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LEGAL CERTAINTY AND THE PROTECTION OF LEGITIMATE EXPECTATIONS IN THE EU LAW

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ABSTRACT

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Content

General characteristics of the dissertation work

The principle of legal certainty and legitimate expectations is classically subject to examination by the general theory of law or by the constitutional law, where its examination from the point of view of the integration law is particularly interesting and problematic due to the specific character of the EU legal order and the need to secure its effect to the legal subjects. This is one of the few topics that is well researched on a national level in the foreign legal literature, there are studies devoted to this topic on integration law, but complete and comprehensive studies devoted to this topic are limited in number.

The principle of legal certainty and the resulting principle of protection of legitimate expectations have been recognized as intrinsic to integration law since the dawn of the integration process. In fact, whether or not it is expressly recognized in the modern constitutions of the Member States or in the practice of their constitutional jurisdictions, this principle is structural for any legal system and for the EU system as such as it is devoted to resolve the fundamental question of the requirements to which the law must comply in a legal system in order to be considered as law and as such observance to be required by private persons. This dissertation examines this principle in the EU legal system embracing the concept of a legal system as developed by R. Alexy – in the understanding that the legal system is consisting of a legitimate level (principles), normative (norms) and practical (procedures). As the EU legal order, although autonomous, has an integrative effect and interacts with national legal systems in bringing its useful effect to its ultimate addressees, it leads to a number of theoretical and practical complications. Thus, at legitimacy level, the fundamental questions of whether the EU legal system is theoretically sound and defensible against national constitutional objections regarding the primacy of the EU law and its theoretical claim to be just are raised; at the level of legality we observe specific problematics from the point of view of the different requirements for the law stemming from the legal certainty principle. They have been subject of study in the complex way to secure a degree of unitary effect

of the law in all Member States, and at the practical level various possible deviations and obstacles, caused by the formal requirements of the procedures for bringing the useful effect of the integration law to the legal subjects are researched. As a result of the issues so considered, a conclusion is reached that the legal certainty of the integration law largely overlaps with legal efficiency and at the Union level the classic requirements, perceived as "technical" to the law, arising from considerations of legal certainty, rather need to be rethought essentially in view of the functional orientation of the system.

The subject of the dissertation is the principle of legal certainty, which is predetermining the existence of a legal system in general, therefore a number of philosophical questions are raised about its moral foundation. The research perceives that it is the protection of the human dignity and the individual human liberty that lies beneath its base. The legal-dogmatic, sociological-axiological and institutional methods are used in view of the methodology used in the jurisprudence of the Court of Justice, and a special effort is directed to consider the principle both conceptually and practically. As a result, it is concluded that it is a structural principle standing above other principles, through which the legal system has the means for its self-correction and manages to stay within the critical limits of its effectiveness (understood in the general theoretical sense of compliance by most legal subjects).

The dissertation has a structure consisting of four chapters, which are subdivided into paragraphs. The first chapter examines the complex legitimation of the EU legal system - as a combination of general legitimacy reflected in the core values of the EU and general principles of law; specific integration legitimacy – justified by the possibility of achieving a higher efficiency of this legal order in comparison with the national one and combining the national specific legitimacy of the Member States through the principle of protection of the national constitutional identity. It has been concluded that this complex legitimation fully satisfies the

theoretical pretention for justice that any law needs to posses, therefore could be considered as a specific complex integrationist rule of recognition and the ground for recognition of the absolute primacy of the integration law leaving no room for national objection, be it constitutional. The second chapter begins with the examination of the different requirements for the law arising from considerations of legal certainty. As a *locus classicus*, in the second and third chapters, the requirements that were developped by L. Fuller are considered. Thus, in the first chapter the requirements for the law to have a general character, to be prospective and to ensure the necessary clarity are examined. Particular attention is paid to the need for clarity due to the particularities of the integration legal order and the clarity to be inferred rather than direct and literal. The methods of interpretation used in the jurisprudence of the EU Court, through which a correct legal conclusion is reached and weather the system brings for the necessary degree of legal certainty using them, are discussed and considered. The need of practical specialization in the field of integration law has been evaluated in order to effectively access it and to avoid the "*Jack in the box*" effect described by the Scandinavian author T. Wilhelmsson. The second chaper is devoted to the requirements for the prohibition of prescribing the impossible, the need for granting stability and coherence. The need for stability and coherence poses mostly problems for the harmonious combination of the integration legal prescriptions on a national level. The problematic of opposing internal legal situations consolidated by legal certainty as final and union legality is examined and conclusions are offered on the base of a method that allows union level legal certainty to recognize results of internal legal certainty and to reject them. The last, fourth chapter examines the procedures both at the union level and at the national level with a view to guaranteeing legal certainty in the creation and application of integration law.

