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# The Extension of International Law to Private Parties Within the European Union

## INTRODUCTION

During the twentieth century, one of the significant developments in European law has been the extension of international law to private parties.<sup>1</sup> Today, private parties are more likely to have the public acts of sovereign parties reviewed in national and international legal systems.<sup>2</sup> Suits for violations of international law<sup>3</sup> and human rights<sup>4</sup> demonstrate that a foreign sovereign is no longer absolutely immune from suit in national<sup>5</sup> and international courts.<sup>6</sup>

The extension of international law to private individuals in Europe has been facilitated by two methods: “community competence” and “intergovernmental cooperation.”<sup>7</sup> This Note addresses the extension of international law to private parties in Europe. Part I examines “community competence” through the decisions of the European Court of Justice (ECJ) and the European Court of Human Rights (ECHR). Part II examines “intergovernmental cooperation” through the right of Union Citizenship conferred by the Treaty on European Union (TEU). Part III compares “community competence” to “inter-

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<sup>1</sup> See Ronald A. Brand, *The Role of International Law in the Twenty-First Century: External Sovereignty and International Law*, 18 *FORDHAM INT'L L.J.* 1685, 1692 (1995).

<sup>2</sup> See *id.*; 4 *ENCYCLOPEDIA OF EUROPEAN COMMUNITY LAW* 21-0055 (Sweet & Maxwell ed. 1996). The European Convention on Human Rights granted a right of petition to individual complainants. See 4 *ENCYCLOPEDIA OF EUROPEAN COMMUNITY LAW* 21-0055 (Sweet & Maxwell ed. 1996).

<sup>3</sup> See Brand, *supra* note 1, at 1692.

<sup>4</sup> See *Lopez Ostra v. Spain*, 20 *Eur. Hum. Rts. Rptr.* 277, to be published as 303-C *Eur. Ct. H.R.* (ser. A) Application No. 16798/90 (Judgment of Dec. 9, 1994). The European Court of Human Rights ruled unanimously in *Lopez Ostra* that Spain's complacent enforcement of environmental laws violated a family's right of privacy. See *id.*

<sup>5</sup> See Brand, *supra* note 1, at 1692.

<sup>6</sup> See *Lopez Ostra v. Spain*, 20 *Eur. Hum. Rts. Rptr.* 277.

<sup>7</sup> See David O'Keefe, *General Course in European Community Law the Individual and European Law*, in V-1 *COLLECTED COURSES OF THE ACADEMY OF EUROPEAN LAW* 55, 84 (Academy of European Law ed. 1996). “Community competence” refers to limitations on state sovereignty imposed by the transfer of national control over certain issues to an international organization. See *id.* at 87. “Intergovernmental cooperation” refers to the cooperation resulting from the retention of complete control over national issues. See *id.* at 85.

governmental cooperation" from the standpoint of the individual. This Note concludes that "community competence" ultimately provides a better guarantee than "intergovernmental cooperation" for the protection of individual rights.

## I. THE EXTENSION OF INTERNATIONAL LAW TO INDIVIDUALS THROUGH "COMMUNITY COMPETENCE"

### A. *The Individual As a Subject of European Community Law*

The ECJ is the institution responsible for the extension of European Community (EC) law to individuals.<sup>8</sup> Through the doctrines of supremacy and direct effect, the court's case law established the place of the individual in the EC's legal order.<sup>9</sup> In *Van Gend en Loos*, the ECJ resolved the question of whether Article 12 of the EEC Treaty<sup>10</sup> had direct application in national courts.<sup>11</sup> The court concluded that:

[T]he Community constitutes a new legal order of international law, for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals . . . . Community law . . . 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 (direct effect) way upon individuals as well as upon the Member States . . . .<sup>12</sup>

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<sup>8</sup> See *id.* at 64. There is still a distinction between the EC and the European Union (EU). See TREATY ON EUROPEAN UNION, Feb. 7, 1992, art. E., 31 I.L.M. 247, 256 [hereinafter TEU]. Article A of the TEU states that the Union is founded upon the EC. See TEU, art. A. Article M provides that nothing in the TEU shall affect the treaties that established the EC. See TEU, art. M. Thus, the ECJ's case law has not been superseded by the TEU. See *id.*

<sup>9</sup> See O'Keeffe, *supra* note 7, at 64. Supremacy refers to the preemption of national law by EC law. See *id.* at 65. Direct effect refers to rights that are expressly granted by the European Economic Community (EEC) Treaty and to rights that arise from obligations which the treaty imposes upon member nations. See *id.* at 65-66.

