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Research Article

General Legal Principles and Judicial Review in the European Union: Examination and Analysis

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Abstract: The rule of law forms the backbone of the EU legal system. This key principle requires EU institutions to adopt actions that comply with the treaties ratified by the member states. Accordingly, the competencies and authorities of the institutions should be exercised only within the framework of valid legal norms and principles set in the framework of the European Union. To the end, judicial review of the decisions and actions of EU institutions is of paramount significance. This review is achieved by the European courts as guardians of the rule of law. Although the main purpose of judicial review in this legal structure, is to limit the exercise of discretionary powers, and hence similar to that of the legal system of the member states, it has it own unique features, conditions and types.

Keywords: European Union, rule of law, enforcement of European institutions, judicial review, jurisdiction

1. Introduction

Judicial review of administrative task is a prerequisite of any democratic legal and political order, particularly in modern governments. If the most important task of the law is rightly deemed to be diminishing arbitrariness in the exercise of powers, judicial review is one of the most efficient tools to achieve such. According to Daisy, "wherever there is authority, it is possible to exercise it arbitrarily,"[1] but in case rules of general and predetermined behavioral obligations with equal and justified application for everyone is properly established, Clear, general, and enforceable criteria can be defined and implemented to further systematize government and reduce the level of arbitrary exercise of power and authority. Judicial review is the main mechanism by which the judges and magistratures can limit the authorities of governments. The significance of judicial review in democracies is the fruition of the idea that administrative decisions should be made not through taste but through a rational decision-making process. Therefore, formal decisions must be legally justified, documented and shall comply with legal standards.[2]

As a special and unique legal and political system, the European Union establishes the idea of the rule of law and judicial review, and a special normative and structural mechanism has been designed since to enforce it. The full introduction of this structure, given its extensiveness and complexity, is beyond the scope of this article, and here only the issue of judicial review over the actions of the EU institutions as a part of the broader judicial review in the European Union is discussed. It is noteworthy that judicial review in the European Union can be divided into two main parts:

1. Judicial review of the actions of member states where they fall within the scope of EU law; and
2. Judicial review of the actions of the EU institutions which is the subject of this article.

The necessity for judicial review on the actions of the EU institutions stems from the notion that the Treaty on European Union (i.e., Maastricht Treaty) has provides a unique order of functions, duties and authorities for the institutions, the implementation of which requires the supervision on the institutions that exercise such duties and authorities. The acts of such institutions should not be arbitrary, out of lust, discriminatory, repressive or without legal foundation. As such, judicial review is pivotal to ensure that institutions function within the normative framework set out in the Treaties and to achieve institutional balance in the European Union. The EU judiciary, including the European Court of Justice and the Court of First Instance, is responsible for carrying out this important task. The EU has managed to fashion a unique set of jurisprudence, some parts of which are examined in this study. The sphere of review on the actions of institutions extends beyond treaties to include principles that arise from the legal order of the union, yet are not explicitly reflected in the aforementioned order.

[1] Wade, W., Administrative law, oxford university press , 2004,P.32
[2] O'connor , S., Vindicating the Rule of law. The role of judiciary Chinese journal of international law. No.3.2003.P7.

2. The concept of judicial review in the European Union

The greatest concern of administrative law is the review of power and its essence is the action of a consequent institution beyond its authority. Judicial review is a tool to protect the rights of individuals against administrative tyranny, strengthening the authority of the government and functioning as a lever for improving the accountability of administrative officials. From this perspective, review of administrative practice fulfills the demand for the legal accountability of administrative officials and one of the greatest democratic political goals, that is, monitoring the conduct of administrative officials.[3]

The importance of judicial review in democracies is the result of the notion rendering the courts as the main enforcers of the rule of law. As such, the rule of law requires public authorities to be held accountable and hence subject to effective penalties for violations of the law. Therefore, the purpose of review is to confine bureaucrats within their sphere of authority, to have them follow approved rules and procedures, and to enhance the efficiency of the political system.[4]

Moreover, dynamics of judicial review enables individuals to protect their legitimate rights and interests, while balancing the authorities and task of the governments, and providing the courts with the opportunity to influence the processes law enforcement and decision-making. The main ultimate aim of judicial review is to create accountability for the government and to protect the rights of individuals.

