Case C-377/98 Netherlands v Parliament and Council [2001]

Facts: The Netherlands brought an action for annulment of a Directive on the legal protection of biotechnological inventions.

Held: The Netherlands put forwards six pleas. The first plea was that Article 100a of the Treaty was the incorrect legal basis to adopt the Directive. Firstly, because the differences in the laws of the Member States concerned only secondary issues; however, recourse to Article 100a is possible provided that the emergence of future obstacles is likely and the measure is designed to prevent them, and some differences with significant consequences were already apparent. Secondly, because the previous national provisions were taken from the Convention on the Grant of European Patents, therefore any uncertainty should have been removed by renegotiation of this international legal instrument; however, the purpose of harmonisation is to reduce the obstacles, whatever their origin, to the operation of the internal market. Thirdly, because the Directive went beyond the approximation of the legislation, creating a new type of property right distinct from the rights covered by existing patent law; however, the patents to be issued under the Directive were national patents, deriving their protective force from national law: the creation of a Community patent was neither the purpose nor the effect of the Directive and recourse to Article 235 of the Treaty was not required. The second plea was that the Directive breached the principle of subsidiarity; however, the objective pursued by the Directive could not have been achieved by action taken by the Member States alone, and this would have impeded the proper functioning of the internal market. The third plea was that the Directive breached the principle of legal certainty, giving national authorities a discretion in applying ambiguous concepts; however, this scope for manoeuvre was not discretionary, since the Directive gave guidelines for applying them, and it was necessary to take account of the social and cultural context of each Member State when using certain patents, which national authorities were better placed to understand. The fourth plea was that the obligations created by the Directive for Member States were in breach of their international law obligations; however, the Directive was compatible with these agreements. The fifth plea was that the patentability of isolated parts of the human body undermined human dignity; however, the protection envisaged covered only the result of inventive, scientific or technical work where necessary for the achievement and exploitation of a particular industrial application, ensuring that the human body remains unavailable and inalienable. The sixth plea was the breach of procedural rules in the adoption of the Commission's proposal, but no valid reasons were alleged to cast serious doubts in this respect.