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Reasonableness and Law

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be limited, on the model of the English example. One such person was Guido Zanobini, an influential Italian administrative lawyer. In the 1920s he worked out a sort of standard positivist view of the principle of legality, arguing that an administration can do only what is explicitly provided for by specific laws (see Zanobini 1956, 25).

However, such a narrow conception did not reflect reality—and still doesn't. Since the beginning of the 20th century, general and abstract legislative rules have been replaced by legislative programs administered by governmental agencies. Because these forms of governmental action were not suitable for the 19th century, they were viewed with suspicion and were often neglected. Over the years, however, there has been a growing recognition that a basic transformation has taken place. Statutes are often designed to achieve a plurality of interests, without setting out any precise or rigid ranking among such interests. As a result, an administration must not only identify the optimal measure by which to maximize a given public interest:[3] it must also decide which interests are to be maximized. Discretionary powers, in sum, are inevitable and wide. The fundamental question, then, is not *whether* discretion ought be altogether eliminated but rather *how* discretion may be properly limited (to borrow a fortunate formulation), and how it may be structured and checked (see Davis 1969).

Procedural and substantive standards alike have been devised for this purpose. The growing demand for procedural standards is a consequence of governmental activism: the more public rules and decisions affect different and even contrasting interests, the greater will be the demand to include all such interests in the decision-making process. And so it is that procedural due process requirements have been developed by national and international bodies. These requirements include the right to have a hearing and to access relevant papers and documents, the giving-reasons requirement, and the right to effective judicial protection. However, these requirements do not ensure the fairness of rules and decisions. This has been pointed out in an oft-quoted remark by Lord Denning, M.R., who said: "I go further. Not only must he be given a fair hearing, but the decision itself must be fair and reasonable."[4] This position reflects a tendency of courts in several jurisdictions to check for the reasonableness of administrative rules and decisions. Judicial decisions and EU directives also require that administrative and legislative measures be proportionate.

Methodologically, therefore, it seems useful to begin with an analysis of the different meanings that courts (mainly in the United Kingdom and Italy) ascribe to the concept of reasonableness. Next, I will compare such concept with that of proportionality, bringing out similarities and differences. And, third, I will consider the standing that reasonableness enjoys as a general principle of law.

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[3] For this model, see Mashaw (1985).

[4] *Chief Constable of North Wales Police v. Evans*, (1982) 1 WLR 1155 at 1160 and 1174.

2 The Concept of Reasonableness

2.1 What Reasonableness Is Not*: The* Wednesbury *Doctrine*

Defining reasonableness in the positive—what it *is*—is not at all an easy task. This explains why the courts often find it easier to do it in the negative, pointing out what instead is *not* reasonable. This approach led English courts to identify what has come to known as *Wednesbury* unreasonableness.

This term was introduced in *Associated Provincial Picture Houses v. Wednesbury Corporation* ([1948] 1 KB 223). The plaintiffs were granted a licence by a local authority (the defendant) to operate a movie theatre provided that no children under fifteen be admitted on Sundays. The plaintiffs sought a declaration that this condition was unacceptable, and that the Wednesbury Corporation was acting beyond its legal powers in imposing it. The court held that it would correct a bad administrative decision on grounds of unreasonableness only if:

- the corporation made the decision taking into account factors that ought not to have been taken into account; or
- the corporation failed to take into account factors that ought to have been taken into account; or
- the decision was so unreasonable that no reasonable authority would in its right mind ever consider imposing it.

Two meanings of *unreasonableness* thus emerge.[5] The first one encompasses a variety of flaws, such as giving weight to irrelevant considerations of fact. The second one expresses a more substantive concept, to be sure, but it also relies on a more extreme criterion, that is to say that an administrative decision will be overturned only if it is "so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it," as was remarked in the GCHQ case,[6] almost forty years later, by another famous English judge. Many commentators have since criticized that text as implying an abstentionist approach by the courts, because it permits judicial intervention only if a decision is so unreasonable as to be aberrant. Several scholars have called for a more searching criterion of judicial review. An important argument along this line of reasoning (see Elliott 2001, 301) is that the European Court of Human Rights adopts a more intrusive approach to substantive review, an approach founded on the principle of proportionality.

