

Principles of National Procedural Law in Summary Procedures and the Effectiveness Principle of European Law

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Access to Civil Justice Conference

Sources of EU Law

- Treaties
 - Secondary legislation
 - Regulations
 - Directives
 - Decisions

Nature of the ECJ judgements

- 1963: Da Costa

*“The obligation imposed by the third paragraph of article 177 of the EEC treaty upon national courts or tribunals of last instance may be deprived of its purpose by reason of the **authority of an interpretation** already given by the Court under article 177 in those cases in which the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case.”*

Nature of the ECJ judgements

- 1982: Cilfit

*“(...) the **authority of an interpretation already given by the Court** may however deprive the obligation of its purpose and thus empty it of its substance. Such is the case especially when the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case or where previous decisions of the Court have already dealt with the point of law in question, **irrespective of the nature of the proceedings which led to those decisions, even though the questions at issue are not strictly identical.**”*

Nature of the ECJ judgements

- 1997: Dior

“a court against whose decisions there is no remedy under national law, as is the case with both the Benelux Court of Justice and the Hoge Raad der Nederlanden, must make a reference to the Court of Justice under the third paragraph of Article 177 of the Treaty. However, that obligation loses its purpose and is thus emptied of its substance when the question raised is substantially the same as a question which has already been the subject of a preliminary ruling in the same national proceedings.”

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Sources of EU Law

- Treaties
 - Secondary legislation
 - Regulations
 - Directives
 - Decisions
- ECJ Case-law: binding precedent
 - Fundamental principles of EU law
 - Direct effect
 - Supremacy or prevalence

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Enforcement of EU law

- Under the principles of
 - Direct effect
 - Supremacy or prevalence

National courts

- Procedural law?
 - National procedural law

Principle of the institutional and procedural autonomy of the Member-states (PIPA)

- First impression – ECJ: Comet, Case 45/76, Judgment of the Court of 16 December 1976; REWE, Case 33/76, same date:
 - *“In the absence of any relevant community rules , it is for the national legal order of each member state to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of community law...”*

PIPA

- *“According to settled case-law, in the absence of relevant Community rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under Community law are a matter for the domestic legal order of each Member State, under the principle of the procedural autonomy of the Member States...”* – ECJ: Mostaza Claro, Case C-168/05, Judgment of the Court (First Chamber) of 26 October 2006.

Small claims

- Article 19: Applicable procedural law

Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the **procedural law of the Member State** in which the procedure is conducted.

Limits to the Principle of the institutional and procedural autonomy of the Member-states (PIPA)

- First impression – ECJ: Comet, Case 45/76, Judgment of the Court of 16 December 1976; REWE, Case 33/76, same date:
 - *In the absence of any relevant community rules , it is for the national legal order of each member state to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of community law, **provided that such rules are not less favourable than those governing the same right of action on an internal matter. The position would be different only if those rules made it impossible in practice to exercise rights which the national courts have a duty to protect.***

Limits to the PIPA

- *“According to settled case-law, in the absence of relevant Community rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under Community law are a matter for the domestic legal order of each Member State, under the principle of the procedural autonomy of the Member States, **provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness)**” – ECJ: Mostaza Claro, Case C-168/05, Judgment of the Court (First Chamber) of 26 October 2006.*

Limits to the PIPA

- Principle of equivalence
- Principle of effectiveness

Principle of equivalence

- Cat and mouse
 - ECJ: Hans Just, Case 68/79. Judgment of the Court of 27 of February 1980.
 - repercussion of taxes illegally perceived can be taken into account when deciding reimbursement.
 - Italy enacted legislation refusing the right to reimbursement in case of passing of the charge that was presumed in case the goods had been transferred. This presumption could only be set aside by documentary evidence Article 10 of the Decree-Law No 430 of 10 of July 1982.
 - ECJ: San Giorgio, Case 199/82. Judgment of the Court of 9 of November 1983.
 - *“Any requirement of proof which has the effect of making it virtually impossible or excessively difficult to secure the repayment of charges levied contrary to Community law is incompatible with community law...”*

Principle of effectiveness

- Limit to the Principle of equivalence
- San Giorgio, 1983
- Advocate-general Darmon, Opinion of 28th of January 1986, Case 222/84, Johnston:
 - *Droit au juge*
 - the right to a process which comprises the full range of safeguards: *a)* the need to find a court with *b)* all the necessary power to enforce rights acquired under EC law.

