

§ 3 The legal system of the European Union

I. The concept of integration through law

1) Integration based on law and the respect for law

- parts of the substantive law of the integration directly regulated in the Treaties
- Union confined to pass legal acts that member states must execute
 - *compliance essential* - even small irregularities may cause serious distortions in the internal market jeopardizing the integration process

2) No coercive powers of the Union to enforce its law in the member states

- expulsion of the member state strongest possible sanction

3) Strong emphasis on the rule of law

- in theory as in practice in the daily work of EU institutions and member states
- rule of law mechanism to monitor the rule of law in the member states
 - the reaction of the European Commission to the fund. value crisis in Hungary & Poland
 - a political mechanism: *continuous monitoring*, national human rights dialogs and annual Rule of Law Reports about the rule of law situation in all member states
- if rule of law deficits threaten the Union's financial interests, Commission can withhold financial resources earmarked for a member state under the conditionality mechanism (regulation 2020/2092)

4) Prominent role of the European Court of Justice

- a Union institution on equal terms with the others
- virtually functions as constitutional court and supreme court
- a motor for the development of Union law that has worked out many characteristic features and elements by *judicial further development of law*
- ECJ jurisprudence the most comprehensive and up-to-date collection of rule of law elements in the world

5) Effectiveness (*effet utile*) dominant criterion in dealing with Union law

- practical effectiveness of the law (\neq efficiency!) as dominant criterion in legal interpretation and judicial further development of law
 - actually nothing other than a consistent pursuit of the rule of law...

6) Granting personal rights to the Union citizens

- a smart coup in the design of the European common (now: internal) market:
- granting *economic fundamental freedoms* as *subjective rights* to the citizens very helpful to ensure compliance of authorities in the member states, because the *citizens tend to defend "their rights" vigorously* before the courts

II. The sources and characteristics of European Union law

- see detailed presentation in Diagram 3

1) The sources of Union law

- a) Primary law
- b) Secondary law

2) The characteristic features of Union law

- a) Autonomy
- b) Unity
- c) Direct effect within the member states
- d) Primacy over national law

III. The execution of European Union law

- see Diagram 3

IV. The rule of law in the execution of European Union law

- see for further studies special material from Chişinău 2017 (p. 26 ff.)

1) Rule of law elements introduced by judicial further development of law

- mainly as *general principles of law* "discovered" by the European Court of Justice, following a comparative approach with special regard to rule of law and effet utile

2) Precautions to ensure effective implementation of Union law (selection)

- duty to interpret national law in conformity with Union law (cf. ECJ, case 79/83, Harz)
- duty of authorities to take coercive measures to enforce Union law (ECJ, case C-217/88, vin de table)
- duty of courts to grant interim relief to enforce Union law (ECJ, case c-213/89, Factortame)
- implementation of directives through legal provisions, not administrative provisions or practice (ECJ, case C-361/88, TA-Luft)
- duty to refrain during the implementation period from measures compromising the result prescribed in the directive (ECJ, case C-129/96, Inter-Environnement Wallonie)
- direct applicability of directives in favour of citizen after expiration of implementation period (ECJ, case 148/78, Ratti)
- direct applicability of decisions addressed to the member states in favour of the citizen (ECJ, case 9/70, Leberpfennig)

3) General principles of European administrative law (selection)

- principle of legality
 - primacy of the law (ECJ, joint cases 42, 49/59, SNUPAT)
 - need for a legal basis for encroachments on citizens' rights (ECJ, joint cases 46/87, 227/88, Hoechst)
- principle of legal certainty and protection of legitimate expectations
 - limitation of retroactive effects (ECJ, case C-293/04, Beemsterboer)
 - legal clarity of legal norms (ECJ, case C-63/93, Duff; case C-199/03, Ireland v. Commission)
 - does, however, not exclude use of indefinite but definable legal terms (ECJ, case 85/76, Hoffmann-La Roche)
 - respect for acquired rights (ECJ, case C-496/08 P, Serrano)
- principle of good [proper] administration (= of a fair administrative procedure)
 - (cf. ECJ, case C-255/90, Burban; joint cases 33 and 75/79, Kuhner; see now art. 41 ChFR)
 - duty to examine carefully and impartially ex officio all relevant aspects of the case (ECJ, case C-269/90, Technische Universität München)
 - duty to decide within a reasonable time (ECJ, joint cases 238/99 P, 244/99 P a.o.)
 - duty to state the reasons for the administrative decision (ECJ, case 222/86, Heylens)
 - right of the citizen to be heard (ECJ, case 85/76, Hoffmann-La Roche)
 - right of access to one's files (ECJ, case C-51/92 P, Hercules Chemicals)
 - right to sufficient time to prepare one's defence (ECJ, case C-349/07, Sopropé)
 - protection of citizen's professional and business secrecy (ECJ, case case 53/85, AKZO Chemie)

- state liability for violation of Union law (starting with ECJ, joint cases C-6/90 and 9/90, Francovich)
- right to effective legal protection (ECJ, case 222/84, Johnston; case 222/86, Heylens; see now art. 47 ChFR)
- right to a fair trial (ECJ, case 98/79, Pecastaing; see now art. 47 ChFR)
- principles for administrative sanctions proceedings like in criminal law
 - presumption of innocence (ECJ, case C-199/92 P, Hüls; see now art. 48 No. 1 ChFR)
 - nulla poena sine lege / no punishment without law (ECJ, case 63/83, Kirk; C-266/06, Degussa)
 - ne bis in idem / no sanctioning twice in the same matter (ECJ, joint cases 18 and 35/65, Gutmann)
 - nemo tenetur se ipsum accusare / no one needs to accuse himself (ECJ, case 374/87, Orkem)

V. Legal protection in the European Union

1) Legal protection by national and European courts

- *usually* citizen will seek legal protection against measures of domestic authorities that execute or fail to execute, respect or disrespect Union law *before the national courts, but European Court of Justice may be involved by the way of preliminary proceedings*:
 - if domestic measure violates Union law, national court will annul it
 - if domestic measure relies on national law incompatible with Union law, court will not apply this national law
 - if doubts about correct interpretation of Union law are decisive for the case, national court may (court of last instance must) suspend proceedings, ask ECJ for a *preliminary ruling* on this question and continue proceedings after receiving response (art. 267 FEU Treaty)
 - likewise in case of doubts about the validity of secondary Union law (e.g. because of possible violation of fundamental rights)
- citizens addressed or directly and individually concerned by a legal act of the Union, can file an *action for annulment before the General Court* (art. 263 sub-sect. 4, 256 FEU Treaty)

2) The most important legal actions at the European Court of Justice

- actions for failure to fulfil obligations (→ against member states) (art. 258 et seq. FEU Treaty)
 - in case of any violation of Union law by a member state
 - an important instrument of the European Commission to enforce compliance
 - compliance with ECJ decisions can be *enforced by lump sums or penalty payments* (art. 260(2) FEU Treaty), an instrument frequently used in practice
- actions for annulment (→ of legal acts of the Union) (art. 263 et seq. FEU Treaty)
 - by Union institutions or member states
 - also of citizens before the General Court, if they are addressed or directly and individually concerned
- actions for failure to act (→ against Union institutions) (art. 265 FEU Treaty)
- references for preliminary rulings (→ by courts of the member states) (art. 267 FEU Treaty)
 - binding preliminary ruling on the interpretation of primary and secondary law and the validity of acts of secondary law if the question is decisive in the proceedings at the referring court
 - most important type of proceedings for the development of legal dogmatics