GENERAL PRINCIPLES OF LAW – SOURCE OF EUROPEAN UNION LAW

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Abstract

In interpreting primary and secondary Union legislation, the Court of Justice of the European Union has developed a number of general principles of law, some based on the fundamental laws of the constitutions of the Member States, some based on principles of international law and some derived directly from the European Convention on Human Rights (ECHR). These general principles of law are also based on the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union. The status of the Charter has been enhanced now that the Charter has been afforded legal recognition by the Treaty of Lisbon through the amended Art 6(1) TEU.

Keywords: European Union Law, principles of law, Court of Justice, European Convention on Human Rights.

1. General aspects

General principles of law are referred to in legal literature as being Community over – legality. In this respect the Court requires compliance by both the Community institutions – in the setting-up of secondary acts, having a superior authority and the Member States – in respect of all acts falling within the scope of Community law in their execution.

The general principles of law are unwritten rules that community judge (Court of Justice) applies and thus are incorporated into Community law, they are the product of interpretive methods used in its jurisprudence.

Can be distinguished four categories of principles which the Court applies faced both in identifying and determining the compatibility with Community law:

1. General principles of law common to all legal systems, national and international;
2. The general principles of public international law;
3. General principles common to the legal systems of the Member States;
4. The principles of community (European Union) law.

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1 See G. Isaac, M. Blanquet, Droit communautaire général, 8 edition, Ed. Dalloz, p. 176.
Reference to general principles of law common to the laws, national and international shows difficulties in identifying especially, because of their very general; nature. But they respond to supreme demands of law and collective consciousness." \(^3\) In this category include, by way of example: the general principle of juridical principle of good faith, the principle of legality, etc.

The general principles of public international law are not compatible with the structure and requirements of the Community.

For example, referring to ,, except for reciprocal obligations fulfilling state " – which can be invoked by the party injured by a breach of the obligations of the other party can be dispensed from the performance of its obligations except getting above – the Court stated that "the Treaty (EC na) is not intended to create mutual obligations of different subjects to which the Community rules, but establishes a new legal order; scheme of the Treaty, unless expressly provided, resulting prohibition for Member States to make their own hands ".

Notwithstanding, the Court turned to the principles of public international law that prohibit, for example, states to refuse its own nationals the right to enter and establish themselves on their territory.\(^4\)

The general principles common to the laws of the Member States. Through these principles, the Court draws inspiration from national laws of the Member States stating, moreover, even before the signing of the Treaties of Rome that it is required to steer according to the rules recognized by the legislation, doctrine and jurisprudence of the Member States.

Today, on a regular basis, the Court states “general principles”, which usually are admitted to the national legal systems of the Member States "for example, the principle of equality before the law, the appeal before a national court etc.

The discovery of these common principles requires not identify them as an almost mechanical overlay of the national law of each Member State. Court off in the spirit, orientation and evolution of national law, those principles that are rooted” near their legal systems, produced over the years and their level of economic, social and cultural substantially equal ".\(^5\)

Court places, however, under Community law and principles that come from a single Member State, for example, the principles of proportionality and legitimate expectations, which were established only in German law.

In conclusion, the Court reserves:

- The right to choose between the different solutions offered by national legal systems of those with intrinsic value for system needs;
- The right to reject those common principles that are incompatible with Community needs;

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\(^3\) See G. Isaac, M. Blanquet, op. cit., p. 176.


- To adapt those common principles on which it intends to transpose autonomy according to Community law.

*Own principles are arising from the Community Treaties, i.e. the primacy directly applicable effect, and direct applicability of community law, loyal cooperation, the institutional balance, free movement, non-discrimination based on nationality etc.*

2. The application of general principles of law

*General principles of law* common have been prioritized if the Community treaties do not contain express provisions in the desired direction.  

If such a principle is reflected in the *general principles common to the laws of the Member States* towards this distinction is made quite difficult.

Applying the principles can be done by express reference in the Community Treaties, for example:  

- According to art. 288 par. 2 CE “the non-contractual liability, the Community should repair, according to the general principles common to the laws of the Member States, the damage caused by its institutions or its servants in the performance of their duties”;

- According to art. 190 par. 4, CE referring to the European Parliament elections, this institution must draw up a proposal for elections by direct universal suffrage, following a uniform procedure in all Member States or under principles common to all Member States;

- According to art. 230 CE, when determining the jurisdiction of the Court of Justice, referring to the action brought on the basis of a rule of law concerning application of the Treaty;

If the EU treaties make no explicit reference to the binding legal principles, they can be applied without restraint when not inconsistent with any provision of the Treaties.  

If there are provisions diverging formula according to the Treaty priority. When any contrary provisions not in the Treaties will apply general principles as part of the Community legal order.  

The general principles of law may be invoked when the community bodies of jurisdiction will be a review of the legality of acts issued by Community institutions.  

