unitary Community Design right, administered by OHIM, has been effective since 1 April 2003. The application procedure is straightforward. The examination process itself is intended to be nominal, only covering formalities, and will not involve checks on substantive issues. There is no provision for opposition before registration; the means of challenge will involve an application to OHIM for a declaration of invalidity after registration and publication. Holders of registered designs will have exclusive rights to use the design concerned, and will be protected against both deliberate copying and the independent development of a similar design. In contrast, with an unregistered right there is only infringement where the original design has been copied. Registration will last for a maximum of 25 years from filing, with renewal fees due every five years. National design protection, as harmonized by the old Design Directive,[28] will continue to exist in parallel with Community design protection. The array of possibilities for design protection is not merely increased by the Community regime, it is positively enhanced. It is already proving popular.[29]

The Database Directive has been in force since 1 January 1998,[30] and cases on the subject are beginning to be reported. It creates a *sui generis* right, granted to the maker of a database that shows 'substantial investment' of various forms. The right is to prevent 'extraction and/or reutilisation' of 'the whole or of a substantial part' of the database.[31] It has proved difficult for national courts to apply these terms, and several references to the ECJ are pending.[32] The policy issues are contentious. If the ambit of protection is drawn too widely there is a risk that important sources of information may be monopolized. Yet on the other hand, there is little incentive to invest in the production of a database which may be freely utilized by others. The correct balance is, once again, difficult to find.[33]

CATHERINE SEVILLE*

IV. CITIZENSHIP AND HUMAN RIGHTS

Citizenship and human rights continue to play an important role in the evolution of Community law. Both sets of principles have appeared in the case law of the European Courts and in the creation of a Constitutional document for Europe. Part II of the draft Constitution incorporates the Charter of Fundamental Rights of the Union. Additionally, the first report from the independent network of experts in fundamental human rights details the various international human rights obligations which the Member States are subject to, analysing Member State policy in a number of areas in

28 Directive 98/71 on the Legal Protection of Designs, OJ (1998) L289/28.

29 For further details and comment see C-H Massa and A Strowel [2003] EIPR 68; KA Levin and MB Richman [2003] EIPR 111 and M Schlötelburg [2003] EIPR 383.

30 Directive 96/9 on the Legal Protection of Databases, OJ (1996) L77/20.

31 Art 7(1).

32 *British Horseracing Board Ltd v William Hill Organisation Ltd* [2002] ECDR 4 and Case C-338/02 *Fixtures Marketing Ltd v AB Svenska Spel* [2003] ECDR CN2.

33 For more see J Lipton [2003] EIPR 139.

* Newnham College, November 2003. Part II of this contribution on developments in the area of Trade Marks will appear in the next Current Developments section on EU law.

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the light of the international obligations.[1] Paradoxically, at a time when greater emphasis is being paid to the constitutional recognition of human rights there are indications of divisions between some of the Advocates General, the Court of First Instance and the European Court of Justice (the Court) on the constitutional role of fundamental rights in relation to access to justice.

The Court has taken an expansive view of citizenship of the Union, taking this to be a clear and symbolic sign of the Union's commitment to increasing the rights of citizens under the European constitution. *Grzelczyk* concerned a claim from a French student against the withdrawal of the Belgian benefit, the *minimex*.[2] The Belgian authorities took the view that Grzelczyk was not a Belgian national and did not fall within the scope of the EC Treaty rules on free movement. At stake was the issue of whether the action amounted to discrimination on the grounds of nationality. Drawing upon the fact that, like *Martínez Sala*,[3] Grzelczyk was legally resident in Belgium, the Court relied upon Article 18 EC to trigger the right to non-discrimination found in Article 12 EC. *Grzelczyk* provides an organized and clear set of reasoning, moving on from the *Sala* judgment, to determine the application of Community law to a Union citizen lawfully resident in another Member State.

The Court begins with a finding that a fundamental Treaty rule, the principle of non-discrimination on the grounds of nationality, has been infringed. The Court slots Grzelczyk into the scope of the EC Treaty by virtue of his exercise of the right to free movement through the Citizenship provisions:[4]

> Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to the expressions as are expressly provided for.

