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## THE FORMATION OF GENERAL PRINCIPLES OF JUDICIAL PROCEEDINGS IN THE PRACTICE OF THE EUROPEAN COURT OF JUSTICE

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**Abstract.** The article examines the practice of the European Court of Justice amidst the formation of general principles of judicial proceedings in the EU. The research methodology includes general scientific and special scientific approaches and methods. In the author's understanding, the general principles of the EU *acquis* are the fundamental human rights enshrined in the European Convention of 1950 common to all EU member states. They are the basis of the European legal order in general and the European judicial proceedings in particular. The decisions of the European Court of Justice, which specify the right to a fair trial, effective remedy, independence, and impartiality of the court, etc., are reviewed. The position of the Supreme Court regarding the binding nature to the national judiciary of the principles derived from the decisions of the European Court of Justice is analyzed. Thus, the necessity to deepen Ukrainian judges' knowledge of the judicial law of the European Union is emphasized.

**Key words:** general principles of European Union law, European integration, European judicial proceedings, independence and impartiality of court, right to a fair trial, right to an effective remedy.

**Introduction.** The Court of Justice of the European Union (hereinafter referred to as "the EU Court" or "the Court") holds pride of place in the system of EU institutions. Its practice has formed general principles which are sources of EU *acquis* and ensure the unity of its legal system. The activities of the EU Court made the following provisions statutorily significant and formally consolidated: the principle of respect for human rights and freedoms; the principle of the right to judicial protection; the principle of legal certainty and legitimate expectations; the principle of direct effect and the rule of law in the European Union; the principle of procedural autonomy of the EU Court and the judicial authorities of the Member States, etc. The mentioned principles are essential to the European legal order as a whole. At the same time, they are the basis for the administration of justice within the EU and its member states. The Ukrainian state has already acquired EU candidate status, so the principles of justice, approved by the practice of the EU Court, are especially relevant.

**Main body.** The purpose of this research is to conduct a theoretical and applied analysis of the formation and approval of the general principles of law on which European justice relies in the activities of the EU Court.

**Material and methods.** Foreign and domestic scientific literature extensively covers the European Union's judicial system and the operation of the Court of Justice. In academic and methodological literature, they are usually considered within the EU institutional system or in the context of European law. It is worth mentioning the monographic research by T. V. Komarova (Komarova, 2018), presenting a comprehensive theoretical and methodological characteristic of the Court of Justice of the European Union, as well as the works by I. V. Kaminska (Kaminska, 2021), V. O. Krotinov (Krotinov, 2012), and others, which cover individual issues of the EU Court's activities. A bulk of studies deal with the principles of law formed by the practice of the EU Court and their impact on the development of European Union law, etc. (Nazarenko, 2015; Stanko, 2020; Streltsova, 2012, etc.). However, there is a lack of a comprehensive research of the legal principles developed by the EU Court, which are the basis of European justice.

The methodological basis of the study consists of a system of general scientific and specific approaches and methods. In particular, the dialectical method was used to become acquainted with the legal content of European standards of justice, and the historical method made it possible to identify the patterns of their formation and development. The synthesis of the results obtained during the analysis allowed concluding about the theoretical and applied significance of the EU Court's activities in improving the general principles of justice for modern Ukraine as a European state.

**Results and discussion.** Since the process of European integration is thoroughly covered in the scientific literature, the author outlines only its main stages relating to the formation and development of the EU Court. The beginning of European integration is naturally considered to be the signing of the Paris Treaty on April 18, 1951, setting up the European Coal and Steel Community (ECSC), which brought together 6 countries: Belgium, Italy, Luxembourg, the Netherlands, Germany, and France. It entered into force on July 23, 1952. The Paris Treaty provided for establishing special-purpose institutions of management and control, in particular, the ECSC Court, which consisted of seven judges appointed for 6 years by mutual consent of the governments of the Member States to ensure the correct interpretation and application of the Treaty.

