NOTES AND COMMENTS

COMPLEXITY INSTEAD OF UNIFORMITY: THE EUROPEAN COURT OF JUSTICE AND NATIONAL ADMINISTRATIVE LAW

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Abstract

European administrative law is rather complex, as it requires a collaboration of European and domestic administrative organisation, however, the exact sphere of responsibilities are far from being clear. The member states of the union have a procedural and organisational autonomy that is constrained by the principles of equivalence and effectiveness which at the very end cause rather more complexity than uniformity in the execution of union law.

I Introduction

EUROPEAN ADMINISTRATIVE law is quite vague and disorganised. There are different views on what European administrative law is meant to be. To some extent it is understood as the administrative law of European Union (EU) institutions, partly as a project of evolving a common European administrative law, as further as the influence of EU law on national administrative law. To make it more complicated, the European Convention of Human Rights and the case-law of the European Court of Human Rights influence the supranational legal order of the EU. At this juncture, the paper highlights a tiny part of this big picture: the question how the European Court of Justice (ECJ) influences national administrative law.

First and foremost, one has to bear in mind that the EU is basically a law-making organisation The execution of these commonly adopted rules remains primarily by the member states. Although there are some recent tendencies of strengthening the cooperation among the commission and the administration of the EU member states by creating complex network structures with EU regulatory bodies at their apex,[1] like the European Competition

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1 See to the different forms of co-operation, C Nowak, Europ isches Kooperationsverwaltungsrecht, in S Leible and J Ph Terhechte (ed.), *Europ isches Rechtsschutz- und Verfahrensrecht* (Nomos, Baden-Baden, 2014); H.C.H Hofman, Mapping the European Administrative Space 31 *West European Politics* 662-676 (2008); E Schmidt-A mann B Sch ndorf-Haubold (ed), *Der Europ ische*

Network (ECN), the EU still extensively relies on national administrations to effectively carry out EU law. The right and the duty to carry out EU legislation is usually described in terms of the principle of national procedural autonomy . This may be understood as a presumption of national competence to determine remedies and procedural rules. From this presumption follows, that the execution of EU rules may differ from member state to member state because of the 28 different legal systems in the EU, and therefore the autonomy is limited by two principles: equivalence and effectiveness. The *first* demands that national legal remedies should not be less favourable for claims based on union law than available for similar actions based on purely national law. The *second* obliges the member states to guarantee a minimum standard of efficiency of national remedies. All these principles should foster a uniform application of union law, however, they intensify the complexity of applicable rules.

II The procedural autonomy of the member states

The procedural autonomy[2] is a commonplace expressing the power[3] respectively the duty[4] of the EU member states to create and form their administrative organisation and the procedural rules for the execution of EU

Verwaltungsverbund (Mohr, T bingen, 2005); S Cassese, European Administrative Proceedings 68 *Law and Contemporary Problems* 21-36 (2004) ; M P Chiti, Forms of European Administrative Action 68 *Law and Contemporary Problems* 37-57 (2004); G Della Cananea, The European Union s Mixed Administrative Proceedings 68 *Law and Contemporary Problems* 197-217 (2004); W Weiss, Agencies versus Networks, From Divide to Convergence in the Administrative Governance in the EU 61 *Administrative Law Review* 45-70(2009). About the historical development of the concept of administrative law in the EU, see C Harlow, Three Phases in the Evolution of EU Administrative Law in P Craig and G de B rca, *The Evolution of EU Law* 439-464 (OUP, Oxford, 2011).

2 Th von Danwitz, *Europ isches Verwaltungsrecht* 302-305; (Springer, Berlin, 2008); W Schroeder, Nationale Ma nahmen zur Durchf hrung von EG-Recht und das Gebot der einheitlichen Wirkung Existiert ein Prinzip der nationalen Verfahrens autonomie ? , *Archivdes ffentlichen Rechts* 3-38 (2004); Ch Kr nke, *Die Verfahrensautonomie der Mitgliedstaaten der Europ ischen Union* (Mohr, T bingen, 2013).

