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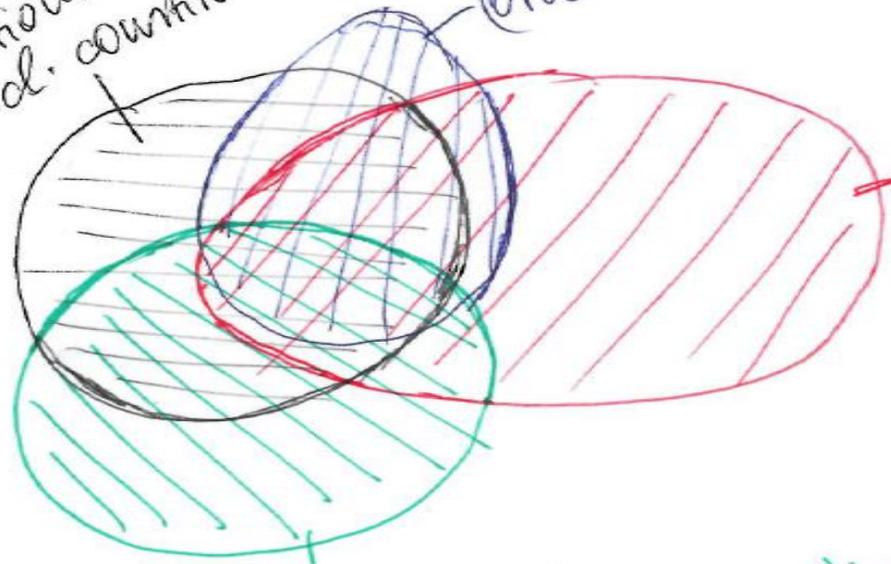
# Application of EU law in the national context – principles and challenges for a judge

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national legal order  
incl. constitutional law  
(other) international law



EU law regime  
incl.  
- FRC  
- general principles  
of EU law

European Human Rights Convention

# Application of EU law

- **Some of the key principles in the application of EU law are:**

1. EU law is an autonomous legal order, specific characteristics
2. Primacy of EU law vs conflicting national law
3. Direct effect of EU law within national legal order
4. Art. 267 TFEU as keystone of the EU judicial system
5. Procedural autonomy – principles of effectiveness and equivalence
6. General principles of EU law and some more key principles.....

=>

What is the scope of EU law? What do we do with *final* decisions violating EU law?

# I.) In which situations does the EU legal regime apply?

## scope of application of EU law:

Jurisprudence of CJEU (Wachauf, Ert) =>

3 main scenarios to come under scope of EU law:

- a) Direct application scenario
- b) Indirect application scenario
- c) Derogation scenario

Summary, opinion GA Bobek, C-298/16

=> *This means in more concrete terms:*

## Scope of EU law – situations

### *Clearly YES :*

- a) EU law is applied (regulation / directive...)
- b) national law transposes EU directive or framework decision
- c) administrative act implements a decision of EU-institution (e.g. national regulation based on EU regulation)
- d) Non - harmonized area of law refers voluntarily to EU provisions
- e) EU-Regulation provides for exercise of discretion on national court level => exercise of discretion „implements EU law“
- f) Restrictions of fundamental freedoms
- g) a national norm objectively ‘serves to implement’ an EU-law obligation (different settings)

## Scope of EU law – situations

### *Clearly NO :*

- a) No EU competences in the field
  - b) no harmonisation measures yet done, but EU competence
  - c) Gold plating
- 
- Scope of EU law – implementing EU law – fields of EU law

## Scope of EU law – situations

### *Grey areas:*

- summary - opinion C-298/16 GA Bobek - how to test the connection:
  - does the legislation intend to implement EU-law?
  - what is the nature of that national legislation?
  - are there specific rules of EU-law on the matter or capable of affecting it?
  - does the legislation have other purposes than the envisaged EU-legislation?

# Scope of EU law - Judicial systems of MS

- Art. 19 para 1 TEU

The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

Case Associacao Sindical dos Juizes Portugueses..., C-64/16

# Judicial systems of member States

## **Confirmed inter alia in:**

- Carlos Escribano Vindel, C-49/18
- Commission vs Poland, C-619/18
- Joined Cases A.K. and others, C-585/18, C-624/18 and C-625/18
- A.B. and others, C-824/18
- “Forumul Judecatorilor din Romania” .. And others, C-83/19
- Repubblika v Il-Prim Ministru, C-896/19
- RS, C-430/21

## **Limits:**

- Miasto Łowicz, Joined Cases C-558/18 and C-563/18
- Maler und Anstreicher OG, C-256/19

## II) Legal validity and EU law

*Supremacy of EU law – procedural autonomy – legal validity – principle of effectiveness*

- case Ciola: Decision was OK but violated later on EU law --- end of legal validity?
- Case Kühne Heitz NV: restricted duty to reopen administrative procedures – duty of sincere cooperation
- Case Kapferer: final judicial decision violated EU law – res iudicata
- Case Hristo Byankov: principle of effectiveness
- Case E.B.
- Case XC, YV, ZA

Thank you!



## II) Implementation of CJEU judgements – Austrian example

- Austrian law to combat wage and social dumping.
- EU directive to post workers => “sanctions must be imposed in case of violation of this directive”
- In Austrian legislation, fines per each worker had to be imposed, which led to the accumulation of fines where numerous workers were concerned.
- Scope of review of Austrian admin judges broad (incl. discretion)
- certain amount of costs (10% of the sanction amount before administrative authorities and 20% by courts) must be foreseen as well as court/procedural fees.
- In every case by law also the possibility of custodial sentences (and its amount) must be declared to substitute the penalties in case that the penalties will not be paid.

## II) Implementation of CJEU judgements – Austrian example

- Proportionality of sanctions for floppily handling of specific documents?

=>case Maksimovic, C-64/18, C-140/18, C-146/18 and C-148/18

Mix of several criteria so that no proportionality all in all.

- Austrian legislator: did nothing => Austrian legal framework all in all still applicable (unchanged)

=>how to implement CJEU decision? No custody? One sanction for all workers? Level of sanctions changed? Upper limit? No costs?

- Decisions SAC, CC

- Second reference: C-205/20 BH Hartberg-Fürstenfeld

- During second reference: legal amendments made