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3. The principles applied by the Court of Justice and their legal force

3.1. Fundamental human rights

While fundamental human rights constitute a special category of general principles, representing the largest of them, none of Treaties provides no constitutive, express or general relating thereto. Their subsequent treaties contain such provisions as follows:

- Treaty of Maastricht, art. 6, par. 1 “Union is founded on principles of democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States; par. 2 “The Union shall respect fundamental rights, as guaranteed by the European Convention were Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and as they result from the constitutional traditions common to the Member States, all of which as general principles of Community law”.

- The Amsterdam Treaty introduced new provisions in this area, in turn modified by the Treaty of Nice, art. 7 point 1 “motivated on a proposal from a third of Member States, the European Parliament or the Commission, the Council, acting by a majority of four fifths of its members after obtaining the assent of the European Parliament maybe there is a risk of a serious breach by a member of principles mentioned in art. 6, par. 1 and make appropriate recommendations to that State.

In 1969 or 1970 The Court of Justice has held that fundamental rights form an integral part of the general principles of law which is the constitutional traditions common observance of which must be guaranteed in the structure and objectives of the Community. Subsequently, in 1974 The Court made three Important observations:

1) in matters of fundamental rights, general principles are designed to apply at Community level, the highest national guarantees;

2) by way of general principles in the Community legal order are integrated in the European Convention rights and fundamental freedoms as a minimum standard;

3) those fundamental rights that must be considered in relation to the social function of the protected goods or activities. They may be made to certain limitations to achieve the objectives of general interest pursued by the Community, provided they do not prejudice those rights.

In the Joint Statement of 5 April 1977, the Council and the Commission stated paramount importance that these institutions give to respect for fundamental

11 See O Ţînca, op. cit. p. 205.
13 See G. Isaac, M. Blanquet, op. cit. p. 178, 179.
rights as they result from the constitutions of the Member States and the European Convention of Human Rights and Fundamental Freedoms of Rome (1950). Referring to the Convention, the Court of Justice in 1986, emphasizing that represents the prime reference in the field of fundamental rights.

The Court also held that where a Member State relies on the provisions of the Treaty to justify national legislation which is such as to prevent the enforcing of a right guaranteed in the Treaty, such justification, provided by Community law must be interpreted in the light of general principles of law and especially fundamental rights.

The question of accession to the European Communities Convention, but the Court of Justice, the opinion of 28 March 1996, said that currently Communities can not conclude international agreements in this regard and also can not adopt EU rules on human rights. 14

At the European Council in Nice on 7 - 11. 12. 2000 Parliament, the European Council and the Commission solemnly proclaimed the Charter of fundamental human rights which was drafted by a Convention composed of 30 representatives of national parliaments, 16 representatives of Parliament European, 15 personal representatives of heads of state or a commissioner representing the Commission. 15 It was revealed that, through this proclamation protection of fundamental rights at Union level will be more visible and transparent to the citizen and the Court of Justice may refer in the future to the Charter when it will examine the compatibility of a specific act with fundamental rights attributing thus rank Charter authentic interpretation of legal principles mentioned in art. 6 TEU, especially since it was approved by all national governments and parliaments. 16 A demarcation between fundamental human rights and other principles of law has been observed nus, ICEE means that it can be applied to confusion. 17 For example, the Court of Justice has recognized some of these principles, but they may come to the same extent, and as a human right. Included in this, by way of example, the following principles: the fundamental right to inviolability of the home (principle common to all legal systems of the Member States), the right to form unions (enshrined in international documents of reference). 18 the principle of democracy (which is reflected by the need for citizen participation in the exercise of power by gathering representative – European Parliament), the right to privacy (derived from the constitutional traditions common to the Member States), Right of every person to a fair trial in adversarial proceedings.

15 See V. Constantinesco, La Charte des droits fondamentaux de l’Union européenne, in SUB- B nr. 1/2002, p. 8-16.
16 See V. Constantinesco, op. cit., p. 8 - 16.
17 See V. Constantinesco, op. cit., p. 8 - 16.
18 See O. Manolache, op. cit., p. 29-33.
3.2 The principle of the rights of defense

Once this principle must guide the proceedings before the Community organs of jurisdiction. In the application of Community law guaranteeing respect for the rights of defense "has multiple issues:

- The right to be heard, in compliance with the conditions of the inconsistencies of the procedure, not only before judicial bodies, involving pecuniary sanctions, but before administrative bodies, even purely consultative, involving disciplinary or administrative sanctions. Related to this question is to examine the witnesses when it has been requested in cases strictly determined, or the right to obtain information, for example, about the documents that leads the Commission to rule on whether the agreement violated art. 85 EC, respecting the privacy of professional secrecy to interested third parties;\(^{19}\)

- The right to assistance from national authorities, the right to legal assistance and representation.

c. The principle of equality, prohibits discrimination by nationality (art. or after sex, assuming an equal parties treatment identical and comparable situations. The principle has applications even in Community texts as follows:

- Article 141 EC prohibits gender discrimination by applying the principle that men and women should receive equal pay for equal work;

- Article 12 par. 2 EC, expressly prohibits discrimination on grounds of nationality, the Council may adopt under Art. 251 EC rules to prohibit such discrimination;

- Art. 13 EC refers to combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;

- Art. 40 para. 3 exclude any discrimination between producers and consumers within the Community common organization of agricultural markets;

