

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.