This statement is repeated in *D'Hoop* where the claim concerned the denial of a 'tideover' allowance to a Belgian national who had completed her secondary education in France in 1991 (a period before the Citizenship provisions introduced by the Maastricht Treaty came into force) and returned to Belgium for her university education.[5] Her parents had resided in Belgium and therefore she did not fall under the economic aspects of the free movement provisions in her own right, or through the rights granted to the children of migrant workers in Article 12 of Regulation 1612/68. The Court confirmed that the Citizenship provisions could be applied to the present effects of a situation, even though the events that triggered their operation had occurred earlier.[6]

The Court found that D'Hoop fell within the scope (*ratione personae*) of Article 17 EC by being a national of one of the Member States and confirms that citizenship is

[1] See EU Network of Independent Experts in Fundamental Rights (CFR-CDF), *Report on the Situation of Fundamental Rights in the European Union and Its Member States in 2002* (March 2003). Available at: <http://europa.eu.int/comm/justice_home/cfr_cdf/doc/rapport_2002_en.pdf>.

[2] Case C-184/99 [2001] ECR I-6193.

[3] Case C-85/96 [1998] ECR I-2691.

[4] Above n 2, para 33.

[5] Case C-224/98 [2002] ECR I-1691, para 28. The allowance was paid to young people seeking their first employment. It had been deemed to be a 'social advantage' within the meaning of Art 7(2) of Regulation 1612/68/EEC in Case 94/84 *Deak* [1985] ECR 1873, para 27. The Court held Belgium to be in breach of its Community law obligations by failing to make the allowance available to young people who were the children of migrant workers and who had not completed their secondary education in Belgium: Case C-278/94 *Commission v Belgium* [1996] ECR I-4307.

[6] See Case C-195/98 *Österreichischer* [2000] ECR I-10497, paras 54 and 55.

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deemed to be the 'fundamental status' of nationals of the Member States. D'Hoop also found herself within the *ratione materiae* of the Citizenship provisions by exercising one of the fundamental freedoms. The Court relied on its case law to use the idea that D'Hoop found herself in a less favourable position in Belgium by virtue of the fact that she had exercised her right to freedom of movement. The action of the Belgian authorities would deter her, and future migrants, from exercising rights to free movement:[7]

> Those opportunities could not be fully effective if a national of a Member State could be deterred from availing himself of them by obstacles raised on his return to his country of origin by legislation penalising the fact that he has used them. . . .

The Court refers to the importance of free movement in the field of education despite the fact that this is an area where Community competence has been contentious.[8] Unlike the *Grzelczyk* case, there was no discrimination on the grounds of nationality. Instead the Court argues that Belgium has placed at a disadvantage certain of its nationals 'simply because they have exercised their freedom to move in order to pursue education in another Member State'.[9] This inequality of treatment is found to be:[10]

> contrary to the principles which underpin the status of a citizen of the union, that is, the guarantee of the same treatment in law in the exercise of the citizen's freedom to move.

Drawing upon *Bickel and Franz*[11] the Court argued that such inequality of treatment can only be justified by objective considerations independent of the nationality of the person concerned and respecting the principle of proportionality. The Court accepted that a geographical link between the young person applying for the 'tideover allowance' and the geographic employment market could be an objective justification but in this case the condition was too general and exclusive in nature and went beyond what was necessary (proportionate) to achieve the aims of the legislation.

An issue that is left open is whether there are any limits to the scope of Article 18 EC. Article 18 EC refers to limitations on the right to free movement but we are still unsure as to what these are and the way in which they are to be interpreted in relationship to citizenship of the Union.

Citizenship, the economic right to free movement and the principle of non-discrimination were combined in another preliminary ruling, *Olazabal*.[12] This case should have provided an opportunity for the Court to discuss how far the limitations recognized in Article 18 EC may be read across from other EC Treaty provisions. The ruling is very short as the issues had been discussed in *Rutili*,[13] although the facts of this case are different. In *Olazabal* the defendant, a Spanish national, had been sentenced to 18 months' imprisonment in France and a 4-year ban on residency for conspiracy to disturb public order by intimidation or terror. These sanctions were motivated by the fact that Olazabal was part of an armed and organized group that posed a threat to public order in France. The Court focused its judgment upon the restriction of the fundamental right to free movement in Article 39 EC, repeating its earlier case law and the focus upon the proportionality of the measures taken. The Court accepted that a Member State may not always be able to treat its own nationals in the same way as nationals from another Member State.

