PUBLIC ADMINISTRATION AND EU CHARTER OF FUNDAMENTAL RIGHTS. LEGAL REMEDIES IN CASE OF VIOLATION OF EU FUNDAMENTAL RIGHTS BY THE NATIONAL ADMINISTRATIVE AUTHORITIES

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Abstract
This paper deals with the consequences arising from the failure of national authorities to comply with EU fundamental rights, in the framework of administrative procedures carried out in Member States of the European Union. In particular, this paper aims to determine the legal remedies available at national level in the context of judicial review, in case of violation, by the national authorities, of EU fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union (hereinafter referred to as “EU Charter”) or as general principles of EU law.

To this end, this study explains the impact of the legally binding EU Charter on the authorities, bodies and institutions of the Member States. In this section, the paper examines the field of application of EU Charter at national level, based on CJEU case-law concerning Article 51 of EU Charter. Also, this section will outline the specific situations in which the national administrative authorities have the legal obligation to ensure respect for the rights enshrined in the EU Charter.

The paper deals also with the issues of legal remedies available in national courts in the larger context of judicial review of the decisions of administrative authorities in the matter of EU fundamental rights.

From this perspective, the paper emphasizes the distinction between EU fundamental rights as primary EU law guaranteed by the EU Charter and EU fundamental rights as general principles of EU law, with the purpose of highlighting the most effective procedural means of claiming, in national courts, violation of EU fundamental rights. Furthermore, in the context of judicial review, for the purpose of an in-depth practical understanding of the subject, the paper will examine, in connection with certain EU rights (the right of defence, the presumption of innocence and the right to a good administration) and based on the most recent CJEU decisions, when it is appropriate to claim rights as general principles of EU law and when it is appropriate to claim rights as primary EU legislation, stipulated by EU Charter.

With reference to the judicial remedies available to national courts in case of violation of EU fundamental rights, the study will emphasize what are the principles and the rules that must be observed by the national courts during the judicial review of the national measures and will try to determine what are the circumstances in which a national court may decide the annulment of the Member State action for the infringement of EU fundamental rights.

Finally, the paper concludes with the most important findings concerning the judicial protection at national level of EU fundamental rights, especially from the perspective of the right to an effective remedy and to a fair trial, stipulated by Article 47 of EU Charter.

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Points for Practitioners

The paper presents interest for practitioners in public administration, especially the aspects concerning the field of application of EU Charter of Fundamental Rights in Member States of EU and the legally binding force of EU Charter for the administrative authorities of the Member States. Also, for practitioners in public administration it is important to know what are the specific situations in which the national administrative authorities have the legal obligation to ensure compliance with the rights enshrined in the EU Charter or with the general principles of EU law (situations presented in paper).

Key words

Charter of Fundamental Rights of the European Union, general principles, national administrative procedures, judicial review, right of defence, right to a good administration.