Thus, at the end of 1955, at a conference in Messina, the above countries founded the European Atomic Energy Community (Euratom) to cooperate in the peaceful uses of nuclear energy, and at the beginning of 1957 – the European Economic Community (EEC) to eliminate internal trade barriers, create a customs union and a common market of the Community. As the Treaties were signed in Rome, they were called the Treaties of Rome. With the entry into force of the treaties, the ECSC Court was renamed the Court of European Communities, common to the three Communities: the European Coal and Steel Community, the European Atomic Energy Community, and the European Economic Community.

At the same time, within integration processes, the principles of law common to the legal systems of European countries began to be approved. The very concept of General Principles of Law was enshrined in the relevant founding treaties. However, according to O. V. Streltsova, “the founding treaties specified neither the concept of general principles nor their content. In practice, it made the Court of Justice of the European Communities (now the Court of Justice of the European Union) fill that gap” (Streltsova, 2012: 265). The signing of the 2007 Lisbon Agreement led to significant changes in the EU judicial system, i.e., a new name for the EU supranational justice system entered into circulation – the Court of Justice of the European Union, its jurisdiction was significantly expanded and hence acquired a multi-vector character. Among the powers of the EU Court is the control over the observance of the norms that make up the system of law of the European Union and their interpretation following the “letter and spirit” of the founding treaties. At the request of the national courts of the Member States, the EU Court shall adopt preliminary rulings, which do not contain a decision of the case but only a clear explanation of the relevant EU acts and have the character of a precedent. Thus, during such activities, the EU Court formulated a bulk of fundamental regulations, i.e., general principles, and confirmed their supreme force in the EU legal system.

There are several approaches to determining the specific list and content of the general principles of EU law. In particular, W. Cairns believes that EU law encompasses: a) general principles that originate from Community law; b) those that are common to the legal order of one or more Member States; c) fundamental human rights; d) general principles of international law. To the first group, the scientist attributes the principles of equality and solidarity. The principles common to the legal order of the Member States are: 1) the principle of legal certainty; 2) the principle of legitimate expectations; 3) the principle of proportionality (Cairns, 2002: 104). For his part, O. A. Nazarenko divides the principles of EU law into the following groups: “1) the principles of correlation of EU law with the legal systems of the Member States (the supremacy of EU law over the national law of the Member States, the direct effect of EU law); 2) the principles of the EU life, which determine the procedure for

the implementation of the powers granted (the principles of proportionality, subsidiarity, etc.); 3) special principles of EU law that apply within certain sectors or spheres of legal regulation in the EU; 4) general principles of EU law are the basic guidelines operating in all areas of the EU competence and, at the same time, inherent to democratic legal systems” (Nazarenko, 2015: 243).

As part of this study, the author focuses on the general principles which were formed as a result of the activities of the EU Court. In his opinion, a direct reference to such principles is evident in the EU founding documents, which amended and supplemented the primary treaties. Thus, part 1 of Art. 6 of the Consolidated Version of the Treaty on the Functioning of the European Union states: “The Union recognizes the rights, freedoms and principles enshrined in the Charter of Fundamental Rights of the European Union of 7 December 2000, as amended in Strasbourg on 12 December 2007, which have the same legal force as the Treaties. Part 3 of the same article states: The fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States are general principles of Union law.

Therefore, the general principles of EU law should, first of all, be understood as the fundamental rights and freedoms formulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, and how they derive from the common constitutional traditions of the EU Member States. The EU Court is the entity empowered to interpret and apply the general principles of Community law. According to I. Ya. Stanko, “the frequent use of legal principles in the practice of the EU Court is a practical embodiment of justice, where the rule of law prevails – natural law. It is manifested in court decisions and is mandatory in view of the reasonableness, fairness, and credibility of court decisions” (Stanko, 2020: 159).

