

INTERPRETATION OF EUROPEAN LAW, SELECTED ISSUES

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Abstract

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The article deals with the issue of interpretation of European law. It is based on the classical methodology of law interpretation in continental Europe, but it also reflects the particularities and recent approaches, which are used in European law as in independent and particular legal system. So it is essential to emphasize the autonomous conception of European law, which finally means its own methodology which is different from national attitudes.

By practice of European bodies and mainly by judgments of Court of Justice of European Union was established specific set of rules which corresponds to peculiarities of European Union as an integrative society. The Court of Justice formulated in its decision two basic principles for the application of the European law in the Member States: the principle of direct effect of the European law in the Member States and the principle of the primacy of the European law rules in the national legal rules of the Member States. There should be further assigned to these two basic principles the principle of indirect effect of directives (uniform interpretation) and the principle of State liability for damage caused to an individual by breach of the European law. The application of principles of direct effect and primacy of the European law rules is closely related to the preliminary ruling procedure (prejudicial proceedings). The judge-made law can be used only by the Court of Justice, neither the administrative bodies of EU nor the national bodies have this capacity.

European law, interpretation of law, methods of interpretation

Interpretation means a mental process during which a man, as a subject of interpretation, affects the reality by something which predicates of the situation (object of interpretation).¹

According to V. Knapp, in general, interpretation is giving meaning to the characters, i. e. appearing of meaning of the signs.²

Interpretation is an essential part of the legal regulation procedure. Its main role can be seen in correct practical application of law but it is impossible to apply the legal rule correctly without affecting its meaning.

The rudiments of classical methodology of legal interpretation were laid down by F. C. von Savigny

in 19th century. By the legal interpretation Savigny means the ideas included in statutes whilst this construction is allowed by application of four interpretative methods, including the grammatical, logical, historical and systematical method. According to Savigny, these methods do not stand independently and the interpreter is not allowed to use them arbitrarily but if the interpretation should be successful they shall operate in the interconnection. To the list of methods Savigny did not include the teleological method but he considers purposes to be the auxiliary means of finding the meaning (reasons) of statutes and of internal value of interpretation result, especially in

1 HOUBOVÁ, D., Interpretace práva. In: HARVÁNEK, J. et al. *Teorie práva*. Plzeň: Aleš Čeněk, 2008, p.361.

2 Comparably KNAPP, V., *Teorie práva*. Praha: C. H. Beck, 1995, p.168.

3 To specification of Savigny's conception of law interpretation viz. e. g. HOLLÄNDER, P., *Filosofie práva*. Plzeň: Aleš Čeněk publishers, 2006. p. 220–224.

connection with analysis of vague and unclear terms interpretation.³

1) Basics resources

European law interpretation⁴ is governed by its own interpretation rules, which differ both from national interpretation rules and International Public Law. By practice of European bodies and mainly by judgments of Court of Justice of European Union (hereafter CJEU) was established specific set of rules (respectively of metarules) leading to specification of European legal rules (interpretation and application), which corresponds to peculiarities of European Union as an integrative society. According to Tichý, European law interpretation (in a broader sense of word) consists of three specific performance while implementation of European Law:

The application itself (application in a strict sense of word) – includes eliminating of ambiguous and contrary provisions of European Law.

The development of law – represents supplementing of imperfect texts of the legal regulations, mainly of gaps existing in legislation. This procedure requires understanding of the sense of regulation and of legal order itself with the regard of objective of specific regulation. This required procedure is mainly reached by systematical and theological method of interpretation of affected regulation and also of its comprehensive legal context.

A judge-made law (a case law) – is used by the CJEU necessarily in cases which require this accession particularly. Legal rules creation is used as much as it is necessary for the European Union capacity for action.⁵

2) European law interpretative methods

In terms of sequence of interpretative methods stands first grammatical method. In case of situation when the legal regulation is after using of grammatical method clear and unambiguous, this interpretation shall not be excluded by other means of interpretation attained by different methods. On the other hand other methods are suitable if the legal regulation is unclear and ambiguous and the grammatical interpretation fails. Never

less exceptional could be situation when despite the unambiguous meaning it is necessary to use teleological interpretative method⁶ (see following text).

The subject of interpretation is a legal rule text in all its language versions (case 55/87 Moksell). For the each language of 25 officially used language is equal, this is relatively complicated situation. Thus it is impossible to use majority principle, i.e. to incline to the interpretation to which leads the texts of majority of the official versions. In this case it is necessary to use other interpretative methods and mainly to find out the meaning and purpose of the specific legal regulation.⁷ It is inadmissible, while interpreting legal concepts, to the base on national legislation, but it is necessary to interpret each legal concept autonomously as European law legal concepts. In this case it can be used auxiliary legal concept interpretative rule in dubio pro communitate, created by European law.

