

THE GENERAL PRINCIPLES OF LAW AT THE PRACTICE OF THE EUROPEAN COURT OF JUSTICE¹

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Abstract: *The purpose of this essay is to present the General Principles of law recognized by the European Court of Justice (hereafter: Court) as the relevant source of the Community Law. In this essay we focus the origins and developments of the General Principles, first of all those principles which bring operation at the civil procedures e.g. the rights of defence, and more specifically the right to hearing, the defendant's right to an inter partes hearing by an appropriate court, the principle of Legal Certainty which means avoiding multiplication of jurisdiction, avoiding irreconcilable decisions from different courts. In this study we examine these procedural principles at the interpretation of the 44/2001/EC Regulation (Brussels I.) concerning jurisdiction and recognition and enforcement judgment in civil and commercial matters, as the main source of the European Civil Procedure Law.*

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By holding that respect for fundamental rights is an integral part of the General Principles of Law it safeguards, the Court has made a considerable contribution to improving the standards of protection of those rights. In this respect, it looks to the *constitutional traditions common to the Member States* and to international treaties on the protection of human rights, on which the Member States have collaborated or which they have signed, in particular the European Convention on Human Rights.

1. What are the General Principles of law?

With a good comparison - in short - the General Principles of Law are children of national law but, as brought up by the Court, they become *enfant terribles*: they are extended, narrowed restated, transformed by a creative and eclectic judicial process.²

The Court through some decades from the 1950s to 1980s has recognized the following most important principles as general principles of Community law:

- the right to judicial protection,
- the principle of equal treatment or non-discrimination;

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² Takis Tridimas: *The General Principles of EU Law*, Second Edition, Oxford EC Law Library 2006. p. 12.

- the principle of proportionality;
- the principle of legal certainty;
- the principle of the protection of legitimate expectations;
- the protection of fundamental rights;
- the rights of defence.³

In this essay we focus the two latter cases, particularly the connection of fundamental rights and procedural rights, the right to fair trial.

2. Appearance of references to General Principles of Law in the Community Law

References to the human rights – like at the field of judicial cooperation in civil matters – became significant in the Treaty of Maastricht, and in the Treaty of Amsterdam. The defence of fundamental rights was guaranteed at Article 6. paragraph 2 “*the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as General Principles of Community law.*”

In the *Nold*-case the Court identified the Convention as one of the primary sources of fundamental rights, whose observance is guaranteed in the Community legal order as below “the Court already stated, fundamental rights form an integral part of the General Principles of Law, the observance of which it ensures. In safeguarding these rights, the Court is bound to draw inspiration from the Constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States. The International Treaties for the Protection of Human Rights on which the Member States have collaborated (...) can supply guidelines which should be followed within the framework of Community Law.”⁴

As we see in this case the Court haven't referred to European Convention for the Protection of Human Rights and Fundamental Freedoms, only some unidentified International Treaties. Express reference to the Convention was made for the first time in the *Rutili* case. (Point 32.) In this case the Court specified some *procedural principles*, e.g. *right to notification, right to appeal*.

This requirement means that the State concerned must, when notifying an individual of a restrictive measure adopted in this case, give him a precise and comprehensive statement of the grounds for the decision, to enable him to take effective steps to prepare his defence. (Point 39.)⁵

In the 70s the Court declared some procedural rights as fundamental rights, e.g. *right to hearing* at first in the Case *Transocean Marine Paint Association v Commission of European Communities*.⁶ “Both from the nature and objective of the procedure for hearing (...) applies the general rule that a person whose interests are perceptibly affected by a decision taken by a public authority must be given the opportunity to make his point of view known. This rules requires that an undertaking be clearly informed, in good time, of the essence of conditions to which the commissions intends to subject an exemption and it must have the opportunity to submit its observation to the commission.” This case made

³ Takis Tridimas: *The General Principles of EU Law*, Second Edition, Oxford EC Law Library 2006. p. 6.

⁴ Judgment of the Court of 14 May 1974. *J. Nold, Kohlen and Baustoffgrosshandlung v Commission of European Communities C- 4/73*. Paragraph 13.

⁵ Judgment of the Court Roland Rutili v Ministre d' Interieur C-36/75. ECR 1975. p. 01219.

⁶ C-17/74. *EBHT* 1974. 01063. o.

extensive references to English law, in adopting the right to hearing to the Community Law.