As emphasized by I. I. Maryniv, “fundamental human rights have been recognized as the general principles of Community law precisely because of the activities of the EU Court” (Maryniv, 2019: 183–184). At the same time, V. O. Krotinov notes that “the EU Court did not immediately take its control functions in the field of human rights and freedoms. At the beginning of its foundation, it was believed that the legal order of communities is based solely on economic principles [...]. However, in 1969, the EU Court, for the first time, referred to fundamental human rights in the case of *Strauder v Ulm*. Over time, the EU Court developed a catalog of fundamental human rights, which was not granted the force of the regulatory document. During the reform of the founding treaties of 1985 – the adoption of the Single European Act – the governments of the EU states, influenced by the EU Court’s practice, confirmed that respect for human rights is one of the general principles fundamental to the European Union. In 2010, the EU Charter of Fundamental Rights, which became a source of primary law, supplemented the founding treaties. Thus, the powers of the EU Court of Justice in the field of human rights were maximally expanded to such an extent that the issue of correlation between the decisions of the EU Court and ECtHR arose” (Krotinov, 2012).

Consequently, after the adoption of the Charter of Fundamental Rights of the European Union, the decisions of the EU Court primarily rely on its provisions, that is, “for many years, the EU Court has been building judicial practice regarding fundamental rights based on the Charter, turning into the Court of Human Rights for the European Union” (Grzeszczak, Szmigielski, 2015: 11). However, as noted above, the European Union recognizes the fundamental rights enshrined in the 1950 European Convention as general principles of EU law. In our opinion, the relevant provision is systemic for European law in general and European justice in particular. In T. V. Komarova’s opinion, a significant difference in European Union law is that “integration law applies to individuals. European integration used to be a tool for achieving the interests of sovereign states, and now a person comes to the fore hence raising the standards for protecting one’s fundamental rights” (Komarova, 2018: 8). The practice of the EU Court consistently establishes the general principles of the European judiciary, based on the rule of law and ensuring the human right to a fair trial.

It is worth noting that in EU law, the term “tribunal” is used as a synonymous term “court”. The EU Court considered the term in the context of whether a particular entity can apply to CJEU with a preliminary request, as the national court (tribunal) is authorized to do. To define a body applying to CJEU as a court (tribunal), it is necessary “to take into account many factors, e.g., whether the body is established by law, whether it is permanent, whether its jurisdiction is binding, whether a procedure is *inter partes*, whether it applies the rule of law, and whether it is independent” (Judgment of the Court, 1997). Therefore, the EU Court establishes that such a body as a court (tribunal) should be established by law, i.e., every state adopts special laws regulating the functioning of national courts permanently.

The requirement of independence and impartiality of the courts, which are usually considered in unity, is key to the enjoyment of the human right to a fair trial. However, independence mainly concerns the court, and impartiality characterizes the one who makes the decision in the case, that is, the judges. An unambiguous understanding of the principles of independence and impartiality of the courts was formed in the practice of the EU Court. The Court first noted that the concept of a tribunal, that is, a court, “is a concept of Community law and by its very nature can only encompass authorities acting as a third party in relation to the body which has rendered the impugned decision” (Judgment of the Court, 1993). In other words, the court’s independence, which is an indispensable condition for resolving the dispute, means that the court and the body that made the impugned decision must belong to different branches of power.

The EU Court interpreted the requirement of impartiality (neutrality) of courts in two aspects. First, tribunal members (the judges) shall be subjectively impartial: none of its members must be biased or personally interested since there is a presumption of personal impartiality in the absence of evidence to the contrary. Secondly, the court must be objectively impartial: it shall offer guarantees sufficient to exclude any reasonable doubt in this regard (Judgment of the Court (Grand Chamber), 2008).