Although proportionality will be considered in Section 3 below, it is useful to observe here that the "narrow" or "weak" concept of reasonableness has been used by the courts in other jurisdictions, too, for example, by Italian

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[5] Craig (2003, 553) calls the first meaning the "umbrella sense" and qualifies the other as "substantive."

[6] *Council of Civil Service Unions v. Minister for the Civil Service* (1985) AC 374, 410 *per* Lord Diplock.

administrative judges, who understand reasonableness in a similar way. Their starting point is that when discretionary powers are entrusted to an administration, it is the judge's role to verify whether the latter has acted within the bounds of such discretion. When discretion is particularly out of bounds, an administrative decision may be quashed only if it evinces manifest unreasonableness (*manifesta irragionevolezza*). This applies, for example, to disciplinary measures taken against civil servants. In a recent case, an administrative court held that neither the allegations about the civil servant's conduct nor the administration's infringement of established rules and practices warranted judicial review: such review would have been available either if the allegations had been clearly wrong (gross error of fact) or if the disciplinary action was on its face unreasonable (*manifesta irragionevolezza*).[7] As in the UK, in sum, the basic idea is that discretion comes in degrees, and only a very extreme degree of unreasonableness can bring a fully discretionary decision within the scope of judicial invalidation.

2.2 Reasonableness as Logic or Coherence

In other judgments, reasonableness is conceived as logic. One such judgment reveals one of the weaknesses of the Italian political and administrative system, namely, its lack of effective oversight and prompt measures against the unlawful construction of houses. Inevitably, a demand for "amnesty" grows and, from time to time, political institutions provide such a pardon by an act of Parliament.

Now, even if we sidestep the underlying moral question, we are faced with another set of complex issues in this regard. One of them is how to set the standards for fines that owners are required to pay. The higher administrative court recently specified that the "reasonableness principle" requires, first, that the day from which an amnesty becomes available (producing its legal effects) cannot be completely disconnected from the day in which the house was finished. Second, as the court observed, houses built infringing the *same* rules over the *same* period cannot be subject to different fines, and this brings in the principle of equality.[8]

Logic and equality both lie at the heart of another recent case, this time brought before the Italian Constitutional Court. Another weakness emerged from this case, namely, the use of retroactive and unclear fiscal rules by the Italian Parliament. The Constitutional Court consistently held that the legislator cannot use an interpretive, and retroactive, rule having a twofold, and contradictory, effect. This effect consists, on the one hand, in making certain sources of income tax-exempt and, on the other hand, in denying any right to recover sums erroneously paid to the government. The contradiction, then, is that the same income is at once deemed tax-exempt and not recoverable. This not only violates the solid principle prohibiting

[7] TAR Sicilia–Palermo, Section II, 2 December 1991, n. 642 (TAR stands for Tribunale Amministrativo Regionale, the lower administrative court).

[8] Consiglio di Stato, V, 11 October 2002, n. 5502 (my translation).

unjust enrichment but also violates logic—understood as straightforward Aristotelian noncontradiction—and it consequently also violates the principle of reasonableness, which the Court derives from the principle of equality (as contained in Article 3 of the Italian Constitution).[9] A lack of coherence and consistency thus becomes in this sense the essential point of reasonableness.

A further question arises from this case, namely, whether reasonableness might be considered from the point of view of retroactivity. As Lon Fuller (1969, 51) pointed out, retroactivity raises serious questions from a normative point of view. His starting point is that, since a system of law has an essentially prospective value, a retroactive law is simply "a monstruosity." This is plain logic, once we accept that the basic mode of regulating human conduct is "If A, then B." However, he concedes that this is the way a prospective system of rules must *generally* work: it does not prevent a specific statute from producing effects retroactively, as in the case of a "curative measure." And such a need (to cure what has gone before) does indeed arise if rules are pragmatically conceived as instruments with which to solve concrete problems. That said, the question arises whether the legislator enjoys full discretionary powers in this regard. Positive rules preclude such powers, especially in criminal law. Constitutional courts may admit retroactive effects in other areas of the law, as in administrative and tax law. For example, they may consider reasonable a statute designed to set straight a legislative incongruence. A retroactive statute may in this sense be reasonable to the extent that it answers a basic legal need, that is, the need to make sure that the laws can in fact be obeyed (ibid., 54). But this presupposes a positive appreciation of what the legislator is seeking to do with a retroactive statute: if the legislator goes against logic or crafts a law harmful to individuals or businesses, then a negative judgment is more likely to ensue.

