

Abuse of European Union law

Abstract

The aim of this dissertation is to analyze the principle of the prohibition of abuse of EU law and its applicability in various areas of EU law. The dissertation focuses mainly on the analysis of the case law of the Court of Justice, which plays a crucial role in defining the principle and the scope of its application.

The following research questions are set out in the dissertation: 1) What practice constitutes the abuse of law under EU law?; 2) Does the Court of Justice apply only one single principle of the prohibition of abuse of EU law or does it apply various principles to different areas covered by EU law?; 3) If there is only one principle of the prohibition of abuse of EU law, how is this principle applied in various areas of EU law? Is the principle applied always in the same manner or are there areas of EU law that are subject to a more restrictive application of this principle? 4) What are the legal means that can prevent the abusive practices of economic operators or more precisely what are the legal means that can reduce the abuse of law?

In order to answer these research questions the dissertation is divided into five parts. The first part defines the notion of abuse of law and the purpose of the principle of the prohibition of abuse of law, which finds its legal roots in the legal systems of the Member States. The second part deals with the principle of the prohibition of abuse of law as it is applied in the case law of the Court of Justice. The abuse of EU law is subsequently divided into two autonomous categories, namely the abusive practice leading to circumvention of national legislations of Member states and the direct abuse of EU law in order to obtain an unjustified benefit. The third part describes the prohibition of abuse of law leading to circumvention of the national legislation and is divided into two chapters. The first chapter analyzes the case law of the Court of Justice in the area of free movement of services and freedom of establishment in cases where economic operators claim the applicability of the national legislation of another Member State through abusive practices. The subject of the second chapter is the abuse of law leading to circumvention of national legislation and abusive application of the EU legislation. This type of abusive practice is illustrated in the areas of mutual recognition of professional qualifications and free movement of persons. The fourth part analyzes the case law of the Court of Justice in the field of direct abuse of EU law that is carried out in order to obtain an unjustified benefit. This part is also divided into two chapters, namely the chapter dealing with this type of abuse of law in the area of the common

agricultural policy and the chapter covering the tax law. In the latter part the dissertation focuses also on the two-step test of abuse of law laid down in Emsland-Stärke judgement, i. e. the objective and subjective condition for establishing abusive practice. The fifth part of the dissertation focuses on the possibilities of how to prevent the abuse of EU law. The attention is paid to the prevention of abusive practices through the legislative activity at the EU level (i. e. through the negotiation of secondary legislation) and through the legal means invoked by the Court of Justice such as overriding reason relating to the general interest or restrictive interpretation of EU provisions.

Klíčová slova: abuse of EU law, circumvention of national legislation, EU law