

ECJ CASE LAW AND ITS IMPACT ON THE EVOLUTION OF ADMINISTRATIVE LIABILITY; STATE LIABILITY FOR INFRINGEMENT

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Abstract: *Romania's accession to the European Union resulted in the integration of the national legal system into the European legislation, which has as a main result the modification and adaptation of many legal institutions for compliance. Both legal rules and practice of supranational legal courts (ECHR, ECJ) exercised a major influence over the national law, forcing it to beneficial changes, but the process of harmonisation, of alignment to the European standards is not yet complete, with important imperfections (the abundance of unfavourable decisions of the Romanian state in the European courts confirming this fact).*

Key words: *responsibility, case law, state liability, infringement.*

1. Introduction

The main task of the European Court of Justice is to ensure that the EU Law is uniformly interpreted and applied by all the states of the European Union, recalling that the international instruments of protecting human rights are indications that should be taken into considerations in the EU law, which has generated discussions in the doctrine regarding the possible overlap of competence of the two European Courts, ECHR and ECJ, as well as the pressure that this overlap could exercise over the national Courts (Both the ECJ and ECHR supporting the primacy of its own where national legislation is unclear / inconsistent with the provisions of the EU law or of European Convention of Human Rights).

ECJ institutes changes in how administrative law principles are applied in an EU member state by its own interpretation of legislative acts, as the

guarantor of the implementation and enforcement of the law throughout the Union.

The jurisprudence component was of huge importance for the development of European administrative law. Thus, the vast majority of general legal principles recognized today as the EU law as applicable to the administrative acts, were drafted by the EU Court of Justice. ECJ acts primarily as an administrative court - in terms of continental law - for the European Union in order to protect the legal issues, member states, as well as individuals.

2. Content

Through its jurisprudence, the European Court of Justice has established that the national administrative authorities are required to ensure full application of EU law within their areas of competence.

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Accordingly, authorities are also obliged to protect the rights of citizens regarding these decisions, by removing any contrary provision of the national law, whether enacted before or after the Union's norm.

Also, the ECJ recognizes the principle of responsibility of member states for infringement of the Union's law, these infringements being susceptible to give rise to remedial obligations.

Moreover, failure by member states to give effect to the obligations imposed by EU law, may be referred to the Court. If the member state fails again to implement or to operate the necessary changes as required in a decision of the European court that found such a breach, the state may be forced to pay penalties and / or a lump sum.

The Court introduced the principle of direct effect of community law in member states, allowing both the citizens and legal entities established in a member state to invoke directly the Union's rules in front of national courts - CJCE, *Hot. Simmenthal* of 9 March 1978: national court is bound to consider, based on their own authority, as inapplicable any conflicting provision of national legislation, without waiting for its prior removal by the legislator or other competent state authorities.

Other important principles established by ECJ case law were echoed in the doctrine and case law, among which we mention: the principle of subsidiarity, the principle of proportionality, the principle of equivalence and effectiveness, and others.

Subsidiarity is set up by art. 5 of the EU Treaty - according to this the Union shall act within the powers conferred and the objectives assigned by the aforementioned treaty.

In areas which are outside its exclusive competence, the Union does not interfere due to the principle of subsidiarity. However if the objectives of those actions (that have to be taken) cannot be achieved satisfactorily by the member states and can be better achieved at European level then

the EU authorities may interfere taking in consideration the scale or effects of its measures

This principle is closely linked, as applicable, by another principle established in the Union, namely the principle of proportionality, as stated by the provisions of paragraph 3 of Article 5 EC: "No Union action will exceed what is necessary in order to attain the objectives of this Treaty".

Applying the principle of proportionality concerns the form of action, the nature and extent of Union action and determining the amount of financial or administrative expenses.

We find applications in national law of the principle of proportionality in determining penalties, including administrative sanctions, but also in other areas (expropriation, abuse of power, etc.).

In EU law, the principle of proportionality applies to the limits of Community competence and the means used to achieve these competences, this principle acting as a "guarantor" of fundamental rights. [2]

The principle of equivalence requires that the same procedural provisions apply both to actions based on Community law and related actions based on national law.

The principle of effectiveness means that, in practice, assignment of rights through EU legislation must have a finality, not to be in danger of being inapplicable.

With regard to the principle of effectiveness and equivalence, European Court of Justice held that it is for the domestic system of each member states to designate the courts having jurisdiction and the procedural conditions governing actions at law intended to ensure the protection of the rights which subjects derive from the direct effects of EU law.