Principle of effectiveness

- *a)* The right to find a court
 - ECJ: Factortame, Case C-213/89. Judgment of the Court of 19 June 1990: lack of procedural means, interim relief against an act of Parliament.
 - ECJ: Brasserie du Pecheur, Joined Cases C-46/93 and 48/93: state liability for breach of EC by the legislative bodies.
 - ECJ: Kobler, Case 224/01: state liability for the breach of EC law by national jurisdictions: *The principle that Member States are obliged to make good damage caused to individuals by infringements of Community law for which they are responsible is also applicable when the alleged infringement stems from a decision of a court adjudicating at last instance.*

Principle of effectiveness

- *b)* ECJ: Johnston, 1986
 - *“The principle of effective judicial control (...) does not allow a certificate issued by a national authority (...) to be treated as conclusive evidence so as to exclude the exercise of any power of review by the courts”*
- *b)* Barav, 1991
 - *La plénitude de compétence du juge national*

Principle of effectiveness

National courts to apply EU law on their own motion

- *b)* ECJ: Fratelli Constanzo, Case 103/88. Judgment of the Court of 22 June 1989
- *b)* ECJ: Peterbroeck, Case 312/93. Judgment of the Court of 14 of December 1995
- *b)* ECJ: Oceano, Case C-240/98 to C-244/98. Judgment of the Court of 27 June 2000
- *b)* ECJ: Cofidis, Case C-473/00. Judgment of the Court (Fifth Chamber) of 21 November 2002
- *b)* ECJ: Eco Swiss, Case C-126/97. Judgment of the Court of 1 June 1999
- *b)* ECJ: Manfredi, Joined cases C-295/04 to C-298/04. Judgment of the Court (Third Chamber) of 13 July 2006
- *b)* ECJ: Asturcom, Case C-40/08. Judgment of the Court (First Chamber) of 6 October 2009

Principle of effectiveness *res iudicata*

- b) ECJ: Lucchini, Case C-119/05. Judgment of the Court (Grand Chamber) of 18 July 2007
 - *“Community law precludes the application of a provision of national law, such as Article 2909 of the Italian Civil Code, which seeks to lay down the principle of res iudicata in so far as the application of that provision prevents the recovery of State aid granted in breach of Community law which has been found to be incompatible with the common market in a decision of the Commission which has become final.”*

Principle of effectiveness *res iudicata*

- b) ECJ: Olimpiclub, Case C-2/08. Judgment of the Court (Second Chamber) of 3 September 2009
 - *“The rules implementing the principle of res iudicata , which are a matter for the national legal order in accordance with the principle of the procedural autonomy of the Member States, must not, however, be less favourable than those governing similar domestic actions (principle of equivalence); nor may they be framed in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by Community law (principle of effectiveness).”*

Consequences of the Principle of effectiveness

- What is the value of national law incompatible with Union law?
 - 1978, ECJ: Simmenthal, Case 106/77. Judgment of the Court of 9 of March 1978. Recitals 17 and 18:

“17 Furthermore , in accordance with the principle of the precedence of Community law , the relationship between provisions of the treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures not only by their entry into force render automatically inapplicable any conflicting provision of current national law but - in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each of the Member States - also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with community provisions.

18 Indeed any recognition that national legislative measures which encroach upon the field within which the Community exercises its legislative power or which are otherwise incompatible with the provisions of Community law had any legal effect would amount to a corresponding denial of the effectiveness of obligations undertaken unconditionally and irrevocably by Member States pursuant to the treaty and would thus imperil the very foundations of the Community.”

Thank you