- Other provisions prohibiting discrimination on the free movement of goods, people and capital.\(^{20}\)

Discrimination applies to all legal relationships that may be settled in the territory of the Community by virtue of where they agreed or place where they take effect. \(^{21}\) Discrimination must be sufficiently justified and objective and not arbitrary.

d. The principle of legal certainty is based on the idea of law, both in respect of the private and Member States and Community institutions. \(^{22}\) This principle requires, in particular in the following areas:\(^{23}\)

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19 See O. Manolache, *op. cit.*, p. 34.
20 See O. Manolache, *op. cit.*, p. 34.
23 See Guy Isaac et Marc Blanquet, *op. cit.*, p. 180
- Prescription and limitation. Court imposes limits to the exercise of their power to the lodging of rights by individuals, for example, the Commission must decide within two months on the compatibility with the Treaty of state aids projects submitted by state in the action material weakness applicant must notify the institution in a reasonable time, under penalty of forfeiture;

- An act that did unenforceability suitably advertised;

- Retroactivity. Except for special cases, a Community act can not have that starting point, the effects being a date before its publication; concerned in the spirit of legal certainty, the Court, in certain cases, limit or reject the retrospective that came naturally, a judgment interpretation or declaration of invalidity of a reference time at the pre-trial.

- Legitimate expectations. This principle is translated from German law and especially recipients of Community provisions protecting against changes with immediate effect and without notice, the regulations in question, as against provision of wrong information.

- Clarity and precision right. The principle opposes ambiguous formulations of Community texts, to the simple transposition of directives on administrative channels, by their nature, legal, modifiable, or notification of a decision in a language other than the language of the recipients. In conclusion, the regulations must be:

- Clear and precise to be able to determine with certainty the rights and obligations;

- Predictable for litigants;

- Effective and covering all cases established, there is a transposition of a directive into national law;

- Limited effects in time; so that text can not be applied only in exceptional cases to a period prior publication and interpretation of Community texts must be in compliance with the law in force and not in relation to amendments.

3.3. The principle of res judicata

This principle prohibits a fresh assessment in depth of committing an act that would result in the imposition of either a second penalty, in addition to the first, if it is determined liability for a second time or a first penalty in the case that liability not established by the first decision is established by the second decision.

There were, however, accepted two parallel procedures for giving a pre-trial ruling, the Community and one national one, so as to impose a double penalty on cartels. It was shown also, that the possibility of concurrent sanctions does not necessarily mean that the possibility of two parallel proceedings pursuing different

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25 See Ami Barav, Christian Philip, op. cit., p. 862.
26 See O. Manolache, op. cit., p. 34.
purposes is unacceptable. Acceptability of a dual procedure of this kind is clear from the special system of sharing jurisdiction between the Community and the Member States with regard to cartels. It is necessary, however, that the incriminating evidence to be produced in the Community and those proceedings to be brought before the courts located within it.

3.4. The principle of loyalty

The principle of loyalty is called also the principle of solidarity is called promoted by the Court and set out in art. 10 TEC is deemed to result from the very nature of Community law because it has three obligations on Member States, two positive – of a general nature, and a negative way:

- Take all appropriate measures, whether general or particular, to ensure fulfillment of duties resulting from the Treaty or of action by the Community institutions (Art. 10 para. 1 TEC, Part I);
- Provide the Commission with the information required to verify whether the measures which they have taken are consistent with Community law, i.e. primary or secondary legislation (art. 10 para. 1 TEC, Part II);
- Refrain from any measure which could jeopardize the objectives of the Community (Art. 10 para. 2 TEC);

Another example of an obligation of loyalty resulting from art. 11 par. 2 Ms. T. “which provides that Member States actively and unreservedly support the common foreign and security policy in a spirit of loyalty and solidarity (...). They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness.”

4. Conclusion

The Charter of Fundamental Rights of the European Union was signed by the then 15 Member States during December 2000 at the meeting of the European Council held in Nice, France. The Charter combines in a single text the civil, political, economic, social and societal rights which had previously been laid down in a variety of international, european and national sources.

It includes the following:
- rights of dignity (e.g. the right to life, and respect for private and family life);
- freedoms (e.g. freedom of assembly and of association);
- equality (e.g. respect for cultural, religious and linguistic diversity);
- solidarity (e.g. right of collective bargaining and action);
- citizens’ rights (e.g. freedom of movement and residence);
- justice (e.g. presumption of innocence and right of defence).

27 See O. Manolache, op. cit., p. 34
28 See O. Manolache, op. cit., p. 34.
Originally, the Charter was not legally binding. A Declaration annexed to the Treaty of Nice provided that an Intergovernmental Conference would be held in 2004 to consider, inter alia, the status of the Charter. This resulted in the adoption of the proposed Constitutional Treaty and subsequently the adoption of the Treaty of Lisbon.

The Court has become more and more cautious about employing the apparent term of art of the “general principles” that could challenge the authority of the authors of primary law and the legislature in the context of secondary law. Instead, the Court clearly prefers reliance on the EU Charter of Fundamental Rights or secondary legislation.

REFERENCES