2.3 Reasonableness as Consistency

While the courts' focus in assessing the reasonableness of legislation falls mainly or even exclusively on the final *outcome*, they often instead lay emphasis on *process* when reviewing administrative decisions. This connection between procedural (as opposed to substantive) due process requirements and reasonableness emerged, for example, in a dispute between Monsanto and the Italian government, in a case heard before both national courts and a panel of the World Trade Organization.

At the end of the 20th century, suspicion grew in Italy, as in other EU countries, about genetically modified organisms (or GMOs). This led to both a national and a EU-wide ban on the introduction of such products in the market. Monsanto and other multinational corporations persuaded the governments of three the WTO members—the United States, Argentina, and Canada—to challenge the ban. They held that the ban violated the Agreement on the Application of Sanitary and Phitosanitary Measures, an annex to the Marrakech Agreement, under which

[9] Constitutional Court, 26 July 2005, n. 320.

the WTO was established. A panel was thus set up, and it recognized the applicants' argument as valid.

The panel did not in principle exclude the legitimacy of national measures limiting the import of products considered dangerous for human health. But it did observe that such measures must be based on an assessment of risk; otherwise, they are arbitrary. The problem with the Italian ban was precisely its not being based on the opinion of the competent scientific agency: the agency did acknowledge that the composition of OGM products does not entirely match that of traditional products, but it found that this posed no risks to the health of either humans or animals. According to the panel, the expression "based on" means not simply that the ban must be preceded by a scientific study but that there must be a rational relation between the two. The failure to show such a rational relation, then, was to account for the illegitimacy of the ban.[10]

The first thing to note here, for our purposes, is that the panel's decision was not prompted by the usual genuflection to a specific way of conceiving the precautionary approach but was instead focused on the ban's rationality and coherence: what specifically led the panel to judge the ban irrational was its inconsistency with any scientific assessment. The second thing to note is that the same conclusion was reached by the administrative judge in a parallel dispute regarding the same ban. The judge relied here on a more traditional legal principle, namely, *difetto d'istruttoria*, meaning that the process of discovery (the preliminary investigations of relevant facts, leading to the ban) was deemed inadequate. The outcome, however, is the same, which is that an administrative act was found to be unreasonable because incoherent.[11]

2.4 Beyond Logic and Consistency: The Reasonable Time of Judicial Processes

There is still another way in which the courts understand reasonableness. This understanding centres on a basic element of human conduct that public authorities do not always consider with due regard, and that is time.

Unlike the American and Spanish constitutions, the Italian Constitution does not contain a due process clause. It only requires public administrations to uphold the principles of impartiality and sound administration (Article 97). In 1990, however, a general statute on administrative procedures was adopted partially modelled after the US Administrative Procedure Act of 1946 (see della Cananea 2006, 117). The statute requires all public authorities to provide individuals with a fair opportunity to be heard in procedures whose outcome is likely to affect their interests. As a

[10] Report of the Panel, WT/DS291/R, *European Communities: Measures Affecting the Approval and Marketing of Biotech Products* (2006). For a detailed analysis of interests and processes, see Shaffer (2008).

[11] TAR Lazio, Section I, 3 December 2004, n. 14477.

result, notice must be given whenever an administrative procedure is commenced (Article 7, Law No. 241/1990). Unfortunately, public administrations will often ignore this requirement if they can. The courts may pass over such non-compliance in some cases, especially when the administration is under pressure to act urgently or when circumstances necessitate it, as when there is a serious risk that public property is damaged. But they will not *always* accept such non-compliance. Nor will they accept too short a notice to present evidence and arguments for and against the line of conduct the administration intends to follow. One administrative court found that three-days' prior notice will not suffice to meet the principles of sound administration and reasonableness.[12]

Time is crucially important in another context, too, where the length of public procedures is concerned. Particularly relevant in this respect are the implications of Article 6 of the European Convention on Human Rights (ECHR), entitling everyone "to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" (Article 6). The only condition required by this provision is the existence of either a civil right or obligation or of a criminal charge. Article 6(1) applies, therefore, to both civil and criminal cases. The question arises, however, whether it *only* applies to such cases. Indeed, the terms "civil right," and "obligation" are not particularly clear, especially to English courts and lawyers. However, these terms have been broadly interpreted by the courts in Strasbourg to include disputes about land use and claims for certain types of social-security benefits. The scope of Article 6 has thus been extended to administrative cases and, more recently, to administrative procedure, too.[13]

