

This is an Open Access document downloaded from ORCA, Cardiff University's institutional repository:<https://orca.cardiff.ac.uk/id/eprint/129226/>

This is the author's version of a work that was submitted to / accepted for publication.

Citation for final published version:

Drake, Sara 2020. The principle of primacy and the duty of national bodies appointed to enforce EU law to disapply conflicting national law: An Garda Síochána. *Common Market Law Review* 57 , pp. 557-568.

Publishers page: <https://kluwerlawonline.com/journalarticle/Common+...>

Please note:

Changes made as a result of publishing processes such as copy-editing, formatting and page numbers may not be reflected in this version. For the definitive version of this publication, please refer to the published source. You are advised to consult the publisher's version if you wish to cite this paper.

This version is being made available in accordance with publisher policies. See <http://orca.cf.ac.uk/policies.html> for usage policies. Copyright and moral rights for publications made available in ORCA are retained by the copyright holders.



Reasserting the principle of primacy and the duty of national bodies appointed to enforce EU law to disapply conflicting national law

The Minister for Justice and Equality, The Commissioner of An Garda Síochána v. The Workplace Relations Commission; notice parties; Ronald Boyle, Brian Fitzpatrick, Gerard Cotter (hereinafter *The Minister for Justice and Equality and The Commissioner of An Garda Síochána*), Grand Chamber, 4 December 2018 EU:C:2018:979.

1. Introduction

The fundamental principle of primacy of EU law over conflicting national law, and as a corollary, the duty on *national courts* to give full effect to EU law, if necessary, by disapplying any conflicting national law, has long been established by the Court of Justice since its *Simmenthal* judgment.¹ In subsequent case law such as *Costanzo*, the Court extended the duty to all organs of the State including administrative bodies.² In a referral from the Irish Supreme Court, the Grand Chamber of the Court of Justice was required to consider the compatibility with EU law of Irish law which divided jurisdiction for the enforcement of EU employment rights between a body established by domestic law to enforce such rights and an ordinary court, where only the latter had the power to disapply conflicting national legislation in accordance with the Irish Constitution. For the Irish Supreme Court and the Advocate General, the issue clearly fell within the remit of the principle of procedural autonomy subject to the principles of equivalence and effectiveness.³ The Court of Justice followed a different approach and reasserted the principle of primacy and its *Simmenthal* mandate and confirming its application to *bodies established under national law to enforce individuals' EU rights*, even where this may conflict with national constitutional rules. It added that the power is particularly important where, as is the case here, a national body constitutes a 'court or tribunal' under Article 267 TFEU.

¹ Case 106/77 *Simmenthal* EU:C:1978:49.

² Case 103/88 *Costanzo* EU:C:1989:256.

³ Case 33/76 *Rewe-Zentralfinanz eG and Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland* [1976] ECR 1989; Case 45/76 *Comet BV v Productschap voor Siergewassen* [1976] ECR 2043.

The Court’s judgment may appear unsurprising for many. It can be read as a straightforward reiteration of the Court’s well-established case law on the principle of primacy and the practical ramifications for national courts and other state bodies particularly where they have a quasi-judicial role which brings them within the definition of a court of tribunal for the purpose of Article 267 TFEU. Yet, the judgment is a reminder that the principle of primacy is ‘bidimensional’ in nature and that the incorporation of the Court’s doctrine into the legal orders of the Member States and its acceptance by the supreme court can be complex.⁴ This judgment demonstrates that the full scope of the principle of primacy had not been integrated into the Irish legal order by the judiciary undermining the effective enforcement of EU law. It has important constitutional and practical ramifications for Ireland.⁵ It also provides clarification of the duties of enforcement national bodies where there is an increasing use of extra-judicial redress to resolve disputes in key fields of EU law such as employment and consumer protection.