<sup>10</sup> TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC TREATY].

<sup>11</sup> See Case 26/62, *N.V. Algemene Transport - En Expeditie Onderneming Van Gend en Loos v. Nederlandse Tariefcommissie*, 1963 E.C.R. 1, 3, [1963] C.M.L.R. 105 (1963).

<sup>12</sup> *Id.* at 12.

Thus, Member State nationals were able to lay claim to rights, on the basis of Article 12 of the EEC Treaty, which national courts had to protect.<sup>13</sup> In *Costa*, the ECJ noted that the EEC Treaty's self-executing provisions created a body of law that bound Member States.<sup>14</sup> Furthermore, *Amministrazione delle Finanze dello Stato v. Simmenthal* explicitly resolved any question regarding the duty of national courts in the event of a direct conflict between EC and national law.<sup>15</sup> The ECJ stated:

The effectiveness of provisions of Community law which have direct effect . . . cannot be impaired by incompatible national provisions whether they were adopted earlier or later. The fact that a constitutional court may declare such a national law to be unconstitutional cannot be allowed to prevent the national court from applying directly applicable provisions of Community law, even if the conflicting national provisions have not yet been declared unconstitutional.<sup>16</sup>

The ECJ's early view of the EC legal order evolved into a perception of the EEC Treaty as a constitutional document.<sup>17</sup> In Opinion 1/91, the court summarized its case law:

[T]he EEC Treaty . . . constitutes the constitutional charter of a Community . . . . The essential characteristics of the Community legal order which has thus been established are in particular its primacy over the law of the Member States, and the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States . . . .<sup>18</sup>

Since the doctrines of supremacy and direct effect were the most important characteristics of EC law, this provided a guarantee for the enforcement of individual rights.<sup>19</sup>

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<sup>13</sup> See O'Keefe, *supra* note 7, at 65.

<sup>14</sup> See Case 6/64, *Flaminio Costa v. ENEL*, 1964 E.C.R. 585, 603, [1964] C.M.L.R. 425 (1964).

<sup>15</sup> See Case 106/77, *Amministrazione delle Finanze dello Stato v. Simmenthal*, S.p.A., 1978 E.C.R. 629, 656, [1978] C.M.L.R. 263 (1978).

<sup>16</sup> *Id.*

<sup>17</sup> See O'Keefe, *supra* note 7, at 69.

<sup>18</sup> *Id.*

<sup>19</sup> See *id.*

## B. *Judicial Protection of the Individual*

The ECJ's protection of the individual has evolved into a rights- and remedy-based case law.<sup>20</sup> This generation of case law pertains to the relationship between national law and EC directives in the enforcement of EC legal rights.<sup>21</sup> The ECJ has utilized the doctrine of direct effect in two distinct ways to protect individual rights.<sup>22</sup> The court has (1) relied on the direct effect of EC directives to protect individual rights<sup>23</sup> and (2) interpreted Article 5 of the EEC Treaty as imposing obligations upon national courts to give effect to EC directives.<sup>24</sup>

The court's acceptance of the doctrine of direct effect of directives extended far beyond the wording of Article 189 of the EEC Treaty.<sup>25</sup> In *Van Duyn*, the ECJ held that "the useful effect (of a Community directive) would be weakened if individuals were prevented from relying on it before their national courts . . . ."<sup>26</sup> Using the *Van Duyn* reasoning, the court in *Becker* allowed an individual to rely on directives which had not yet been implemented by Member States.<sup>27</sup>

In *von Colson*, the ECJ indicated another avenue for the protection of individual rights.<sup>28</sup> The court determined that Article 5 of the EEC Treaty imposed an obligation on national courts to interpret national law, specifically introduced to implement an EC directive, in a manner which would give effect to the purpose of that directive.<sup>29</sup> Furthermore, in *Faccini Dori*, the court stated that EC law required Member States to make restitution to individuals for failure to transpose an EC directive into national law.<sup>30</sup> Thus, the doctrine of direct effect of EC direc-

<sup>20</sup> See *id.* at 75.

