THE PRINCIPLE OF PROPORTIONALITY IN EU LAW

Based on

According to Article 5 of the Treaty on the European Union (TEU): “The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality...” It is already clear from this provision that the EU has defined its competences and the synergies that shall take place between the union and the member states. Indeed, the distribution of competences between both parties is a very important matter that had to be dealt with throughout the years in a very clear manner. Yet, such constant need for the clarification of the union’s competencies has created plenty of controversies and steered plenty of debates where national governments accused the union’s institutions, in particular, the European Commission of breaching the sovereignty of European states every time the commission attempts at regulating a certain sector that is deemed to be sensitive of its members. For this reason, the union had to explicitly mention specific principles that must be respected by both parties in order to ensure the separation of power. In this regard, the principle of proportionality has become one of the cornerstones of the EU law and provided much-needed clarification with regards the division of competences. This principle defined in Article 5 TEU in the following manner: “Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.” Thus, as it could be noticed, the principle is of an incremental importance for the union as it organizes the union’s competences. Furthermore, when a dispute usually arises, it is up to the European Court of Justice (ECJ) to decide whether the union or the member states have indeed violated this principle. And even in this case, the ECJ faced severe criticism mainly from the member states accusing the court of pursuing further integration through EU law as the interpretations that are being given to the rules according to several members states highly exceed the competencies that the union was supposed to have through the European regulations. In this context, one could easily notice the importance of the principle of proportionality for the distribution of competences between the union and its member states. In the Chapter “A History of Success? Proportionality in International Economic Law,” of the book “The Reform of International Economic Governance,” the author Valentina Vadi examined the possibility of applying the proportionality principle in international economic law. Indeed, one would wonder whether a “proportionality analysis is a useful tool of judicial governance in international economic law to promote the perceived legitimacy of the latter.” As such, the author attempted to provide an answer to the latter question.
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