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Reasonableness and Law

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approach clearly extends the Court's judicial discretion in defining the scope of the rule of reason and hence that of competition law. The rule of reason also plays a role in connection with Article 81(3), under which the effects that counteract competition must be balanced against those that promote it; however, the Court's discretion in this context is limited, since the assessment is to be made within the Treaty framework. The Court has held up in this respect a flexible application of the Treaty provisions by establishing that "competition cannot be enforced without account being taken of the economic and legislative context and the effects of the alleged infringements."[21] However, such a flexible approach cannot mean that judicial application of the rule of reason may affect the requirement to comply with EC obligations. As the Court clarified, "even if the rule of reason did have a place in the context of Article 85(1)—now Article 81(1)—of the Treaty, in no event may it exclude application of that provision in the case of a restrictive arrangement involving producers accounting for almost all the Community market and concerning price targets, production limits and sharing out of the market."

Furthermore, reasonableness may also have a crucial role in assessing whether a national measure may be justified on the basis of the precautionary principle; this is well illustrated by the *Monsanto* case,[22] where the Court had to consider the unpredictable effects on human health which may be produced by the insertion of foreign genes in foods. According to the Court, the precautionary principle means that "where there is uncertainty as to the existence or extent of risks to human health, protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent" (par. 111). Protective measures thus presuppose that risk assessment provides scientific evidence which "makes it possible reasonably to conclude on the basis of the most reliable scientific evidence available and the most recent results of international research that the implementation of those measures is necessary in order to avoid novel foods which pose potential risks to human health being offered on the market" (par. 113). One may argue that, in this case, the principle of reasonableness takes the form of an assessment of how probable a risk is, and thus plays a pivotal role in clarifying the scope of the Member States' power to limit the free movement of goods by asserting a reasonable probability of a health hazard on the basis of scientific evidence.

If the Court makes wide use of the principle of reasonableness—under the previously described scheme—in assessing whether a Member State has correctly used its power to derogate from EC law, the principle has at times been accorded some relevance in the more general context of verifying compliance with Treaty

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[21] Case C-235/92, 8 July 1999, *Montecatini v. Commission ECR*: I-4539, par. 130. See also Case C-552/03 P, 28 September 2006, *Unilever Bestfoods, ECR* I-9091ff., par. 13; Case T-112/99, 18 September 2001, *Métropole télévision, ECR*: II-2459ff.; Case T-328/03, 2 May 2006, *O2, ECR*: II-1231ff. See on the rule of reason in competition law: Odudu (2002), Manzini (2002), Wesseling (2005), Marquis (2007), and Rossi and Curzon (2008).

[22] Case 236/01, 9 September 2003, *ECR*: I-8105ff.

obligations.[23] To bring just one example, the Court considered whether a charge levied under a national system was reasonable, so as to ascertain whether the charge had to be deemed a tax or a service fee (it would have been prohibited by the Treaty in the former case and permitted in the latter). For a charge to be considered a service fee it should be "established reasonably by reference to the cost of the service in respect of which the charges are levied."[24] In this case, then, a reasonableness criterion was used to assess the amount of a charge imposed by a Member State, this to define the nature of the charge (as a tax or a service fee) and to correspondingly apply EC law.

Some cases where the "test of reasonableness" is applied can also be found with respect to national provisions concerning conflicts of laws, that is, where the applicable law needs to be identified in the absence of a solution established by EC legislation. For instance, in clarifying which social-security legislation applies to a worker who is self-employed in two or more Member States and resides in one of them, the Court has found that "the attachment of a worker to the legislation of the State where he resides, in a case where he pursues one or more self-employed activities in two or more Member States, is by no means unreasonable."[25] A similar approach has subsequently been upheld with respect to employees,[26] as well as in

