



Co-funded by the
European Union

EU Law in National Court Proceedings

- About Finding the Connection to EU Law & Legal Remedies in National Court Proceedings

Advanced Training in EU Law for Judges and Prosecutors, 30.9.2024, Tallinn
Alice Guimaraes-Purokoski, Justice, Supreme Court of Finland, Doctor of Laws



Finding the Connection to EU Law & Legal Remedies in National Court Proceedings

Contents

- 1 Finding the Connection to EU Law
- 2 Legal Remedies in National Court Proceedings
 - 2.1 Procedural Autonomy – Constrains of EU Law
 - 2.2 Direct referral to EU Law
 - 2.3 Request for Preliminary Ruling
 - 2.4 Compensation for the Damage on Breaching EU Law



1 Finding the Connection to EU Law

- Does the case have a connection to EU law at all?
- Some parameters of connection to EU law:
 - Primary sources of EU law – KKO 2019:90 & C-724/17 Skanska Industrial Solutions (TFEU Art. 101):
 - Compensation for the damage caused by a prohibited cartel, succession of legal entities, economic continuity test, determination of the undertakings liable to provide compensation

1 Finding the Connection to EU Law

- The question is regulated by EU law
 - Scrutinize deeply the relevant piece of law - be it national or EU law – its *travaux préparatoires* along with the case law related to it; go to the sources of law.
 - Does the national regulation transposing EU law correspond with the requirements of EU law
 - Margin of discretion; eg. Public procurement (national thresholds)
 - Eg. KKO 2023:39 & C-406/21 A (directive on combating late payment in commercial transactions 2011/7/EU): common commercial practice & long-standing cooperation or at least tacit agreement not to demand interest for late payment or compensation for recovery costs; derogation concerning the application of the directive; directive did not preclude such practice.

1 Finding the Connection to EU Law

- Harder to find the connection to EU law (“jack-in-the-box”-theory)
- Purely MSs internal situation with no cross-border effect
- The four freedoms governing the free movement of goods, persons, services and capital within the EU, citizenship of the Union, equality, principle of proportionality
- Eg. KKO 2023:35 & C-35/20 A (Minor border offence – Right of Union citizens to move freely within the territories of the MSs – Calculation of the fine based on the offender’s average monthly income)
 - CJEU: the right of Union citizens laid down in Art 21 TFEU and defined by Directive 2004/38 did not preclude national legislation which obliges MSs nationals, on pain of criminal sanction, to carry a valid identity card or passport when travelling to another MS, provided that those sanctions comply with the general principles of EU law, including those of proportionality and non-discrimination

1 Finding the Connection to EU Law

- CJEU: Criminal fine which typically amounts to about 20% of the offender's net monthly income, is not commensurate with the seriousness of the offence (case at hand 95 250 €) without any ceiling provided and thus infringes Art. 21.1 TFEU, free movement directive 2004/38 & Art. 49.3 of the Charter of Fundamental Rights
- Supreme Court: the calculation basis of daily fine infringes EU law principle of proportionality in all income groups. Not possible to conclude otherwise by way of interpretation of national law or not applying it. Majority ordered 5 days daily fine (vote).

2 Legal Remedies in National Court Proceedings

2.1 Procedural autonomy – constraints of EU law

- Judicial remedies in national process – access to rights guaranteed by EU law
 - Art. 2 TEU – Rule of law
 - Art. 19.1 TEU – national courts role as the guarantors of the application of EU law
 - Art. 47 of the Charter – the right to an effective remedy before national court, impartiality and independence of national courts
 - For the Member States to establish a judicial system and procedures ensuring effective judicial review (C-791/19 R, order, Commission v. Poland (Régime disciplinaire des juges), paras. 30-32).
 - The essential role played by the judiciary in the protection of the rights derived by individuals from EU rules (C-34/19, Telecom Italia, para. 68).



2 Legal Remedies in National Court Proceedings

- Remedies laid down by national law (C-234/17, XC etc. para 51)
- Principle of the procedural autonomy, but in consistence with (C-234/17, XC, paras. 21 & 22 kohta):
 - Principle of sincere cooperation
 - Principle of equivalence
 - Principle of effectiveness
- Right to effective remedies – Art. 47 of the Charter strengthening legal protection of individuals
 - C-30/19, Diskrimineringsombudsmannen v. Braathens Regional Aviation AB – airline company denied having discriminated against a passenger on the basis of his racial or ethnic origin but agreed to pay him the compensation required; civil action; national procedural rules; could the case be decided by a national court of law without ruling on the issue of discrimination? Legal remedy – civil law/criminal law?

2 Legal Remedies in National Court Proceedings

2.2 Direct referral to EU Law

- National Court applies EU law in an individual case.
- No interpretative ambiguity
- Direct legal remedy.

2 Legal Remedies in National Court Proceedings

2.3 Request for preliminary ruling

- Art. 267 TFEU
 - All national courts have the competence to make a request for preliminary ruling
 - In Finland the Supreme Court and the Supreme Administrative Courts are courts against whose decisions there is no judicial remedy;
 - in certain situations obligation to make a reference for a preliminary ruling – interpretation of EU law is necessary to enable it to give judgement or the case concerns the validity of EU law
 - Uniform interpretation of EU law
 - The obligation to make a reference is intended in particular to prevent a body of national case-law that is not in accordance with the rules of EU law from being established in any of the Member States (C-416/17, Commission v. France)
 - CJEU Recommendations to national courts (EUOJ 2018/C 257/01).



2 Legal Remedies in National Court Proceedings

- Initiative to make the referral
 - Party
 - To be decided solely by the national court (eg. C-379/15, Association France Nature Environnement);
 - No uncommon that the party takes the initiative
 - Any of the parties
 - Not necessarily in the first instance
 - Does not bind the national court

2 Legal Remedies in National Court Proceedings

- Express decision to a request by the party
- Dismissal requires that the Cifit-requirements are fulfilled (eg. C-160/14, João Filipe Ferreira da Silva e Brito)
 - Interpretation is not pertinent to deciding the case
 - CJEU has already interpreted EU law
 - No reasonable doubt about the interpretation
- Consorzio Italian Management "CILFIT II", C-561/19 (Grand Chamber)
 - Reasoning the dismissal
 - National court to decide at what point in time to make the request

2 Legal Remedies in National Court Proceedings

- Initiative by the Court
 - No need for request of the party
 - At any point in the national proceedings (C-234/17 Generalprokuratur & CILFIT II)
 - Obligation to make the request if necessary for deciding the case (C-379/15, Association France Nature Environnement)
 - Request may concern other issue than that requested by a party
 - Reasoning the dismissal of making a request for preliminary ruling (KHO 2017:32 & CILFIT II)

2 Legal Remedies in National Court Proceedings

- Role of the party in referral procedure
 - Drafting the request; commenting on it; no role
 - Instrument of collaboration/dialogue between the CJEU and national courts
 - C-160/14 João Filipe Ferreira da Silva e Brito & C-234/17 Generalprokuratur, CILFIT II
 - National courts have large margin of discretion in drafting the request and selecting the facts of the case
 - C-234/17 Generalprokuratur, CILFIT II
 - CJEU dismissing request (eg. C-464/15, Admiral Casinos & Entertainment)
 - Purely hypothetical
 - No linkage to the issue at hand
 - Facts of the case/judicial questions inadequately explained

2 Legal Remedies in National Court Proceedings

2.4 Compensation for the damage on breaching EU law

- Indirect judicial remedy
- Concerns also cases where EU law has been breached at the highest national court of law
- *Res judicata* not an obstacle

Thank you