<sup>21</sup> See *id.* This generation of case law is based on the assumption that national rules will apply in the resolution of disputes founded in EC law. See *id.*

<sup>22</sup> See O'Keefe, *supra* note 7, at 76-77.

<sup>23</sup> See *id.* at 76.

<sup>24</sup> See *id.* at 77.

<sup>25</sup> See *id.* at 76. Article 189 of the EEC Treaty requires that the result of an EC directive be binding upon each Member State to which it is addressed. See EEC TREATY, art. 189. Article 189 leaves national authorities discretion in the manner in which national laws implement EC directives. See *id.*

<sup>26</sup> See Case 41/74, *Yvonne van Duyn v. Home Office*, 1974 E.C.R. 1337, 1347, [1975] C.M.L.R. 1 (1975).

<sup>27</sup> See Case 8/81, *Ursula Becker v. Finanzamt Munster-Innenstadt*, 1982 E.C.R. 53, 77, [1982] C.M.L.R. 499 (1982).

<sup>28</sup> See Case 14/83, *Sabine Von Colson and Elisabeth Kamann v. Land Nordrhein-Westfalen*, 1984 E.C.R. 1891, 1909, [1986] C.M.L.R. 430 (1986).

<sup>29</sup> See *id.*

<sup>30</sup> See Case C-91/92, *Faccini Dori v. Recreb Srl*, [1995] C.M.L.R. 655, 691-92 (1995). The court

tives is complemented by the requirement of conformity of national laws with the purposes of EC directives and by the principle of state liability.

### C. *Human Rights and the Individual*

“Community competence” in the area of human rights has extended international law to private parties.<sup>31</sup> The European Convention on Human Rights (Convention) created its own judicial enforcement system and granted a right of access to individual complainants.<sup>32</sup> From the standpoint of the individual, this is significant because the case law of the ECHR is universally regarded as relevant to litigation practice.<sup>33</sup>

The scope of human rights protected by the Convention is broad.<sup>34</sup> For example, the ECHR in *Lopez Ostra* unanimously ruled that the operation of a waste and water treatment station near the home of the plaintiff was a nuisance that constituted a violation of the right to private life under Article 8 of the Convention.<sup>35</sup> The ECHR awarded

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said that a Member State will only be liable if the preconditions for state liability were met. *See id.*

<sup>31</sup> See 4 ENCYCLOPEDIA OF EUROPEAN COMMUNITY LAW, *supra* note 2, at 21-0055.

<sup>32</sup> See European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, art. 25, 213 U.N.T.S. 222, 236 [hereinafter Convention]. Under Article 25 of the Convention, individuals and nongovernmental organizations may submit petitions to the European Commission of Human Rights. *See id.* Upon receipt of a petition, the Commission reviews it for admissibility in accordance with the conditions set by Article 26 (exhaustion of local remedies) and Article 27 (reasons for nonadmissibility are anonymous petitions, petitions submitted to another international procedure, no apparent violation of a protected right, and abuse of the right to petition). *See id.* at art. 26. If the petition is accepted, the Commission will ascertain the facts and will attempt to resolve the dispute. *See id.* at art. 28. If the matter remains unresolved, the Commission prepares a report containing a statement of facts and an opinion of whether a contracting party has breached its obligations under the Convention. *See* Convention, *supra*, art. 31. The report is then transmitted to the Committee of Ministers. *See id.* If the question is not referred to the Court by the Commission or a contracting state, the Committee decides whether the Convention has been violated. *See id.* at art. 32.