3 Th ..hlinger and M Potacs, die Regelung der Zust ndigkeit f r den indirekten Vollzug prinzipiell in die Kompetenz der Mitgliedstaten . *EU-Recht und staatliches Recht: Die Anwendung des Europarechts im innerstaatlichen Bereich* 150 (LexisNexis, Wien, 2011).

4 Th von Danwitz, die Wahrnehmung von Verwaltungsma nahmen zur Durchf hrung des Gemeinschaftsrechts prim r Aufgabe der Mitgliedstaaten *Europ isches Verwaltungsrecht* 302 (Springer, Berlin, 2008).

law. Nonetheless, it is still intensively discussed what the autonomy actually means. Some understand it in a normative sense of the word,[5] meaning thereby that it demarcates the boundaries of the responsibilities between EU, its member states and in doing so, the autonomy protects the powers of the member states to carry out the EU law[6] as they see proper. Different national administrative rules are to be accepted as a consequence of an endeavor creating a genuine European federalism. Moreover, it should also imply that there are legal limitations for the EU to encroach national administrative law without proper justification.[7]

However, in a simple descriptive sense of the word,[8] autonomy is just an euphemistic [9] expression for a factual situation that the administrative organisation is indeed created by the member states and the procedural rules are primarily made by them.[10] Nonetheless, the autonomy does not intend to delaminate the powers of the EU definitely.[11]

Those who believe that autonomy is of normative nature rely on several provisions of the founding treaties of the EU. Foremost, to act, the EU needs powers to be conferred explicitly or implicitly by the founding treaties[12] and the founding treaties do not transfer too many of them regarding executive

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5 Ch Kr nke, *Die Verfahrensautonomie der Mitgliedstaaten der Europ ischen Union* (Mohr, T bingen, 2013).

6 W Schroeder, *supra* note 2.,

7 S Kadelbach, *Allgemeines Verwaltungsrecht unter europ ischem Einfluss* 110 (Mohr, T bingen, 1999); Th von Danwitz, *supra* note 2 at 113.

8 K St ger, Gedanken zur institutionellen Autonomie der Mitgliedstaaten am Beispiel der neuen Energieregulierungsbeh rden , Z..R 2010, 247-267; C. M. Kakouris: Do the Member States Possess Judicial Procedural autonomy *Common Market Law Review* 1389-1412 (1997); L Frank, Gemeinschaftsrecht und staatliche Verwaltung 201- 203 (Manz, Wien, 2000).

9 F Schoch, Die Europ isierung des Allgemeinen Verwaltungsrechts und der Verwaltungsrechtswissenschaft in *Die Wissenschaft vom Verwaltungsrecht, Die Verwaltung, Beiheft* 136 (1999).

10 Ziller diagnozes that the main source of applicable provisions is the domestic administrative law. Magiera, Sommermann, Ziller (Hrsg.), *Festschrift f r Heinrich Siedentopf zum* 70 Geburtstag (Berlin, 2008) 173-188 (181).

11 Grabit, Hilf, Nettesheim (ed), *Das Recht der Europ ischen Union* (Beck, M nchen) art. 4 EUV, para 77; W Frenz, *Handbuch Europarecht* (5) (Springer, Berlin, 2010) para. 1747.

12 European Union (TEU), art. 5.

powers. Therefore, especially in light of the subsidiarity principle, the member states shall have the primary duty and power to carry out EU law.[13] Moreover, they also read article 291 section 1 of the Treaty on the Functioning of the European Union (TFEU) in this sense.[14] This paper provides that Member States shall adopt all measures of national law necessary to implement legally binding Union acts , and stress, of course, the phrase national law . The expression effective implementation of Union law by the Member States in article 197 section 1 TFEU is also observed as a further confirmation of the procedural autonomy in the normative sense of the word.[15]

The organisational autonomy undeniably exists to the extent that the EU itself cannot create administrative bodies of the member states,[16] Nonetheless it does not prevent the EU from imposing obligations on its member states[17] to establish regulatory agencies[18] or single contact points[19] or a European Competition Network,[20] which of course begs for a further clarification of the actual limits of the autonomy.