Therefore, A comprehensive judicial review system addressing the performance of EU institutions has been established in accordance with the Treaty on European Union to protect the rights of member states and individuals and to protect the EU institutions in relation to each other. The duty of this system is to ensure that the institutions of the Union act within their scope of specific competencies set out in the Treaty. This system employs a complex and rather extensive form of judicial review, but in short it can be divided into four main categories:

1. litigation to monitor the legal basis of the actions of the EU institutions according to Article 230 and since if the actions are illegal, the outcome of the lawsuit will be challenged, so this type of lawsuit is also called a lawsuit for annulment.
2. litigation owing to neglect or action under Article 232
3. Non-contractual liability of the European Union pursuant to Article 288 of the Treaty on European Union
4. Preliminary review pursuant to Article 234 of the Treaty on European Union

3. Foundations of judicial review in the European Union

Here, the two key foundations of judicial review, namely the principle of the rule of law and the principle of institutional balance, are discussed. Although the rule of law is the foundation of judicial review in national legal systems, it is also a key notion in the context of any transnational organization. Moreover, although the principle of institutional balance can be deemed to be highly corresponding to the notion of separation of powers, it is nonetheless one of the independent foundations of judicial review in the EU, particularly established in precedence from the rulings of the European Court of Justice.

3.1. The rule of law

The legal system of the European Union is based on the principle of the rule of law, save for the fact that it has been one of the most complex concepts in legal terms, and over time, different notions and perceptions have been formed therefrom.

By declaring the foundation of the Union based on the principles of liberty, democracy and respect for fundamental rights and the rule of law (not merely respect and observance), Article 6 of the Treaty on European Union clarifies that the principle is the most fundamental and decisive one, implying that the Union, like its members states, is governed by a general and fundamental principle according to which the exercise of public power is subject to or regulated by a set of formal and substantive constraints.

In addition to requiring the observance of valid norms, the rule of law in the European Union includes treaties and general legal principles, all of which are considered to be components of the EU rule of law. The European Court of Justice offered an extensive interpretation of the rule of law in the *Parti écologiste "Les Verts" v European Parliament (1986) Case 294/83*.

[3] Woolf,H.The Importance of the principles of judicial Review law lectures for practioners P.156
[4] shapira, M., Judicial review in Developed countries, Democratization Vo1.14,No.4 , 2007 , PP.7-26

According to this ruling, the principle of the rule of law of the European Union is primarily aimed at ensuring the legal order of is entities, in that natural and legal persons under its jurisdiction are legally protected against any possible arbitrariness or unlawful exercise of the Union's competence. To this end, the Court first focused on pledging the formal principles of the code derived from the rule of law, the most important of which are the principle of legal certainty, the principle of legitimate expectations and the principle of proportionality. In *Unión de Pequeños Agricultores v Council of the European Union (2002) C-50/00 P*, the Court entered into the substantiative principle of the rule of law and considered respect for fundamental rights worthy of effective judicial protection. This ruling by the Court was a turning point in the judicial review of EU, because at the time, the Union's fundamental treaties were mostly silent on effective judicial protection, and it was in the Lisbon reforms that the Union's Charter of Fundamental Rights was given the same validity as that of the Union's treaties.

The rule of law within the framework of the EU institutions translates to the expectation that the actions of the EU must be in accordance with its treaties, which have been voluntarily and democratically accepted by governments. Hence, the considerable power of the institutions must be exercised in accordance with the treaties. These treaties lay down the objectives of the union, the rules governing the institutions, the applicable decision-making procedures and the relationship between the union and the governments. One of the most important goals of the rule of law is to confine the power of government officials within the framework of general legal rules, regulations and principles. As such, the rule of law is rightfully perceived as an efficient tool to prevent the arbitrary exercise of powers and competencies by public authorities, while also functioning as a prerequisite to voluntary authority, as these powers must be exercised within the framework of the law. In the context of EU law, a similar function can be attributed to the principle of the rule of law, as there is always the possibility that the EU institutions, even when acting under the framework, would go beyond their legal authority and make decisions that have no legal basis and hence don't comply with EU treaties. The significance of such a function is further pronounced by the rule of law given the need to confine the voluntary political decisions of the EU institutions. The voluntary political decisions of the Union within this framework are comparable to the voluntary competence of public and administrative authorities of member states.

