

12-1-1987

European Community Law in the United Kingdom by Lawrence Collins

Kimberly Warren

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/iclr>



Part of the [International Law Commons](#)

Recommended Citation

Kimberly Warren, *European Community Law in the United Kingdom by Lawrence Collins*, 10 B.C. Int'l & Comp. L. Rev. 135 (1987), <http://lawdigitalcommons.bc.edu/iclr/vol10/iss1/9>

This Book Review is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College International and Comparative Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

Book Review

EUROPEAN COMMUNITY LAW IN THE UNITED KINGDOM. By LAWRENCE COLLINS, Butterworths, London, third edition, 1984, xxxvi pp., 233 pp., index.

This book is the most recent edition of an already established text on the relationship between European Economic Community (EEC) law and United Kingdom law. It addresses the recent legal developments that have taken place in EEC law and British domestic law. The author, Lawrence Collins, has made numerous changes and additions to the text since his second edition. For example, chapter three has been revised to include the applicability of Article 177 of the Treaty of Rome¹ to disciplinary bodies and arbitral tribunals. Chapter four has been extended to include the *locus standi* of individuals before the European Court in cases that concern restrictive practices² and antidumping.³

¹ Treaty Establishing the European Economic Community, *done at Rome*, March 25, 1957, 298 U.N.T.S. 3 [hereinafter Treaty of Rome]. Article 177 provides:

The Court of Justice shall have jurisdiction to give Preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a member state, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

Id. at art. 177.

² Article 85 of the Treaty of Rome prohibits Common Market practices which affect trade among members and have as their object the prevention, restriction or distortion of competition within the Common Market. Treaty of Rome, *supra* note 1, at art. 85. Decisions made by the Commission as to restrictive practices may be challenged by the parties and they may seek annulment of decisions provided they have a legitimate interest. L. COLLINS, *EUROPEAN COMMUNITY LAW IN THE UNITED KINGDOM 190-92* (3d ed. 1984) [hereinafter L. COLLINS].

³ Dumping occurs when goods are sold in an export market at a price lower than their value in the exporter's home market. Council Regulation 3017/79 contains Community rules providing for the imposition of antidumping duties and countervailing duties. This regulation provides that a legal person or any association acting on behalf of a Community industry which considers itself injured by dumping may lodge a written complaint and this may result in the initiation of a proceeding. L. COLLINS, *supra* note 2, at 195-96.

In addition, recent European Court case law has been added to several sections of the book.⁴

Since the initial publication of this book, the European Court has delivered judgments in over three hundred cases. Due to the large number of cases decided since the first edition, Collins answers many questions on which he merely speculated in earlier editions. This is accomplished through an examination of pertinent cases. Examples of such questions include the issues surrounding the supremacy of EEC law over British domestic law and the limitations of the direct effects doctrine. Furthermore, Collins addresses questions concerning the role of fundamental rights in the decisions of the European Court. Specifically, fundamental rights are considered through a discussion of the European Convention of Human Rights.

I. THE GENERAL RELATIONSHIP BETWEEN EEC LAW, UNITED KINGDOM LAW, AND INTERNATIONAL LAW

The book is divided into four areas. The first part examines the general relationship between EEC law, United Kingdom law, and international law. Next the book considers the operation of directly applicable and effective EEC law in the United Kingdom. The third area considers the relationship between the United Kingdom Courts and the European Court of Justice (European Court) with respect to interpreting EEC law. Finally, the book considers the avenues available to challenge the EEC acts.

The first chapter defines EEC law as that body of law which comprises the rights, duties, power, and remedies created by and exercised under the Treaties setting up the three European Communities (the European Coal and Steel Community, the European Atomic Energy Community, and the EEC).⁵ The effectiveness of such an independent system of law is derived from its recognition within the national legal systems of the member states, the creation of Community Institutions, and the development in the decisions of the European Court.

II. OPERATION OF DIRECTLY APPLICABLE AND EFFECTIVE EEC LAW IN THE UNITED KINGDOM

In the second chapter Collins attempts to resolve the conflict between the supremacy of EEC law and concurrent British domestic law.⁶ In addressing this

⁴ See *CILFIT v. Ministry of Health*, 1982 E. Comm. Ct. J. Rep. 3415, 1 Common Mkt. L.R. 472 (1983); *Foglia v. Novello* (No. 2), 1981 E. Comm. Ct. J. Rep. 3045, 1 Common Mkt. L.R. 585 (1982); *Foglia v. Novello* (No. 1), 1981 E. Comm. Ct. J. Rep. 745, 1 Common Mkt. L.R. 45 (1981); *IBM v. Commission*, 1981 E. Comm. Ct. J. Rep. 2639, 3 Common Mkt. L.R. 635 (1981); *National Panasonic (UK) Ltd. v. Commission*, 1980 E. Comm. Ct. J. Rep. 2033, 3 Common Mkt. L.R. 169 (1980).

⁵ L. COLLINS, *supra* note 2, at 1.

⁶ *Id.* at 34.

conflict Collins considers the direct effects doctrine, on the one hand, and the British government's dualistic approach to treaties, on the other hand.

Collins presents the direct effects doctrine in a discussion of section 2 of the European Communities Act of 1972.⁷ According to the principle of direct effects, nationals of Member States may invoke certain provisions of the Treaties establishing the European Communities as conferring direct rights. The individual involved may rely on such rights during proceedings in national courts. Collins indicates that if a provision is directly effective then the national court must decide in what way to give effect to the treaty. In the case of direct effect of EEC regulations, Member States are prohibited from altering the scope of EEC regulations in applying their provisions. Thus, in the United Kingdom, authorities cannot, by subordinate legislation or administrative measure, issue binding interpretations of EEC regulations or modify the scope of such regulations.