It should be emphasized that the requirement of independence and impartiality (neutrality), first of all, concerns the EU Court. That view is expressed by I. Kaminska who states that “the EU Court and national judicial authorities are also bound by common requirements for their legal status, in particular, the independence and impartiality of judges, the observance of which is a guarantee of effective judicial protection, as well as by the principles and standards for the administration of justice provided for by the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) and the Charter of Fundamental Rights of the European Union (hereinafter referred to as the Charter)” (Kaminska, 2021: 13).

In its judgments, the EU Court also underlines the need to ensure efficient judicial protection as a “general principle of Community law, derived from the constitutional traditions common to the Member States, enshrined in Articles 6 and 13 of the ECHR and reaffirmed in Article 47 of the Charter of Fundamental Rights of the European Union” (Judgment of the General Court (Second Chamber), 2010). Under Union law, the EU Court considers the Member States shall provide such remedies which would be sufficient and effective in all areas covered by Union law. This follows from the fact that EU regulations do not create new remedies in the national courts of the Member States, thus, each state in its legislation must determine which procedural rules regulate actions to protect rights. At the same time, the Member States should also pay attention to the principles of efficiency and equivalence in establishing these rules (Judgment of the Court (Grand Chamber), 2013).

Therefore, following Article 47 of the EU Charter, each Member State should establish a system of legal remedies in accordance with EU law and procedures that will ensure their protection. It means that the right to a fair trial and an effective remedy applies whenever the rights and freedoms guaranteed by EU law are at stake. If a violation of EU treaties was committed through the fault of the State and due to breach of the practice of the EU Court, the state liability arises. Thus, in the case of *Andrea Frankovic and Danila Bonifaci and Others v. the Italian Republic*, the EU Court found that the

Member State had failed to take the necessary implementing measures within the prescribed period to fulfil the provisions of Directive 80/987 on the protection of employees in the event of insolvency of their employer. In its judgment, the Court stressed that “compensation by a Member State is particularly necessary if the full effectiveness of Community rules depends on prior action by the State and where, therefore, in the absence of such action, individuals cannot enforce before national courts the rights conferred on them by Community law” (Judgment of the Court, 1991).

Having described the main principles of European justice, it is worth assessing their importance for Ukraine within its EU integration. Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, which contains a separate title III “Justice, Freedom and Security”, is the legal basis for cooperation on justice between the European Union and the Ukrainian state is enshrined (Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, 2014). Article 14 “Rule of law and respect for human rights and fundamental freedoms” stipulates that “The Parties shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption. Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom and security”.

As you can see, the principle of respect for human rights and freedoms is the basis for cooperation between Ukraine and the EU. For its consistent implementation in the national justice, “The Parties agree to further develop judicial cooperation in civil and criminal matters, making full use of the relevant international and bilateral instruments and based on the principles of legal certainty and the right to a fair trial” (Article 24 of the Agreement).

As T.V. Komarova notes “with the entry into force of the Association Agreement, Ukrainian courts began to use the Agreement provisions and the case law of the Court of Justice of the European Union, sometimes not correctly enough” (Komarova, 2018: 12). In our opinion, it happened because the legal force of the EU Court’s judgments remained ambiguous for Ukraine at that time. The first attempt to clarify the issue was made by the Supreme Administrative Court of Ukraine in its information letter dated November 18, 2014 No. 1601/11/10/14-14. SAC of Ukraine conveyed the difference between the decisions of the European Court of Human Rights as a body whose jurisdiction extends to the Member States of the Council of Europe and the decisions of the European Court of Justice (EU Court), which functions only within the legal system of the European Union. Since Ukraine is a Member State of the Council of Europe, the case law of the European Court of Human Rights is employed as a source of law in resolving administrative disputes. At the same time, “taking into account the European aspiration of Ukraine’s development, as well as the start of the Association Agreement between Ukraine and the European Union, the legal reasonings formulated in the judgments of the European Court of Justice (EU Court) can be regarded by administrative courts as an argument, considerations regarding the harmonious interpretation of the national legislation of Ukraine under the established standards of the European Union legal system, but not as a legal basis (source of law) for the settlement of disputed relations” (SACU Information Letter, 2014).