The right to hearing later appeared at the case-law of the Court like *right of defence*, and today as *right to legal representation*.⁷

3. The Importance and effect of Charter of Fundamental Rights

In this way there was a giant leap the approval of the Charter of Fundamental Rights. The Charter was approved unanimously by the Biarritz European Council in October 2000, and was signed by the presidents of the European Parliament, the Council and the Commission on December 2000. The procedural rights enshrined in Chapter IV under Article 47. like *right to an effective remedy and fair trial, right of defence, right to a fair and public hearing within a reasonable time* by an independent and impartial tribunal, right to legal aid and effective access to justice.⁸

The Treaty of Lisbon amends the current EU and EC treaties, without replacing them. It will provide *Europe of rights and values, freedom, solidarity and security*, promoting the Union's values, introducing the Charter of Fundamental Rights into European primary law, providing for new solidarity mechanisms and ensuring better protection of European citizens.

The Treaty of Lisbon preserves existing rights while introducing new ones. In particular, it guarantees the freedoms and principles set out in the Charter of Fundamental Rights (see above) and gives its provisions (a) binding legal force.

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 *Johnston* [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 *Heylens* [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 *Borelli* [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles 251 to 281 of the Treaty on the Functioning of the European Union, and in particular in the fourth paragraph of Article 263. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

In the Community law, the *right to a fair hearing* is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, '*Les Verts*' v *European Parliament* (judgment of 23 April 1986, [1986] ECR 1339).

⁷ See for further details: Aron Mifsud-Bonnici: The role of the Court of Justice in the development of the General Principles of Community Law, <http://www.mifsudbonnici.com/lexnet/articles/artgenprinc.html>

⁸ Article 47 *Right to an effective remedy and to a fair trial*

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice. www.ocipe.hu

Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union. With regard to the third paragraph, it should be noted that in accordance with the case-law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR judgment of 9 October 1979, Airey, Series A, Volume 32, p. 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

4. Procedural principles at the Brussels Convention and later in the Brussels I. regulation

At first we have to focus on the Brussels Convention, as the main source of the European Civil Procedure Law. We have to mention, that although the primary aim of create this Convention to ensure the possibility of mutual recognition and enforcement of judgments, and to avoid the possibility of parallel procedures with respect to the effective legal protection of citizens, the preamble of Convention (and after the 44/2001/EC regulation) formulated some procedural principles. The Convention formulated the principle of Legal Certainty.

“In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. (...) The rules of jurisdiction must be highly predictable.”⁹ So one of the most general principle of the Convention, the principle of „strengthening the legal protection of persons established in the Community” has early recognized in the Preamble.

“For the purposes of the free movement of judgments, judgments given in a Member State bound by this Regulation should be recognized and enforced in another Member State bound by this Regulation, even if the judgment debtor is domiciled in a third State.”¹⁰

In Case of *Gubish v Palumbo* the Court confirmed that the principles „free movement of judgments” is closely related to the principle of „strengthening the legal protection of persons”.¹¹

Beside the above-mentioned principles has appeared another procedural principles e.g. right of defense as “the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected.”¹²

The Preamble of Regulation declared *five* procedural principles:

- free movement of judgments;
- right to legal certainty;

⁹ Council Regulation (EC) 44/2001 of 22 December 2000. concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters preamble Points (11) and (15).

¹⁰ Council Regulation (EC) 44/2001 of 22 December 2000. concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters preamble Point (10)

¹¹ Judgment of the Court of 8 December 1987 in *Gubisch Maschinenfabrik KG v Giulio Palumbo* C-144/86. ECR 1987 Page 04861

¹² Council Regulation (EC) 44/2001 of 22 December 2000. concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters preamble Point (18)

- rights to a adversarial procedure;
- right of defense;
- right to appeal.¹³

After this short review of Preamble, we examine the interpretation some problematic articles of the Regulation by the Court in the field of procedural rights.

4.1 Definition problems at the field of provisional measures (Article 24 of Convention, Article 31 of Regulation)

The Article 24 of Convention (Article 31 of Regulation) allows “application may be made to the courts of a Member State for such *provisional, including protective measures* as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.” It means an extraordinary jurisdiction.

The ordinary jurisdiction of the courts, which may be seised or are already seised also for the substance of the matter, and *extraordinary jurisdiction* based on the above-mentioned article must be distinguished. The provisional measures provided for in national law may be limited to effectiveness only on the territory of the issuing State. Others are worldwide. This diversity is at the basis of a variety of problems arisen in the context of recognition and enforcement of provisional measures.

