

The interpretation in judicial cooperation in civil matters

Zdeněk Nový



The aims of the presentation

- To elucidate the tenets of interpretation in european private international law (EPIL)
- To focus upon preliminary ruling under art. 68 Treaty (TEC)

Interpretation in EPIL

- Interpretation of „what“
- Interpretation in „which manner“
- Interpretation by „whom“

Interpretation of „what“

- Community law based upon Title IV TEC and Title IV TEC itself
- The traditional methods of i. of Community law
 - the verbal interpretation
 - the historic interpretation
 - the systematic i.
 - the purposive i.
 - the comparative interpretation

Interpretation of „what“ II

- The object of the interpretation is not national law (exceptions -e.g. art. 59 Brussels I Reg.)

Interpretation in „which manner“

- Autonomous interpretation = independent on national laws of Member states
- Autonomous i. v autonomous qualification
 - former: question of law, latter: question of fact
- Autonomous interpretation, i.e.:
 - without recourse to national law
 - only „by reference principally to the system and objectives of the legal act (e.g. Regulation)

Autonomous Interpretation I

- Autonomous i. does not mean only interpretation of concrete Regulation per se, but interpretation in the light of Community law as such (cf. e.g. Case 9/87 *Arcado SPRL v Haviland SA* [1988] ECR 1539, 1555 para. 14)
- Autonomous i. may encompass reference to the uniform international instruments such as the CISG

Reasons for autonomous interpretation

- Legal certainty
 - Parties should be able to deduce their rights and duties from the Convention itself)
- Uniformity
 - Parties should be treated equally in all member states
 - Community law should be applied in uniform way

The other guidelines for interpretation

- In line with preceding Conventions (e.g. Brussels Convention)
- In conformity with HR – art. 6 ECHR (fair trial)
- In conformity with Community law
 - general principles of Community Law
 - e.g. non-discrimination – art. 12 TEC
 - 4 freedoms

Interpretation „by whom“

- Key players: ECJ and member states' courts
- Uniform interpretation via Preliminary Ruling:
 - Generally- Art. 234 TEC
 - For EPIL matters – 68 TEC

Preliminary ruling under art. 234 TEC

- The ECJ shall have jurisdiction to give preliminary rulings concerning:
- the **interpretation of this Treaty**:
 - [...]a question is raised before any court or tribunal of a Member State, that court or tribunal **may, if it considers that a decision on the question is necessary to enable it to give judgment,**
 - [...]such question is raised in a **case pending** before a court or tribunal of a Member State **against** whose **decisions** there is **no judicial remedy under national law,** that court or tribunal **shall** bring the matter before the Court of Justice.

Preliminary ruling under art. 68 TEC

- **Article 234 shall apply to title IV:**
- **where a question on the interpretation of this title or on interpretation of acts of the institutions of the Community based on this title is raised:**
- **in a case pending before a court or a tribunal of a Member State**
- **against whose decisions there is no judicial remedy under national law,**
- **that court or tribunal shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.**

Relationship between art. 68 TEC and 234 TEC

- Art. 68 TEC
 - is special to art. 234 TEC
 - restricts the ambit of art. 234 TEC
 - Some requirements are identical (e.g. pending procedure), some differ

Identical elements in art. 68 and 234 TEC

- Pending procedure
 - Interpretation arises in the course of pending procedure
 - Whether contentious or non-contentious
 - Whatever the nature of a court
 - Not before arbitration court (e.g. Case 102/81 Nordsee [1982]ECR 1095)
 - Acte Clair (Cilfit doctrine)

The differences between art. 68 and 234 TEC

- Art. 68 – interpretation of Title IV of TEC
- v Art. 234 – Interpretation of the Treaty as a whole
- Art. 68 – reference to ECJ only by courts against whose decisions there is no judicial remedy and said courts shall request ECJ to give a preliminary ruling
- v Art. 234 - all courts may, if they consider that a decision on the question is necessary to enable them to give judgment

Court of last instance

- Art. 68 TEC – only courts of last instance may refer to ECJ
- Czech Republic:
 - Predominantly Supreme Court
 - Hypothetically Supreme Administrative Court and Constitutional Court
 - Regionals courts if there is no extraordinary judicial remedy(?)

The effects of preliminary ruling in national procedural law

- The ECJ's decision is necessary for national court to settle the dispute
- National court has to stay proceedings
- The ECJ's decision is binding on national court and the parties in an original dispute

The end



- Thank you.