2. Legal and factual background to the judgment

2.1. Legal background

The dispute arose in relation to the enforcement of the principle of equal treatment in employment matters, more specifically, the principle of non-discrimination on grounds of age, a general principle of EU law given effect in Directive 2000/78.⁶ Directive 2000/78 establishes a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation within the Member States. The enforcement of the principle is delegated to the Member States. Article 9 (1) of the Directive, the ‘defence of rights’ provision, requires Member States: ‘to ensure that the judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them...’. The Irish implementing legislation divided jurisdiction for hearing

⁴ See Weiler, ‘The Community System: The Dual Character of Supranationalism’ (1981) *YBEL* 267, 275-276.

⁵ See further O’Sullivan, ‘Ireland’s non-compliance with the principle of supremacy and the definition of a ‘court or tribunal’ for the purposes of Article 267 TFEU: a review of the recent case law’ (2019) 61 *Irish Jurist* 159-173.

⁶ Council Directive of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

complaints in employment equality matters between the Workplace Relations Commission ('the WRC'), a statutory body,⁷ and the Irish High Court, an ordinary court. Complainants alleging employment discrimination are mandated by national law to bring their dispute before the WRC at first instance.⁸ The function of the WRC is to provide swift and low-cost resolution of complaints made against employers and service providers. The WRC has a range of legal powers to resolve disputes, but these are confined to those conferred on it by the relevant statute in accordance with the Irish Constitution. Critically, and *as a matter of national law*, it does not have the power to disapply national legislation. This power rests with the High Court and reflects Article 34.3.2. of the *Bunreacht Na hÉireann* (the Constitution of Ireland).⁹ Consequently, the WRC does not have jurisdiction under national law to hear cases where the successful outcome of the complaint would require disapplication of a provision of national (primary or secondary) law which is in breach of EU law, even where it is the body allocated under statute to fulfil this enforcement role. In this situation, it is the High Court which has jurisdiction to hear the case. It is this division of competence between the WRC and the High Court under Irish law which is at the centre of the dispute in this case

2.2. Factual background

The facts of the case date back to 2005-2007 when three men were refused admittance as trainees to An Garda Síochána, Ireland's national police force, because they were over the age of 35 years old, the upper age limit for entry as trainees set out in secondary legislation ('the Age Restriction Measure').¹⁰ In accordance with the Irish Employment Equality Acts applicable at the time, the three men lodged complaints against those refusals before the Equality Tribunal, now the WRC. The applicants alleged that the Age Restriction Measure amounted to age discrimination in the context of employment.¹¹ During the proceedings, the

⁷ Formerly known as The Equality Tribunal. The Workplace Relations Act 2015 provides for the WRC to undertake the functions formerly carried out by the Equality Tribunal (ET), the Labour Relations Commission (LRC), including the Rights Commissioner Service, the Employment Appeals Tribunal (EAT) and the National Employment Rights Authority (NERA).

⁸ Employment Equality Acts 1998-2015. An exception arises in cases of gender discrimination, where the complainant can choose to proceed directly before the Circuit Court.

⁹ It states that, 'the jurisdiction of the High Court shall extend to the question of validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court, the Court of Appeal or the Supreme Court.'

¹⁰ The Garda Síochána (Admissions and Appointments) (Amendment) Regulations, 2004 (S.I. No. 749 of 2004).

¹¹ For this case, the relevant acts are the Employment Equality Acts 1998-2004, and subsequent amending legislation where relevant.