[23] Recall that Member States should enjoy a reasonable time limit within which to comply with EC obligations. See Case 1/00, 13 December 2001, *Commission v. France, ECR*: I-9989ff. Furthermore, reasonableness serves as a criterion by which to assess the compliance of national legislation with EC obligations. See, for example, the Opinion of Advocate General Tizzano in Case C-145/04, 6 April 2006, *Spain v. United Kingdom, ECR*: I-7917: a Member State's power to define its own electorate for European elections "may be exercised only exceptionally and within limits and under conditions that are compatible with Community law. That implies that it is necessary in each case to ensure compliance with the general principles of the legal order—such as, in particular, in this case the principles of reasonableness, proportionality and non-discrimination—as well as, of course, any specific and relevant Community provisions" (par. 103). The Advocate General also found that it seems "consonant with those principles to exclude the possibility of extending voting rights to persons who have no actual link with the Community" (par. 104). In addition, the principle of reasonableness has some relevance for the purpose of fixing an amount for fines under Article 228, in the event of a Member State's repeated infringements of EC obligations (see Case C-387/97, 4 July, *Commission v. Greece, ECR*: I-5047), especially in assessing the seriousness of the violation.

[24] Case C-206/99, 21 June 2001, *Sonae ECR*: I-4679ff. The Court found that "the distinction drawn between taxes prohibited by Article 10 of the Directive and duties paid by way of fees or dues implies that the latter comprise only remuneration the amount of which is calculated on the basis of the cost of the service rendered. The existence of a maximum which those charges cannot exceed is not sufficient to make them duties paid by way of fees or dues if that maximum is not established reasonably by reference to the cost of the service" (par. 43). See also Case C-134/99, 26 September 2000, *IGI, ECR*: I-77717 and joined Cases C-71/91 and C-178/91 20 April 1993, *Ponente Carni and Cispadana Costruzioni, ECR:* I-1915ff.

[25] Case C-242/99, 20 October 2000, *Vogler, ECR*: I-9083 (par. 27).

[26] Case C-249/04, 26 May 2005, *Allard, ECR*: I-4535: "It should first be recalled that the Court has already ruled, first, that, in regard to social security, the purpose of the principle of application of the legislation of a single Member State is to avoid the complications which might ensue from the simultaneous application of a number of national legislative systems and, second, that the attachment of a worker to the legislation of the State where he resides, in a case where he pursues

the area of tax law.[27] In such cases, the principle of reasonableness arguably plays a role as an integrative source to be employed in areas where EC Treaty applies but EC legislation does not provide any clear solution.

This technique may be used not only when legislation is unclear but also when EC provisions, generally contained in Directives, deliberately reserve significant discretion for Member States. For instance, a discretionary power is obviously conferred on Member States by EC legislation containing "as far as possible" clauses, which are sometimes included in binding acts. Examples include Directives on environmental protection, such as Directive 2006/123,[28] under which Member States must limit, "as far as possible, any environmentally significant detrimental changes in groundwater quality." Another example is provided by Directive 2000/78, establishing a general framework for equal treatment in employment. The Directive establishes, with a view to promoting equal treatment for disabled persons, that "reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer" (Article 5).[29]

Such "as far as possible" clauses are arguably aimed at introducing some flexibility in binding acts by giving to Member States the opportunity to prove that a certain restriction or a certain measure was "reasonably possible." These clauses are mainly employed where Treaty provisions make it possible to advance certain interests, such as environmental protection, by way of "mainstreaming," that is, by integrating such interests into the whole of the Community's legislative activity, and by giving them priority over other interests. With this technique, Community

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one or more self-employed activities in two or more Member States, is by no means unreasonable" (par. 28). See also Case C-242/99, *Vogler*, pars. 26–27.

[27] The Court relied on the principle of reasonableness, finding that the solution established by some agreements between Member States in allocating fiscal jurisdiction was not unreasonable. See Case 336/96, 12 May 1998, *Gilly, ECR*: I-2793ff.: "Nor, in the allocation of fiscal jurisdiction, is it unreasonable for the Member States to base their agreements on international practice and the model convention drawn up by the OECD, Article 19(1)(a) of the 1994 version of which in particular provides for recourse to the paying State principle" (par. 31).

