

Aspects of Judicial Competence under Community Law

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ABSTRACT: According to the Treaty on the Functioning of the European Union, when the European Union is conferred exclusive competence by the Treaties in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts. The limits and conditions for the exercise of Union competence are laid down in the provisions of the Treaties relating to each area. With regard to the determination of the international competence of the Romanian courts, the example of succession matters is given, where the competence is acquired by meeting two conditions: the deceased had his last place of residence in Romania and the claim relates to movable or immovable property located in Romania.

KEY WORDS: treaties, competence, European court, principles, powers

Principles of ensuring competences in the light of the European Union Treaties

In order to better understand the competences in the field of justice, let us start with a few general points on how the European Union operates at this level. According to the 2017 amendments, provisions have been introduced in the Treaty on European Union on certain principles governing the competences of the Union. Thus, the limits of competences are governed

by the *principle of conferral* and the use of competences is governed by the principles of *subsidiarity and proportionality*.

The principle of conferral provided that the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level. Regarding the principle of proportionality, the Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The principles of subsidiarity and proportionality shall be applied by the institutions of the Union in accordance with the *Protocol on the application of the principles of subsidiarity and proportionality*.

Moreover, these aspects are supplemented by the fact that the European Union has acceded to the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, and the Union's competences have not been altered by this accession. The fundamental rights as guaranteed by the Convention shall constitute general principles of Union's law.

According to the *Treaty on the Functioning of the European Union*, when the European Union is conferred exclusive competence by the Treaties in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. In conclusion, the Member States shall coordinate their economic and employment policies in accordance with the provisions of the Treaties, since the Union is competent to carry out actions to coordinate or supplement the national actions of the Member States, without thereby superseding their competence in these areas.

The limits and conditions for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area. Legally binding acts of the European Union adopted on the basis of the provisions of the Treaties relating to these areas may not involve harmonisation of the laws, regulations and administrative provisions of the Member States.

The Court of Justice of the European Union in the Community legal order

The Court's fundamental task is to ensure respect for the law in the interpretation and application of the Treaties. To this end, the Member States determine the remedies necessary for judicial protection in the areas governed by European law. The Court of Justice of the European Union (CJEU) comprises the Court of Justice, the General Court and specialised courts. Each Member State is represented by a judge on the Court of Justice and the General Court. The judges, Advocates-General and judges of the General Court are elected from persons whose independence is beyond doubt and shall be appointed by common accord of the governments of the Member States for a renewable term of six years. If the office of judge falls vacant before the expiry of the term of office, a successor shall be appointed for the remainder of the term.

The Court's powers under the Treaties are as follows:

- ✦ in actions brought by a Member State, an institution or a natural or legal person;
- ✦ as a preliminary ruling, at the request of national courts, concerning the interpretation of the Union law or the validity of acts of the institutions;
- ✦ in other situations provided for by the Treaties

According to the provisions of the Statute of the CJEU, judges enjoy "immunity from legal proceedings" even after they have ceased to hold office. An important aspect of the Court's deliberations is that its decisions shall be valid only when an uneven number of its members is sitting in the deliberations and decisions of chambers consisting of either three or five judges shall be only valid if they are taken by three judges. The Grand Chamber deliberates only if eleven judges are sitting. The preliminary ruling procedure is based on close cooperation between the European Court and the Member States, in particular in the case of requests for preliminary ruling which must be dealt with celerity (Fabian 2017, 230).

Competence of the Court of Justice

It is necessary to distinguish between direct and indirect application of foreign law by the competent forum. *Direct* application refers to the dynamic and immediate application of foreign provisions to facts occurring and established on the territory of the forum, raising various issues relating to the limits of application in terms of public order and fraud. *Indirect* application refers to the application by the forum of the effects of the application of a law which has previously been enforced abroad to facts and legal acts or judgments ruled abroad. In the latter case, arises the question of the enforcement of rights acquired abroad and their effects (Dariescu 2018, 130).

From the internal perspective of the European Regulations, in the case of civil proceedings abroad, in which persons resident in Romania are parties, the service of documents is carried out in accordance with the national law. Depending on the legal basis of the communication, the application may be received by a similar central authority, such as an authorised institution or the requesting court (Păncescu 2014, 81-82).

