

her by the Member State's breach of Community law.¹²⁵ It is unlikely that this principle, as it stands at present, could be used by individuals against a State for failure to implement properly the Habitats Directive as the Directive does not appear to confer rights on individuals as required by the Court of Justice. However, it is not inconceivable that the Court of Justice will develop the principle so that it eventually encompasses the field of nature conservation.¹²⁶

1.7 Integration of the Habitats Directive into the Irish Legal System

1.7.1 Supremacy of European Community Law

The legal system of the European Community is fundamentally different to the traditional model of international law. Unlike international law, EC Law is supreme over the national laws of the Member States.¹²⁷ National courts are required to give precedence

¹²⁵ *Francovich and Others v. Italy* (Cases 6,9/90) [1991] ECR I-5357; [1993] 2 CMLR 66 (failure to implement a directive); *Brasserie du Pêcheur S.A. v. Germany* and *Regina v. Secretary of State for Transport, ex parte Factortame (No.3)* (Joined Cases 46/93 and 48/93) [1996] ECR I-1029; [1996] 1 CMLR 889 (Member State adopts legislation incompatible with EC law); *Regina v. H.M. Treasury, ex parte British Telecommunications plc* (Case 392/93) [1996] ECR I-1631; [1996] 2 CMLR 217 (Member State incorrectly implemented the provisions of a directive into national law); *Norbros Laboratories Ltd. v. Ministry of Agriculture Fisheries and Food* (Case 127/95) European Court of Justice, 2 April 1998, not yet reported. The principle of State liability for damages for failure to properly implement a Community directive was accepted by the High Court in *Coppinger v. Waterford County Council* [1996] 2 ILRM 427.

¹²⁶ While the Court has stated that in order for the principle to arise the directive in question must confer rights on individuals, it has, in effect, held that a general interest, such as the protection of groundwater against pollution, confers rights upon individuals if non-compliance might endanger the health of persons, *Commission v. Germany* (Case 131/88) [1991] ECR I-825; *Commission v. Germany* (Case 58/89) [1991] ECR I-4983; *Commission v. Germany* (Case 361/88) [1991] ECR I-2567; [1993] 2 CMLR 821; *Commission v. Italy* (Case 363/85) [1987] ECR 1733.

¹²⁷ *Oberkreisdirektor des Kreises Borken v. Handelsniedernehmung Moormann B.V.* (Case 190/87) [1988] ECR 4689; *Costa v. ENEL* (Case 6/64) [1964] ECR 585; [1964] CMLR 425; *Amministrazione delle Finanze dello Stato v.*

to EC law over conflicting provisions of national law¹²⁸ and national Parliaments must refrain from enacting any new conflicting measures. Even the Constitution of Ireland is subordinate to a provision of European Community law as demonstrated in *SPUC v. Grogan* (Case 159/90).¹²⁹ Accordingly, the Habitats Regulations cannot be challenged in the Irish courts as being repugnant to the Constitution in so far as they are necessary to give effect to EC law.¹³⁰ The following is an outline of the main features of EC law relevant to the implementation of the Habitats Directive into the Irish legal system.¹³¹

1.7.2 Directives

There are two basic sources of EC law, namely "primary legislation" (Treaty law) and "secondary legislation" consisting of regulations, decisions and directives adopted by the Community institutions under Article 189 (renumbered Article 249) of the Treaty of Rome. A directive is a legislative measure binding as to the result to be achieved. The Habitats Directive applies to the European territory of the Member States.¹³² In Ireland, implementation of the Directive extends to the exclusive fishing limits of the State.¹³³ Therefore, provisions relating to SCIs and SACs will apply to the marine environment.

Directives must be incorporated into the national law of a Member State by means of formal legislation. New legislation must be adopted unless the objectives contained in the directive are already reflected in existing legislation.¹³⁴ Pre-existing Irish legislation, such as the Wildlife Act, 1976 and subordinate legislation made under it, did not reflect fully the objectives of the

¹²⁸ *Fratelli Costanzo v. Comune di Milano* (Case 103/88) [1989] ECR 1839; [1990] 3 CMLR 239.

¹²⁹ [1991] ECR I-4685; [1991] 3 CMLR 849. See also *Internationale Handelsgesellschaft v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (Case 11/70) [1970] ECR 1125; [1972] CMLR 225.

¹³⁰ See section 1.7.6.

¹³¹ For further information, refer to Steiner, *op. cit.*, at 38, Weatherill and Beaumont, *op. cit.*, at 337, Wyatt and Dashwood, *op. cit.*, at 52, Turner, *op. cit.*, at 51.

¹³² Habitats Directive, Article 2(1).

¹³³ Habitats Regulations, Regulation 2.

¹³⁴ *Commission v. Germany* (Case 361/88) [1991] ECR I-2567.