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ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION IN ESTABLISHING THE EUROPEAN ADMINISTRATIVE SPACE

РОЛЬ СУДУ ПРАВОСУДДЯ ЄВРОПЕЙСЬКОГО СОЮЗУ У СТАНОВЛЕННІ ЄВРОПЕЙСЬКОГО АДМІНІСТРАТИВНОГО ПРОСТОРУ

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The concept of "European administrative space" is considered. The main doctrinal approaches to the idea of "European administrative space" and the role of the Court of Justice of the European Union in its functioning are revealed.

It has been proven that the general principles of EU law developed by the Court of Justice, namely the supremacy, direct effect, procedural autonomy of national courts, the principle of sincere cooperation, the principle of subsidiary have played a key role in ensuring effective cooperation between the authorities of the Member States and, in the future, in shaping the European administrative space.

The problematic aspects of the role of the Court of Justice in ensuring the functioning of the European administrative space have been identified. This primarily concerns the interpretation of EU law. This procedure aims to ensure uniform application of EU legislation. However, in many cases it is problematic, as the Court of Justice draws conclusions only on EU law, without taking into account the specifics of national law.

In fact, the Court of Justice should not take into account national specificities, but such an approach does not contribute to the effective application of EU law by Member States, as the final decision in the case still remains with the national court. Therefore, its effectiveness depends to some extent on the willingness of national courts to comply with EU law. Although national courts are obliged to do so, this is not always the case in practice. A clear example of this is the United Kingdom, which has disagreed with certain provisions of EU law, in particular on welfare and migration policies.

Another problematic aspect of the role of the Court of Justice in ensuring the functioning of the European administrative space is the inability of national courts to require interpretation of the national laws of other Member States. This complicates administrative cooperation, especially if the differences are decisive. Addressing this shortcoming would increase legal certainty and simplify administrative cooperation.

Issues for future scientific research are proposed, namely the study of ways to improve cooperation between the national courts of the Member States of the European Union and the Court of Justice of the European Union.

Key words: European Union (EU), European administrative space, Court of Justice of the European Union (CJEU), European Union law, administrative authorities.

Основну увагу приділено дослідженню поняття «європейський адміністративний простір». Розкрито основні доктринальні підходи щодо ідеї «європейський адміністративний простір» і ролі Суду Європейського Союзу в його функціонуванні.

Доведено, що загальні принципи права Європейського Союзу, розроблені Судом Європейського Союзу, а саме принципи верховенства права (supremacy), прямої дії (direct effect), процесуальної автономії національних судів (procedural autonomy), щирої співпраці (sincere cooperation), субсидіарності (subsidiarity) відіграли визначальну роль у забезпеченні ефективної співпраці між органами держав-членів і надалі у формуванні європейського адміністративного простору.

Означено проблемні аспекти ролі Суду Європейського Союзу в забезпеченні функціонування європейського адміністративного простору. Це насамперед стосується тлумачення права Європейського Союзу. Така процедура має на меті забезпечення уніфікованого застосування законодавства Європейського Союзу. Однак у багатьох випадках вона проблематична, оскільки Суд Європейського Союзу робить висновки лише щодо права Європейського Союзу, не враховуючи особливості національного законодавства. По суті, Суд Європейського Союзу й не повинен ураховувати національні особливості, але такий підхід не сприяє ефективності застосування законодавства Європейського Союзу державами-членами, адже остаточне рішення у справі все-таки залишається за національним судом. Тому його ефективність певною мірою залежить від готовності національних судів виконувати законодавство Європейського Союзу. Хоча національні суди й зобов'язані це робити, але на практиці це не завжди так. Яскравим прикладом цьому є Великобританія, яка не погоджувалася з окремими нормами законодавства Європейського Союзу, зокрема щодо політики добробуту й міграції.

Іншим проблемним аспектом ролі Суду Європейського Союзу в забезпеченні функціонування європейського адміністративного простору є неможливість національних судів вимагати тлумачення національних законів інших держав-членів. Це ускладнює адміністративну співпрацю, особливо якщо розбіжності визначальні. Усунення такого недоліку сприяло б підвищенню правової визначеності й спрощенню адміністративної співпраці.

Запропоновано питання для майбутніх наукових розвідок, а саме дослідження шляхів покращення співпраці між національними судами держав-членів Європейського Союзу й Судом Європейського Союзу.

