

Law of the European Union

course for exchange students

4. Application of European Union Law

Filip Křepelka

(krepelka@law.muni.cz)

Direct effect of EU law

- Self-executing rules of former TEC and now TEU+TFEU enjoy direct effect in legal practice of member states.
- These rules are expected and required to be applied by administration and by judiciary of all member states.
- Therefore, they establish rights and – to lesser extent - duties for individuals.
- Judgment *van Gend en Loos* (26-62)

Primacy of rules of TEU+TFEU

- These rules, if self-executing (applicable directly) enjoy priority.
- If member state law does not comply, its application shall be set aside.
- Nevertheless, abrogation of inconsistent provision of national law is not required.
- Judgment 6-64 *Costa v. ENEL*.

Absolute primacy of EU law

- Primacy of EU law towards inconsistent national law of member states shall be absolute.
- *Internationale Handelsgesellschaft* 11-70.
- Nevertheless, supreme and constitutional courts of several member states hesitate to recognize this primacy and threaten with rebellion. Its incidence, however, is rare.

Judgments-based principles (case-law)

- Both principles were established by case-law of the Court of Justice in the European (Economic) Community:
- These principles have not been clearly precised in founding treaties.
- Both principles have been justified with specific features of EC/EU (supranational integration of member states and people).

Supremacy (primacy) in „European Constitution“ and in the Lisbon Treaty

„Treaty establishing a Constitution for Europe“ expected clear provision on primacy (and thus also direct effect) of future European Union law.

Nevertheless, it failed to be ratified.

Lisbon Treaty includes proclamation no 17 confirming settled case law (Costa v. ENEL) on primacy of EC law for future EU.

Shift from dualism to monism

- That approach differs from international law.
- In general, International treaties are binding only for contracting parties - i. e. for states (countries) and for international organizations. This approach is „dualism“.
- These states decide whether and, if yes, to which extent individuals can claim benefits resulting of them as rights before their administrative authorities and courts.
- Case-law thus switched from dualism to monism proposed by several theorists of law.

Reluctance to accept full supremacy and ignorance

- Member states, i.e. their parliaments, courts, political and administrative authorities respect supremacy of EC/EU law.
- There is, however, visible reluctance to accept these principles by in all situations.
- Plenty examples of ignorance of EC/EU law.
- Extremely rarely, Authorities of member states refuse clearly supremacy of EU law.
- It is consequence of weaknesses of EC/EU.

Application of regulations and complementary legislation

- Regulations can impose duties on individuals and establish rights to them.
- Rules of regulations are expected to be directly applied by administration and courts of the member states.
- Many regulations must be accompanied with complementary national legislation (procedures, sanctions, institutions).

Direct effect of directives in exceptional cases

- The Court of Justice has developed the doctrine of direct effect if a directive is not transposed without delay.
- Individuals can claim directly applicable rules against incompliant national law (judgement 148/78 *Ratti*, 152/84 *Marshall*).
- On the other hand, direct effect is not expected if relations among individuals shall be affected (judgement C-91/92 *Faccini-Dori*).
- Member states cannot also impose duties on individuals based on directives (judgement 80/86 *Kolpinghuis*).

Indirect effect of directives

- Administrative authorities and courts of member states are expected to interpret their national laws while taking into consideration of directives (judgement C-106/89 *Marleasing, Colson and Kamann*).
- Directive-based national law is, however, usually applied without knowledge of relevant directives.

Acquis communautaire

- These words denote all law of the European Community and of the European Union which is expected to be accepted and implemented by new member states.
- *Acquis communautaire* is huge mass of legal documents, including case-law of the Court of Justice of different level of importance.
- Burden related to membership is often understood with *acquis communautaire*.