Minister for Justice and Equality ('the Minister') disputed the jurisdiction of the then Equality Tribunal on the ground that the redress sought in this case was the disapplication of secondary legislation which was alleged to be contrary to Directive 2000/78 and the Employment Equality Acts. The Minister requested that the Equality Tribunal deal with the jurisdictional issue as a preliminary issue, before dealing with the substance. The Equality Tribunal refused to do so and scheduled a hearing for the 11 June 2008 at which both the jurisdiction and substantive issues regarding the age discrimination would be heard. The Minister commenced judicial review proceedings before the Irish High Court against the Equality Tribunal. The Minister asked for the latter to be prohibited from proceeding with the investigation of the complaints of the applicants, and for a declaration that it had no jurisdiction to hear the complaints. The High Court agreed and ruled on the 17 February 2009 that the Equality Tribunal had acted unlawfully in implicitly assuming a legal entitlement to disapply the relevant national legislation.¹²

The Equality Tribunal appealed the decision to Ireland's Supreme Court. By the time the matter came to be considered by the Supreme Court on the 15 June 2017, the Equality Tribunal had been replaced by the WRC. The WRC argues that as the body responsible for ensuring that national and EU law relating to equality in employment are complied with in Ireland, 'it must have all the powers necessary for that purpose'. It submits that the division of competence between itself and the High Court is incompatible with EU law. The Supreme Court confirmed the finding of the High Court that *as a matter of national law* the WRC did not have jurisdiction to disapply conflicting national law. It ruled that a statutory body could only have such power if it had been explicitly granted under statute and where the latter set out clear principles and policies on the exercise of such a power.¹³ Cases which would normally fall within the jurisdiction of the WRC, but which required the disapplication of either national law or EU law, must be brought before the High Court instead. Turning to EU law, the Supreme Court held that the division of competence complied with the principles of equivalence and effectiveness, namely that the national rules were not less favourable than those relating to similar actions of a domestic nature (principle of equivalence) and did not make it impossible in practice or excessively difficult to exercise the EU rights which the national courts is under a duty to protect (principle of effectiveness). Nevertheless, it considered it necessary to request

¹² *The Minister for Justice, Equality and Law Reform v. The Director of the Equality Tribunal* [2009] IEHC 72.

¹³ *The Minister for Justice, Equality and Law Reform v. The Director of the Equality Tribunal* [2017] IESC 43.

a preliminary ruling from the Court of Justice to establish whether Ireland's implementation of Directive 2000/78 was compatible with EU law. In essence, it questioned whether the WRC, *as the body appointed to enforce EU equality law*, should have the power to disapply conflicting national law *as a matter of EU law* notwithstanding that national law would confer the jurisdiction in such matters to a court established under the Irish Constitution rather than to the body in question. For the Supreme Court, the matter was not *acte clair*.

3. Advocate General Wahl's Opinion

The Advocate General's (rather lengthy) Opinion follows the same approach as the Irish Supreme Court. He distinguishes the case at hand from *Simmenthal* and *Costanzo*. He argues that in both of these cases the contested national law granted the courts the substantive jurisdiction to hear the action based in EU law, but restricted their powers to give full effect to EU law.¹⁴ Similarly, in *CIF*, national law conferred on the national competition authority substantive jurisdiction to enforce the EU competition law rules, but it did not have the explicit power to disapply conflicting national law.¹⁵ In contrast, the national law at issue in *The Minister for Justice and Equality and The Commissioner of An Garda Síochána* divides the *substantive* jurisdiction between the WRC and the High Court, and grants the latter the *exclusive* jurisdiction to hear cases concerning the validity of national legislation, or requiring the disapplication of national legislation.¹⁶ For this reason, it is not a question of whether the *Simmenthal* mandate could be extended to the WRC because the WRC does not have jurisdiction in the first place under national law. This would mean that the WRC was acting *ultra vires*. This view is supported by the dictum in *Simmenthal* which states that the national courts must act 'within the limits of its jurisdiction.'¹⁷ For the Advocate General, the dictum is a sign that the Court is aware that Member States should determine their own jurisdictional and administrative architecture to give effect to EU law which accords with their own constitutional traditions, and is a sign of deference to the autonomy of each of the Member States which form the constituent parts of the EU legal order.¹⁸ He also rejected the argument put forward during the proceedings that Article 267 TFEU would be undermined if the WRC had made a referral

¹⁴ Ibid, para. 64.