When the interpreted text remains unambiguous, despite using grammatical interpretation, it is necessary to focus on the relations of the legal regulation. In these cases the systematical interpretation is used. By the systematical method can be guaranteed internal compliance of provisions (case 101/63 Wagner). It consists in unitary interpretation of whole European law, the concepts of European law are interpreted in the same manner, and as a reason of autonomic interpretation they often differ from the substantive content of homonymous terms of national laws. This unification, i.e. uniform interpretation, is mainly supported by institute of preliminary question.⁸ During this proceeding (also called prejudicial or preliminary proceeding) the CJEU is applying the interpretation of Treaties (the primary legislation) and acts passed by the institutions or by other EU bodies (the secondary legislation). Under this procedure, the CJEU is also entitled to decide on the validity of the secondary legislative acts. This procedure institute is specific by the fact, that the decisions of the CJEU are not merits, but are only expressing the relevant question of law, raised by the national court resolving particular dispute. By this fact can be provided unified application and homogenous interpretation of European law rules

4 European law is a peculiar system of law which comprises a primarily supranational European Union law, and the law of the European Union, which are still based on the principles of international cooperation between Member States of the European Union (including the common foreign and security policy as the earlier II. Pillar of EU law). E.g. closer VEČEŘA, M., 'Evropéizace práva jako projev evropské integrace'. In: VEČEŘA, M., MACHALOVÁ, T., *Evropéizace práva v právně teoretickém kontextu, výklad základních pojmů*. Brno: Masarykova univerzita, 2010, p. 108.

5 TICHÝ, L., *Prameny evropského práva*. In: TICHÝ, L. et al., *Evropské právo*. 4. v. Praha: C. H. Beck, 2011. p. 234.

6 Opus cit. sub. 5. p. 237.

7 For more on this issue see e.g., WHELANOVÁ, M., *Implementace práva Evropské unie do českého právního řádu*. *Právník*. 2009, 148, 3: s. 282.

8 Article 267 of the Treaty on the Functioning of the European Union: *European Court of Justice has jurisdiction to give preliminary rulings concerning:*

a) *interpretation of the Treaties,*

b) *the validity and interpretation of acts of bodies, offices or agencies of the Union.*

in the national territories of member states, while the relationship between the national courts applying European law and the CJEU is characterized by the principle of cooperation.⁹

A conformal interpretation of the primary law is a type of systematical interpretation. It functions as a definition or specification of the secondary law, if more interpretations are acceptable, in the sense that the provision shall be compatible with the EU Treaties and with the general principles of European law (case C-314/89 Rauh). The interpretation which is complementary to the objectives of the primary legislation shall be preferred to the interpretation leading to a provision with contradictory meaning to the primary legislation (case 205/84 Commission v Germany). In this case the legal rule of higher legal force is, rather than the criterion, a tool to determine the standards of lower legal force.

However the decisive interpretation of European law has the teleological interpretation, focused on meaning and purpose of the European law rules. The existence and dynamical development of the nature of contracts, as a constantly developing framework of the integration process, is allowed by the teleological arguments. On the basis of the teleological arguments a breakthrough was achieved on certain decisions and as well as on the certain fundamental shifts in the understanding of the importance of European law.

The interpretative principle of effectiveness (effet utile) is reflective when interpreting the European law by using the teleological method of interpretation, which means not only taking into account the objective (to which leads the teleological method) but also the effort to reach the goal as effectively as possible (case C 292/89 Antonissen).¹⁰ The character of the European law was significantly influenced by the principle of effet utile. It is expressed when interpreting (is one of the basic characteristics of the method of interpretation of European law) and it many other principles are based on the principle of effet utile, mainly the principles concerning the European law application. On the basis of the effet utile principle was inferred the principle of direct effect, indirect effect, the principle of primacy and the state liability of damage. However according to Bydlinski the effet utile is in the European case law frequently used in the widest sense of the centralist powers and possibilities between European instances where European law, sometimes even without taking account of European law codified and its binding.¹¹ Viz. e.g. the situation when CJEU

declared Directives to be directly applicable to the states, although the primary legislation explicitly differs between Regulations and Directives, when only Regulations are directly applicable and the Directives require national transposition. Bydlinski ads *In this position ... the ECJ case-law sets out barely perceptible boundaries*. Another principle often used in addition by the CJEU beside the effet utile principle is a principle taken from the U.S. doctrine, known as the implied powers,¹² thus the principle of the unwritten or hidden powers. The CJEU came to the conclusion that without the use of this principle is often not possible to reach a reasonable results (in this matter The Commission has jurisdiction, which can be inferred only from the content of certain provisions) (case 22/70 Commission v Council).