The procedural autonomy is furthermore acknowledged as far as member states effectively carry out the union law,[21] and, under this precondition, they are free to choose how to fulfil their duties. This reading of the founding treaties is supported by many provisions as well. Article 197 TFEU requires

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13 Subsidiarity means breifly that in areas which do not fall within the exclusive competence of the EU, the union shall only act if and insofar as the objectives of the proposed action cannot be sufficiently achieved by its member states either at central, regional or local level.

14 Th von Danwitz, *supra* note 2 at 303.

15 R Streinz (ed), 57 *EUV/AEUV* (Beck, M nchen, 2012) art. 197 AEUV para 6.

16 B Raschauer, *Allgemeines Verwaltungsrecht* (Wien, New York, 3rd edn. 2009) Nr 609. See, for example, the case of Hungarian data ombudsman; the office was established contrary to the requirements of the EU law, the ECJ, however, could only declare the incompatibility of Hungarian law with EU law, but Hungary remain responsible for organizing the office itself, see *ECJ Commission* v. *Hungary*, case C-288/12.

17 Summarizing J Ph Terhechte, *Europ isches Verwaltungsrecht* (Nomos, Baden-Baden, 2012) para. 22-30.

18 K St ger, Gedanken zur institutionellen Autonomie der Mitgliedstaaten am Beispiel der neuen Energieregulierungsbeh rde *Journal of Public Law* 247-267. (Z..R 2010).

19 According to art. 6 Directive 2006/123/EC of the European Parliament and of the Council of Dec. 12, 2006 on services in the internal market.

20 See the Council Regulation (EC) No 1/2003 of Dec.16, 2002 on the implementation of the rules on competition laid down in art. 81 and 82 of the Treaty.

21 Grabitz and Hilf (ed), *Das Recht der Europ ischen Union*, EUV/AEUV art. 4 EUV para 78; J Schwarze (ed), *EU-Kommentar* (Nomos, Baden-Baden, 32012).

effective implementation and article 291(1) of TFEU requires necessary measures to implement EU law, and if these measures are not taken, and if the national measures are not effective enough, the EU may itself enact binding rules of implementation according to article 291 section 2 of TFEU.[22] This reading of the TFEU may be fortified by the supremacy of the EU law which calls for full and uniform application of the EU law[23] in the member states.[24] The procedural autonomy is, in this paradigm, like the implementation of directives which are also binding to the results, but the member states have the choice of form and methods (article 288 section 3 of TFEU) if they guarantee an effective implementation.[25]

Although the ECJ itself recognises the procedural autonomy of the member states, it makes it subject to several conditions. First and foremost, the national rules are to be applied as far as no EU rules govern the matter either explicitly or implicitly by the general principles of EU law.[26] This condition was quite easy to meet in the 70s, as the concept of procedural autonomy was shaped earlier. However, as the implementation of EU law is understood quite broadly nowadays [27] the Charter of Fundamental Rights of the EU, especially the right to good administration (article 41) and the right to an effective remedy (article

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22 *Id.,* J Schwarze, art. 291 para 3.

23 C D Classen, Das nationale Verwaltungsverfahren in Th von Danwitz, *supra* note 2. at 303-385.

24 D.U Galetta, Diana-Urania, *Procedural Autonomy of the EC Member States: Paradise Lost*? (Springer, Berlin-Heidelberg, 2010).