[28] Directive 2006/118/EC, OJ L 376, 19ff. See, for example, Case 1/00, 13 December 2001, *Commission* v. *France*, ECR: I-9989ff.: "Since the French Republic had to have a reasonable period for implementing Decisions 98/256 as amended and 1999/514 [. . .] it must be held that the infringement consisting of a failure to implement those decisions is proved only from expiry of the period allowed for complying with the reasoned opinion" (par. 136).

[29] Similar clauses are sometimes included in Directives concerning safety at work. Furthermore, the Court excluded that a national provision requiring workers' protection as far as reasonably possible constitutes a violation of Directive 89/391. In Case C-127/05, 14 June 2007, *Commission v. United Kingdom ECR*: I-4619, the Court acknowledged a "margin of manoeuvre available to the Member States in transposing those provisions into national law. On the other hand, it cannot be inferred from that provision, on the basis of an interpretation *a contrario*, that the Community legislature intended to impose upon Member States a duty to prescribe a no-fault liability regime for employers." Therefore, "that duty does not imply that the employer is required to ensure a zero-risk working environment" (par. 53).

legislation in effect shifts to Member States the task of balancing interests, or of weighing the goals of the legislation against the obligation to achieve these goals. When it comes to determining the Member States' compliance with EC law, the Court considers these clauses in light of the principle of reasonableness, which plays a crucial role in determining whether or not a certain action is permissible.[30]

4.3 The Impact of "EC Reasonableness" on the Activity of National Administrative and Judicial Authorities

Insofar as the principle of reasonableness is considered a general principle of Community law, it should be respected by national administrative and judicial bodies when applying both EU legislation as such and national provisions aimed at implementing Community acts.[31]

This means that the Court may ascertain whether the principle of reasonableness has been respected both in domestic legislation and in the conduct of national administrative authorities whenever they apply EU law. This is clarified by a ruling in which the Court expressly stated that Member States have to rely on reasonableness when monitoring the allocation of Community funds. In particular, a Member State must "satisfy itself, first, that the expenditure incurred by the recipient of the aid is reasonable and, second, that that person has displayed sound financial management."[32] A further example concerns the implementation of EC law: the Court has clarified that, where a Member State decides to anticipate or bring forward a Directive's implementation, the time limits should be consistent with reasonableness.[33]

The need for Member States to respect the principle of reasonableness in implementing EC law is sometimes expressly stated by legislation. Certain Directives

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[30] For instance, in Case C-2/97, 17 December 1998, *Società italiana petroli v. Borsana, ECR*: I-8597ff., the Court assessed whether it was technically possible to replace a carcinogen with a less-dangerous substance (see pars. 55–56).

[31] The Court has declared that national authorities should comply with EC principles of law when applying national measures that implement or apply EC law; see e.g., Case 316/86, 26 April 1988, *Krucken, ECR*: 2213ff., par. 22; Case 5/88, *Wachauf, ECR*: 2609ff.; Case C-144/04, 22 November 2005, *Mangold, ECR*: I-9981ff., par. 78; Case C-260/89, 18 June 1991, *ERT, ECR*: I-2925ff.; Joined Cases C-2/92, 23 March 1994, *Bostock, ECR*: I-955ff., par. 16; Case C-107/97, 18 May 2000, *Rombi and Arkopharma, ECR*: I-3367ff., par. 65.

[32] Case 413/98, 25 January 2001, *DAFSE v. Frota Azul-Transportes e Turismo, ECR*: I-673ff. The Court found that a Member State undertaking a certification of accounts "cannot confine itself to carrying out a mere technical check [...] but must, to the contrary [...], satisfy itself as to the reasonableness of the costs charged within a complex structure" (par. 27), since "if the certification carried out by the Member State concerned amounted to no more than a technical check, the Commission would then be obliged to carry out systematic monitoring" (par. 28).