All the provisions of the Convention (...) express the intention to ensure that proceedings leading to the delivery of judicial decisions take place in such a way that the *rights of defence are observed*. It is because of the guarantees given to the defendant in the original proceeding that the Convention is very liberal in regard to recognition and enforcement. (Point 13.)¹⁴

Although enforcement proceeding may be unilateral this fact has to be brought into accord with liberal character of the Convention as regards the procedure for enforcement, which is justified by the guarantee that in the State of origin *both parties have either stated their case or had the opportunity to do so*. (...) Whilst another reason for the unilateral character of the enforcement procedure under Art. 34 is to produce the surprise effect which this procedure must have in order to prevent a defendant from having the opportunity to protect his assets against any enforcement measures (...) the unilateral proceedings are based on the assumption that *both parties will have been heard* in the State of origin. (Point 14.)¹⁵

As we see the Court set a great significance to guarantee the defendant’s *right of defence* and the *right to be heard*.

In the Case *Mario Reichert and others v Dresdner Bank AG* the Court confirmed his opinion expressed in the above mentioned case “that as provisional or protective measures may serve to *safeguard a variety of rights*, their inclusion in the scope of the Convention is determined not by their own nature but by the nature of the rights which they serve to protect. The Court also pointed out in the judgment in Case 125/79 *Denilauler v Couchet Frères* (...) that, where such types of measures are concerned, special rules were

¹³ See for further details: Pointer, Jannet A., Burg, Edwige: EU Principles on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters – according to the case law of the European Court of Justice, Asser Press, Hague 2004.

¹⁴ Judgment of the Court of 21 May 1980 *Bernard Denilauler v SNC Couchet Freres* C-125/79. (ECR 1980. p. 1553.)

¹⁵ Judgment of the Court of 21 May 1980 *Bernard Denilauler v SNC Couchet Freres* C-125/79. (ECR 1980. p. 1553.)

contemplated so as to take account of the *particular care and detailed knowledge of the actual circumstances* required by the granting of this type of measure as well as the determination of procedures and conditions intended to guarantee the provisional and protective character of such measures.”¹⁶

In the Case *Italian Leather v WECO Polstermöbel GmbH* the Court repeated its opinion which was stated in the *Denilauer* case. Finally, it would be contrary to the principle of legal certainty, which the Court has repeatedly held to be one of the objectives of the Brussels Convention (see Case 38/81 *Effer* [1982] ECR 825, paragraph 6, Case C-440/97 *GIE Groupe Concorde and Others*[1999] ECR I-6307, paragraph 23, and Case C-256/00 *Besix* [2002] ECR I-0000, paragraph 24), to interpret Article 27(3) as conferring on the court of the State in which recognition is sought the power to authorize recognition of a foreign judgment when it is irreconcilable with a judgment given in that Contracting State. In view of the foregoing, the answer to the second part of the first question must be that, where a court of the State in which recognition is sought finds that a judgment of a court of another Contracting State is irreconcilable with a judgment given by a court of the former State in a dispute between the same parties, it is required to refuse to recognize the foreign judgment.¹⁷

Under the case law of the Court of Justice, provisional measures given in extraordinary jurisdiction provided for by Article 24 of the Convention (Article 31 of the Regulation) must be restricted in two characteristic respects. First: *real connecting link* between the subject matter of the measures sought and the territorial jurisdiction *must exist*. Second: *interim payment* of a contractual consideration *doesn't constitute a provisional measure (...)*.¹⁸

If we want to generalize the settlements of the Court we may be said – according to the standard case-law – the right to a hearing requires that the undertaking concerned be afforded the opportunity to make known its views on the truth and relevance of the facts, charges and circumstances relied on by the decision-maker.¹⁹

4.2 Definition problems at the field of recognition under the Convention

The Court has strengthened some elements of fair trial at the case law of interpretation the articles of *recognition of the Convention*, e.g. *right of appearance*, *right to serve the documents in sufficient time* etc.

Under the Convention the judgment shall not be recognized:

1. if such recognition is contrary to public policy in the Member State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so.²⁰

We don't want to define the content of the public policy of a Contracting State, but we

¹⁶ Judgment of the Court of 26 March 1992 *Mario Reichert and others v Dresdner Bank AG*. C-261/90 (ECR 1992. p. I-02149.)

¹⁷ Judgment of the Court of 6 June of 2002 *Italian Leather Spa v WECO Polstermöbel GmbH & Co*. C-80/00 (ECR 2002. I-04995. o.)