One such case is *Procaccini v. Italy*, involving a woman working as a caretaker at a school owned by a municipality. She was not, technically, a civil servant with a permanent job, which incidentally explains why she had not been required to pass an open competition for that job. However, after several years, she brought an action before the administrative court, claiming that the court ought to recognize her the status of civil servant. The action was brought at the beginning of May 1990, but it took six years for her filing to reach the court's secretariat, and then another one and a half years for the court to issue a judgment. The caretaker therefore sought relief before the European Court of Human Rights in Strasbourg. The respondent state, Italy, argued that the general rule did not apply because of the exemption that public administrations were granted under established caselaw. However, the exemption is granted only if and to the extent that a civil servant has a part in pursuing the state's essential interests and exercises public powers, such as the power to issue or deny a license or to punish a certain conduct. The court found that none of these requisites applied to the activity carried out by the applicant, and it accordingly recognized her right, even though her employer was a public administration. Nor did the court hesitate to recognize her claim, since the seven and a half years it

[12] TAR Sardegna–Cagliari, Section II, 27 May 2005, n. 1271.

[13] For a comparative analysis of how national courts interact with the European Court of Human Rights in three legal orders, see Mirate (2007).

took for the process to unfold was in excess of the reasonable time required under Article 6 ECHR.[14] Interestingly, the court also pointed out that the national remedies showed themselves in several cases to be inadequate. Not only was the specific process unreasonably long, then, but this brought to light a broader problem, too. As a result, the court also recognized a claim for equitable compensation.

3 Reasonableness and Proportionality

3.1 Reasonableness as Proportionality?

The ECHR proves useful as well with respect to another possible meaning of reasonableness, that is, reasonableness as proportionality. The European Court of Human Rights has held on several occasions that differential treatment is discriminatory under Article 14 ECHR if it has "no objective and reasonable justification." Such a justification is found to be lacking if:

- there is no legitimate public aim; and
- there is no reasonable relation of proportionality between the means employed and the ends pursued.

For example, in *Abdulaziz v. United Kingdom* and other cases, the European Court of Human Rights held that the UK Government had failed to provide a reasonable and objective justification for denying some women residing in the UK permission to be joined by their husbands, all of whom were non-nationals. The court found that the application of the relevant rules was disproportionate to the purported goals.[15] In this sense, then, an administrative decision is unreasonable if disproportionate.

The question thus arises whether proportionality and reasonableness are essentially the same concept, and so whether proportionality should replace reasonableness. Some judges say it shouldn't, arguing that proportionality exists as a separate ground of review applicable to fundamental rights. This view seems to be shared in particular by the House of Lords, which has on several occasions recognized the continuing validity of the *Wednesbury* doctrine. Other judges have held that there is no solid justification for retaining this doctrine. For them, the time has come to use proportionality even in domestic cases, as Lord Slynn has argued in *Alconbury*.[16] It may be correct to treat like situations alike, regardless of the traditional distinction between the national sphere and that of the EU. Still, it could be argued that proportionality and reasonableness are two distinct legal concepts with different standards of assessment.

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[14] European Court of Human Rights, case n. 31631/96, *Procaccini v. Italy* (2000).

[15] European Court of Human Rights, case n. 9473/81, *Abdulaziz v. United Kingdom* (1985).

[16] *R (Alconbury) v. Secretary of State for Environment, Transport and Regions*, 2 All ER 929 at 976 (2001).

3.2 Proportionality as Balancing

The concept of proportionality originates from German doctrines and was later borrowed into EC law by the European Court of Justice (ECJ). At the heart of this concept is the idea that a public authority must not only weigh public and private interests (this is the essence of discretionary power)[17] but must also choose measures that imply the least burden on the private interests at stake. Even a quick glance at the ECJ's established caselaw reveals that the essence of proportionality lies in balancing. Proportionality involves a three-stage test, checking for adequacy, necessity, and proportionality strictly construed. Only if an administrative measure is deemed adequate and necessary will the ECJ assess whether the burden it entails is disproportionate to the aims the authority is pursuing through the same measure.[18]

