Opening Address

David A. O. Edward

Ladies and Gentlemen,

We have now developed several strands in our thinking about European Community law. In the early days, in the first phase of the development of Community law, the emphasis was on two strands. First of all, there was what one might call the constitutional strand, establishing the constitutional relationship between the Member States and the Community and between the institutions within the community. The other strand, in the early phase, was the development of substantive Community law defining the nature and content of the four basic freedoms.

We have now passed, I think, into a new phase. The constitutional problems remain, as to a certain extent do the problems of defining the four basic freedoms. But we are now passing into a period in which, so far as substantive law is concerned, we are just as much concerned with interpreting secondary Community legislative instruments – interpreting Directives and Regulations of considerable detail and technicality. At the same time we are evolving what one might call a European Community law of remedies. That is the topic of today's congress.

During the first phase I spoke about, remedies were important in two respects. First of all, the development of the direct actions before the European Court. What were the rules of procedure? What were the limits of the rules of procedure? And of particular importance for individuals and companies – what were the conditions on which they would have access to the European Court?

The second aspect concerned administrative procedure and judicial control of administrative procedure. Again, so far as individuals and companies were concerned, the Court had to define Community rights of defence.

During that period the European court tended to refer to national courts and national remedies for everything that did not fall within the precise scope either of judicial control of Community administrative procedure or of direct actions.

This approach of referring the individual to the national court for national remedies was, I think, an important aspect of the process of legal integration. It is a basic principle of the Community legal system that the courts of the Member states are the courts of general jurisdiction for Community law. That is a major point of difference between the Community system and, for example, the federal system in the United States, which clearly distinguishes not only between federal law and state law but between federal courts and state courts.

The Community approach is, as I say, to treat the courts of the Member States as the primary courts for the administration of Community law.

As I mentioned, during the first phase the European court was concerned with defining the conditions of access of individuals to direct remedies before the European court. And the approach of the European court was restrictive. The court tended to restrict the extent to which individuals and companies could come before the European court to have a remedy.

That restrictive attitude is, to some extent, being relaxed. But it was an important part, I think, of the process I've mentioned that the European court saw the national courts as being the natural place in which the Community citizen would exercise the legal rights that he has under Community law.

Recourse to national courts therefore implied recourse to national remedies. And for some time, the European court simply said that actions before national courts must be governed by national procedures. There was, to that extent, no imposition of procedures by the Community on the national courts. There were two conditions, however: that the national remedy must be non-discriminatory and that national rules must not be such as to make the granting of a remedy impossible or excessively difficult. That phase of what one might call abstention has now passed, and we are moving into a phase in which there is now a substantial area of law which one could call the European Community law of remedies.

This last week, the Court of Justice has heard three cases, two together on Tuesday and another one on Wednesday, raising the question of the extent to which the individual who feels himself injured by a failure of his Member State properly to apply Community law can obtain damages under national law. There are a number of other actions pending before the court on this issue.

In the course of the next day you will discuss many of those aspects. But there is a further aspect which is, I think, important. Because the Community is developing remedies, this is having an effect within the Member States. Let me quote two statements in the House of Lords in the United Kingdom in the same year: ". . . At a time when Community law is becoming increasingly important, it would be strange if the right of the citizen were to be more restricted under domestic law than it is under Community law . . .", and: ". . . It would be most regrettable if an approach which is inconsistent with that which exists in Community law should be allowed to persist if that is not strictly necessary. . .".

So, the topic we are discussing in this conference is one which is important not just for the Community, and not just for Community law, but also for the development of national law. It is a classic example of what one might call the "inter-penetration" of the Community system and the national systems.