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Application of EU law in the national context: principles and challenges for a judge

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Article 4, p. 3 Treaty on European Union

- Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.
- The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.
- The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Article 47 Charter of Fundamental Rights of the EU

Right to an effective remedy and to a fair trial

*** Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.**

*** Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.**

The national judge is an EU judge



What to do when the national law does not seem to be in accordance with the EU law?



National procedural law

- The national procedural law is leading (case C317/08), but Member States have the obligation to ensure judicial protection of the rights of individuals under EU law.
- principle of equivalence
- principle of effectiveness

Interpretation methods

- Compare the text in different languages
- Interpretation in the light of the wording and purpose of the directive
- In the light of the effectiveness of the directive

National law has to be interpreted in conformity with Community law

- The national court called upon to interpret national law is required to do so, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter. (C-106/89 Marleasing)
- It is the responsibility of the national courts in particular to provide the legal protection which individuals derive from the rules of Community law and to ensure that those rules are fully effective. (C 397 – 403/01 Pfeiffer)

Timing

- Accordingly, where a directive is transposed belatedly, the general obligation owed by national courts to interpret domestic law in conformity with the directive exists only once the period for its transposition has expired. (C-212/04 Adeneler)

General principles

- It is true that the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law contra legem (Case C-105/03 Pupino).

Contra legem?

- Direct effect: whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State
- If the article had direct effect and it is not possible to interpret it in conformity with EU law, the national court would have to disregard any conflicting national provision. (c-282/10, Dominguez)

Step by step

- 1. is national law in accordance with the directive?
- 2. is the directive transposed and transposed in time?
- 3. can national law be interpreted in conformity with EU law?
- 4. Is the article of the directive unconditional and sufficiently precise?

When in doubt

- There is always the possibility to request a preliminary ruling under Article 267 TFEU.



Time for dicussion