However, that "autonomy" was subjected to two overriding considerations of EU law. First, the national rules applicable to EU law cases cannot be discriminatory or less favourable than those relating to

similar actions of a domestic nature (the principle of equivalence). Secondly, the national rules must not make it excessively difficult to exercise Community law rights (the principle of effectiveness).

The principle of cooperation enshrined in Article 10 EC required that member states provide adequate protection of EC law rights and this also includes the procedural aspects of the enforcement of those rights. If the application of the principles of effectiveness and equivalence that demonstrates that the member states have not fulfilled that duty, then the national courts will have to set-aside those procedural rules that stand in the way of proper procedural protection. Regarding the application of the principle of equivalence concerning administrative responsibility, the practice [7] of ECJ reveals that: European Union law precludes the application of a norm of a member state under an action for damages against the state, alleging a breach of that law by national legislation (which has been established by a judgment of the ECJ according to Article 258 EU) and can succeed only if the applicant has previously exhausted all domestic remedies for challenging the validity of a harmful administrative measure (adopted on the basis of that legislation). This is more obvious when such a rule/norm is not applicable to an action for damages against the State alleging breach of the Constitution by national legislation which has been established by the competent court.

In the case under consideration ('Transportes Urbanos'), a reference has been made to ECJ for a preliminary ruling regarding the legality of an action for State liability for damage caused by administrative acts based on a law that was subsequently declared unconstitutional in the context that the national court rejected the action brought against the Spanish State for breach of EU law.

Given the object and the essential elements of the two actions for damages (founded on national law and on EU's law)

they may be considered as similar since, on the one hand, they have exactly the same object, namely compensation for the damage suffered by the person injured as a result of an action or an omission of the State and, secondly, the only difference between the two actions under consideration is the fact that the violations of law on which they are based are established for one by the decision issued by the Court under the Article 226 EC and for the other, by a decision issued by the competent national court. Therefore, the ECJ procedure can not be conditioned by the exhaustion of all remedies in the national law.

Under the conditions of accession, the member states have assumed the obligation to transpose EU rules into national law and to support their implementation. Otherwise, a procedure is established by which states are held accountable, that is the action for the infringement procedure by the member states of their obligations under Community law having as the legal basis the Art. 226 of the Treaty establishing the European Union.

The infringement can be as a result of an affirmative action, which consists of acts contrary to Union law, as well as the result of a negative action, omission of notification of those legal acts transposing Directives or noncompliance of national legislation with EU requirements. [3]

Even if the infringement is caused exclusively by a separate entity, which is financed and controlled by the Government, the State is solely responsible for that violation of law. [9]

Thus the dispute between the Commission and one of the Member States is subject to a resolution, reached by the preliminary procedure, which has a non-contentious character, in order to resolve it amicably, and if this procedure does not lead to a settlement, then the litigation is settled by the European Court of Justice.

The complaint may be lodged with the Commission, by any natural or legal

person, the only condition regarding the admissibility of the complaint being that the object of the complaint to constitute a breach of Union law by the Member State.

In its decision the ECJ takes note of the violation of the Union legislation by a member state and further requires that that State harmonizes its national legislation with that of the EU and pays a lump sum or a penalty for the infringement.

If the member state still fails to implement the Union legislation, then the ECJ hearing an infringement action, may issue a second decision which requires the Member State to pay a lump sum or a comminatory payment until the obligation of conforming to the legislation is fulfilled. When establishing the amount, ECJ is taking into account [4] the degree of risk and the duration of the breach, the possibility of Member State to pay the amounts set out, the effect of infringement on private rights, etc.

The nature of the state's liability for breach of the Union law is of an administrative patrimonial type which is undertaken following a breach of the Union legislation. In order to be subject of this type of liability it is not necessary to prove actual damage. The fault of a member state in an infringement procedure is proven by the existence of national rules which are inconsistent with the European legislation.

3. Conclusions

The legislative changes are absolutely necessary, as the main instrument of European integration is legal integration through the establishment of a community law, based on the supremacy principle, the primacy of the Union law over the national. [5] Unlike the Council of Europe, which is an organization for international cooperation in the form of association of sovereign states, European Union is an integration organization that primarily involves the building of a supranational legal system and the harmonization of national laws with it.

Building a stable legal framework compatible with the EU recommendations in line also with the new economic realities can equate with changes of the competitive framework and create new competitive advantages, ensuring for all EU's citizens equal rights, guaranteed also by the procedure of infringement.

Finally, adapting national legislation to the requirements of European Union, especially regarding the administrative responsibility, helps to define mechanisms to protect the rights and legitimate interests of citizens of member states before public administration actions. This should be seen as part of a general purpose of which the ultimate aim is ensuring equity in relationships between citizens and public power.

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