Under the dualist approach, treaties are not self-executing, but, instead, need legislation to effect their objectives. Collins, while acknowledging the direct effects doctrine, concludes that British parliamentary supremacy will prevail over EEC law due to Britain's adherence to the dualist approach.

III. INTERPRETATION OF EEC LAW: RELATIONSHIP BETWEEN EUROPEAN COURT AND BRITISH COURTS

The third chapter, which is of particular interest to a British practitioner faced with a point of EEC law, deals with the treatment of questions of EEC law by the British courts. Collins examines the manner in which points of EEC law are to be pleaded in domestic litigation and how the British courts have reacted to such points. Collins also includes a detailed analysis of the reference procedure of Article 177 of the Treaty of Rome.⁸ Whenever a relevant question is raised before any court or tribunal of a Member State, that court or tribunal may request the European Court to issue a ruling. Article 177 gives the European Court jurisdiction to make preliminary rulings on references concerning interpretations by Member States of treaties or acts of institutions of the EEC. The purpose of Article 177 is to help create uniformity and harmonization among courts in community interpretation of EEC law.

Collins gives a full commentary on rulings of the European Court and the British Court of Appeal concerning the circumstances in which references are granted or denied. Collins has added a section to this edition discussing the applicability of Article 177 to disciplinary bodies and arbitral tribunals. The European Court limits the power of professional bodies or disciplinary tribunals to refer under Article 177 to instances in which 1) there is state involvement in

⁷ *Id.* at 36.

⁸ Treaty of Rome, *supra* note 1, at art. 177.

the membership or rules, and 2) there is no recourse to courts or right of appeal. In the case of arbitral tribunals, while arbitrators appointed by statute have the power to refer, private arbitrators appointed pursuant to the agreement between the parties do not have the power to refer. The author points out that in the United Kingdom the Arbitration Act of 1979 regulates the power of courts to review decisions of arbitrators and an appeal is not granted unless a strong *prima facie* case exists to show that the arbitrator has come to the wrong conclusion.

This chapter also includes a new discussion concerning the principle of *Acte clair* and its affect on the duty of the European Court to accept a reference under Article 177. According to the principle of *Acte clair*, the court of final resort, which would be obliged to make a reference under Article 177(3), is not bound to make such a reference where the point of European law sought to be referred is clear or free from doubt.

Collins examines the near acceptance of *Acte clair* by the European Court in his examination of the *CILFIT* case.⁹ In this case, the Court ruled that an Italian National Court could refrain from submitting a reference to the European Court. The Court conditioned this holding upon the absence of reasonable doubt as to the manner in which the question raised is to be resolved. Furthermore, the Court held that before the national court reaches this decision it must take into account two factors. First, that EEC legislation is drafted in several languages. Since each version is equally authentic both must be compared. Second, the national court must place the provision of EEC law in the proper perspective and consider the meaning of legal concepts in the EEC law context. Collins continues with a discussion of how the British House of Lords has adopted a similar approach to the obligation of a national court to refer a question such as that recommended in *CILFIT*.¹⁰

Article 177 is also considered with respect to the European Court's exercise of its discretion to refuse to give a preliminary ruling when there is misuse or abuse of the Article 177 proceedings. Collins uses the *Foglia* cases¹¹ to explain how a Member State or individual might attempt to abuse Article 177. In *Foglia*, Italian wine growers attempted to have the European Court give a ruling the effect of which would have been to hold that a French tax was discriminatory and contrary to the Treaty of Rome. The Court found that it had no jurisdiction because there was no genuine dispute between the parties. Moreover, the Court stated that the litigation was an artificial device by the Italian parties to obtain a ruling that French tax legislation was invalid. In addition, *Foglia* stands for

⁹ L. COLLINS, *supra* note 2, at 119-20.

¹⁰ *Id.* at 120-21.

¹¹ *Id.* at 128-30.

the Court's decision not to give advisory opinions on aspects of EEC law which are not central to the decision.

IV. METHODS OF CHALLENGING EEC ACTS

The fourth chapter deals with the manner in which the acts and defaults of EEC institutions and Member States may be litigated before the European Court. Collins discusses how these parties may raise the plea of illegality provided for in Article 184 of the Treaty of Rome. This section has also been expanded to include a discussion of the application of *locus standi* principles to restrictive practices and antidumping investigations. Collins then explains the EEC's prohibition of restrictive practices and the power of the Commission of the Economic Community¹² to hear complaints and conduct investigations initiated by parties with legitimate interests in the infringement of trade. The addressee may challenge the Commission's decisions that stem from an investigation.¹³ For example: in the *AM and S*¹⁴ case a partially successful challenge against the production of documents was made on the ground of legal professional privilege and in *National Panasonic*¹⁵ an unsuccessful challenge was made against an on the spot investigation.¹⁶

In conclusion, this edition will be helpful to academicians and practitioners alike. It explains the relationship between EEC law and British domestic law from both theoretical and practical perspectives.

Kimberly Warren

¹² The European Commission formulates proposals for new Community policies and administers existing policies. T. HARTLEY, *THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW* 9 (1981).

¹³ L. COLLINS, *supra* note 2, at 192.

¹⁴ *AM and S Europe Ltd. v. Commission*, 1982 E. Comm. Ct. J. Rep. 1575, 2 Common Mkt. L.R. 264 (1982).

¹⁵ *National Panasonic*, 1980 E. Comm. Ct. J. Rep. 2033.

¹⁶ L. COLLINS, *supra* note 2, at 192.