25 *ECJ Minister Public* v. *Oscar Traen* case 372-374/85, Nr. 22; *ECJ; Commission* v. *Greece*, case C-110/89, para 13-15; *ECJ Commission* v. *Italy*, case C-128/89; ECJ Oberkreisdirektor des Kreises Borken und Vertreter des ffentlichen Interesses beim Oberverwaltungsgericht f r das Land; *Nordrhein-Westfalen* v. *Handelsonderneming Moormann BV*, case 190/87; *ECJ Groener* v. *Minister for Education und City of Dublin Vocational Educational Committee*, case 379/87.

26 M Holoubek and M Lang (ed), *Abgabenverfahrensrecht und Gemeinschaftsrecht*, 115- 129 (Linde, Wien, 2006); the principles C Franchini, European Principles Governing National Administrative Proceedings 68 *Law and Contemporary Problems* 183-196 (2004).

27 *ECJ klagare* v. *Hans kerberg Fransson*, case C617/10 (ECR 2010, I-2213) para. 16-31; F Lange, *Verschiebungen im europ ischen Grundrechtssystem? Neue Zeitschrift f r Verwaltung* 169-174 (2014); Th Kingreen, Ne bis in idem: Zum Gerichtswettbewerb um die Deutungshoheit ber die Grundrechte Anmerkung zur Entscheidung des EuGH vom 26. 2. 2013 (C-617/10) *Europarecht* 446-453; (2013); J Masing: Einheit und Vielfalt des Europ ischen Grundrechtsschutzes, *Juristenzeitung* 477-487 (2015); K Lenaerts:, Die EU-Grundrechtecharta: Anwendbarkeit und Auslegung (3-6). *Europarecht* 3-17 (2012).

47), may find application anyway. If there are questions unanswered by the EU law, the application of the national law still remains subject to two conditions: *first*, the national procedural rules must not be less favorable than those governing similar domestic actions and *second*, they should not render virtually impossible or excessively difficult the exercise of rights conferred by union law. These two principles are called equivalence and effectiveness.

III The limits of the autonomy: Effectiveness and equivalence

The principle of equivalence[28] according to the established case-law requires that the procedural rule at issue applies without distinction to actions alleging infringements of union law and to those alleging infringements of national law.[29] However, this principle cannot be interpreted as obliging a Member State to extend its most favourable rules [ ] under national law to all actions for breach of Community law .[30]

This principle requires that basically comparable actions should be governed by the same rules and hence it raises the question of comparability.[31] According to the established case-law of the ECJ, the comparability does not require a complete identity but a functional similarity that is to be verified objectively[32] considering the role, purpose and the essential characteristics of the procedural rules.[33] A tortious liability for the breach of the national

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28 Earlier it was also called as principle of prohibition of discriminaton; J K nig: *Der quivalenz- und Effektivit tsgrundsatz* 93 (Nomos, Baden-Baden, 2011); M Holoubek and M Lang, *Abgabenverfahren und Europarecht*, 129,134,136) (Linde, Wien, 2006).

29 Fox example, ECJ *Edis*, case. C-231/96 (ECR 1998, I-4951), para. 36; ECJ *Levez*, case C-326/96 (ECR 1998, I-7835), para 41; ECJ *Preston*, C-78/98 (ECR 2000, I-3201), para. 55; ECJ i21 *Germany and Arcor*, case C-392/04 ans C422/04 (ECR. 2006, I-8559), para. 62.

30 ECJ *Levez*, case C-326/96, (ECR 1998, I-7835), para. 42; EuGH vom 9.02.1999, Dilexport, C-343/96 (Slg. 1999 I-579) Rn 27; EuGH vom 29.10.2009, Pontin, C-63/08 (Slg. 2009, I-10467), Rn. 45.

31 A Biondi, The European Court of Justice and certain national procedural limitations: Not such a tough relationship 36 *Common Market Law Review* 1271 (1274-1276) (1999); M Holoubek and M Lang, *supra* note 28 at 129, 139-141; K nig, Der quivalenz- und Effektivit tsgrundsatz 95, 100-103 (Nomos, Baden-Baden (2011).