[33] The Court found that "there is nothing to prevent the Member States from anticipating implementation of the obligations laid down in the Directive for existing work equipment" (par. 47); however, "when taking all appropriate measures to ensure fulfilment of the obligations arising under a directive, pursuant to Article 5 of the Treaty, the Member States are required to comply with the general principles of Community law" (par. 48).

do not simply fix a term for their implementation but leave some discretion to Member States in ensuring that a reasonable period is given to the interested parties compelled to apply the Directive. Thus, Directive 2006/118, on the protection of groundwater from pollution and deterioration,[34] requires that "a reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements which will result from the inclusion."[35] Such techniques are clearly aimed at extending the Member States' discretion, leaving it to them to assess their own particular national situation.

The principle of reasonableness as defined by the Court may even bear to some extent on the conduct of the Member States' national courts: the caselaw of the Court of Justice has sometimes required national courts to use reasonableness in defining the effect of certain EC obligations.[36] A particular scenario concerns the definition of the duty of national courts of last resort to refer preliminary questions: in the well-known *Cilfit* case, the Court acknowledged a limitation on the obligation to refer preliminary questions on the basis of the *acte clair* doctrine, where "the correct application of Community law may be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved."[37] However, the assessment of reasonableness is significantly restricted by the Court in order to avoid the risk of non-uniform application of EC law.

The principle of reasonableness should further be considered by national courts when deciding whether to order interim measures. Here the principle of reasonableness is aimed at giving national courts some discretionary powers, but that discretion is strictly limited on the basis of certain criteria that these courts have to consider in their assessment. This is unequivocally clear in the Court's caselaw, as in the above-mentioned *Cilfit* case (where the Court, in leaving some discretion to national courts, laid down strict criteria for assessing the lack of a reasonable doubt), or in the *Atlanta* case, where the Court, although it acknowledged the power of national courts to grant interim measures when they have serious doubts as to the

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[34] *OJ* L 372, 27 December 2006, 19ff.

[35] Similarly, Directive 2007/46, establishing a framework for the approval of vehicles, establishes the general technical requirements for approval of all new vehicles with a view to facilitating their circulation within the Community. Article 31, par. 4, provides that for "any entry or group of entries in Annex XIII a reasonable transitional period shall be fixed to allow the manufacturer of the part or equipment to apply for and obtain an authorization."

[36] Since reasonableness may give rise to non-uniform assessments, a national court raised the preliminary question whether the relevant Member State's certification of the accuracy of accounts relative to payments (a certification required by an EC regulation) implies a merely technical control or makes it necessary to also assess the reasonableness of the expenditure. The Court of Justice found that the risk of non-uniformity is averted by virtue of the fact that "the final decision concerning the grant of Community assistance lies exclusively with the Commission" (par. 31): Case C-413/98, 25 January 2001, *DAFSE, ECR:* I-673ff.

[37] Case 283/81, 6 October 1982, *Cilfit ECR*: 3415ff. See also Case C-495/03, 15 September 2005, *Intermodal Transports BV, ECR*: I-8151ff., where the Court confirmed that the national court has "sole responsibility for determining whether the correct application of Community law is so obvious as to leave no scope for any reasonable doubt" (par. 37).

lawfulness of a Community act, imposed conditions requiring a hard balancing of interests.[38]

A further general effect on national courts is that they should rely on the principle of reasonableness as defined by the Court whenever they interpret EU legislation. In fact, the Court clarified in *Cilfit* that EC provisions should be construed according to peculiar interpretative criteria. Thus, even the principle of reasonableness, considering it is used by the Court of Justice as an interpretative criterion, must be taken into account by national courts where it seems relevant in interpreting EU provisions that have to be applied in national proceedings.

Although national authorities should conform to the principle of reasonableness when applying EC law, the Court seems reluctant to accept that national legislation relying on the same principle may be regarded as a correct implementation of EC obligations. This is clearly demonstrated by an infringement proceeding in which the Court considered whether a provision of the Dutch Civil Code was suitable for implementing the Directive on unfair terms in consumer contracts.[39] According to the provision in question, any rule concerning contracts is inapplicable if it does not comply with the standards of reasonableness and fairness appropriate to the circumstances of the case. The Court did not uphold the Dutch government's argument that the national legislation at issue could be interpreted in such a way as to ensure compliance with the Directive. The reluctance of the Court in this respect was certainly owed to the need to ensure that the proper implementation of Directives at the national level fully meets the requirement of legal certainty.[40] Even though domestic legislation based on reasonableness might actually satisfy EC obligations, it makes monitoring too difficult, as it requires a careful assessment of the national practice in question. Furthermore, such legislation would also limit the effectiveness of protection afforded to citizens by EC law because it may raise doubts about the actual content and scope of such protection.