3.2. The principle of institutional balance

Another argument justifying the necessity of judicial review in the structure of the European Union is to maintain a balance between the institutions of the European Union. Similar to the legal systems of its member states, the legal system of this transnational organization is also based on the doctrine of separation of powers (that is, separation and balance between institutions) such that its functions are divided into legislative, executive and judicial ones. The purpose of such a strategy is to prevent the concentration of all authorities and competencies in few specific institutions. Accordingly, the principle of institutional balance requires that each institution exercise its authority and competency by considering and observing the scope of action of other institutions, and violation of such a principle would be punishable. Based on this mechanism, it can be argued that the EU has five major institutions performing a three-fold of functions.

the doctrine of the balance of institutional powers was first established by the European Court of Justice in *cases C-9/56 and C-10/56 (Meroni v High Authority [1957/1958] ECR 133).* Overall, according to the judicial procedure of the European Union, the concept of institutional balance refers to the system of distribution of power among the EU institutions, the allocation of power and role of each institution in the institutional structure of the EU and the duties and responsibilities assigned to each institution.[5]

4. Causes of judicial review in European Union law

If the plaintiff has a relevant standing and seeks to litigate within the permissible time limit, the burden of proof for the invalidity of the action of an EU institution is on him/her. In this regard, Article 230 of the treaty has specified four legal causes, namely (1) lack of competence, (2) infringement of an essential procedural requirement, (3) infringement of the EU Treaty or of any rule of law relating to its application, or (4) misuse of powers.

4.1. Lack of competence

The institutions of the Union have no general authority and can only act in cases where the EU Treaty has explicitly attributed them the competence for such. This principle is similar to the principle of *Ultra vires* in many legal systems, but it has been employed relatively rarely in the past for two reasons: First, the European Court of Justice has interpreted the power of institutions in a very broad and purposeful way to achieve the goals of the Union, itself being complemented by the doctrine of implied power. Second, the rules of the Union, in particular

[5] Hofman, H., and H.Turk, A.legal Challenges in EU Administrarion law. Edward elgar Puplishing, 2006. P.118

Articles 94 and 308, have given the institutions broad legislative power. Therefore, lawsuits challenging actions on incompetence are rare.

One of the cases in which incompetence was the cause of litigation was *Commission v Council*. In this case, Portugal granted certain financial aids to pig farmers. The Commission considered this action contrary to the common market and as a result a violation of the Union's rights regarding government aid. Portugal invoked Article 88 on exceptional circumstances and the Council nullified the Commission's ruling. The article provided that member states might request from the Council a rule on the basis of which aid which is normally in breach of Union law might be considered compatible with the common market in exceptional circumstances. The Commission challenged the Council's action under Article 230, arguing that the Council lacked the legality to do so. The Court of Justice accepted the Commission's argument and annulled the Council's action.

Judicial review can be challenged when a plaintiff alleges that the delegation of power is illegal, as cited in the Meroni case, in which the supreme authority delegated certain powers to an external entity. The Court held that the delegation of defined powers is legal, that is, the extensive delegation of discretionary competence necessitates considerable freedom of action for the delegated-to entity.

4.2. infringement of an essential procedural requirement

Infringement of not all the procedural requirements lead to annulment, but only of those which are considered essential, but determining and interpreting a procedural requirement as essential is the responsibility of the European Court of Justice. Moreover, there is no code of administrative procedure on the requirements of procedural justice in European administrative law. The only general principle provided in the treaty is pursuant to Article 253, which requires institutions to provide reasons and grounds for their decisions. Thus, an infringement of an essential procedural requirement is an avenue of judicial review that varies considerably from one context to another. The European Ombudsman made great efforts to expand and to develop the general principles of administrative procedure, but its efforts were realized only in limited situations. In 1998, the European Parliament Committee on Legal Affair proposed to the European Ombudsman to develop an administrative code of good conduct. The time ombudsman proposed the code to Parliament, which passed it in September 2001. At the same time, the right to good administrations was introduced in the European Charter of Fundamental Right. Since the Charter of Fundamental Rights is not as legally enforceable as the law, the European Ombudsman uses Article 41 of the Charter and Administrative Code of Good Conduct in investigations of mismanagement brought forward by plaintiffs. the European Ombudsman considers this code as a document that explains in more detail the Charter of the Right to Good Administration, and considers the infringement of Article 41 and the Code of Conduct as grounds for mismanagement.

4.2.1. Duty to give reasons

It is safe to say that the only procedural guarantee established in the EU treaty is the duty to give reasons, which is provided in Article 253.