The ECJ's established caselaw has influenced national courts, too. A recent example is provided by a dispute on environmental standards in Italy. A local government administration had issued an authorization requested by an enterprise and then decided (only afterward) to impose on the enterprise some conditions designed to raise environmental standards. The enterprise claimed that these conditions were inappropriate and unnecessary and that they entailed an excessive burden, and high costs in particular. The claim was recognized as valid by both the regional court and the higher jurisdiction (Consiglio di Stato), precisely on the basis of the balancing test.[19]

Balancing plays an important role with respect to positive norms, too. While there may be little scientific basis for the distinction between the use of proportionality in determining the legislative and administrative capacity of EC institutions and its use in dividing competences between the EC and its Member States,[20] there are two other areas where balancing can be a useful component of proportionality. First, we can appreciate that the idea of balancing was incorporated into the Treaty of Rome with a view to ensuring compliance with the principle of subsidiarity: the last paragraph of Article 3 states that "any action of the Community shall not go beyond what is necessary to achieve the objectives of this treaty." Second, EU directives require national regulatory authorities to carry out a balancing test when privatizing public utility companies, such as power companies and providers of electronic communications. For example, Article 9 of Directive 2002/21 (a framework directive) requires that the management of radio frequencies for electronic-communications services be carried out on the basis of a series of principles including objectiveness, transparency, non-discrimination, and proportionality. Article 4 of Directive 2002/19 (on services) requires national regulatory authorities to respect the same

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[17] For this thesis, see Giannini (1939).

[18] The literature on proportionality is vast. For the view that proportionality originates from German legal doctrine and emphasizes balancing, see Stone Sweet and Mathews (2008).

[19] Consiglio di Stato, Section V, 14 April 2006, n. 2087. The standard reference in Italy on the meaning and value of proportionality is Sandulli (1999).

[20] Usher (1999, 37) describes this as a "simple level of classification."

principles when imposing duties on providers. Once again, therefore, the emphasis lies on balancing means and ends.

3.3 The Question of Standards

Proportionality and reasonableness are both very broad principles of law designed to ensure the fairness of rules, and even more so of decisions. However, two main differences do emerge between them. The first of these is a functional difference. Proportionality implies balancing, and this means that the reviewing court has to carry out a sort of quantitative analysis: it must consider the relative weight accorded to the interests at stake. This implies the exercise of a strong judicial power, which sometimes comes very close to the line between legitimacy and opportunity and sometimes oversteps it. It therefore produces strong institutional consequences, making for a great deal of judicial exposure. Where reasonableness is concerned, the emphasis falls instead on logic and rationality, or it otherwise falls on consistency and coherence (see also Cassese 2006, 13; Craig 2003, 616). The second difference is a structural one: while proportionality involves the three stages previously identified (adequacy, necessity, and proportionality strictly understood), reasonableness involves a must less structured test, one that is not only broader but also much vaguer.

These features emerged in a recent case brought before a regional administrative court in Italy. A regional administration had issued the date and time for an open competition to qualify for medical training. One of the candidates, a young woman, showed up ten minutes late. The exam committee decided to admit her anyway and also gave her a passing grade. However, it later turned back on its decision and struck her name from the list of those accepted into the training program. Since the decision was upheld by the region, the woman brought an action before the regional administrative court, arguing that a few minutes' delay could not, and did not, give rise to any adverse consequence. Indeed, while the candidates did have to show up by 8:00 a.m. (so as to allow adequate time for a number of administrative activities, such as identifying the candidates and handing out multiple-choice tests), the exam would not begin until later, at 9:30 a.m. The administrative court recognized the claim, finding that a few minutes' delay did not compromise the equal treatment of all candidates. And the court adduced a further ground, this being the principle *Ubi lex voluit dixit* (where the law requires something, it expressly so states it), thereby arguing that since the administrative rules did not explicitly establish automatic disqualification for delay, the administrative decision contravened the principles of reasonableness and logic.[21]

This case gives rise to several questions. Did the court really attribute such importance to the literal interpretation of the text? Or did the court simply think the administrative decision was too strict or (stated otherwise) unfair, and so went

[21] TAR Puglia–Bari, Section II, 15 January 2005, n. 590.

looking on that basis for an adequate legal ground with which to justify such a view? And, in this latter case, could the court have used the proportionality test? A possible answer is that, since proportionality requires a close balancing of all the interests at stake, public and private alike, as well as a more stringent judicial assessment of policy issues, and since the court was not ready or willing to undertake this effort, it chose to instead cloak its choice in the guise of reasonableness. This conjecture may also explain, as some observers have suggested (see Usher 1999, 40), the reluctance of some UK judges to apply proportionality in domestic cases not dealing with fundamental rights.