32 ECJ *Danske Slagterier*, case C-445/06 (ECR. 2009, I-2119) para 41; ECJ *Preston*, case C 78/98, (ECR 2000, I3201), para. 63.

33 ECJ *Palmisani*, case C-261/95, (ECR 1997, I-4025), para. 34-38; ECJ *Levez*, case C-326/96 (ECR. 1998, I-7835), para 43.

constitution and that of the European law,[34] or interlocutory and mandatory injunctions[35] are deemed to be functionally comparable rules. The equivalence has to be decided by the national courts themselves, as they have direct knowledge of the procedural rules even if they are often reluctant to make this decision.[36] This is at least surprising, as the main advantage of the principle of equivalence is that it does not require radical changes of national law[37] but the extension of the scope of application of some domestic rules to slightly different situations governed by EU rules.

Contrary to the equivalence, the application of principle of efficiency is like opening Pandora s box.[38] It requires national rules not to be applied or to be applied with some modifications[39] if their unaltered application would hinder the effectiveness of EU law. The insufficient effectiveness of domestic law may occur if domestic law does not grant any injunctions for the breach of EU law,[40] or if a state aid cannot be reclaimed because of a very broad domestic understanding of legitimate expectations,[41] or if the national law

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34 ECJ *Transportes Urbanos*, case C-118/08 (ECR. 2010, I-635).

35 Judgement of Austrian Administrative Court of 09.04.1999 GZ AW 99/21/0061; Judgement of Austrian Administrative Court of 01.12.2000 GZ AW 2000/09/0058; Judgement of Austrian Administrative Court of 10.11.2000, GZ AW 2000/09/0067; Ch Ranacher and M Frischhut: Handbuch Anwendung des EU-Rechts 510-512 (Facultas, Wien, 2009)

36 The critical words of Monica Claes are hence justified, Claes: *The National Courts Mandate* 122 (Hart, Oxford, 2006). Many national courts do not feel confident to answer the questions of equivalence and effectiveness themselves, and refer the matter to Luxembourg. The Court has spent much valuable time deciding whether Community and national actions at law were comparable, whether particular time limits could be applied and so on, and has at times been lured into an analysis of national procedural law, which clearly is not its function, and seems not worth the time spent on it.

37 Ch M llers, Durchf hrung des Gemeinschaftsrechts - Vertragliche Dogmatik und theoretische Implikationen *Europarecht* 483, 500-501 (2002).

38 Especially critical therefore G M sch, Private Anspr che bei Verst en gegen das europ ische Kartellverbot Courage und die Folgen *Europarecht* 2003, S. 825 (838).

39 M Holoubek and M Lang, *Abgabenverfahren und Europarecht* (117) (Linde, Wien, 2006).

40 ECJ *Factortame*, case C-213/89 (ECR 1990, I-2433); M Andenas and D Fairgrieve (ed), *Tom Bingham and the Transformation of the Law: A Liber Amicorum* (OUP, Oxford, 505 (2009); B Bocrner and J Baur *et. al.,* (ed.), *Europarecht, Energierecht, Wirtschaftsrecht*, Geburtstag 389-401, 393-394. (Heymanns, K ln, 1992).

41 ECJ *Land Rheinland-Pfalz* v. *Alcan Deutschland* case. C-24/95 (ECR. 1997, I-1591); J K nig, *Der quivalenz- und Effektivit tsgrundsatz* (Nomos, Baden-Baden, 2011) 116-124.

does not grant any remedy for breach of EU emission limits.[42] The real dilemma is in many cases, however, that the ECJ finds some national procedural rules contrary to the principle of effectiveness and some very similar rules not to be contrary to this principle. This may be properly demonstrated by some famous judgements.