Ключові слова: Європейський Союз, європейський адміністративний простір, Суд Європейського Союзу, право Європейського Союзу, адміністративні органи.

Introduction. Overtime cooperation between European Union (EU) countries started to encompass more areas. It resulted in the establishment of the European administrative space. This term refers to the area in which increasingly integrated public authorities of EU member states jointly exercise powers delegated to the EU in a system of shared sovereignty [1, p. 159].

The development of this administrative cooperation was evolutionary and fluid. This concept is supported by Article 3 of the Treaty on European Union. It helps the EU to

achieve its economic, social, and political goals. The creation of this common European model required intense cooperation between national and supranational actors. It is necessary to note that despite the creation of higher EU institutions and the development of the law of the European Union, member states still maintain the autonomy of their legal systems. It is possible to argue that the European administrative space is still developing since convergence on the common European model is not fully achieved yet. However, there was a significant reduction of variance and disparities in administrative arrangements between member states [2].

Court of Justice of the European Union (CJEU) and its general principles had a central role in ensuring effective cooperation between public authorities of the member states and subsequent administrative convergence. It is because CJEU created a comprehensive framework that allowed for the uniform application of EU law.

There is extensive research examining the role of EU institutions such as the European Court of Justice on the functioning of the European Union and its administrative space. Central topics of debate focus on whether there exist convergence on the common administrative model and what implications such space have for member states' governments. Scholars such as Hoffmann and Olsen are strong proponents of further Europeanization. They argue that convergence on the common European model are crucial for achieving effective cooperation in the administrative sphere. They promote the idea that CJEU's general principles and its ability to ensure legal compliance are vital for shaping the European administrative space. Other scholars such as H. Siedentopf, B. Speer, C. Timmermans hold that legal oversight from the CJEU and its general principles greatly undermines the sovereignty of the member states. They believe that it unnecessarily complicates functioning of national administrative authorities since CJEU does not have a well-developed mechanism for determining adherence of national laws and EU directives. Another widely-accepted view is that CJEU used judicial policy-making to advance EU integration even in areas where member states wanted to preserve their autonomy [3].

CJEU can be considered as the main institution that added meaning to a rather empty concept of the administrative union [4, p. 945] – developed a framework of general principles that played a critical role in regulating the relationship between national and European legal orders. All of the general principles that CJEU uses today were not developed right away. Some of them initially emerged as treaty provisions, while others were developed as a part of the case-law of CJEU. These principles are considered as primary legislation, and they have precedence over national laws. In other words, the correct application of the principle is preferred over national laws of member states. The ongoing development of the CJEU's case-law helps to address existing legal gaps between European and national laws. The most important probably are principles of supremacy and direct effect. These two notions granted European law a supreme status.

Functioning of the European Court of Justice

Many scholars argue that increased Europeanization can be attributed to the ever-stronger influence of supranational institutions such as CJEU. Although this assumption is logical, it is not necessarily fully accurate. Nevertheless, the creation of the European Court cannot be seen as the establishment of just a supranational actor. The CJEU consists of judges who are representatives of member states. So, although it is a supranational institution, it has a bottom-up origin. General principles of the CJEU also took inspiration from the national laws of member states. So, the current case law of the CJEU is a direct result of the synthesis of different legal traditions of member states.

Importance of judicial control

Beginning in the 1960s, the European Court of Justice started to develop a mechanism to gradually constitutionalize the Treaty of Rome [5, p. 160]. It ensured that EU legislation could override national laws. It resulted in the creation of more common European policies and increased cooperation between member states. Constitutionalizing the Treaty of Rome made EU law not only binding for the sovereign member states but helped to ensure that EU rights and obligations became judicially enforceable for public and private entities as well [5, p. 161].

In other words, it led to the opening of national legal systems since now not only national administrations could be held accountable for the implementation of EU law, but all national courts and public administrations became subject to the same conditions. This change allowed to appeal of objective legality and the regular functioning of public authorities in the CJEU. This ability to make administrative violations of public authorities subject for judicial control had a great influence on the creation of the European administrative space. It made it possible to ensure legal compliance by the public authority of another member state. For example, the court can fine the member state if it failed to implement the EU directive or being a repeat offender [6].

