

**Practical aspects of the implementation and enforcement of EU law in Latvia in the field of labour law, non-discrimination and free movement of persons**

**I Application of EC law by administrative authorities and national courts – obligations deriving from EC law**

- Supremacy doctrine

*In case national law conflicts with EC law national courts (Simmenthal 106/77) and administrative institutions (Larsy C-118/00) must set aside conflicting national law provision and apply EC law provision.*

- State may not invoke unimplemented directive against private person (Ratti 148/78)

*“... a Member State which has not adopted the implementing measures required by the directive in the prescribed periods may not rely, as against individuals, on its own failure to perform the obligations which the directives entails”*

- Obligations of national court on rising issues of EC law on their own motion

*“...where, by virtue of domestic law, courts or tribunals must raise of their own motion points of law based on binding domestic rules which have not been raised by the parties, such an obligation also exists where binding Community rules are concerned”.*

*“...Community law does not require national courts to raise of their own motion an issue concerning the breach of provisions of Community law where examination of that issue would oblige them to abandon the passive role assigned to them by going beyond the ambit of the dispute defined by the parties themselves and relying on facts and circumstances other than those on which the party with an interest in application of those provisions bases his claim”*

*(Schijndel joined cases C-430/93 and C-430/93).*

*“As to the question of whether a court seised of a dispute concerning a contract between a seller or supplier and a consumer may determine of its own motion whether a term of the contract is unfair, it should be noted that the system of protection introduced by the Directive is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer*

*agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of the terms”.*

*“The aim of Article 6 of the Directive, which requires Member States to lay down that unfair terms are not binding on the consumer, would not be achieved if the consumer were himself obliged to raise the unfair nature of such terms. In disputes where the amounts involved are often limited, the lawyers' fees may be higher than the amount at stake, which may deter the consumer from contesting the application of an unfair term. While it is the case that, in a number of Member States, procedural rules enable individuals to defend themselves in such proceedings, there is a real risk that the consumer, particularly because of ignorance of the law, will not challenge the term pleaded against him on the grounds that it is unfair. It follows that effective protection of the consumer may be attained only if the national court acknowledges that it has power to evaluate terms of this kind of its own motion”.*

*(Oceano joined cases C-240/98 and C-244/98)*

## **II Practical application of EC law by administrative authorities and national courts (several shortcomings)**

### ***Application of EC directives by administrative institutions***

- presumption of full and correct implementation of directives
- presumption that administrative institutions are not responsible for incorrect application of directives if EC directives are not implemented fully or correctly

### ***Application of EC directives by national courts***

- obligation of a private person to know rights provided by directives

*„Pieteicēja apelācijas sūdzībā norāda, ka Latvijas valsts nenodrošina to, ka Latvijas Republikas iedzīvotājiem ir iespēja pietiekami viegli piekļūt informācijai par direktīvu prasībām, jo tās nekad nav publicētas oficiālākā laikrakstā.*

*Tiesa nepiekrīt šādam pieteicējas viedoklim. Eiropas Savienības tiesību akti, tai skaitā direktīvas tiek publicēti Oficiālajā vēstnesī, tai skaitā latviešu valodā” (2008.gada 30.oktobra Administratīvās apgabaltiesas sprieduma lietā Nr.A42347606).*

- obligation of a private person to not only inform court on applicable case-law of the ECJ but also provide translation in Latvian
- reversed burden of proof procedure under Latvian Civil procedure law