<sup>33</sup> See 4 ENCYCLOPEDIA OF EUROPEAN COMMUNITY LAW, *supra* note 2, at 21-0056. For example, the Convention rights are directly effective in the domestic law of the Netherlands and Belgium and are pleadable before their national courts. *See id.* Although the United Kingdom has not implemented the Convention into its domestic legal system, courts are willing to hear “convention points” and to attach a level of credence to them. *See id.*

<sup>34</sup> See Richard Desgagne, *Integrating Environmental Values into the European Convention on Human Rights*, 89 AM. J. INT’L L. 263, 270-77 (1995). The term Human Rights encompasses: the right to life, the right to physical integrity and health, and the prohibition of degrading treatment. *See id.*

<sup>35</sup> See *Lopez Ostra v. Spain*, 20 Eur. Hum. Rts. Rptr. 277. Since a leather tanning firm began operation in July 1988, odors from the treatment of waste and wastewater created health problems

Lopez Ostra 5.2 million pesetas in damages.<sup>36</sup> Spain does not possess a right of appeal against this judgment.<sup>37</sup> Thus, "community competence" in the area of human rights is another avenue by which individuals can use international law to enforce their rights.

## II. THE EXTENSION OF INTERNATIONAL LAW TO INDIVIDUALS THROUGH "INTERGOVERNMENTAL COOPERATION"

The Third Pillar of the TEU is based on a form of "intergovernmental cooperation" that has strong links to the EC.<sup>38</sup> The choice of "intergovernmental cooperation" in the area of Justice and Home Affairs was deliberate.<sup>39</sup> It not only allows Member States to cooperate in areas which have been deemed to be important but also maintains control of internal decisionmaking in these areas.<sup>40</sup> Consequently, the Third Pillar of the TEU lacks a generalized system of judicial review.<sup>41</sup> Article L excludes the ECJ's jurisdiction over Third Pillar issues.<sup>42</sup> This review is only available under Article K3(2)(c) for Third Pillar conventions<sup>43</sup> and under Article K9 in the event of a transfer of Third Pillar issues to the EC.<sup>44</sup>

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and nuisances for numerous people living in the area. *See id.* Ms. Lopez Ostra suffered health problems and felt her quality of life had diminished. *See id.* She launched legal action through regional and national courts, alleging "[u]nlawful interference with her home and her peaceful enjoyment of it, a violation of her right to choose freely her place of residence, attacks on her physical and psychological integrity, and infringements of her liberty and her safety on account of the municipal authorities' passive attitude to the nuisance . . . ." *See id.* After her final appeal was rejected, Ms. Lopez Ostra took her case to the European Commission on Human Rights in May 1990. *See id.*

<sup>36</sup> *See Spanish Woman Wins Environmental Nuisance Case Under Human Rights Convention*, Information Access Co., Jan. 6, 1995, available in LEXIS, Envirn Library, Allnews File.

<sup>37</sup> *See id.*

<sup>38</sup> *See* Dr. Dieter Kugelmann, *The Maastricht Treaty and the Design of a European Federal State*, 8 TEMP. INT'L & COMP. L.J. 335, 339 (1994). The EU is founded on the treaties that comprise the EC: the EEC Treaty, the Treaty Establishing the European Coal and Steel Community, and the Treaty Establishing the European Atomic Energy Commission. *See* TEU, *supra* note 8, 31 I.L.M. at 247. The EU is built on three pillars. *See* Kugelmann, *supra* at 339. The First Pillar consists of the treaties that established the EC. *See id.* The Second Pillar is based upon a common foreign and security policy, and the Third Pillar consists of a combination of home affairs and judicial cooperation. *See id.* The latter two pillars are intergovernmental in nature. *See id.*

<sup>39</sup> *See* O'Keefe, *supra* note 7, at 85.

<sup>40</sup> *See id.*

<sup>41</sup> *See id.* at 90.

<sup>42</sup> *See* TEU, *supra* note 8, art. L.

<sup>43</sup> *See id.* at art. K3(2)(c). Third Pillar conventions concluded under Article K3(2)(c) specifically stipulate that the ECJ may have jurisdiction to interpret their provisions and to rule on any disputes regarding their application, in accordance with the respective provisions of each convention. *See id.*

<sup>44</sup> *See id.* at art. K9.