One of the most fiercely debated questions arose because of two rulings of the ECJ decided on the same day, however, stating something else at least at the first glance. In both the cases the question was the extent of the duty of a domestic judge to examine whether domestic law is contrary to EU law, and the ECJ had to decide as to whether this question has to be examined *ex officio* or merely by the request of the parties. In the case *van Schijndel*, the ECJ stated that union law does not require national courts to raise, of their own motion, an issue concerning the breach of provisions of [union] law where examination of that issue would oblige them to abandon the passive role assigned to them by going beyond the ambit of the dispute defined by the parties themselves and relying on facts and circumstances other than those on which the party with an interest in application of those provisions bases his claim.[43] A similar question was decided, however to the contrary, in the *Peterbroek* case. The ECJ stated that [union] law precludes application of a domestic procedural rule whose effect is to prevent the national court or tribunal, seized of a matter falling within its jurisdiction, from considering of its own motion, whether a measure of domestic law is compatible with a provision of community law.[44]

A very similar incongruity may be perceived between two judgements concerning the finality of administrative decisions: on the one hand, in the *Ciola*-case, the ECJ demanded a final administrative decision which was contrary to EU law be revoked,[45] and on the other, in the *i-21* and *Arcor* decisions, the ECJ did not criticize a national law precluding the revocation of a final administrative decision contrary to EU law.[46] If one reads the cases

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42 ECJ case C237/07, *Janecek* v. *Freistaat Bayern* (ECR 2008 I-6221); M Potacs Subjektives Recht gegen Feinstaubbelastung *Zeitschrift f r Verwaltung* 874-879 (2009); J K nig; *Der quivalenz- und Effektivit tsgrundsatz* 170 (Nomos, Baden-Baden, 2011).

43 ECJ, *van Schijndel*, joined cases C-430/93 and C-431/93 (ECR 1995, I-04705).

44 ECJ, *Peterbroeck*, case C-312/93 (ECR 1995, I-04599).

45 ECJ *Erich Ciola* v. *Land Vorarlberg* case. C-224/97 (ECR 1999, I-2517).

46 ECJ i-21 *Germany und Arcor*, joined cases. C-392/04, C-422/04; M Potacs, Bestandskraft staatlicher Verwaltungsakte oder Effektivit t des Gemeinschaftsrechts? *Europarecht* (2004).

carefully and is fully aware of the fine factual and legal distinctions of the very constellations one may perceive slight differences between the judicial remedies in one or the other member state. However, it is still quite a complicated task to decide whether the very national remedy is effective enough or not. Taking into account that the principle of efficiency does not demand an optimal[47] or best possible national remedy, but reduces the question of efficiency to one as to whether the domestic legal remedy is manifestly inefficient or not, or, to put it others, as to whether the national law offers a fair chance of enforcement of EU law,[48] one might find the nuances between the cases. However, to find these distinctions and grades is still not easy for many reasons.

The ECJ often does not distinguish the cases, and does not explain why it came to another conclusion under very similar but not identical conditions. One may guess the difference between *Peterbroek* and *Schijndel* or between *Cioala* and *Arcor*, however the ECJ does not provide any answer to this question by itself. This distinction would be more than necessary as these decisions are made as answers to preliminary questions.

IV The preliminary reference procedure

The very essence of the preliminary reference procedure is to guarantee the uniformity and consistency of union law. To this end, national courts are enabled to question the ECJ on the interpretation or validity of EU law (article 268 of TFEU). Regarding national administrative law the preliminary questions aim to clarify whether a national remedy satisfies the double criteria of equivalence and effectiveness. Therefore, the preliminary reference procedure is particularly necessary exactly because union law is primarily carried out by the member states. However, the rulings of the ECJ are often Delphic in a double sense of the word as their obscure wordings are not only binding for the judge referring the preliminary question, but they (as a mandatory interpretation of the founding treaties) also bind all the member states.

