursue anti-constitutional aims. Foundations are supervised by local authorities within each state Bundesland because each state has exclusive legislative power over the laws governing foundations. These benefits are subject to taxation. More than charitable German foundations have existed for more than years; the oldest dates back to Foundations are the main providers of private scholarships to German students. Italy[edit] In Italy, a foundation is a private non profit and autonomous organization, its assets must be dedicated to a purpose established by the founder. The founder cannot receive any benefits from the foundation or have reverted the initial assets. The private foundations or civil code foundations are under the section about non commercial entities of the first book Libro Primo of the Civil Code of Law Codice Civile from The founder must write a declaration of intention including a purpose and endow assets for such purpose. This document can be in the form of a notarised deed or a will. To obtain legal personality, the foundation must enroll in the legal register of each Prefettura local authority or some cases the regional authority.

4: The foundations of European Community law - LSE Research Online

Hartley, Trevor C. () The foundations of European Community law. (5th). Oxford University Press, Oxford, UK. ISBN Full text not available from this repository.

5: Foundation (nonprofit) - Wikipedia

FOUNDATIONS OF EUROPEAN COMMUNITY LAW pdf

Providing an account of the constitutional and administrative law of the European Community, this book examines the institutions, the community legal system, major constitutional issues, the European.

6: Table of contents for The foundations of European Community law

The Foundations of European Community Law: An Introduction to the Constitutional and Administrative Law of the European Community Describes the institutional structure of the EU and its legal system, the relationship between EU law and the national law of the member states, as well as the judicial and administrative constraints on EU actions.

7: The foundations of European Community law - CORE

The dynamics of EU legislation growth is a consequence of the big, fifth enlargement. This enlargement represents the transition from relatively homogenous EU 15 with similar national regulations.

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