The volume of the dissertation is 338 pages in total. The literature used is

divided with regards of its language – Bulgarian or foreign. In total are used 85 scientific sources – 17 in Bulgarian language and 68 in English, French and Spanish. 432 judgements of the Court of Justice are cited, most of them are of the Granc Chamber of the Court. 605 remarks under the line are made.

Basic content of the dissertation work:

Although a huge volume of foreign scientific research literature has been dedicated to the principle of legal certainty, which examines it in general theoretical and philosophical terms - or positions it within the framework of a specific constitutional system, including this of the EU[1], until now, there is no research that examines the practical, as well as the theoretical problems that arise from legal certainty, when it is necessary to guarantee the integrated impact of the law of the EU in the national legal system. The specific character of the integration legal system and, particularly its limited field of application, will continue to be a challenge for the proper consideration of the impact of its norms in the internal legal systems. Thus, if the principle of legal certainty, assessed independently within the framework of a national legal system, poses its own problematics, characteristic only for a classic internal legal system, when it comes necessary to comply with EU law, this problematics becomes much more complicated. In the latter case, the traditional assertions that apply for the national legal system such as the clearer and preciser or conciser the norm the more certainty, becomes no longer valid, because in the EU order the judgment for clarity can only be made after examining the correspondence between the norms of both systems. However, when we are to assess conformity, we

[1] For example Humberto Ávila, „Certainty in law“, Springer International Publishing Switzerland, 2016, Law and Philosophy Library, ISBN 978-3-319-33406-6, Anne-Laure Vallembois, "*La constitutionnalisation de l'exigence de sécurité juridique en droit français*", L.G.D.J, ISBN : 978-2-275-02579-7, Juha Raitio, "The principle of legal certainty in EC law", 2003 Springer Science+Business Media Dordrecht, ISBN 978-90-481-6264-2, стр. 200-217,

examine the meaning, the logic of the integration legal system and must conclude whether the domestic legal framework fits correctly within it. In this case already the formal criteria for internal legal certainty of the norms in a unitary legal system such as clarity, brevity, accuracy do not apply, as a result we arrive at a transition to not so much formal legal certainty, but mostly material. The lack of coherence when ensuring the necessary coherence and consistency between the dispositions of the EU legal order and domestic law is the main problem, revealing the existence of seemingly domestic normative positions which, even if they are clear in themselves, only create confusion as their clarity is just formal – this conclusion for clarity is reached only on an internal level, and as such remains only apparent. The present study is devoted to this particular problematics, which reveals the operation of Union law in national legal systems. The extremely large volume of jurisprudence of the Court of Justice is real evidence of the existence of a real problem – every dispute resolved by the Court was caused by some ambiguity or misunderstanding of the content and consequences of the relevant rule of the legal order of the EU. This study is based on the achievements in the practice of the Court of Justice, which is the only legitimate "Treaty Arbiter", therefore empowered to predetermine for all Member States in a generally binding manner not only the meaning and content of the norms of Union law, but also to conceptually fulfill this particular legal system. On the other hand, this research also rests on the modern juridical-philosophical achievements regarding the concept of law and the legal system, making an attempt to conceptualize the conclusions of the Court of Justice for the EU law and legal system.