The exclusive competence of the Romanian courts is provided for in the Code of Civil Procedure in the part dedicated to international competence, including special rules of competence, derogating from the general rule provided for in Article 1066 of the Code of Civil Procedure. When the Romanian court of the place with which the court case has a sufficient connection becomes competent to decide on the case, if it proves that it is not possible to bring an action abroad, the “forum of necessity” intervenes; when the action is brought by a Romanian citizen or a stateless person domiciled in Romania or by a legal person of Romanian nationality, the jurisdiction of the Romanian court is mandatory (Zidaru 2015, 224).

Regarding the competence of the *General Court*, the criteria by which cases are to be allocated are the following: a) the case is assigned as soon as possible after the document initiating proceedings has been lodged; b) cases involving a public office, brought pursuant to the Treaty on the Functioning of the European Union and, where applicable, the Statute of the Court of Justice of the European Union, shall be assigned among the four Chambers by designating a judge, in accordance with the order in which the cases are

registered at the Registry; c) cases concerning intellectual property rights shall be assigned among the six Chambers designated for that purpose, also by a rotation system; (d) cases other than those referred to in sections (b) and (c) shall be assigned on the basis of two separate systems of rotation, differentiated according to the subject-matter of the cases: those concerning the application of the competition rules applicable to undertakings, aid and trade protection measures and all other cases.

Members of the General Court shall, in principle, perform the duties of a judge. With the exception of the President and the Presidents of Chambers of the General Court, they may, in certain specified circumstances and by express designation, perform the function of Advocate General. The term of office of the Judges shall begin on the date of issue of the instrument of appointment or, as the case may be, on the date of publication in the *Official Journal of the European Union*. The Judges shall elect one of their number as the President for a term of three years. If the office of President falls vacant before the normal date of expiry, a successor shall be elected for the remainder of the term. The elections shall be by secret ballot, with more than half of the judges composing the General Court. If no Judge obtains that majority, further ballots shall be held until that majority is attained. The Vice-President of the General Court is also elected for a term of three years. Regarding the responsibilities of the President, it should be noted that he/she directs the judicial business and administration of the General Court, presides at the plenum, presides over the Grand Chamber and, when attached to a Chamber, presides over that Chamber.

In terms of setting up, the General Court shall set up Chambers sitting with three and five judges. Decisions taken are published in the *Official Journal of the European Union*. Cases may be heard by the Grand Chamber or by a single Judge. The Grand Chamber shall be composed of fifteen Judges, the General Court deciding how to designate the judges composing the Grand Court. If a Judge is unable to take part in the disposal of a case, he is required to inform the President of the General Court. The deliberations of the General Court shall be secret. When a hearing has taken place, only those Judges who participated in that hearing shall take part in the deliberations. The conclusions

reached by the majority of the Judges after final discussion shall determine the decision of the General Court. The deliberations of the Chambers sitting with three or five Judges are valid only if three Judges are sitting.

With regard to the determination of the international competence of the Romanian courts, the example of succession matters is given, where the competence is acquired by meeting two conditions: the deceased had his last place of residence in Romania and the claim relates to movable or immovable property located on the national territory.

Conclusions

With regard to the competences in EU civil law, the doctrine (Reich 2014, 23-24) establishes that there is a consensus regarding the absence of a general EU competence in regulating civil law matters such as contracts or obligations. However, elements of civil law have found a context for regulation in the European area, through the Treaties and legislative rules, in particular regulations and directives. For example, in the area of contracts or civil liability, the competence is determined by the rules on the application of foreign law, when cross-border elements are involved in the cases to be settled.

At the domestic level, the new Civil Code has tried to meet the requirements arising from the commitments undertaken by Romania in the context of European integration (Bonciog 2010, 123), regulating together private law relationships in areas such as family relations, commercial, but also provisions of private international law.

However, we would point out that, when actions are brought before the European court, the general constitutional principle (Stănescu 2017) must be respected, particularly the principle of *proportionality*, especially in areas where a common European law is sought as far as possible, such as in the area of sales. The *principle of effectiveness* relates to procedural aspects, especially in the area of contracts, where it is necessary to protect the disadvantaged party and avoid discrimination in the content of the contracts in question. Last but not least is the principle of conciliation, which concerns the interpretation and application of EU civil law by the courts.

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