Finally, one could wonder whether the court might have reached the same result in another way. For example, it could have deemed contradictory the initial decision to admit the woman, only to disqualify her later, and having passed her in the meantime, too. But this is not what the court really said, for it instead lay emphasis on other factors, pointing out in particular the lateness of some of the civil servants entrusted with the task of test supervision. Another possibility was to see whether the administration offered any reasons in support of its decision. This is a check the courts must carry out under the giving-reasons requirement, yet the courts, as has been observed with regard to the US (see Shapiro 1992, 185), tend to instead judge on merits whatever reasons are offered, with the result that a procedural constraint is turned into a substantive one. Judicial activism is less apparent, on the other hand, when this more-searching scrutiny is based on substantive constitutional principles, such as equality under the law: the courts would try to determine, in this sense, whether there was an unfavourable outcome and, if so, whether such an outcome falls within the prohibition against unreasonable discrimination.[22] A similar review was undertaken in *Abdulaziz*, where the European Court of Human Rights found that the reasons stated by the UK government did fall within the scope of such a prohibition and so could not justify the differential treatment in question.

4 Reasonableness as a General Principle of Law

4.1 An Unwritten General Principle of Law?

The fact that reasonableness is vaguer and less structured than proportionality may explain a further partial difference. Like reasonableness, proportionality was worked out by the courts on the basis of doctrinal theories about the legitimacy of administrative action. Both principles thus originate from *professorenrecht* and *richerrecht*, and they are accordingly reckoned among the *principes hors texte*, to use the French expression (Letourner 1951, 19 n. 5), by which is meant those legal principles that lack a textual basis.

[22] See Ely (1970), for the thesis that the duty to state reasons often serves to identify "disadvantageous distinctions."

While this expression betrays the French reluctance to accept a legal precept without a specific textual basis (a reluctance owed to a strict legal positivism), it points out not only the feature that distinguishes such principles from legislation but also their function as a limitation on majority rule. In France, this function proved to be particularly important after 1944, when the Conseil d'État, absent any kind of constitutional court, undertook the task of repealing the legislation introduced under the Vichy Regime that was deemed politically and even morally unacceptable. As Réné Cassin wrote some years later, such general principles made it possible for French public life to come under a new ethic.[23]

Unlike reasonableness, however, proportionality is frequently enounced in positive law, especially in the context of the EU. Aside from the general provision on proportionality as a corollary of subsidiarity, there is also a plurality of provisions concerning public utility companies. Reasonableness is instead for the most part an unwritten principle, for which reason the courts invoke it under the heading of broader constitutional principles, one of them being equality. An example of this way of conceiving reasonableness may be found in the Italian Constitutional Court's judgment on fiscal exemptions: the court found that a retroactive rule is in itself an anomaly, and is even less compatible with the principle of reasonableness when internally incoherent and contradictory.

But while reasonableness is *mainly* an unwritten principle, it is not *just* that. Thus, Article 6 ECHR, a written constitutional document, goes beyond the requisite of a fair process by requiring Member States to also ensure a "reasonable time" for any judicial process. Moreover, the trend is for this requisite to be constructed more and more broadly, so as to also include adversary administrative procedures, like the ones that give rise to the adoption of penalties.

What really matters, in sum, is not the textual basis of reasonableness, or the lack thereof, but its actual influence on public action. Nor is it particularly important that the courts or similar other bodies should use the term *principle* or *general rule*, as the ECJ did in the first case in which it dealt with the principle of proportionality.[24] What matters is instead that reasonableness, understood as a legal precept, be counted among the general principles of law. This gives way to important legal consequences.

4.2 Reasonableness as a Requisite of Validity

As was observed earlier, there is empirical evidence showing that the courts will not hesitate to recognize reasonableness as a principle in its own right, as an autonomous principle, one carrying its own legal import or status. This means that reasonableness

[23] See Cassin (1951, 3 n. 5): "Grace à ces principes généraux l'ensemble de la vie publique française est soumise à une éthique" (Thanks to these general principles, the whole of French public life is subject to an ethic).

[24] European Court of Justice, Case 8/55, *Fédération Charbonnière de Belgique v. High Authority*.