4.4 The Significance of Reasonableness in the Protection of Individual Rights

As to the role of reasonableness in protecting individual rights—that is, the third level in the scheme suggested above—the most important dimension is arguably that concerning the application of the principle of non-discrimination. According to the Court's definition, this principle requires that "comparable situations must not be treated differently and that different situations must not be treated in the same way."

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[38] Case C-465/93, 9 November 1995, *Atlanta, ECR*: I-3761ff. See Bebr (1996).

[39] Case C-144/99, 10 May 2001, *Commission v. Netherlands, ECR*: I-3541ff.

[40] "[. . .] even where the settled case law of a Member State interprets the provisions of national law in a manner deemed to satisfy the requirements of a Directive, that cannot achieve the clarity and precision needed to meet the requirement of legal certainty. That, moreover, is particularly true in the field of consumer protection" (ibid., par. 21).

However, such treatment may be justified "if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the objective being legitimately pursued."[41] Thus, one may argue that the Court relies on reasonableness in assessing whether a difference in treatment is justified. When assessing whether a discrimination can be justified, the Court balances the different values and interests at stake; reasonableness is thus likely to play a role in this process even when it is not explicitly mentioned in the ruling.

The principle of equity may also fall within the framework of a general criterion of reasonableness. In *Walt Wilhelm*,[42] the Court implicitly relied on equitable principles, affirming that "if the possibility of two procedures being conducted separately were to lead to the imposition of consecutive sanctions, a general requirement of natural justice demands that any previous punitive decision must be taken into account in determining any sanction which is to be imposed." This shows that the Court is even inclined to discern and apply general principles of natural justice as sources of Community law.

However, while reasonableness in the previously considered judgments is arguably aimed at *safeguarding* individual rights, the same principle has in other circumstances led the Court to instead *restrict* certain rights. This can be appreciated in the Court's judgments limiting the temporal effect of an interpretation EC law or of a finding of invalidity of EC law: the Court seeks to find a reasonable compromise among the different interests at stake, and it justifies such a solution on the basis of the principle of legal certainty.[43] This balancing test has sometimes jeopardized the right of private persons to have unlawful charges or taxes reimbursed, the point of the balancing being to avoid economic imbalances that work to the detriment of private enterprises or of Member States. It is clear from the Court's reasoning in such cases that reasonableness serves to determine a balance point between conflicting interests; indeed, economic considerations play a decisive role in the Court's rulings limiting temporal effects.

Furthermore, the Court has sometimes attached importance to the principle of unjust enrichment, finding that national provisions "which prevent the reimbursement of taxes, charges, and duties levied in breach of Community law cannot be regarded as contrary to Community law where it is established that the person required to pay such charges has actually passed them on to other persons." It may thus be inferred from this reasoning that individual rights established under EC law should be protected unless there is evidence that such protection would conflict with reasonableness, which in this case takes on the guise of a general principle of equity.

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[41] Case C-148/02, 2 October 2003, *Garcia Avello, ECR:* I-11613ff., par. 31. See also Case C-354/95, 17 July 1997, *National Farmers' Union, ECR*: I-4559ff.; Case C-184/99, 20 September 2001, *Grzelczyk, ECR*: I-6193.

[42] Case 14/68, 13 February 1969, *Walt Wilhelm, ECR*: 1ff. See Lauwaars (1969) and Walz (1996).

[43] See, for example, Case 24/86, 2 February 1988, *Blaizot, ECR*: 379ff., and Case C-72/03, 9 September 2004, *Carbonati Apuani, ECR:* I-8027ff.

