

Twenty years after Von Colson: the impact of "indirect effect" on the protection of the individual's community rights

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EC law; Indirect effect; Interpretation; National courts; Rule of law

Legislation:

Treaty of Amsterdam 1997

EC Treaty art.249

Case:

Von Colson v Land Nordrhein-Westfalen (C14/83) [1984] E.C.R. 1891 (ECJ)

Abstract

The introduction, some 20 years ago, of the concept of "indirect effect" by the European Court of Justice in Von Colson represents a fundamental development of the principle of "effective judicial protection". Two decades on, the Court's case law clearly illustrates that "indirect effect" has played a key role in protecting citizens' rights, particularly in the absence of the horizontal direct effect of Directives. This has recently been confirmed by the Court's judgment in Pfeiffer. It is argued in this article that the scope of the principle of indirect effect has not been restricted by Arcaro and that a clearer distinction is possible between the principles of "incidental horizontal direct effect" and "indirect effect". The Court has rightly limited the latter concept in order to comply with the rule of law and the principle of legal certainty, but legal certainty would be further improved if the Court indicated more clearly the point in time when the duty arises for national courts to interpret national law to comply with Community law. Furthermore, the (alternative) possibility of national courts relying on the principle of state liability as a means of protecting the rights of individuals is unlikely to be a panacea for all ills. Although the court seems prepared to further develop the principle of "effective judicial protection" where appropriate, the ultimate guarantor of Community rights is the national court. Recent UK caselaw is examined with this in mind. The unwillingness of the House of Lords in White to apply the principle of indirect effect to a private law agreement purporting to give effect to Community law is criticised and should be reviewed in light of the Court's ruling in Evans.