Although the preliminary rulings were intended to clarify the meaning of the supranational legal, they arose always in the context of a very special national provision, which does or does not meet the requirements of the

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47 Therefore questionable F Schoch, Europ isierung des Allgemeinen Verwaltungsrechts *Juristenzeitung* 110, 113 (1995).

48 M Claes, *supra* note 36 at 122. ( ) the national court must verify whether the individual who derives a right from community law, has sufficient opportunity to seek judicial protection of that right before a court of law .

principles of effectiveness and equivalence. However, the courts in the other members states do not know exactly the domestic law of the referring court and may only guess what the consequences of a decision for their national provisions. This might be demonstrated by the judgement in the case *K hne & Heitz*, in which the ECJ ruled that the principle of cooperation imposes on an administrative body an obligation to review a final administrative decision in order to take account of the interpretation of the relevant provision given in the meantime by the ECJ. This duty arises under national law, it has the power to reopen that decision; the administrative decision in question has become final as a result of a judgment of a national court ruling at final instance; that judgment is, in the light of a decision given by the ECJ subsequent to it, based on a misinterpretation of union law which was adopted without a question being referred to the ECJ for a preliminary ruling; and the person concerned complained to the administrative body immediately after becoming aware of that decision of the court. The ECJ made its decision by a reference from a Dutch court and established the above mentioned four criteria with regard to the Dutch procedural provisions. However, as the ECJ did not clarify whether these criteria are to be read in the light of the principle of equivalence or that of effectiveness. In the first case, the member states are not obliged to reopen administrative procedures if their domestic provisions do not allow it. However, if they do, they are obliged to extend this option also for union law. In the second case, the member states are obliged to introduce provisions to reopen administrative procedures.

The very similar questions arose regarding the *Factortame* judgement. The House of Lords referred many questions to the ECJ regarding the Merchant Shipping Act, 1988. This Act was contrary to the EU law and one of the questions was whether the national court should suspend the application of the national measure if it has no power to give interim protection. The ECJ decided that full effectiveness of union law would be impaired if a rule of national law could prevent a court seised of a dispute governed by union law from granting interim relief in order to ensure the full effectiveness of the judgement to be given on the existence of the rights claimed under union law. This judgement may also be read in many ways: in Austria, it had been understood as a duty to introduce ex officio[49] mandatory injunctions,[50] an

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49 P Vcelouch, *Auswirkungen der sterreichischen Unionsmitgliedschaft auf den Rechtsschutz vor dem* VwGH *und dem VfGH*, ..JZ 721, 729, (1997).

50 M Holoubek and M Lang (ed), *Das verwaltungsgerichtliche Verfahren in Steuersachen*, 42, 57 (Linde, Cienna, 1999).

interpretation in light of the principle of effectiveness. Nonetheless, this reading is partly a consequence of the fact that Austrian courts do not no British law, and are not aware of the circumstance that injunctions are though available in British law, however, not against the Crown, and the question of the House of Lords served only to clarify this very point.

V Conclusion: The complexity

On the one hand, the union law recognizes the procedural autonomy of its member states, however, on the other hand, it tries to limit it for sake of its own effectiveness and uniform application. To this end, national procedural provisions are subject to the principles of equivalence and effectiveness. As the ECJ interprets these requirements due to a preliminary reference from another member state all its decisions are made in context unknown by the courts of the other member states. These courts look at these decisions from the perspective of their own legal system; they understand these requirements based upon their own preconceptions. Therefore, the judgements of the ECJ are often rather legal irritants[51] which may but not necessarily will induce dynamic changes in the legal system of the EU member states depending on how the national courts understand these decisions. Are they willing to take a bolder step and interpret them in light of effectiveness or are they reluctant to make tectonic changes and they will construe them in the light of equivalence principle? Even if the preliminary reference procedure was introduced to foster uniformity its very conditions nurture rather complexity and dynamic interpretation of domestic law.

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51 G Teubner: Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences 61 *The Modern Law Review* 11-32 (1998).