5 The "Procedural" Notion of Reasonableness

5.1 Reasonableness with Respect to EC Judicial and Administrative Proceedings

Moving to the procedural facet of the principle of reasonableness, no doubt the most important role that plays lies in its use in determining what constitutes fair duration in a judicial or administrative EC proceedings. Reasonableness is used in this role to assess compliance with the general principle of Community law—a principle inspired by Article 6(1) of the European Convention on Human Rights (ECHR)—under which everyone is entitled to a fair hearing.[44] Under the Court's caselaw, whether an EC court proceeding is reasonable in its duration is something that needs to be assessed in light of the circumstances of each case, which means taking into account how important the case is for the person concerned, how complex it is, and how the applicant and the competent authorities conduct themselves.[45] In applying these criteria, the Court has been led to find that the same length of time was reasonable in one case and unreasonable in another, as can clearly be illustrated by looking at the *Sumitomo* and *Baust* cases in comparison: in *Sumitomo*,[46] the Court found that a judicial proceeding lasting more than four years was justified in light

[44] See Case C-270/99 P., 27 November 2001, *ECR*: I-9197ff.: "As regards the application of the general principle of Community law that everyone is entitled to legal process within a reasonable period [. . .], it is clear from the case-law of both the Court of Justice and the European Court of Human Rights that the reasonableness of the length of proceedings is to be determined in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities" (par. 24). See also Case C-185/95 P, 17 December 1998, *Baustahlgewebe v. Commission ECR*: I-8417ff.; Case C-194/99, 2 October 2003, *Thyssen Stahl v. Commission, ECR*: I-10821ff. On the proceedings conducted by the Commission in the context of state aid, see Case T-95/96, 15 September 1998, *Gestevisión Telecinco v. Commission, ECR*: II-3407ff., where a proceeding of forty-seven months was found to exceed the limits of reasonableness. In Case T-395/04, 10 May 2006, *AirOne v. Commission, ECR*: II-1343ff., a period lasting nearly six months was found not to exceed a reasonable time frame, while in Case T-167/04, 11 July 2007, *Asklepios Kliniken v. Commission ECR*: II-2379 ff., the length of the proceedings was considered reasonable in view of the complexity of the case.

[45] See Case C-185/95 P, 17 December 1995, *ECR*: I-8417, par. 26ff. In Case 199/99, 2 October 2003, *Corus Ltd, , ECR*: I-11177ff., where the Court found that the duration of proceedings lasting five years was "justified in the light of the particular complexity of the case" (par. 56). The elements taken into consideration were the number of undertakings that brought actions for annulment, the variety of claims regarding access to documents relating to the administrative procedure, the size of the file (which contained 11,000 documents), and language constraints imposed by the Court's rules of procedure. See also Case C-238/99 P, 15 October 2002, *Limburgse Vinyl, ECR*: I-8375ff.

[46] Case C-403/04, 25 January 2007, *ECR*: I-729ff. The Court found that "the general principle of Community law that everyone is entitled to a fair hearing, which is inspired by Article 6(1) of the ECHR, and in particular the right to legal process within a reasonable period, is applicable in the context of proceedings brought against a Commission decision imposing fines on an undertaking for infringement of competition law" (par. 115). See also Case C-199/99, P *Corus v. UK*.

of the case's complexity, while in *Baust*,[47] a proceeding lasting about the same time was considered overlong. This clearly shows how an assessment of reasonableness depends on the specific circumstances of each case, thereby leaving the Court a wide margin of discretion.

In determining whether the time taken to handle a case is justified, the Court has taken into account such factors as the high number of actions for annulment brought against a given act and the size of the documents to be examined, and even the fact that the claims are submitted in any number of different languages.[48] It is in light of all these factors that the Court ascertains whether or not the duration of a proceeding can be considered reasonable. By applying a standard of reasonableness, and taking into account all the circumstances of the case, the Court can consider whether or not a long duration is justified. If the Court concludes that the duration is in fact unreasonable, it applies a further test, assessing whether such excessive duration has influenced the outcome of the relative judicial proceeding.[49] This implies a further discretionary analysis by the Court aimed at assessing whether the duration so determined to be excessive has prejudiced the interests of the parties to the proceeding.