¹⁵ Ibid, para. 65.

¹⁶ Ibid, para 66. Advocate General's emphasis.

¹⁷ Opinion, para. 54.

¹⁸ Ibid, at para. 55.

to the ECJ (as it had previously)¹⁹ and was unable to disapply any conflicting national law to comply with a preliminary ruling on its return. As the WRC would not have jurisdiction in this type of case in the first place, it would not be able to make a reference to the ECJ, and so the issue would not arise. Advocate General Wahl proceeds to make an assessment based on the principles of equivalence and effectiveness. He agrees with the Supreme Court that there is no breach of the principle of equivalence since the same jurisdictional rule would apply (i.e. the High Court would have jurisdiction) whether the legal norm in dispute is derived from national or EU law.²⁰ However, he disagrees with its assessment of whether the principle of effectiveness has been infringed. He argues that the Supreme Court had not expressly examined the procedural disadvantages that could arise from the need for a litigant to make a complaint simultaneously between two bodies and whether this undermined the principle of effectiveness. There may be a situation in which the claimant's action is not only based on a legislative measure which may need to be disapplied, but also on the basis of the employer's practice. If such a scenario should require the claimant to bring two actions at the same time, he argues that this would infringe the principle of effectiveness as held in *Impact*.²¹ If the High Court would hear the matter in full, then there is no breach. In any event, he is of the view that this is a matter for the national court to decide.

4. The judgment of the Court of Justice

For the Court, the (reframed) question concerns scope of the principle of primacy, and whether it should render unlawful national legislation which fails to confer jurisdiction to disapply national law that is contrary to EU law on a national body established by law in order to ensure enforcement of EU law. The Court starts by reiterating an important distinction (also made by the Advocate General) between the power to *disapply* a provision of national law contrary to EU law in a specific case, a matter governed by *EU law*, and the power to *strike down* such a provision so that it is no longer valid within a national legal order for any purpose, a matter which falls within the domain of *national law*.²² The Court also acknowledges that it is for

¹⁹ The CJEU has previously accepted a reference from Ireland's Equality Tribunal in Case C-363/12 Z EU:C:2014:159. The CJEU held that Directive 2000/78 cannot be interpreted as meaning that a refusal to provide paid leave equivalent to maternity leave or adoptive leave to a female worker who is unable to bear a child and who has availed of a surrogacy arrangement constitutes discrimination on the ground of disability and therefore did not require national law to be disapplied.

²⁰ Ibid, paras 95 and 97.

²¹ See also Case C-268/06 *Impact* EU:C:2008:223, a referral from the Irish courts.

²² Judgment, para. 33.

the Member States to designate the courts and/or institutions responsible for reviewing the validity of national provisions, for laying down the legal remedies and procedures for contesting its validity and for striking it down if the claim is well founded, as well as setting out the legal effects of striking it down.²³

However, the Court quickly moves on to state that on the other hand there is well-settled case law on the principle of primacy which places national courts ‘*in the exercise of their jurisdiction*’ to apply EU law under a duty to give full effect to those provisions law. This requires them if necessary, to refuse of their own motion to apply conflicting national law, and without requesting or awaiting for the conflicting national law to be set aside by legislative or other constitutional means.²⁴ The Court states in unequivocal terms that any national provisions or any legislative, administrative or judicial practice which prevent a court from exercising this duty impairs the effectiveness of EU law and would be incompatible with the requirements which are the very essence of EU law.²⁵ It reaffirms that the duty applies even where the resolution of a conflict between EU law and national law is reserved to an authority with discretion of its own other than a court. It reconfirms the scope of the duty as set out in *Costanzo* that the duty applies *to all organs of the State*, including administrative authorities, *which in the exercise of their respective powers*, are called upon to apply EU law.²⁶ It concludes by stating that it is the principle of primacy of EU law which requires ‘*not only the courts but all the bodies of Member States to give full effect to EU rules.*’²⁷