This article stipulates that by-laws, instructions and decisions issued jointly by Parliament and the Council or approved by the Council or the Commission must provide the reasons on which these acts are based. Non-compliance with this duty may be considered as an infringement of an essential procedural requirement, ultimately leading to the annulment of the intended action.

The type and details of the reasons that should be presented is still up for debate, but the Court, at a minimum level, requires sufficient reasons to be provided such that the parties can realize their legal status, but what goes beyond this minimum requirement, both in terms of quantity and quality, depends on several factors. The following formula is often repeated in the judicial procedure of courts for details of reasons. This formula is part of the judges' argument in the 2003 Eurocoton case[6]:

Based on the judicial procedure, the statement of reasons based on Article 253 must be proportional to the intended action, and the subject institution has the duty to state the reasons in a clear and unambiguous manner, such a way that the relevant persons can prove the reasons for the action and the court enables the union resources to exercise its supervisory power

4.2.2. The right to be heard

[6] Chalmers, D. and Tomkins.A., European union pablic law, cambridge university press, 2007, pp.409

Most laws on administrative procedure have been developed in the realm of competition. In some cases, the rules that were initially developed in Cases involving competition law have been extended to other areas. However, it should be noted that the extension of the rules on procedural fairness to other areas has not occurred in the same. For example, rules that have been able to influence the anti-pricing field have not succeeded in the realm of government aid. The reasons for the initial establishment of procedural fairness in the field of competition law can be summarized as follows:

1. Since in competition law, EU institutions are openly involved in direct management and thus make decisions that have a very immediate and direct effect on individuals including large corporations, the realm of competition is one of the areas where union policies are directly implemented
2. Since the early 1960s, EU legislation lays down some details of the procedures by which the Commission must act in matters relating to competition law. Accordingly, in the context of competition, the aforementioned body has provided for defense rights (rights related to self-defense) along with procedural protections that the Commission must comply with.

These procedural protections rights include the right to a fair hearing, the right to access documents and the right good administration.

4.3. Infringement of the EU Treaty or of any rule of law relating to its application

Undoubtedly, this is the most common and significant of the four causes for litigation. Although other causes enable the Court of Justice to review the validity of the rules of the Union and the inherent purposes of the institutions in enacting them, this is the only cause that can provide the legal basis for judicial review, and the purpose and legal nature of the regulations in line with their subject compatibility with the rules and legal principles of the European Union.

Infringement here does not just refer to the EU Treaty but also any rule of law relating to its application including amending and supplementing treaties. However, although there is no problem in identifying the main treaties of the European Union, there may be some difficulties in recognizing the rule of law relating to its application. Here we will briefly review some of these related legal principles.

4.3.1. Legal certainty and legitimate expectations

The principle of legal certainty has been upheld in all European legal systems and has been recognized as a general principle of union law since the early 1960s. At its most fundamental level, this principle requires that union law be clear and its consequences predictable, which must be applied particularly in the context of union law, as union law imposes economic liabilities upon individuals. The principle of legal certainty prohibits retroactivity, meaning that actions must not be effective before being implemented, and it also requires that sufficient information be given to the public so that individuals can vividly comprehend what is required from them by the law and abide by it. Therefore, it can be said that the acceptance of this principle in the law of the union means that the law of the union is based on the principle of the rule of law[7].

This principle is explained in the Opel case. The European Economic Area entered into force on January 1, 1994, prohibiting the imposition of a customs tariff on trade between the EU and Austria. On December 20, 1993, eleven days before the entry into force of the Agreement, the council enacted regulations imposing a 4.9% tariff on the gearbox produced by the Austrian General Motors. The Code was published in the Official Journal on December 31, and Opel was not notified of the Code until January 6, 1994, and the Code was not available to the public until January 11, 1994. Opel filed a lawsuit alleging that the regulation violated the principle of legal certainty. The Court of Justice ruled that union law must be final and that its actions must be predictable for individuals. The principle of legal certainty requires that each of the actions of the institutions, which have legal effects, must be explicit and unambiguous, and be communicated to the relevant persons, such that they would be able to determine exactly when the action was adopted and has come to effect. Therefore, in this dispute, although the challenged by-law was enacted on December 20, 1993, according to the principle of legal certainty, the by-law did not have effect until a certain date on 11 January 1994, and thus, the council deliberately created a situation in which two contradictory rules coincided. Finally, the Court of Justice declared that the council's bylaws infringed the principle of legal certainty.

