

Course: *Law of the European Union*

# **[5] Administrative and judicial procedures in the European Union**

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# Administrative procedures

- European Union law has the most important impact on administrative law of member states.
- Administrative procedures serve day-to-day application of European Union law by administrative authorities of both European Union and member states while acting as agents of EU law.

# Procedures for direct European administration

- There are no general rules for proceedings (no administrative code of the European Union).
- Special administrative procedures are established in for various agendas of the Commission (competition, state aids, regional policy) or special agencies (Office for Harmonization on Internal Market).
- Nevertheless, the Court of Justice completes these rules with principles making administrative proceeding in compliance with fundamental rights and rule of law.

# Administration of EU law by authorities of member states

- Many EU legal frameworks are applied by the member states.
- Member states have their rules for proceedings.
- Member states are decide on their administration (so-called principle of procedural autonomy).
- Nevertheless, non-discrimination (equal treatment) and effectivity (effet utile) are required.
- Some procedures are harmonised or unified by directives. Several regulations provide comprehensive procedures (customs).

# Role of judiciary

- Judiciary contributes to good application of law in all modern states with rule of law.
- Member states are expected to have judiciary independent from political influence.
- Member states shall have efficient judiciary.
- Nevertheless, quality of judiciary differs from member state to member state.
- Organization of judiciary is left to the member states. There are various systems of universal and specialized courts in various tiers.

# Importance of judiciary in EU

- The role of judiciary is crucial.
- Case-law of the Court of Justice contributed significantly to development of EU / EC law.
- Courts and tribunals of member states have become an important instrument for application of it in all member states due to their independence.

# Structures and roles in the EU judiciary

- Judiciary of the European Community is limited: the Court of Justice as the supreme court.
- Other courts - the General Court (former the Court of the First Instance) and new - have been established for management of selected less important agenda.
- The Court of Justice decides mainly on constitutional matters and contributes to uniform application of European Union law by national courts and tribunals.

# Judicial procedures of member states important for EU law

- Most EU law rules is applied by judiciary of member states.
- Codes of procedure (civil, criminal, administrative, special) are thus applied.
- Organisation of judiciary, available appeals and complaints depend on member states.
- Principles of equality and effectivity shall be, however, observed.
- Connection between adjudication by courts of member states and judiciary of the European Union is preliminary ruling.



# „Infringement“

- The Commission starts with diplomatic communication with particular member state (reciprocal missions exist).
- It later opens investigation whether legislation and practice of this member state complies with requirements of European Union law.
- If there is no satisfactory result, the Commission can bring case before the Court of Justice.
- The Court of Justice investigates and hears both participants and decides whether the European Community law was infringed or not.

# Fines imposed by the Court

- If the judgement declares infringement is not obeyed by the member state,
- the Commission can ask the Court of Justice for penalty payments (fine).
- These fines are rare, nevertheless, they are expected to be used frequently.
- Such penalization is the instrument of last resort for coercion of member states.

# Action for annulment

- The procedure is:
  - judicial review of administrative decisions (the Commission and other agencies)
  - „constitutional review“ of European Union legislation – regulations and directives.
- Two-month limit is prescribed for the action.
- If the piece of legislation or administrative decision is found contrary to law - breach of superior substantive law, lack of competence, principal procedural failure or misuse of discretion - it shall be declared void.

# Preliminary ruling - description

- Preliminary ruling is the most important and the specific judicial procedure in the EU.
- Preliminary ruling is surrogate to appeals or complaints which are available for parties of proceedings of courts of federations.
- Preliminary ruling contributes to homogenous application of European Union law by the courts of member states.
- Important doctrines and principles of EU/EC law has been established by the Court of Justice in judgements from preliminary ruling.

# Preliminary ruling: conditions for request

- Every court (broadly defined: state or public judicial authority) can request the Court of Justice.
- Provisions of founding treaties, of directives and regulations are to be interpreted by the Court of Justice.
- Compliance of secondary law with primary law can be also questioned.

# Precondition for requests

- Requests shall be submitted if it is necessary for clarification of applicable European Union law.
- Double or multiple interpretation would result in different results of the dispute before national court.
- The Court of Justice checks the necessity of the answer for decision of requesting court or tribunal of member state.

# Implicit exceptions

- The request for preliminary ruling shall not be submitted if the provision can reasonably interpreted in one way (so-called *acte clair*)
- Previous case-law shall be studied in advance and the request shall be omitted if provision has already been interpreted by previous judgement (so-called *acte éclairé*).
- Explained by the ECJ in *CILFIT*...

# Obligation to request

- Solely national courts of the last instance (when no remedy available for re-thinking of legal aspects), i.e. constitutional courts, supreme courts and supreme administrative courts - are required to request for preliminary ruling if described conditions are met.
- Nevertheless, there are only limited sanctions if this requirement is ignored.



# Result of preliminary ruling

- The Court of Justice provides answer to question(s) submitted to it by national court or tribunal. It does not decide on facts.
- Other courts and tribunals of member states are expected to follow existing case-law.
- There is continuous debate about binding force of such case-law.
- Anglo-american (precedent theory) and continental approaches (lack of precedents, only so-called *jurisprudence constante*) clash.

# Other judicial procedures:

- (1) actions for compensation (non-contractual liability),
- (2) actions concerning civil service,
- (3) actions based on an arbitration cause.
- Partly adjudicated by the General Court.  
Their decisions can be appealed.