OMISSION OF EU´s MEMBER STATES LEADING TO THE LIABILITY FOR DAMAGE

RESUMÉ

This thesis deals with the responsibility of the member states of EU for damages caused by failure of member states. Both problems are solved in this work, as general requirements for liability relationship, as description of these failures modes with numerous references to case law of the European Court of Justice. Indeed, case law represented a huge range of sources for this thesis. To sum up the work into several points, we can start by making a breakthrough in the issue of liability in the European Union which Francovich case meant. This case established the rule that it is the responsability of member states to implement EU law properly and in time and provide protection to the rights that follow these standards. This rule was followed by other cases which are called „the first generation of cases liability“ by many authors. Typical liability sentence: unlawful act (caused by the EU´s institution), the damage suffered by the other party and the causal nexus, was subsequently supplemented by the Schöppenstedt criterion, which established the rule that during the process of adopting EU´s legislation must be sufficiently serious breach of the law standards, which serves to protect the individual. The last unification of the liability conditions was made by the Bergaderm case, which provided that the protection of the right which the individuals belong from community law, can not be changed depending on whether the damage was caused by the national or EU law. Final construction of responsability looked like this: inlawful act or omission involving the breach or a rule which confers rights to the individuals; the infringement is sufficiently serious, the damage was caused, the causal nexus between illegality and the damage suffered. It was also necessary to determine which conduct is attributable to a member state, so everything what applies to the concept of non/activity of member state which could be imputable to the state. Besides the typical cases, we discuss the judgement of Tarmo Lehtinen, that sets the cases imputable to the states by the acting of the government official: „the official is in general competent for the area in question, the official’s written statements appear under the official letterhead of the competent department, the official gives television

interviews on the premises of his department, the official does not indicate that his statements are private or that they differ from the official view of the competent department, and the competent State departments do not immediately take the steps necessary to eliminate the impression given to recipients of the official's statements that they represent official statements of the State." As different types of failure of the member states are listed: failure of the application of the directive, the issue of discretion of implemented directive (with reference to the cases Dillenkofer, Denkavit and Lindopark), the necessity of proper implementation of the directive (Robins judgement), breach of the obligation to ask a preliminary question (Gaston Schul Douane- Expéditeur), ignoring the established case law (Kobler) and failure to adapt national law adopted by parliament (and the issue of conflict of regulations which are in conflict with EU´s law- Brasserie, Factortame).

EU´s liability regime came to the czech law by act no. 82/1998 Coll. This law seems to me rather awkwardly, I find the only one positive aspect of that in not fixing the requirement of a sufficiently serious breach of the obligation to fulfill the required of liability conditions.

Key words: omission, liability, directive