One of the implications of the principle of legal certainty is the notion of legitimate expectation which is legally recognized by the European jurisprudence. Regarding the principle of legitimate expectation in the legal system of EU, it must be said that the principle of legitimate expectation is assumed to have been violated if one of the

[7] Schwarze,J., European Administrative law sweet & Maxwell,2006 p 175

institutions of the union takes certain measures and then deviates from its original position and causes harm to others.

2. The principle of proportionality

As a legal principle, proportionality in modern legal systems is pursuant to the notion that citizens should be protected against the government and that regulatory interventions should be proportional with the intended purpose. This principle has been formed and developed in German law.

This principle lacks explicit reflection in the treaties, but is one of the foundations for measuring the legality of the EU institutions' actions, which is applicable to two spheres, namely discretionary political decisions and financial penalties and fines. In the Affish case, which was one of the most well-known cases on exercising proportionality in the field of joint agricultural and fisheries policy, the plaintiff, who imported fish from Japan, called for the annulment of the Commission's decision to ban the import of Japanese fish into the European Union, yet the Commission's decision was in line with the EU directive. The directive allowed for supportive measures in cases of health hazards. The commission's decision was based on reports from its task-force on fish farms. The report stated that fish farms in the country were facing serious health problems. Accordingly, the Commission imposed a general ban on fish imports from Japan, but the fish farms from which the plaintiff sought to import fish to the EU were not examined, and hence there was no evidence suggesting that the imported fish were at risk of being unhealthy. Thus, the plaintiff argued that the ban was general and disproportionate. The Court rejected such an argument and concluded that the decision was proportional and defended the general ban on Japanese fish imports on the following grounds:

1. It was practically impossible to investigate all fish farms in Japan;
2. The centers investigated were selected and announced by the Japanese government, and hence they are perceived to be proper representatives for all existing centers in Japan;
3. The issue of a health risk requires supportive, yet swift measures.

4.4. Misuse of powers

Misuse of powers refers to scenarios where an EU institution takes an action to achieve a purpose other than that stated in the treaty or any rule of law relating to its application. In other words, Misuse of powers happens when an EU institution acts outside the scope of the authority granted thereto.

Most legal systems have recognized a theory called *Ultra vires*, which is very similar to Misuse of powers. To prove misuse of powers, it is necessary to first determine that the position taken is not covered by the powers, goals and objectives of that institution, and secondly, to prove that this is different from what should be pursued under the treaties.

Misuse of powers should be distinguished from other cases of litigation, especially incompetence and infringement of treaties. To recognize the distention, one must bear in mind the consensus of two conditions as grounds for misuse of powers, namely (1) Institutions must have the necessary power to act on the position in question, and (2) competencies must be of discretionary nature.

The institutions cannot misuse the power they don’t have in the first place it, that is, but in case they have the power, it can only be used in a certain way and within the limits specified by the treaties. Rather, it might be used illegally or not used at all

Regarding the former, where there is no authority there would be no incompetence, and in the latter case, where the conditions stipulated by the treaties are not observed, an infringement of the treaties would be inevitable.

Conclusion

Judicial review is rightfully perceived as an effective tool for confining the power of public officials within the framework of laws and regulations, and general legal principles, as well as protecting the rights of citizens in democratic societies. As such, rationalizing and regulating the decisions made by administrative officials is the essence of judicial review. The goal of judicial review is to provide a framework in which the rule of law is fully acknowledged and hence realized.

As a special and unique transnational organization, The European Union has provided a set of interesting legal and political issues, the examinations of which shape many horizons and practical findings contributing to the efficiency of other legal systems, to the extent that it can be replicated.

Based on the aforementioned discussions, it can be argued that the administrative law of the European Union, in addition to being inspired by the notions and solutions derived from national legal systems, in particular from those

of France and England, has employed the prominent role of general legal principles in judicial reviews of the actions of EU institutions. To rationalize the exercise of powers by the institutions, the European Court of Justice has not only exploited the treaties of the Union, but also employed globally-accepted general legal principles, which arise from the established order in the law of its member states. Finally, it can be said that one of the foundations of judicial review in EU law is the protection of the legitimate rights of European citizens, the implications of which have been further pronounced with the adoption of the Charter of Fundamental Rights of the European Union, while the European Court of Justice has also ruled that respect for these rights is essential.

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