

MICRO CASE STUDY – FRANCOVICH (JOINED CASES C-6/90 AND C-9/90)

Facts of the case

Mr. Francovich, an Italian citizen, lost his job. When trying to receive his salary for the last months, he failed due to the bankruptcy of his employer.

In order to avoid this, the directive 80/987 on the approximation of the laws of the member States relating to the protection of Employees in the event of the insolvency of their employer had been adopted. The directive obliged Member States to set up guarantee institutions for the claims of the employees. It had to be implemented into national law by 23 October 1983 at the latest. Italy failed to implement the directive in this period.

Mr. Francovich then sued the Italian Republic for his salary. If they had implemented the directive, he could have received his salary from the guarantee institution Italy was obliged to set up.

What will the Italian Court do?

Solution outline

1. Procedural aspects

- Art. 267 I lit. a AEUV
- “interpretation of the contracts”: “Under the system of the Community law in force, is a private individual who has been adversely affected by the failure of a Member State to implement Directive 80/987 (...) entitled (...) against the Member State (...) to claim compensation for the damage sustained (...)?”

2. Material principles

a) Direct application of the directive

- If the directive is applicable even without implementation, Francovich would have the possibility to sue Italy on the grounds of the directive itself for not having created guarantee institutions; the breach of this obligation would allow Francovich to claim his damages based on the national state liability system.
 - Conditions for direct application:
 - provisions of the directive are sufficiently clear and precise
 - provisions of the directive are unconditional
- ⇒ in this case: State had discretion about the choice of the guarantee institution =>

therefore, direct application was denied

b) liability

- derivation (the existence of State liability as a matter of principle):
 - principle of effectiveness: Member States are obliged to ensure that Community law is fully effective => this goal can only be met if Member States have to make reparation for damages caused by unlawful conduct of the Member State => “the principle whereby a State must be liable for loss and damage caused to individuals as a result of breaches of Community law for which the State can be held responsible is inherent in the system of the treaty”
 - Art. 4 III 2 EUV
 - principle of equivalence: the conditions for obtaining reparation of loss and damage cannot be less favorable than those relating to similar domestic claims
 - conditions:
 - rule of law infringed must be intended to confer rights on individuals
 - content of conferred rights
 - direct causal link between the breach of the obligation and the alleged damages
- ⇒ in this case: Directive was meant to protect employees from bankruptcy of the employers, thus conferring individual rights; the directive should prevent employees from not getting even a part of their wages; by not installing guarantee institutions, Francovich lost all his wages in consequence

=> Decision of the Italian Court:

After having received the answer of the ECJ, Italy had to pay damages.

Teacher's note

- point out to students that the case was decided under old Community Law, in case they want to read the original decision
- point out that conditions for state liability were first defined by Francovich, then refined by following decisions such as Brasserie du Pêcheur, Köbler
- this case study illustrates the following:
 - non-contractual liability of a Member State <> Art. 340 AEUV liability of the EU

- failure to implement a directive
 - conditions for direct applicability of a directive
 - conditions of state liability
- questions to discuss:
- how could this case reach the ECJ? via Art. 267 AEUV
 - significance: mechanism by which individuals can enforce their EU rights before their national courts => better enforcement of Union law
 - range of this decision: not confined to a failure to implement directives; all domestic acts and omissions can give rise to state liability => effectivity of Union Law

Teaching Materials

Power Point (see Document attached)