[7] Above n 5, para 31.
[8] See now, Arts 3 (1) (q) and 149(2) EC.
[9] Above n 5, para 34.
[10] Ibid, para 35.
[11] Case C-274/96 [1998] ECR I-7637.
[12] Case C-100/01 [2002] ECR I-10981.
[13] Case 36/75 [1975] ECR 1219.

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The most far-reaching case of the last year is *Baumbast and R v Secretary of State for the Home Department.*[14] A German national, who initially had a right to residence in the United Kingdom by virtue of exercising the fundamental economic freedoms (free movement of workers and establishment), was granted a right to residence in the UK when the economic activity falling within Community law had ceased. The Court used Article 18 (1) EC as the legal base for this right. The UK government had argued that Mr Baumbast did not satisfy the conditions of residence under Directive 90/364 because he did not have sickness insurance that would cover emergency treatment. This, according to the Court, 'would amount to a disproportionate interference with the exercise of [the right to residence]'.[15] The indication from *Baumbast*, therefore, is that the Court will use the principle of proportionality vigorously, and in a procedural way, to defend and extend the citizenship rights related to free movement. It noted: [16]

> a citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host [M]ember [S]tate can, as a citizen of the Union, enjoy there a right of residence by direct application of Article 18(1) EC. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of Community law and, in particular, the principle of proportionality.

But the Court would go no further. It had been asked to rule on whether the right of residence in a Member State, derived from Article 18 (1) EC entailed a right of residence for family members as well. The Court found it unnecessary to answer this question. It had already come to a dramatic conclusion that the family members (some of whom were third country nationals) had derived their own rights to residence which should be protected on the basis of a fundamental rights perspective as a consequence of Baumbast's earlier status as an economic migrant. The rules for family migration, based upon a hierarchical notion of dependency, as well as conventional attitudes towards the notion of a 'family' have long been criticized for their failure to move with the times. *Baumbast* goes some way to recognizing the fundamental right to family life as well as developing children's rights under the EC Treaty. The case is important in the way in which it builds upon what are essentially secondary, derivative or parasitic rights of the children of migrant workers. It puts those rights centre stage in the argument to find a legal basis for the mother, a non-Member State national, to continue to enjoy a right of residence in the EU. In relying upon Article 12 of Regulation 1612/68 the Court uses the language of fundamental rights:[17]

> it must be borne in mind that the aim of Regulation 1612/68, namely freedom of movement for workers, requires, for such freedom to be guaranteed in compliance with the principles of liberty and dignity, the best possible conditions for the integration of the Community worker's family in the society of the host Member State. . . . In circumstances such as those in the Baumbast case, to prevent a child of a citizen of the Union from continuing his education in the host [M]ember [S]tate by refusing permission to remain might dissuade that citizen from exercising the rights to freedom of movement laid down in Article 39 EC.

The Court also noted that the children were unable to continue their education in the Member State of origin and it would be against the letter and the spirit of Article 12 of Regulation 1612/68 to deny access to the educational courses for children of a national of a Member State 'who is or has been employed' in the host Member State.

[14] Case C-413/99 [2002] ECR I-7091. [15] Ibid, para 93. [16] Ibid, para 94.
[17] Ibid, paras 50 and 52, citing Case C-308/89 *Di Leo* [1990] ECR I-4185, para 13.

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In relation to *R* the Court interpreted Article 12 liberally, evoking the language of fundamental rights. Referring to paragraph 50 (quoted above) of its own ruling, the Court states that Regulation 1612/68 aims to facilitate the integration of the migrant worker and his family 'in compliance with the principles of liberty and dignity'[18] (paragraph 59). In *R* the migrant worker and his American wife were divorced. The migrant worker had returned to France. Nevertheless this did not destroy the children's right to reside in the host State and take advantage of Article 12 Regulation 1612/68. Relying upon its own case law the Court pointed out that in certain circumstances the rights attached to the status of a migrant worker may continue even after the employment relationship has ended and this principle extends to the rights to family migration. The Court stated that Article 10 does not require the family members to live permanently with the migrant worker. The only limitation imposed is that from Article 10(3), citing *Diatta*,[19] that the accommodation which the worker has available must be such as may be considered normal for the purpose of accommodating the family. This condition relates to the first entry of the family into the territory of the host State.

