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KU LEUVEN
Institute for European Law

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The Systemic and the Particular in European Law

17 November 2022

Venue: Irish College, Leuven Janseniustraat 1, 3000 Leuven

Organised by Robin Gaddled and Cecilia Rizcallah

When, how and why does a breach of a particular (set of) legal standard(s) by a Member State acquire a systemic dimension in European Union Law? The use of the “systemic” qualifier and of neighbouring notions such as “structural”, “general”, “generalised” or “general and persistent” is long-established in certain fields of EU law – for instance in the field of EU environment law. It is now applied to instances of non-compliance with EU law in new settings, inter alia in the field of the Area of Freedom, Security and Justice, or in the case-law of the Court of Justice of the European Union regarding breaches of the principle of judicial independence and the right to a fair trial. As this “systemic” approach to violations of EU legal standards appears to be gaining traction, the aim of this conference is to analyse its meanings and functions when used in legal texts and by courts in EU law. Moreover, the analysis will extend to the case-law of the European Court of Human Rights and that of a selection of national courts, in so far as they use similar notions to qualify violations of legal standards.

All contributions will endeavour to identify which legal criteria allow courts and enforcers of legal standards – as well as academics, albeit differently – to establish that a specific violation says something of the system considered itself, and not only of the case at hand. Will a violation be considered to have a systemic dimension in relation to the “frequency” with which a rule will be breached (as in “recurrent practices or omissions by public authorities”); its “extent” (“widespread”); its anchorage in a legal framework (as opposed to localised practice); its importance in view of the functioning of the legal order; its severity (being a threat for the “essence” of rights); its likelihood to occur because of inadequate procedures and control mechanisms (as in “high probability of occurrence in similar types of operations, which results from a serious deficiency in the effective functioning of a management and control system”)? Other criteria or a combination of criteria may apply, which need to be tracked down.

Another point of importance is to identify the consequences attached to the decision that one or several infringements of legal standards have systemic implications. Is the function of the qualifier to indicate that a threshold has been met triggering enforcement (in particular infringement actions); affecting the scale or the nature of enforcement; or leading to other consequences, such as the suspension of EU funds? Does it allow for a link to be made between the violation of one legal standard and other fundamental legal principles, such as the values listed under article 2 TEU? The ambition of the proposed collection of articles is precisely to bring clarity on such issues by relying on case studies as well as transversal approaches.

Scientific committee: Antoine Bailleux (USL-B), Bruno De Witte (Maastricht University), Chloé Brière (ULB), Elise Muir (KU Leuven), Catherine Van De Heyning (UAntwerpen), Peter Van Elsuwege (UGent)



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Programme

9h15: Registration & Coffee

9h30 Introduction – Robin Gaddled and Cecilia Rizcallah

Morning sessions – A Systemic Approach to Violations of EU Legal Standards: Case-studies

Chair: Antoine Bailleux, USL-B

9h40 The Systemic Criterion in the Field of Market Regulation and Competition Law - Pablo Ibanez, LSE and College of Europe

10h The Systemic Criterion in the Field of the Environment - Mariolina Eliantonio, Maastricht University

10h20 – Discussion

10h50 – Coffee Break

Chair: Chloé Briere, ULB

11h05 The Systemic Criterion in the Field of Asylum - Catheryn Costello, Hertie School and Lilian Tsourdi, Maastricht University

11h25 The Systemic Criterion in the Field of Criminal Cooperation, Leandro Mancano - Edinburgh Law School

11h45 The Systemic Criterion in the Field of the Right to a Fair Trial and Judicial Independence - Mathieu Leloup, Antwerp University

12h05 – Discussion

12h35 – 13h50 – Lunch

Afternoon Sessions: The Systemic Criterion – Cross-cutting Approaches

Chair: Emanuele Rebasti, Council of the European Union

13h50 The Systemic Criterion in the Use of Infringement Proceedings - Luca Prete, Court of Justice of the European Union & Vrije Universiteit Brussel

14h10 The Systemic Criterion in the Management of EU Funds - Robin Gaddled, KU Leuven

14h30 – Discussion

15h – 15h20 – Coffee Break

Chair : Catherine Van De Heyning, UAntwerpen

15h20 The Systemic Criterion in the Case-Law of the European Court of Human Rights - Koen Lemmens, KU Leuven & Sébastien Van Drooghenbroeck, Université Saint-Louis – Bruxelles

15h40 The Systemic Criterion as a Tool for Articulating the Multi-Level Sources of Protection of Fundamental Rights - Cecilia Rizcallah, KU Leuven, Université Saint-Louis-Bruxelles and ULB

16h00 – Discussion

16h30 Concluding Remarks – President of the Court of Justice of the European Union, Koen Lenaerts

17h30 – Discussion and Closing