In the context of the case, the Court acknowledges that Ireland has given effect to its obligation under Article 9 of Directive 2000/78 by allocating the WRC as the body competent to ensure enforcement of the principle of equal treatment in employment matters. This principle of non-discrimination has been given concrete expression in Directive 2000/78 and the Irish Equality Acts. Citing its judgments in *Mangold*, *Kucukdeveci* and *DI*, it follows that the principle of primacy requires the WRC to have the power to disapply any conflicting national law to ensure the legal protection which individuals derive from EU law and to ensure that EU law is fully effective.²⁸ In its view, it would be contradictory if an individual could assert their EU rights

²³ Ibid, para. 34.

²⁴ Ibid, para 35.

²⁵ Ibid, para. 36.

²⁶ Ibid, para. 38.

²⁷ Ibid, para. 39.

²⁸ Judgment, para. 45. citing C-144/04 *Mangold* EU:C:2005:709; C-555/07 *Kücükdeveci* EU:C:2010:21; C-441/14 *DI* EU:C:2016:278..

before a particular body which had been conferred jurisdiction over disputes in that area by national law, but that body had no obligation to apply EU law by refraining from applying conflicting national law.²⁹

Moreover, as the WRC is considered to be a ‘court or tribunal’ for the purposes of Article 267 TFEU and has competence to request a preliminary reference from the Court of Justice on the interpretation of EU law (and which it has exercised in a previous case),³⁰ it follows that it must have competence to apply such an interpretation on its return, if necessary, by disapplying conflicting national legislation of its own motion.³¹ The Court held that to deny such power would render the EU equality relating to employment and occupation ‘less effective’.³²

Aware that its interpretation of the principle of primacy may be seen by some to conflict with the provisions of the Irish Constitution, the Court reminds us that even the rules of a national constitution ‘...cannot be allowed to undermine the unity and effectiveness of EU law.’³³ The Court concludes by stating that on the basis of its previous case law, the principle of primacy has been interpreted to mean that ‘bodies called upon, within the exercise of their respective powers, to apply EU law are obliged to adopt all the measures necessary to ensure that EU law is fully effective, disapplying if need be any national provisions or national case-law that are contrary to EU law.’³⁴ This duty applies with immediate effect and does not require the body in question to wait for the national legislation or case law to be set aside by legislative or other constitutional means.³⁵ For further clarity, the Court confirms that the fact that an applicant has the possibility of bringing an action before the High Court which has the power to disapply conflicting national law does not invalidate the Court’s conclusion in this judgment.³⁶

4. Comments

At first glance, the Court’s judgment may seem unremarkable and some may express surprise that this judgment was delivered by the Grand Chamber on an issue which seems well-settled

²⁹ Judgment, para. 46.

³⁰ Ibid, para. 47.

³¹ Ibid.

³² Ibid, para. 48.

³³ Ibid, para. 49, citing C-409/06 *Winner Wetten* EU:C:2010:503.

³⁴ Ibid, para. 50.

³⁵ Ibid.

³⁶ Ibid, para. 51.

in the case law. Indeed, only one Member State submitted observations and that was in relation to admissibility, arguments which were swiftly dismissed by both the Advocate General and the Court.³⁷ Nevertheless, this referral from Ireland's highest court is of significance from both an Irish and EU perspective.