The form of "intergovernmental cooperation" adopted by the TEU extended international law to individuals by establishing a right of Union citizenship for every person who was a national of a Member State.<sup>45</sup> The Treaty established a political link between the individual citizen and the Union.<sup>46</sup> Union citizens are first and foremost nationals of Member States.<sup>47</sup> The Treaty only confers citizenship of an international organization to Member State nationals.<sup>48</sup> Thus, Union citizenship is a label for a collection of rights that exist under EC law.<sup>49</sup>

### III. "COMMUNITY COMPETENCE" COMPARED TO "INTERGOVERNMENTAL COOPERATION"

From the standpoint of the individual, "community competence" provides a guarantee for the enforcement of individual EC-based rights.<sup>50</sup> The EEC Treaty was more than an agreement which created mutual obligations between contracting states.<sup>51</sup> This premise is supported by several factors.<sup>52</sup> First, the preamble to the Treaty refers not only to governments but also to peoples.<sup>53</sup> Second, the Treaty established institutions endowed with sovereign rights; the exercise of these rights affected not only Member States but also their citizens.<sup>54</sup> Third, Member State nationals cooperate in the functioning of the EC through the intermediary of the European Parliament and the Social Committee.<sup>55</sup> Fourth, the preliminary ruling procedure under Article 177 confirmed that Member States acknowledged that EC law has an authority which can be invoked by their nationals before national courts and tribunals.<sup>56</sup> Thus, *Van Gend en Loos* was significant because it allowed individuals to rely on Treaty articles which satisfied the decision's direct effect test.<sup>57</sup>

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<sup>45</sup> See O'Keefe, *supra* note 7, at 124.

<sup>46</sup> See *id.*

<sup>47</sup> See *id.* at 125.

<sup>48</sup> See *id.* at 124.

<sup>49</sup> See Kugelmann, *supra* note 38, at 348. Some of these rights include: freedom of movement, freedom of residence, the right to address petitions, the right to vote and to stand as a candidate in municipal and European elections in the state where a person resided. See *id.*

<sup>50</sup> See O'Keefe, *supra* note 7, at 84.

<sup>51</sup> See *Van Gend en Loos*, 1963 E.C.R. at 12.

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

<sup>56</sup> See *Van Gend en Loos*, 1963 E.C.R. at 12.

<sup>57</sup> See O'Keefe, *supra* note 7, at 66.

The *Van Gend en Loos* decision would have had minimal significance if Member States had been permitted to give priority to subsequently enacted national law.<sup>58</sup> Individual EC law rights would have been defeated, and uniformity of result could not have been guaranteed.<sup>59</sup> *Costa* established the priority of EC law over national law.<sup>60</sup> This was the logical consequence of *Van Gend en Loos* and ensured effective judicial protection of EC rights.<sup>61</sup>

*Simmenthal* provided further protection of EC rights.<sup>62</sup> This decision imposed upon national judges an obligation to disregard national law and to apply EC law.<sup>63</sup> The ECJ arrived at this conclusion by basing its decision on a concept of rights pertaining to the individual.<sup>64</sup> The court held that EC law is "a direct source of rights and duties for all those affected thereby, whether Member States or individuals, who are parties to legal relations under Community law"<sup>65</sup> and that national courts were bound, as a result, "to protect . . . the rights . . . conferred upon individuals by Community law."<sup>66</sup> Thus, the imposition of this obligation transposes the EC legal order to Member States and their courts, potentially disrupting constitutional precepts and judicial organization.<sup>67</sup>

The elevation of the EEC Treaty to the status of a constitutional document provides a guarantee for the enforcement of EC rights.<sup>68</sup> The ECJ's summary of its case law in *Opinion 1/91* identified the doctrines of supremacy and direct effect as the most important characteristics of EC law.<sup>69</sup> The identification of these two doctrines provides a guarantee for the enforcement of individual rights.<sup>70</sup>

The area of human rights affords many opportunities for judicial enforcement of individual rights. From the standpoint of the individual, *Lopez Ostra* is significant because it was the first time in the forty-four years since the Convention was established that an environmental

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<sup>58</sup> See *id.* at 67.

<sup>59</sup> See *id.*

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

<sup>62</sup> See O'Keeffe, *supra* note 7, at 68.

<sup>63</sup> See *Simmenthal*, 1978 E.C.R. at 656.

<sup>64</sup> See *id.*

<sup>65</sup> *Id.* at 642.

<sup>66</sup> *Id.*

<sup>67</sup> See O'Keeffe, *supra* note 7, at 68.

<sup>68</sup> See *id.* at 69-70.