Therefore, this work takes as its starting point the concept for a the legal system that Robert Alexy developed[2], understood as a system on three levels – principles, norms and procedures, in order to develop the principle of legal certainty through each

[2] Robert Alexy, „El concepto y la validez del derecho“, Filosofía del Derecho, Editorial Gedisa, S. A., Segunda edicion, febrero de 2004, Barcelona, ISBN: 98-9784-028-3.

of them. Thus, the first chapter is dedicated to the legitimacy of the EU legal order and examines the conceptual foundations for ensuring material legal certainty. This is the highest level that carries the value charge of the legal order of the EU and through it the main guidelines for the orientation of any positive legal regulation falling within its scope. At this level are the main principles that construct the "*ideal*"[3] nature and character of this law.

The limited scope of the EU legal order is a reason for causing many complications in the operation within the legal consciousness of its legal subjects, but it cannot be a reason for this law to show a deficit from a value point of view - the Court of Justice does not allow this legal system to suffer from value deficit. The need for such value protection, as carried out in recent years by his court, is existential because this legal order is acting in every Member State and a value deficit would delegitimize it in societies that share common values. In the first chapter, the study examines the proper legitimization of the action of the integration legal system with its peculiarities in the legal systems of the Member States. Its general legitimacy is examined, but also the particular legitimacy of this legal order, justifying the very existence of EU. Of course, the peculiarities of the individual Member States bring their own particular national legitimacy, which should be reflected within the framework of the general integration legal system. The special national legitimation of certain essential features for the respective Member States, recognized in the constitutional system of the Union, naturally gives a systematic completeness, which leaves no grounds for national objection and legitimizes the claim EU law to be complied with in all internal systems.

Chapters two and three consider the general claim arising from the validity of the integration law, to be considered and applied in domestic legal systems through the obligation to ensure its useful effect. It is here that the requirements for the

[3]In accordance with the concept of Alexy that the law has an ideal part

applicable law, arising from the principle of legal certainty with a view to the combined operation of two legal systems - national and supranational have to be considered. *Locus classicus* in considering these requirements is Lon Fuller's theory of the eight requirements for ensuring the internal morality of law, and the present study follows precisely these. The sequence of the study goes through an exposition of the general moral foundation of these requirements, which derives above all from the need to ensure human dignity, equality and guarantee individual freedom. The corollary is the fundamental requirement that the law treat man as a legal subject, and not place him in situations where individual freedom does not exist and personal choice is virtual, with the result that man becomes not a subject but an object of proscriptive dispositions.

A sequential examination of the individual requirements of law imposed by legal certainty shows that many of them overlap and replace each other. This is normal because they derive from a common principle and follow its common direction. That is why many consequences that arise from the requirement of clarity of norms can be derived as well from the requirement of foreseeability of the law, as well as from the requirement that the law does not prescribe the impossible. Substantial consequences of the requirement of legal certainty, in turn, can be derived from the requirement of foreseeability, etc.

The problems that are addressed in this study, as already noted, are connected with the specifics of each of these requirements, referred to the situations in which, along with the internal national law of the Member States, the law of the European Union has relevance and thus has to be applied or has to be complied with. In this regard, the most essential place is assigned to the requirement to achieve clarity in the applicable law. The ways to achieve clarity and the essential contribution for the clarity in this legal order has the Court of Justice with its interpretative activity and logic, whose absorption by all national law enforcement entities is fundamentally important

for the achievement of Union legal certainty. The limited material scope of the Union legal order and the need to comply with it in the domestic legal system invariably imposes an interpretive primary conclusion through the methods of interpretation used by the Court of Justice - above all the systematic and teleological interpretation. Only such consideration in each enforcement case can satisfactorily ensure that all relevant elements in the EU legal order are taken into consideration, resp. the legal certainty on EU level is guaranteed in a sufficient degree. The opposite - the mismatch of these elements is a source of consideration and described in Scandinavian literature by T. Wilhelmsson[4] as the „*Jack-in-the-box*" effect – prerequisite for compromising the legal certainty at EU level, isolation of EU law, unequal enforcement, resp. unequal treatment of legal subjects in a union based on the rule of law. The need for judgment on the merits in each specific case and the replacement of the automatic understanding that derives from the applicable domestic norm is conditioned precisely by the integrative nature of this law, which essentially requires a judgment on compatibility with the current domestic legal prescriptions that are of relevance. In this sense, legal certainty at the EU level is commensurate with the extent to which Member States ensure the EU legality or the useful effect of this law.