The judgment is a reminder that the principle of primacy and the obligations on national courts which stem from it can have significant constitutional and practical implications for *all* the Member States. Although one of the smaller Member States, Ireland is no different. The crux of the problem in this case stemmed from an understanding held by the Irish judiciary that viewed the obligation to disapply national law which conflicts with EU law as equivalent to having the authority to rule on the (constitutional) validity of national legislation. The Irish Constitution confers jurisdiction on the High Court to rule on the validity of legislation with appeal on the law only to the Court of Appeal and Supreme Court.³⁸ A body such as the WRC cannot be afforded this power, not simply because the WRC has not been conferred with this power by statute, but because it would be contrary to the Irish Constitution.³⁹ While Article 37 of the Constitution permits such a power to be *expressly* granted in 'limited circumstances,' the Supreme Court did not consider that was the case here. Indeed, to do so would have been 'wholly contrary to the national legal order.'⁴⁰ Although not explicitly set out in the question referred, the Advocate General and the Court took the opportunity to address this view which has been lamented by academic commentators⁴¹ and made a clear distinction between the duty to disapply inconsistent national law and the power to strike down national law as invalid so that it no longer has any legal effect. There should no longer be any doubt that the duty to *disapply conflicting national law* cannot be confined to the ordinary courts and that the duty applies equally to national bodies appointed to enforce EU law rights irrespective of whether

³⁷ The question referred by the Irish Supreme Court was particularly convoluted and did not adequately identify the matters to be addressed in full which led the Czech Government to contest its admissibility.

³⁸ In the earlier High Court decision, Mr. Justice Charlton ruled that, 'There is no principle of European law which allows an administrative body or a court of limited jurisdiction to exceed its own authority in order to achieve a result, whereby it is of the view that European legislation has not been properly implemented at national level and that this situation is to be remedied by the re-ordering in ideal form of national legislation. The limit of jurisdiction is of primary importance to the exercise of authority, whether the court be one established as an administrative body, or is one of the courts under the Constitution. In the event that a view emerges that national legislation has not properly implemented European legislation, this is no more than an opinion. The respondent does not have the authority to make a binding legal declaration of inconsistency or insufficiency on a comparison of European and national legislation. The High Court has that power as this had been expressly reserved to it by Article 34 of the Constitution...', cited *supra* note 12, para. 8.

³⁹ Article 34.3.2.

⁴⁰ Judgment of the Irish Supreme Court, cited *supra* note 13, para. 5.14.

⁴¹ See Fahey, 'A Constitutional Crisis in a Teacup: The Supremacy of EC Law in Ireland' (2009) 15 (4) *European Public Law* 515-522; O'Sullivan, cited *supra* note 6.

the power has been expressly conferred by statute. This should not be confused with the authority to invalidate national law, a matter which can be confined to the ordinary courts. In addition, the Court's judgment reinforces the ability of the WRC to make references to the ECJ under Article 267 TFEU. By confirming that the WRC does have the power to disapply conflicting national law, particularly if this would be required to give full effect to a preliminary ruling on its return from the ECJ, this may lead to an increase in referrals not only from the WRC, but other state bodies conferred with a similar enforcement role.⁴² This judgment clearly represents an important development for the full incorporation of primacy into the Irish legal order.

From an EU perspective, the judgment is of importance for the effective and uniform enforcement of EU law. It reasserts the principle of primacy of EU law and full effectiveness of EU law. It clarifies the duties incumbent on Member States to ensure that if they appoint national bodies to enforce EU law rights, they must ensure that such bodies have the power to disapply any conflicting national law. While it is clearly preferable for all parties that this obligation is conferred expressly by national law, if the Member State fails to do, there is an implicit obligation as a matter of EU law. More fundamentally, this obligation applies even if it would be contrary to the national constitution. An important consideration is whether this judgment can be interpreted as extending the obligation to national bodies which have not been specifically and explicitly entrusted with protecting the enforcement of EU rights by national law.⁴³ In its judgment, the Court is careful to qualify the duty as applying to national bodies 'called upon, within the exercise of their respective powers, to apply EU law' and on several occasions in the judgment it makes it clear that the WRC was specifically allocated the task of ensuring compliance with Directive 2000/78 by national law. This does seem to suggest that there may be a limit to the duty and could illustrate where the Court is willing to draw the line between EU law and respect for the choices made by Member States on how they organise the enforcement of EU law at a domestic level.