The Court applies a similar test to EC administrative proceedings, assessing, for instance, whether the Commission takes an unreasonable time to investigate alleged violations of competition law[50] or to conduct disciplinary proceedings.[51]

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[47] In Case C-185/95, 17 December 1998, *Baustahlgewebe v. Commission, ECR*: I-8417ff., the Court concluded that the relevant circumstances could not justify the length of the proceedings: "The circumstances of this case are not such as to indicate that constraints of that kind can provide justification for the time which the proceedings took before the Court of First Instance" (par. 44). According to the Court, "it must be held, notwithstanding the relative complexity of the case, that the proceedings before the Court of First Instance did not satisfy the requirements concerning completion within a reasonable time" (ibid.).

[48] See, for example, Case C-185/95 P, 17 December 1998, *Baustahlgewebe v. Commission*: "The appellant's application was one of 11, submitted in three different languages, which were formally joined for the purposes of the oral procedure" (par. 35). In Joined Cases C-403/04 and C-405/04, 25 January 2007, *Sumitomo, ECR:* I-729ff., the Court emphasised that "seven undertakings brought actions for annulment of the same decision, in three languages of the case."

[49] "However, in the absence of any indication that the length of the proceedings affected their outcome in any way, that plea cannot result in the contested judgment being set aside in its entirety": Case C-185/95, *Baustahlgewebe v. Commission* (par. 49).

[50] In Case C-113/04 P, 21 September 2006, *Technische Unie, ECR*: 8831ff., the Court found that "compliance with the reasonable-time requirement in the conduct of administrative procedures relating to competition policy constitutes a general principle of Community law whose observance the Community judicature ensures" (par. 40). In Case C-194/99, *Thyssen Stahl v. Commission*, the Court began its analysis on the assumption that observance of the rights of defence is a fundamental principle of Community law which must be complied with even in administrative proceedings (par. 30). See also Case 238/99, 15 October 2002, *Limburgse Vinyl Maatschappij and Others v. Commission, ECR*: I-8375, pars. 167 to 171, and Case C-282/95 P, 18 March 1997, *Guérin automobiles v. Commission, ECR*: I-1503, pars. 36–37.

[51] See Case C-270/99 P, 27 November 2001, *Z v. European Parliament, ECR*: I-9197ff., pars. 23–25. The Court found that "as regards the argument based on Article 6(1) of the Convention, and without there being any need to determine whether that provision is applicable to the disciplinary proceedings provided for in the Staff Regulations, it should be recalled that Article 6(1) provides that in the determination of his civil rights or obligations or of any criminal charge against him,

The Court has relied on a general principle of law under which administrative proceedings should satisfy a reasonable- time requirement. Not unlike what the court does in assessing whether judicial proceedings are unreasonably long, so in this case, where an administrative proceeding is at issue, the Court exercises its power to assess whether a proceeding's duration had an impact on its outcome, and so on the administrative decision itself.[52] The Court thus determines whether a proceeding's excessive length affected a party's rights of defence.[53]

A peculiar problem comes up when the need arises to break down administrative proceedings into stages and to ascertain whether each such stage has been conducted in compliance with the principle of reasonable duration. The Court has found that an "administrative procedure may involve an examination in successive stages and one has to consider whether the duration of each stage was excessive." It thus quashed a judgment of the Court of First Instance that, in assessing an administrative proceeding's compliance with reasonable length, only considered the second stage of the proceedings.[54] The Court of Justice did so on the ground that "excessive duration of the first phase of the administrative procedure may have an effect on the future ability of the undertakings to defend themselves" (par. 54). Administrative proceedings, then, must be considered in all their stages in determining whether one of these stages has been so long as to run afoul of a general principle of law.