However, it should be marked that a prerequisite for obtaining membership in the European Union is to achieve full compliance of the candidate state’s legislation and principles with the EU acquis. We believe this applies to both the EU legislation and the case law of the EU Court. The statement corresponds to the position of the Grand Chamber of the Supreme Court set out in the decision in case 910/9627/20 as of 03.08.2022. According to the Grand Chamber, “the decision of the EU Court should be regarded as one that clarifies the provisions of the acts of Union law. As in the case of applying ECHR decisions, the principles arising from its decisions on similar issues, even if they

relate to other states, are subject to consideration” (Grand Chamber of the Supreme Court, 2022). Thus, the general principles of EU law, formed and approved by the practice of the Court of Justice of the European Union, should be applied by Ukrainian courts and, undoubtedly, guide Ukraine in reforming the national judiciary.

In particular, to meet the requirements of the European Commission, the Verkhovna Rada of Ukraine has recently adopted amendments to the procedure for the selection of Constitutional Court judges, incl. the assessment of the moral qualities and law expertise of candidates for the post of judge of the Constitutional Court, carried out by a 6-member Advisory Group of Experts (Law, 2022). However, the updated opinion of the Venice Commission on legislative changes highlights two important points: “the Advisory group of experts, which will check candidates for the CCU, shall include another (seventh) member from the international experts. The seventh independent expert will reduce political influence on the commission. Decisions of the Advisory Group of Experts shall be binding. Under no circumstances can a candidate who has failed their test become a CCU judge” (Sobenko, 2022). In other words, the Ukrainian parliament did not fully take into account the recommendations of the Venice Commission, so amendments to the law are expected, in particular, an increase in the number of members of the Advisory Group of Experts.

In addition, at the request of the European Commission, it is necessary to complete the integrity check of candidates for the High Council of Justice and the selection of candidates for the High Qualification Commission of Judges of Ukraine. There is a positive trend in this regard, but martial law currently prevents the full implementation of all EU requirements. However, completing judicial reform in Ukraine is essential to form judicial power to the European standards. With Ukraine’s accession to the European Union, the decisions of the EU Court will become binding on national courts in the same way as for the judicial authorities of all current EU Member States. The latter are rightly considered “part of the judicial system of the Union. National courts are undoubtedly an instrument for the enforcement of European Union law, including the decisions of the Court of Justice of the European Union. The above became made possible due to the principles of direct effect of European Union law and its supremacy, which had been also developed by the EU Court. In the event of a conflict between national law and EU law, the application of the relevant principles by national courts authorized them to ignore the former. Thus, the mechanism of cooperation (collaboration) between the Court of Justice of the European Union and the national courts of the EU Member States was objectively formed” (Komarova, 2018: 17).

In our opinion, domestic judges need to deepen their knowledge of the European Union judiciary of to use the case law of the EU Court in administering justice. Thus, the Review of the Case Law of the Court of Justice of the European Union – intended primarily for those entities directly involved in the approximation of national legislation to EU legislation – will be useful. Moreover, it can be a convenient tool to assist in the daily work of Ukrainian courts (Review of Case Law of the Court of Justice of the European Union, 2018).

**Conclusions.** As a result of the study, it was found that the general principles of Union law were formed, approved, and often used in the practice of the Court of Justice of the European Union. Fundamental rights and freedoms formulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and common to the constitutional traditions of the EU Member States have the status of the general principles of EU law. The EU Court has successfully completed its task – to fill the gaps in the general principles of EU law, which currently, according to A. Tatam, “shape an index of key concepts for interpretation used to clarify ambiguous provisions of EU law” (Tatam, 1998: 84). Moreover, the judgments of the EU Court specify the general principles regarding the right to a fair trial and the right to an effective remedy. The interpretations are the standards of justice for all EU Member States and other countries developing towards European integration, including Ukraine.

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