On the Court's reasoning, even though the mother is a third country national, divorced from the (former) migrant worker, and the (former) migrant worker (the father) no longer enjoys the rights under Article 39 EC, the mother and the children derive rights of residence in the UK. This is to ensure that the children can continue to enjoy their rights under Article 12 Regulation 1612/68. The Court states that the Regulation must be interpreted in the light of the requirement of respect for family life set out in Article 8 ECHR as 'that requirement is one of the fundamental rights which, according to settled case-law, are recognized by Community law . . .'.[20] The result was that the American wife derived a right to remain in the UK in order to facilitate the exercise of the children's rights. One issue which may arise in future cases is that in the judgment the Court used the words 'primary carer' but in other language versions the words are not used. Thus there is some confusion as to whether this is a limitation on the right to residence enjoyed by the spouses of migrant workers.

Although not articulated, the *Baumbast and R* case resonates with the aims of Article 20 of the Charter of Fundamental Rights of the Union. In contrast, in *Carpenter,* the Court did not follow its Advocate General's Opinion which relied upon the outdated approach to family organisation and human rights concerns.[21] Instead the Court took a tortuous route to find that a third country national wife from the Philippines derived a right to residence in the UK by virtue of the fact that her husband was engaged in cross-border services provision. The Court refers to the right to family life, as protected by Article 8 ECHR. Of importance in *Baumbast* and *Carpenter* is the use of the principle of proportionality to develop the procedural, as well as the substantive, rights to residence. Needless to say, the approach of the Court in *Carpenter* has attracted critical comment.[22]

A technical approach to third country national family members is seen in *Givane* where the Advocate General and the Court did not raise any human rights concerns over the fact that family members who are third country nationals did not satisfy the requirements of Regulation 1251/70 to enjoy the right to stay within the host State after

[18] Ibid, para 59.
[19] Case 267/83 [1985] ECR 567, para 18.
[20] Above n 14, para 72.
[21] Case C-60/00 [2002] ECR I-6279.
[22] E Szyszczak 'Regularising Migration in the European Union', in B Bogusz, A Cygan, R Cholewinski, and E Szyszczak (eds) *Irregular Migration and Human Rights* (Leiden Martinus Nijhoff Publishers 2004); Editorial Comments (2003) 40 CMLRev 537.

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the death of the migrant worker.[23] Similarly in *Ackrich*,[24] although the Court refers to Article 8 ECHR, it adopted a strict approach, insisting that a third country national must be lawfully resident in the home State before s/he can use the ruling in *Surinder Singh*[25] to re-enter the 'home' State under Community law.

Fundamental rights principles have also influenced a number of judgments in the field of social policy.[26] Recently, Advocate General Ruiz Jarabo has taken a bold human rights approach towards equal treatment for survivors' pensions in a reference from the English Court of Appeal. In *KB v The National Health Service Pensions Agency and the Secretary of State for Health*, the Advocate General draws upon the laws of the Member States and the European Convention on Human Rights to argue that the denial of the right to marry for transsexuals is contrary to the general principles of Community law. [27] The Member States are competent to set the rules for marriage but in this situation the inability to marry is linked to the access to a basic economic right guaranteed in Community law, a widower's pension.

The role of citizenship linked to the principle of non-discrimination on the grounds of nationality is reinforced in *Carlos Avello*.[28] A Spanish migrant challenged the refusal of the Belgium authorities to change the patronymic surname given to his children in accordance with Belgian law. Carlos Avello had married a Belgian national and the children were born in Belgium. The parents wanted to change the children's surname to reflect the Spanish practice of including the mother and father's surnames in the naming of children. The Opinion of Advocate General Jacobs takes an expansive look at a number of international sources addressing the issue of protecting rights to a name and cites the case law under Article 8 ECHR.