Particular attention in the research is also devoted to the conflict between internal legal certainty, which forms numerous domestic final situations, including the principle of *res judicata*, when these domestic situations are in conflict with EU legality. An attempt has been made, I believe with satisfactory results, to explain the logic of when EU legality should prevail over domestic legal certainty. The fourth chapter of this study is devoted to the applicable procedures and their importance for the effectiveness of the supranational legal system and ensuring legal certainty. The law-making procedures at the Union level, which must ensure the quality of Union

[4] Wilhelmsson, Thomas: Jack-in-the-Box Theory of European Community Law, in L-Kriimer, H.-W. Micklitz & K. Tonner (eds.): Law and Diffuse Interests in the European Legal Order, Nomos Verlagsgesellschaft, Baden-Baden, 1997, pp.177-194 (Wilhelmsson 1997)

legal acts by satisfying the requirements for legal certainty, but also for their public acceptability, have been examined. Next, the law enforcement procedures that are applied on the national level and the possibilities for reaching legal certainty through interration with the EU Court of Justice. National legal systems are of primary importance precisely because the EU legal system relies on national judicial procedures to ensure the useful effect of the EU law and proceeds from the original presumption of their effectiveness. The special responsibility that through its case law the Court of Justice imposes over the national courts, jurisdictions and enforcers is examined through the prism of their obligations to comply with the EU law, but above all their primary duty to assess before all any possible relevance of the EU law in each dispute and the need to objectify these conclusions. Failure to find the link with EU law by the entities applying the EU law risks leaving EU law without any recognition and application in a legal system where this is imperative. It is from this starting point that the assessment under EU law must begin, this is the first step to ensure EU legal certainty.

The dissertation ends with a short conclusion, in which the main conclusions of the study are indicated and with a bibliographic presentation of the literature used.

Conclusions

The work over the dissertation work naturally brought various conclusions regarding the essence of the principle of legal certainty at the supranational level and the significant consequences for its legal subjects. The principle of legal certainty is a principle - "umbrella", a kind of protection of the integrity of any legal system, which under certain extraordinary circumstances does not allow the law to be dishonest to itself, but serves as a protection to preserve its "*internal morality*", as Fuller nominates legal certainty. The protection of legitimate expectations is a principle derivable from the principle of legal certainty, having a relation to the

subjects of the law. Intrinsically important for the work was the necessity to be based upon stable theoretical foundation and examination of the works of authors in the field of legal theory such as Radbruch, Kelsen, McCormick, Hart, Fuller, Bobbio, Alexy and others. Their works inspired me to make sense of EU law from a theoretical perspective and to theoretically defend its primacy. If up to now the EU Court of Justice insists that primacy is existential for this law as without primacy this law shall be deprived of any meaning and its nature of law, I consider that, through the justification I provide in the first chapter of my study, I prove from an axeological point of view the basis of the primacy of the EU law and the inadmissibility of a national objection of constitutional rank precisely because of the lack of grounds for a value deficit at the EU level. Along with this conclusion, in the course of the research I have made other conclusions, which until now have not been made in the legal literature, and if elements of them are affected in the jurisprudence of the Court of the EU, then the issues related to them have remained theoretically undevelopped, such as the question of when integration legal certainty recognizes domestic legal certainty, the absence of a presumption of EU legality of the domestic law and its implications.

Other publications on this topic

1. Metodieva, E., Means of ensuring the effectiveness of EU law when the legal dispute is subject to voluntary arbitration. – In: Liber Amicorum, University Publishing House "St. Kliment Ohridski" in honor of Assoc. Dr. Yulia Zaharieva, Sofia, 2020, ISBN: 978-954-07-5051-4 pp. 366-381;

2. Metodieva, E., Scientific readings on "Predictability of Law". - In: Collection of reports, University Publishing House "St. Kliment Ohridski", Sofia, 2022, ISBN: 978-954-07-5478-9 p. 126-139;

3. Metodieva, E., The role of judicial control in civil cases to achieve legal certainty in legal relations revealing a connection with EU law, provided for publication at the annual conference of the "MPMO" department, dedicated to the issues of European Union law under general topic: "Bulgaria in the European Union - achievements and challenges".