The best example might be the establishment and effective functioning of the single European market. It is because the existence of effective means of redress for the behavior and decisions of administrative authorities through appeal is crucial for international economic exchanges [7, p. 312]. It guarantees the security of investments and trade. This approach helped to provoke and further stimulate transnational exchange. It is consistent with the general principle of legality.

Role of the *Aquis Communautaire*

Another important factor in shaping the European administrative space is the expansion of the *Aquis Communautaire* [1]. General principles of the European court played a significant role in developing this supranational law. General principles of the CJEU greatly contributed to its adoption across the EU. Although this community law does not have any specific power in regards to public administrations, it provides a comprehensive framework that they can use for their functioning [8, p. 15].

After a formal establishment of *Aquis Communautaire* in member states' national legal orders, CJEU started to ensure that administrative public authorities have the necessary capabilities for exercising it. It helped to ensure a high quality of performance by the administrative authorities, which was critical for the successful development of the European administrative space. This requirement became especially prominent after the Eastern Enlargement in 1994 [4, p. 950].

Principle of procedural autonomy and its implications

Member states can maintain their original legal system and Exercise principle of procedural autonomy. This principle was developed by the CJEU and gives member states procedural autonomy of the implementation of EU law. To an extent, it limits the power of EU institutions because it prohibits them from exercising straightforward vertical top-down control over administrative authorities that enforce EU law [9]. However, this procedural independence should still result in effective implementation of EU law and equivalent conditions of implementation [7, p. 315]. These two requirements helped to ensure the upholding of the common EU standards in all member states and led to further convergence. These set rules of administrative procedure help to achieve quality and legality in administration decision-making.

Even if a member state chooses to maintain its procedural autonomy, it should still ensure effective implementation of EU law. It is not only necessary for successful and smooth cooperation, but is also required by the general principle of effectiveness. In other words, the country can preserve its administrative diversity as long as it fulfills its obligation before EU law. Otherwise, it can be penalized by the European Court.

General principles of the CJEU had a tremendous impact on the formation of the European administrative space. To achieve more effective cooperation, a large number of European

countries have developed laws of the administrative procedure [7, p. 316]. It greatly simplifies joined cooperation between administrative authorities of different member states by providing them with clear rules of conduct. It still allows for the procedural flexibility of the public authority but helps to increase the quality and transparency of the cooperation.

Currently, the principle of procedural autonomy is becoming less prominent. It can be explained by rapid Europeanization. This term refers to the unification of the procedures of member states' administrative authorities and the administrative procedures. It makes cooperation between member states' public authorities easier. That is why this process of unification has been started in the European administrative space.

Effects of the principle of sincere cooperation

Since the mid-1970s, the European court started to require member states to recognize the administrative and legislative decisions of other member states [1, p. 670]. It is consistent with the general principle of sincere cooperation between member states and led to more convergence between the functioning of public authorities. For example, the CJEU clearly stated: "the requirements of a true single market as a legal space without internal frontiers" [10].

It was done to require an increasing response to administrative cooperation and mutual recognition of the administrative and legislative decisions of other member states. It helped to further strengthen and improve functioning of the European administrative space since mutual recognition of legislative decisions made cooperation much easier. European court also required member states to apply the de Dijon principle when harmonizing European legislation was absent. In this case, member states had to mutually recognize and enforce each other's regulations. It granted trans-territorial power to legislative decisions that were made on the national level. It made horizontal cooperation stronger and easier to implement. It is unlikely that this mutual recognition of regulatory decisions would be possible if it were not required by the CJEU.

Principle of subsidiarity and its effects on integration

Another important stage in the development of the European administrative space was the shift towards integrated European administration. It is closely related to the principle of subsidiarity. It means that legislation is developed on the EU level and implemented by the member states. Like all other general principles, the notion of subsidiarity was created by the CJEU. It still allows for the decentralization of the member states and uniformed implementation of the EU legislation.

Since all member states are subject to the same legislation, joined administrative cooperation becomes significantly easier. This principle of subsidiarity can be compared to the constitutional law of the member states. It is because constitutional law that has been developed on a higher level should be uniformly applied across different levels of government. However, according to the subsidiarity principle, EU legislation should have precedence over the constitutional laws of the member states.