The Court handled the question in a technical way, finding that Community law applies by virtue of the fact that Avello has exercised the right to free movement within the Community. This allowed for Articles 12 and 17 EC to come into play. While the Court acknowledged the national competence to establish rules relating to surname registration, that competence must be exercised in accordance with Community law. The Court reinforced the views of the Advocate General that persons exercising the right to free movement find themselves in a different position from nationals of the host State. Additionally, a rule preventing the application of their own national law relating to surnames puts such migrants at a disadvantage, from a professional standpoint and at the private level. The Court used the fact that the Belgian law allows for derogations from the normal practice and used this fact to find that the Belgian response is disproportionate: no account is taken of the special situation relating to migrants in Avello's position. The judgment is terse and there is no discussion of whether a Member State may argue that a public proviso applies to Article 17. The issue of a defence or derogation is handled through a discussion of the justification to a claim of discrimination under Article 12 EC. This was discussed in *D'Hoop* and the Court repeats that such a justification must be based on objective considerations, independent of the nationality of the person concerned and must be proportionate to the objective legitimately

[23] Case C-257/00 [2000] ECR I-345.
[24] Case C-109/01, judgment of 23 Sept 2003.
[25] Case C-370/90 [1992] ECR I-4265. *Quaere:* how far the ruling in *Ackrich* can be reconciled with the ruling in Case C-459/99 MRAX [2002] ECR I-6591?
[26] Discussed previously in Szyszczak 'Social Policy' (2003) 52 ICLQ 1013.
[27] Case C-117/01, Opinion of 10 June 2003.
[28] Case C-148/02, judgment of 2 Oct. 2003.

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pursued. The Belgian, Danish, and the Netherlands' governments had offered justifications for the restrictions on the registration of surnames but the Court dismissed tersely the justifications offered: 'None of those grounds can provide a valid justification for the practice in issue.'[29]

One is left with the impression that Member States must assess each individual claim to a citizenship right and that procedural issues are as important as the substantive rights at issue. But procedural issues, in relation to access to judicial remedies, have divided the European Courts. The CFI and Advocate General Jacobs have argued for a relaxation in the definition of the *locus standi* criteria of 'direct and individual concern' for non-privileged applicants in Article 230 EC. The basis of the argument is that the Union has matured and should take its place in providing a democratic and representative system of protecting rights. It is the role of any court to protect the fundamental rights of all individuals and offer effective judicial protection when the legislator or any other decision-maker infringes individual rights.[30] The CFI in *Jégo-Quéré* reinforces the notion of the maturity of the Community system arguing that access to the courts is one of the fundamental elements of a Community based on the rule of law that is currently guaranteed by the legal order based upon the EC Treaty.[31] This order has, ostensibly, established a complete system of legal remedies and procedures designed to permit the Courts to review the legality of measures adopted by the Community Institutions. The CFI also refers to the right to an effective remedy before a court of competent jurisdiction is based upon the constitutional traditions common to the Member States and to the ECHR, rights already recognized in *Johnston* and *Les Verts.* [32]

From a symbolic constitutional perspective, the important addition to this set of legal bases for human rights protection is the reference to Article 47 of the Charter of Fundamental Rights of the European Union which reaffirms that this right is already respected as part of the Community *acquis.* Referring to the Opinion of Advocate General Jacobs in *Jégo-Quéré*,[33] the CFI concluded that in order for effective protection to be granted to individuals in the Community legal order, a natural or legal person, the non-privileged applicant, is to be regarded as *individually* concerned by a Community measure of general application which concerns that person directly, if it can be shown that the measure affects his/her legal position in a manner which is both definite and immediate by restricting his/her rights or by imposing obligations on him/her. In a significant move away from the long-standing restrictive *Plaumann*[34] test for *locus standi*, the CFI concluded that a *Regulation* banning a certain size of fishing net for certain kinds of fishing activity was of direct and individual concern to the applicant on the fundamental rights interpretation of Article 230 EC. The CFI recognized that this was only on the basis of its new reading of the Article. Under the *Plaumann* formula the applicant would not be able to show individual concern.

The Court of Justice in *Jégo-Quéré*, while acknowledging that the Community is

[29] Ibid, para 41.

[30] Case C-50/00 *UPA v Council* [2002] ECR I-6677, Opinion of Advocate General Jacobs, para 39.

[31] Case T-177/01 [2002] ECR II-5137. On appeal Case C-263/02, Opinion of Advocate General Jacobs 10 Mar 2003.

[32] Respectively Case 222/84 [1986] ECR 1651 and Case 294/83 [1986] ECR 1339.

[33] Above n 30.

[34] Case 25/62 [1963] ECR 95.