The systematic interpretation of the CJEU also frequently performs a legal comparison. Comparative interpretation applies in particular to the concepts of the general principles of law arising from national legal systems, which are being compared. The comparison is also a method used in the field of competition law, where the CJEU often turns to U.S. law. The concept of competition was for the first time introduced already in the Treaty establishing the European Coal and Steel Community and its foundations remained virtually untouched to these days. But as Bejček says some approaches vary, mainly the ones which are affected by some tendencies used especially in the U.S. This tendency is generally known as “more economic approach”.¹³

However, even when using comparative interpretation the autonomous concept of the European law should be re-emphasized, which in its own result means a different methodology from national approaches.

Autonomous interpretation means that the terms contained in the legal norms of the European law are interpreted independently on the laws of the Member States, although there also exist.

It is possible that the CJEU may take into account the interpretation of national courts, but the CJEU cannot be bound by their interpretation (not even though when he gets inspired). Autonomous interpretation thus implies a fundamental rejection of analogy in relation to the national legal system. The appeal to the national legal system is possible only if the European law itself refers to the law of the Member State.

Finally, it is necessary to mention the method of compelling justification. When applying the above

9 ŠIŠKOVÁ, N., Úvodní komentář. In: ŠIŠKOVÁ, N., MATOCHOVÁ, S., *Evropské a české právo, jejich vzájemný poměr v judikatuře Ústavního soudu ČR*. Praha: Linde Praha, a. s., 2010. s. 22.

10 SEHNÁLEK, D., Princip effet utile v unijním právu. In: TÝČ, V. et al., *Vybrané otázky působení práva Evropské unie ve sféře českého právního řádu*. Brno: Masarykova univerzita, 2011. p. 65.

11 BYDLINSKI, F., *Grundzüge der juristischen Methodenlehre*, Wien: FOWI – Arbeitspapiere Nr. 95, Brünnner Vorträge Nr. 1, 2003, translated by J. Munková, p. 36.

12 Note: This method is used similarly effet utile in public international law.

13 BEJČEK, J., *Soutěžní politika a fúze v evropském kontextu*. Brno: Masarykova univerzita, 2010. p. 115–165.

mentioned principles, methods and approaches it is generally difficult to a firm conclusion, and therefore it is necessary to take into account a number of other interests and principles, even the competing ones. Especially in these situations, the decision-making body necessarily has to choose the most convincing option. The important role is often

played by the fact that in a similar case the CJEU has already clearly decided or has expressed its opinion on the preliminary question respectively. It is the CJEU, who seeks not only to ensure that his decision has a rational manner using interpretive rules justifiable, but to also show that no more justifiable decisions exist.¹⁴

SUMMARY

The European law, at least in terms of primary law, is the framework right. It contains a number of general and undefined concepts, as well as a number of generally formulated rules. It was necessary to establish a mechanism preventing different interpretations of the concepts and rules with a regard to the application by national courts of the Member States. The power to stipulate authoritative and therefore binding (uniform) interpretation of the European law was, unlike as in the international contract law, where the interpretation of international treaties belongs to the parties, delegated on the CJEU. It can be said that the specific application of the interpretative methods in the case of European law is dealing with the status the CJEU as a co-legislator.

However in some cases the CJEU goes beyond mere interpretation in the narrower sense (i.e. the identification of the content and of the meaning of the standard) and formulates new rules reasoned by the interpreted rulings. The CJEU often resorts in a question of ambiguity of the language interpretative method to the teleological method which is always based on the EU objectives and on the purpose of applied legislation. The new rules have sometimes the form of general principles, which are further enforced in other cases. We can then ask, at this point, whether it is still the interpretation or it is completion or even creation of law.

Than the European law (taken with a bit of exaggeration) could hardly meet any expectations in the sense that "it is never what it was." The important think is that somewhere directed. Thus the European law is primarily what it is becoming on its own.

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14 TICHÝ, L. Prameny evropského práva. In: TICHÝ, L. et al. *Evropské právo*. 4.v. Praha: C. H. Beck, 2011. p. 234.