¹⁸ Peter Schlosser: Report on the Application of Regulation Brussels I. in the Member States, Final Version September 2007. p. 307. Study JLS/C4/2005/03. http://ec.europa.eu/civiljustice/news/docs/study_application_brussels_1_en.pdf

¹⁹ Takis Tridimas: The General Principles of EU Law, Oxford EC Law Library, Oxford University Press, 2006. p. 386

²⁰ Article 27 of Brussels Convention.

have to state that the Court while interpret the above-mentioned articles of the Convention often referred some fundamental procedural principles guaranteed by the European Convention for Human Rights. E.g. the case of *Dieter Krombach v André Bamberski* the Court has consistently held that fundamental rights form an integral part of the general principles of law whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. In that regard, the European Convention for the Protection of Human Rights and Fundamental Freedoms has particular significance. (...) The Court has thus expressly recognized the general principle of Community law that everyone is entitled *to fair legal process*, which is inspired by those fundamental rights.²¹

The Court in the Case *Minalmet GmbH v Brandeis Ltd.*²² held that *due service* and *service in sufficient time* constituted two separate and concurrent safeguards for a defendant who fails to appear. The absence of one of those safeguards is therefore a sufficient ground for refusing to recognize a foreign judgment. It follows that a decision given in *default of appearance* in a contracting State *must not be recognized in another contracting State* if the document instituting proceedings was not duly served on the defaulting defendant. (...) It follows from the wording of the aforesaid provision that service on the defendant of the document instituting proceedings *in due form* and *in sufficient time* is required by that provision for recognition of that decision in a contracting State.²³

Furthermore, as the Court held in its judgment in Case 166/80 *Klomps* [1981] ECR 1593, paragraph 9, Article 27(2) of the Brussels Convention is intended to uphold the *rights of the defence* and ensure that a judgment is not recognized or enforced under the Convention if the defendant has not had an opportunity of defending himself before the Court first seised.

It must be emphasized in that regard that, as it is apparent from the provision at issue, the proper time for the defendant to have an opportunity to defend himself is the time at which proceedings are commenced. The possibility of having recourse, at a later stage, to a legal remedy against a judgment given in default of appearance, which has already become enforceable, cannot constitute an equally effective alternative to defending the proceedings before judgment is delivered.²⁴

5. Procedural principles in the case law of the Court after entry into force of the Treaty of Amsterdam

Despite (of) the fact that the *Maastricht Treaty* (amending the EC Treaty) established the category of *judicial cooperation in civil matters* as the third pillar of the Community already in 1993, it only gained significance - among others for the achievement of the above purposes - with the *Treaty of Amsterdam* in 1997. With the entry into force the Treaty of Amsterdam the institutional framework has changed at the field of judicial cooperation in civil matters. Based on the new competences of Articles 61 and 65 of EC Treaty a dynamic legislation process began in the end of the 1990s, the European Community has implemented nine Regulations at the end of 2007. At the same time European procedural law has become a part of a new field of European policy: the "*area of freedom, security and justice*" being created.

²¹ Judgment of the Court of 28 March 2000 *Dieter Krombach v André Bamberski* C-7/98 (ECR 2000. p. I-1935)

²² Judgment of the Court of 12 November 1992 *Minalmet GmbH v Brandeis Ltd.* C-123/91 (ECR 1992. p. I-5661)

²³ Judgment of the Court of 12 November 1992 *Minalmet GmbH v Brandeis Ltd.* C-123/91 (ECR 1992. p. I-5661)

²⁴ Judgment of the Court of 12 November 1992 *Minalmet GmbH v Brandeis Ltd.* C-123/91 (ECR 1992. p. I-5661)

As we saw in the last chapter of this study, since the 1990s the Court has equally been interpreting the Brussels Convention in the light of General Principles of Community Law. Today, applying and interpreting the Regulation EC 44/2001 (which came after the Brussels Convention of 1968) have become relevant in this context.

We have to mention two judgments of the Court in the field of judicial cooperation in civil matters, where the ECJ has referred concretely to some fundamental procedural rights, e.g. right to a fair legal process, right of defence as an integral part of the General Principles of law whose observance the Court ensures.

In the Case *ASML Netherlands BV v Semiconductor Industry Services GmbH* the Court has emphasized that:

- The same requirement appears in the 18th recital in the preamble to Regulation No 44/2001, pursuant to which respect for the rights of defence means that the *defendant should be able to appeal in an adversarial procedure*, against the declaration of enforceability of a decision, if he considers one of the grounds for non-enforcement to be present;

- The European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights, that the rights of the defence, which derive from the right to a fair legal process enshrined in Article 6 of that convention, require specific protection intended to guarantee effective exercise of the defendant's rights (see Eur. Court H.R., *Artico v Italy* judgment of 13 May 1980, Series A No 37, § 33, and Eur. Court H.R., *T v Italy* judgment of 12 October 1992, Series A No 245 C, § 28).

