

**Mariusz Baran, *Stosowanie z urzędu prawa Unii Europejskiej przez sądy krajowe [Obligation of National Courts to Apply European Union Law Ex Officio]*, Wolters Kluwer, Warszawa 2014, pp. 540**

The legal problem in the reviewed monograph is the obligation to apply European Union law by the national judiciary *ex officio*, meaning the legal requirement to ensure the effective protection of EU rights in accordance with national procedural law, even in the absence of a relevant request of the parties. Therefore, it is a specific duty of the national court to apply national procedural provisions when the court, on its own initiative (*ex proprio motu*), finds elements of EU law in the pending case. It is also noteworthy that it is the particular obligation of the national court to ensure the effectiveness of the legal norm in question. The obligation is particular, but its scope is broad – as broad and as wide as are the liabilities arising from EU law – for the national court. In this respect, it should be noted that it is impossible to identify or distinguish any specific scope of such obligation as one of the stages of the application of EU law. On the contrary, this kind of obligation arises and can appear in any phase of the application of the law by the national judiciary – whether making findings of fact, recognizing the scope and proper meaning of the legal bases, or determining the legal consequences of the factual elements in the form of the judicial decision.

Following on from these general reflections, and referring to the subject of the analyses in the reviewed monograph, it suffices say that the legal problem of research is clearly defined and it covers a broad spectrum of legal issues of major theoretical and practical importance. The initiative to undertake studies in the subject area in this manner merits recognition, especially when the application of the EU law *ex officio* has

not been thus far examined as a central theme and the main idea of such a comprehensive legal analysis. Although considerable discussion exists on this subject in both Polish and foreign academic literature, it is only as one of the aspects and specific legal consequences of the application of EU law by the national judiciary, mainly due to the involvement of national procedure.

The dissertation under examination comprises 491 pages plus a bibliography and consists of an Introduction, three Parts consisting of fourteen Chapters and a Summary. Part One, headed “National court as a place of the application of EU law” consists of four Chapters and is devoted to subsequent issues such as “The decentralized model of application of EU law”, “Procedural provisions and the application of EU law”, “The principle of national procedures as a method to ensure the effectiveness of EU law” and finally “The principle of effective judicial protection”. There is a clear connection and structural link between the Chapters forming Part One, which is particularly evident in Chapter I, point 2 (“The decentralized model of the application of EU law – the procedural competence of the Member States”), point 2 of Chapter II (The model of procedural priority: a way to ensure the effectiveness of EU law?) and Chapter III (“The principle of national procedures as a method to ensure the effectiveness of EU law”). Finally, special consideration is given to national procedures in point 3 of Chapter IV (“Methods of assessment”). It thus appears that the main focus of research in Part One is the principle of the effective protection before national courts of the rights and obligations based on EU law, hidden in the wider coverage of the title of the Part in question.

Part Two of the monograph refers to “The application *ex officio* of EU law by national courts – the standard resulting from the jurisdiction of the Court of Justice” and contains in Chapter V “A presentation of the key judgements of the Court of Justice dealing with the application *ex officio* of EU law”. As announced in the title, the study in this Part addresses the case-law of the Court of Justice of the EU, in chronological order, and is extensively discussed, together with the factual evidence and the grounds of the judgement. This is to be distinguished from the separate item of “issues arising on the background” of such case-law (point 3). In this manner, the author collects and presents the main thesis developed through jurisprudence in regard to the leading legal problem, which raises a question concerning the proper presentation,

without a general comment, of such cases, especially when the case law presented is of crucial importance for the topic and appears in all parts of the monograph with a relevant accompanying commentary.

Chapter VI combines the application *ex officio* of EU law with the principle of national procedures, whereby the principle of the primacy of EU law over national law and the provisions of substantive EU law are confronted with the means available under national procedural law. Conversely, in Chapter VII the relationship between EU law and the issue of its application *ex officio* is discussed. The next Chapters, VIII, IX and X consider the problems applying EU law *ex proprio motu*, selected for reasons of the effects in national law (EU law as a standard of the legality of acts of national institutions; the legal consequences for rules of public policy; legal bases in EU secondary law). Each of these aspects are of a crucial legal importance and they are contained in the Part dedicated to the “judicial standard” elaborated by the Court of Justice. This perspective shows that deficiencies remain in these standards, which does not necessary mean that the case-law in this area is itself deficient. On the contrary, it emphasises the complexity of the legal matter.

Finally, Part Three of the book presents the “Judicial standard of the application of EU law *ex officio* – legal provisions in relevant court procedures in Poland”. The division of the content is very clear. Chapter XI deals with the validation and interpretation in reference to the substantive basis of the judicial determination. Chapters XII, XIII and XIV focus on the application of EU law in Polish procedural law: civil, administrative and penal. This part is of solid construction and its considerations are based on provisions of Polish law.

In accordance with the indication in the title, the author creates a judicial standard for the application *ex officio* of EU law in Polish court procedures. Therefore, there a comprehensive picture is presented of the procedural and administrative consequences in private-law relationships, implying the participation of private parties in the form of direct application, direct effect, indirect effect (when the protection of rights arises from the interpretation of national provisions in conformity with EU law). The impact of the principle of the primacy of EU law over Polish domestic law is also relevant. It can be thus concluded that the research in Part Three is of a substantive nature to the extent to which it indicates the scope of legal protection of individual rights in Polish courts under EU law. In this context, procedural issues are also manifested, in terms of

the impact of EU law on the possible refusal of national courts to apply domestic law and the obligation to refer a question to the Constitutional Tribunal, in accordance with national law.

It is important to stress that the discussion in this Part is rigorous and intellectually wide-ranging. A broad and representative selection of the case-law of the Polish courts, comprising judgments from the Constitutional Court, the Supreme Court, the Supreme Administrative Court, the Regional Administrative Courts and the Courts of Appeal, provides an excellent foundation for an analysis of the provisions of the Codes of civil, administrative and criminal procedures. Particularly valuable is the reference to the jurisdiction of Polish Constitutional Court, which contributes to the relativisation of arguments found in the case-law of the Court of Justice of the EU, developing a more complete and more objective view of the application of EU law in national courts, including the *ex officio* application. The academic value of these considerations is significant and therefore it can be concluded that the monograph has interdisciplinary features and proves the scholarly maturity of the author.

As a final conclusion, it should be noted that the scholarly approach adopted in the reviewed monograph relocates research from the theoretical plane to the practical verification of the legal problem indicated in the title, identified in the Introduction and clearly established in the consecutive Parts and Chapters. The general legal problem is clearly worded and well framed. The considerations are subordinated thereto and they justify each of the constructive conclusions. Their undeniable particular value stems from the scheme and scientific methods of research adopted in all Parts, from many perspectives and on a number of levels, anywhere the obligation of a national court to apply EU law *ex officio* may arise. Persuasive argumentation, rich documentation and great practical relevance are the essential characteristics of the reviewed book. It constitutes an interdisciplinary study which will undoubtedly receive a great deal of interest from academics, students and doctoral candidates, but it will also assist practitioners to resolve everyday legal problems before their national courts.

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