<sup>69</sup> See *id.* at 69.

<sup>70</sup> See *id.* at 69-70.

pollution complaint had been successfully pursued under Article 8.<sup>71</sup> The claim of environmental damage was successfully translated into a protected human right by Ms. Lopez Ostra.<sup>72</sup> Thus, this case may have precedential value for those individuals who can translate a harm into a protected human right.<sup>73</sup>

The form of "intergovernmental cooperation" adopted by the TEU does not provide a guarantee for the enforcement of individual rights.<sup>74</sup> This is particularly true in terms of effective parliamentary and judicial supervision.<sup>75</sup> The choice of "intergovernmental cooperation" was deliberate.<sup>76</sup> It allowed Member States to cooperate in areas which were deemed to be important and where cooperation was desirable in light of internal markets.<sup>77</sup> Thus, this cooperation allowed Member States to maintain their monopoly of decisionmaking in these areas.<sup>78</sup>

A generalized system of judicial review of Third Pillar issues is lacking in the EU.<sup>79</sup> If competence of these issues were transferred from Member States to the EC, then the ECJ would have jurisdiction to resolve disputes according to its case law.<sup>80</sup> Provisions which were sufficiently clear, precise, and unconditional could have given rise to rights not only for Member States but also for individuals.<sup>81</sup> Because the ECJ and national courts would have been required to protect those rights, this would have enabled individuals to seek judicial enforcement of their Third Pillar rights.<sup>82</sup>

The form of "intergovernmental cooperation" adopted by the TEU can potentially lead to inconsistent enforcement of Third Pillar rights among states that are part of the EU.<sup>83</sup> For example, a monist state could construe the Third Pillar as giving rights which individuals may enforce before national courts.<sup>84</sup> On the other hand, a dualist state

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<sup>71</sup> See *European Court of Human Rights Finds Violation in Siting of Treatment Plant*, 17 Int'l Envtl. Rep. (BNA) No. 25, at 1043 (Dec. 14, 1994).

<sup>72</sup> See *Lopez Ostra v. Spain*, 20 Eur. Hum. Rts. Rptr. 277.

<sup>73</sup> See *Court Deems Pollution Infringes Human Rights*, Information Access Co., Dec. 28, 1994, available in LEXIS, Envirn Library, Allnews File.

<sup>74</sup> See O'Keefe, *supra* note 7, at 84.

<sup>75</sup> See *id.*

<sup>76</sup> See *id.* at 85.

<sup>77</sup> See *id.*

<sup>78</sup> See *id.*

<sup>79</sup> See Kugelmann, *supra* note 38, at 345.

<sup>80</sup> See O'Keefe, *supra* note 7, at 90.

<sup>81</sup> See *id.*

<sup>82</sup> See *id.*

<sup>83</sup> See *id.*

<sup>84</sup> See John H. Jackson, *Status of Treaties in Domestic Legal Systems: A Policy Analysis*, 86 AM. J.

would require that Third Pillar issues be enacted into law before they could be enforced before national courts.<sup>85</sup> Thus, some Third Pillar issues might not be brought before these national courts.<sup>86</sup>

### CONCLUSION

One of the recent developments in European law has been the extension of international law to private parties. The separate legal enforcement system of the EC affords the private party an opportunity to seek judicial enforcement of EC rights. Likewise, the separate legal system of the European Convention on Human Rights affords an opportunity for individuals to seek judicial review of human rights violations. The method of "intergovernmental cooperation" established by the Third Pillar of the TEU represents a departure from this precedent. The ECJ does not have jurisdiction over Third Pillar issues. Thus, a generalized system of review of these issues is lacking within the EU. This could potentially lead to inconsistent enforcement of Third Pillar rights.

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INT'L L. 310, 314 (1992). According to monist theory, international treaties have primacy over municipal law in both international and municipal decisions. *See id.*

<sup>85</sup> *See id.* at 315. According to dualist theory, international treaties are part of a legal system that is separate from domestic law. *See id.* For an international treaty to operate as a rule of law in the domestic system of a dualist state, the government must incorporate the treaty into its domestic law. *See id.*

<sup>86</sup> *See O'Keefe, supra* note 7, at 91.