- It follows that only knowledge by the defendant of the contents of the default judgment guarantees, in accordance with the requirements of respect for the rights of defence and the effective exercise of those rights, that it is possible for the defendant, within the meaning of Article 34(2) of Regulation No 44/2001, *to commence proceedings* to challenge that judgment before the courts of the State in which the judgment was given.

- The Article 34(2) of Regulation No 44/2001 is intended, in particular, to prevent a defendant from waiting for the recognition and enforcement proceedings in the State in which enforcement is sought in order to claim infringement of the rights of defence, when it had been possible for him to defend his rights by bringing proceedings against the judgment concerned in the State in which the judgment was given.²⁵

In the Case *Eurofood IFSC Ltd* the Court further define the content of *fair legal process* at the implementation of the Council Regulation (EC) No 1346/2000 on insolvency proceedings.²⁶

In the procedural area, the Court of Justice has expressly recognized the general principle of Community law that everyone is entitled to a *fair legal process* (Case C-185/95 P *Baustahlgewebe v Commission* [1998] ECR I-8417, paragraphs 20 and 21; Joined Cases C-174/98 P and C-189/98 P *Netherlands and Van der Wal v Commission* [2000] ECR I-1, paragraph 17; and *Krombach*, paragraph 26). That principle is inspired by the fundamental rights which form an integral part of the general principles of Community law which the Court of Justice enforces, drawing inspiration from the constitutional traditions common to the Member States and from the guidelines supplied, in particular, by the European Convention for the Protection of Human Rights and Fundamental Freedoms,

²⁵ Judgment of the Court of 14 December 2006 *ASML Netherlands BV v Semiconductor Industry Services GmbH* C-283/05. ECR 2006. Points 25-38.

²⁶ Judgment of the Court of 2 May 2006 in *Eurofood IFSC Ltd*. C-341/04. ECR 2006 p. I-03813

signed in Rome on 4 November 1950.²⁷

Concerning more particularly *the right to be notified of procedural documents* and, more generally, *the right to be heard*, (...) these rights occupy an eminent position in the organization and conduct of a *fair legal process*. In the context of insolvency proceedings, the right of creditors or their representatives to participate in accordance with the *equality of arms* principle is of particular importance. Though the specific detailed rules concerning the right to be heard may vary according to the urgency for a ruling to be given, any restriction on the exercise of that right must be duly justified and surrounded by procedural guarantees ensuring that persons concerned by such proceedings actually have the opportunity to challenge the measures adopted in urgency.

In the light of those considerations, (...) on a proper interpretation of Article 26 of the Regulation, a Member State may refuse to recognize insolvency proceedings opened in another Member State where the decision to open the proceedings was taken in flagrant breach of the fundamental right to be heard, which a person concerned by such proceedings enjoys.²⁸

Concluding remarks

The European Court of Justice has decided more than 50 000 cases since it was established. After the Amsterdam Treaty entered into force the Court's competence has been covered the above-mentioned Article 6 (2). This is the reason that the number of cases refers to this Article rises. In the course of the Court's 50-year functioning it declared in several cases that respecting the fundamental rights is an integral part of the general principles justified by the Court. We must recognize the Court elaborated and interpreted several General Principles and often these principles have priority instead of the normative legal rules in practice.

Bibliography:

- *Pointer, Jannet A., Burg, Edwige*: EU Principles on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters – according to the case law of the European Court of Justice, Asser Press, Hague 2004.
- *Bin Cheng*: General Principle of Law as Applied by International Courts and Tribunals, Cambridge University Press, 2006;
- *Takis Tridimas*: The General Principles of EU Law, Second Edition, Oxford EC Law Library 2006;
- *Gottfried Baumgartel*: Ausprägung der prozessualen Grundprinzipien der Waffengleichheit und der fairen Prozessführung im zivilprozessualen Beweisrecht, in: *Verfahrensgarantien im nationalen und internationalen Prozessrecht*, Wien 1993. p. 29-37.;
- *Burkhard Hess*: Die Konstitutionalisierung des europäischen Privat -und Prozessrechts, in: *Juristenzeitung*, 2005/11. p. 540-551.
- *Aron Mifsud-Bonnici*: The role of the Court of Justice in the development of the General Principles of Community Law,
<http://www.mifsudbonnici.com/lexnet/articles/artgenprinc.html>

²⁷ Judgment of the Court of 2 May 2006 in Eurofood IFSC Ltd. C-341/04. ECR 2006 p. I.-03813 Paragraph 65.

²⁸ Judgment of the Court of 2 May 2006 in Eurofood IFSC Ltd. C-341/04. ECR 2006 p. I.-03813 Paragraph 66-67.