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based upon the rule of law, which includes fundamental rights, did not refer to Article 47 of the Charter of Fundamental Rights.[35] Unless the Court changes its stance in the appeal the relaxation of the *locus standi* rules must wait beyond the new constitutional document for a legislative change.

In *Gozutok* and *Brugge* the Court was asked to rule for the first time on the *ne bis in idem* principle contained in Article 54 of the Convention Implementing the Schengen Agreement (CISA).[36] The cases are important in that, without any language or rhetoric of fundamental rights protection, the Court recognized the substantive rights to due process when exercising rights to free movement even where this has resulted in criminal activity. In *Gozutok*, a Turkish national had run a 'coffee shop' in the Netherlands where quantities of marijuana and hashish had been found during a police raid in 1996. He paid a fine, agreed with the Public Prosecutor, and this barred further prosecution in the Netherlands. In 1996 a German bank drew the German authorities' attention to the fact that large quantities of money were passing through Gozutok's account. The German authorities received information from the Netherlands' authorities on the drug activities and proceeded to arrest Gozutok in Germany, charging him with drug dealing. He was convicted and given a suspended sentence. On appeal Gozutok argued that Article 54 CISA bound the German authorities because the Netherlands authorities had discontinued any further proceedings. The case was 'finally disposed of' for the purposes of the German version of Article 54 CISA even though this kind of 'compromise' does not involve the participation of a court and does not involve a formal judicial decision.

In *Brugge* a German national residing in Germany was charged by the Belgian authorities of intentionally assaulting and wounding a Belgian woman in Belgium. The victim became ill and was unable to work and she claimed civil damages before the Court of First Instance in Veurne, Germany, sitting as a criminal court. The German Public Prosecutor offered Brugge an out of court settlement. Brugge accepted and the Public Prosecutor's Office did not proceed with the prosecution. The issue was whether the *ne bis in idem* rule could be applied to procedures where further prosecution was barred even though there had not been an official *judicial* decision.[37] The Court did not draw upon the language of fundamental rights to determine what is an important procedural right of due process. In paragraph 36 it referred to Article 2 TEU, that the EU has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which the free movement of persons is assured. The integration

[35] For a full discussion see A Cygan 'Protecting the Interests of Civil Society in Community Decision-Making—The Limits of Article 230 EC' (2003) 52 ICLQ 952 and 'Recent Developments in Judicial Review and Article 230 EC' (2003) ERA Forum 3/2003 67.

[36] Joined Cases C-187/01 and C-385/01 [2003] ECR I-1345. Art 54 CISA states: 'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can longer be enforced under the laws of the sentencing Contracting Party.'

[37] Cf *Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in Criminal Matters*, OJ (2001) C 12/10. Under the chapter heading 'Taking Account of Final Criminal Judgments Already Delivered by the Courts in Another Member State', Art 1.1. states '*Ne bis in idem*. Aim: To strengthen legal certainty in the Union by ensuring that a final conviction handed down by a criminal court in one Member State is not challenged in another Member State. The fact that such a decision has been handed down in one Member State must preclude a further prosecution in another Member State for the acts that have already been judged. This aim

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of the Schengen *acquis* is aimed at enhancing European integration and maintaining and developing this principle. The Court pointed out the importance of the right to free movement but without any reference to the fundamental nature of this right or cases where substantive rights attached to free movement are at issue. Instead the Court pointed to the incongruity that would arise if Article 54 CISA were confined to judicial decisions: in reality only serious offences would be covered and there would be no scope for allowing simplified methods of administering justice for less serious crimes.

These cases raise concerns as to whether forum shopping will emerge for the trial of criminal matters, particularly where more lenient treatment, or as these cases show, various forms of sanctions are available. The Court did not address this issue—which is surely an outcome from Article 54 CISA. Will a 'Brussels Convention' become necessary to determine the choice of law in such cases, embracing a list of 'preferred *fora*'? The *Brugge* case also reveals that sensitivities will emerge over different approaches to tackling criminal acts. The Advocate General discusses the position of the victim, as does the Belgian Government in its submissions, but the Court merely states that the victim is not precluded from bringing a *civil action* to seek compensation for the damage suffered.

ERIKA SZYSZCZAK *

has been partially realized in Articles 54 to 57 of the Convention implementing the Schengen Agreement.'

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