The judgment is also timely. In recent years, the EU has adopted a broad range of strategies, tools and actors to enhance the enforcement of EU law⁴⁴ and improve access to justice with a particular focus on extra-judicial redress and the promotion of the resolution of disputes

⁴² For further insights, see O'Sullivan, *ibid*.

⁴³ In this case, the WRC was appointed specifically to give effect Article 9 of Directive 2000/78.

⁴⁴ See further Drake and Smith, *New Directions in the Effective Enforcement of EU Law & Policy* (Elgar, 2016).

through alternative dispute resolution (ADR).⁴⁵ Article 9 of Directive 2000/78 clearly reflects this strand of the EU's enforcement policy. It expressly permits Member States to adopt conciliation procedures if considered to be an appropriate means for enforcing EU law. This new development was recognised by Advocate General Wahl in his Opinion.⁴⁶ He acknowledged the growth in ADR where Member States establish specialised (judicial) bodies with powers to mediate and/or adjudicate disputes in fields such as consumer protection and employment, and he accepts that there may be sound reasons why a Member State would divide jurisdiction in a specific field of law between different (judicial) bodies. However, he warns that not all disputes are best dealt with by such bodies, particularly if the dispute concerns interpretations of principles of law with broader legal implications.⁴⁷ This concern may have had a bearing on his view that Member States are in the best position to determine whether a domestic body is sufficiently well-equipped to have the power to disapply conflicting national law, and whether it should be a task better left to the national courts. He is right to emphasise that the decision to disapply conflicting national law should be made with those with adequate experience and expertise in EU law. There are concerns about how this will work in practice at the WRC. Once a complaint has been made, the Director General of the WRC immediately decides whether the case can be resolved through mediation (provided the parties consent), or whether it should proceed for adjudication by the Adjudication Officer. However, the Adjudication Officers do not need to be legally qualified. While formally, the Court's decision should be welcomed, it may have substantial implications for the organisation of bodies conferred with the responsibility to enforce EU law. Careful consideration will need to be given in Ireland (and elsewhere) on how the effective enforcement of EU law is delivered in practice. The challenge this presents to Member States should not undermine the commitment to improving access to justice by offering dispute resolution mechanisms which are quick, easy and low cost compared to litigation before a court which in some Member States such as Ireland is extremely costly.

5. Conclusion

⁴⁵ See further Hodges and Creutzfeldt, 'Transformations in Public and Private Enforcement' in Micklitz and Wechsler (eds.), *The Transformation of Enforcement: European Economic Law in a Global Perspective* (Hart, 2016), pp. 115-133.

⁴⁶ See Directive 2013/11/EU of 21 May 2013 on alternative dispute resolution for consumer disputes amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on Consumer ADR) [2013] OJ L165/63.

⁴⁷ Opinion, para. 87-88.

In *The Minister for Justice and Equality and The Commissioner of An Garda Síochána*, the Grand Chamber of the Court of Justice has reinforced the fundamental constitutional principle of primacy of EU law and the corollary duty on all organs of the Member States to secure the unity and full effectiveness of EU law. It has sent a strong message to Ireland that the duty applies to all national bodies conferred by a Member State with responsibility for the effective enforcement of individuals' EU rights, including national bodies allocated responsibility to enforce EU law. The Court is clear that as a matter of *EU law* the designated body *must* have the power to disapply of its own motion conflicting national legislation to give full effect to EU law, even if this would override a national procedural rule which reflects the division of jurisdiction set out in the national constitution. The Court's ruling is of significant constitutional importance for Ireland which will need to reorganise its judicial procedures and administrative practices. More broadly, the judgment provides important clarification for Member States when allocating responsibility for the effective enforcement of EU law to an increasing range of actors at national level.

Sara Drake*

* Senior Lecturer in Law, Cardiff University. I am grateful to Lucy-Ann Buckley, Dermot Cahill, Ryan Murphy, and the anonymous reviewers for comments on an earlier version.