5.2 Reasonableness with Respect to National Judicial and Administrative Proceedings

The Court also relies on the principle of reasonableness in monitoring the national procedural laws of Member States so as to assess whether such laws are adequate to ensure the protection of rights conferred by EC law. This use can be found quite often in the Court's caselaw, the reason being that national procedural laws are not harmonized, and so the Court requires that such laws comply with the principles

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everyone is entitled to a fair and public hearing within a reasonable time, by an independent and impartial tribunal established by law. As its wording clearly shows, Article 6(1) of the Convention does not lay down precise time-limits and does not provide that the time-limits laid down in a legislative measure, such as those laid down in Article 7 of Annex IX to the Staff Regulations, are necessarily to be regarded as mandatory" (par. 23).

[52] In Case 194/99, 2 October 2003, *Thyssen Stahl v. Commission*, the Court found that the rights of defence are infringed whenever an administrative procedure could have had a different outcome as a result of an error committed by the administrative body (here, the Commission). Thus, "one should show that it would have been better able to ensure its defence had there been no error."

[53] See, for example, Case C-270/99 P, 27 November 2001, *Z v. European Parliament*, par. 43.

[54] Case 113/04, 21 September 2006, *Technische Unive BV*, pars. 40–59. In applying the reasonable-time principle, the Court of First Instance had drawn a distinction between the investigation stage and the remainder of the administrative procedure (par. 42). The Court of Justice found that the Court of First Instance had "failed to consider whether the excessive duration, imputable to the Commission, of the entire administrative procedure [. . .] might affect the ability of the FEG and TU to defend themselves in the future" (par. 56).

of equivalence and effectiveness. On this approach, the national procedures available under which to obtain judicial protection of rights conferred by EC provisions must "be no less favourable than those governing similar domestic claims nor render virtually impossible or excessively difficult the exercise of rights conferred by Community law."[55] The Court relies on these principles to assess whether a national procedure, such as a law fixing a limitation period, should be considered reasonable.[56] Reasonableness acts in this role to provide the Court with the discretion to ascertain whether a national law can adequately ensure the protection of rights conferred on citizens under EC legislation or under the Treaty.

The principle is further used to assess the conditions giving rise to responsibility for Member States due to a violation of EU law. In this role, reasonableness serves to raise the threshold for finding a violation of Community obligations giving rise to liability, and it also serves to assess whether an infringement of EU law is serious enough to produce certain consequences.[57]

6 Concluding Remarks

The above survey of EC caselaw and legislation points up the difficulty involved in finding a comprehensive interpretative scheme under which to work out the meaning of reasonableness in EU law. It seems, on the one hand, that if a sharp distinction is drawn between different methods of interpretation, in an effort to single out an autonomous role for the principle of reasonableness, the results produced will be scant. And yet the foregoing survey of caselaw suggests that the Court's entire legal reasoning is strongly influenced by a principle of reasonableness, even though the Court may wind up justifying on the basis of different principles or criteria what it decides on as a reasonable solution. It may thus be suggested, from a pragmatic point of view, that the Court once that it has settled on a solution it deems reasonable, ascribes such a solution to the EC legislator, or else rules that the solution is required under a general principle of law.

Reasonableness in EU law is a manifold principle playing different roles, and in playing these roles it changes its meaning and content, like a chameleon. As an interpretative principle of EC law, it works under the shadow of other principles,

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55 Case C-188/95, 2 December 1997, *Fantask, ECR*: I-6703ff. See Biondi (2005).

56 Case C-188/95, *Fantask*: "The five-year limitation period under Danish law must be considered to be reasonable [. . .]. Furthermore, it is apparent that that period applies without distinction to actions based on Community law and those based on national law" (par. 49). See also Case C-90/94, 17 July 1997, *Haahr Petroleum v. benrå Havn and Others, ECR*: I-4085ff., par. 49; Case C-255/00, 24 September 2002, *Grundig, ECR*: I-8003ff.; and Joined Cases C-216/99 and C-222/99, 10 September 2002, *Prisco, ECR*: I-6761ff.

57 As stated in Joined Cases C-46/93 and C-48/93, 5 March 1996, *Brasserie du Pêcheur and Factortame, ECR*: I-1029ff., "Community law confers a right to reparation where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties" (par. 51).