Mechanism of preliminary reference and its limitations

Heterogeneity was and remains one of the EU's core characteristics. It is because member states had different norms, values, and legal systems. It potentially could result in subjective conception or interpretation of EU law. The European Court of Justice, as the highest court of the legal system, has the monopoly of interpretation of EU law. Member State courts can consult the CJEU and ask it for a preliminary reference on questions of interpretation of EU law or validity of acts of the institutions (Article 267 TFEU) [10]. It helps in the uniform interpretation of EU law. However, this reference procedure is somewhat problematic since the CJEU makes findings only regarding Union law. In other words, it does not take national features into account. Essentially, CJEU should not consider this national heterogeneity, but this approach undermines the effectiveness of EU law implementation by the member states. It is because the final decision of the case rests with the national judge.

Ideally, CJEU's decisions on the interpretation of particular legislation should not undermine the legal order of the member states. However, it is often not the case since the uniform application of EU law across all member states is given much more importance. It has a positive impact on the functioning of the European administrative space by ensuring uniform interpretation of relevant legislations. At the same time, it somewhat complicates work for the national courts, who are responsible for ensuring the effectiveness of the preliminary references system [11, p. 551]. They are considered the main decentralized enforcers of EU law. This preliminary reference procedure can be seen as one-directional vertical cooperation between national courts and the CJEU, but it should be initiated by the former. Therefore, its effectiveness somewhat depends on the willingness of the national courts to implement EU legislation. Although national courts are required to do so, it is not necessarily always the case. An especially notable example would be the United Kingdom since the country was not agreeing with some EU legislation, e.g., in regards to welfare and migration policies.

Another problematic aspect of the preliminary reference, especially regarding the functioning of the European administrative space, is the inability of the national courts to request interpretation of national laws of other member states that have different legal systems [10]. It makes administrative cooperation more complicated, especially if disagreements arise. This gap is important to address because it seems to be a significant barrier to increasing convergence. It is because national courts often lack familiarity with other national legal systems, which is further complicated by the procedural autonomy of the member states. This gap greatly undermines horizontal cooperation and makes judicial accountability increasingly difficult. Addressing this gap would help to improve legal certainty and simplify administrative cooperation.

It also somewhat undermines the CJEU's principle of accountability. This principle requires that each institution should explain and make everyone understand what and why it does. It also states that they are fully responsible for their actions and omissions. In principle, this notion of accountability should make the functioning of the European administrative space more transparent and improve cooperation. However, the inability of the national judges to obtain a preliminary reference for the national laws of other member states significantly complicates this process.

Recommendations for further research

Important factors to examine would be a judicial trust between national courts and CJEU. A higher degree of trust could potentially lead to more effective enforcement of EU law. It would positively affect the development and functioning of the European administrative space, for it would ensure a more uniform application of EU law [12]. Its success would partially depend on the rules that judges of national courts should follow. Yet, since national courts have discretionary power over the enforcement of EU legislation and directives, their role is important to understand. Unfortunately, judicial trust and subsequent administrative changes are rarely analyzed. Yet, these factors are important to examine since public administrative institutions are central actors that are responsible for the ongoing transformation of the European administrative space. This lack of data can be mainly attributed to the absence of a comprehensive methodology for collecting data. There are also no matrices that would allow us to measure and track progress of the administrative change.

It is important to further examine how improving judicial cooperation between the CJEU and national courts would influence the functioning of the European administrative space. In other words, whether the decreasing separation of power between the EU institution and member states would

have a positive effect. Currently, a model remains oriented on creating a two-level system (article 267, TFEU). This idea is consistent with the essence of European law that has effective cooperation as its main component.

Conclusions. CJEU's general principles provide an important guarantee for the effectiveness of EU law. They greatly decrease opportunities for corruption and wrong decisions and create effective means for appeal. This legal certainty allows for the effective and smooth functioning of the European administrative space. Although national administrations have procedural autonomy in implementing and executing requirements of the EU's directives and legislations, they should ensure its effectiveness and correct application. Therefore, it is possible to conclude that some general principles are given more importance than others, e.g., principles of effectiveness and supremacy. These principles partially decrease the sovereignty of the member states, but they greatly improve cross border cooperation since different patterns can lead to the variety in the quality of governance.

Therefore, effective implementation of CJEU's general principles is crucial for establishing a highly integrated European administrative space. Creation of this space results in achieving equal conditions and standards in different areas across the EU, such as medical treatment, trade, and employment.

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