

Prof P Craig

Session 3 – Decision-making: Form, Procedure and Substance

EU Ombudsman / ReNEUAL conference

Towards an EU administrative procedure law ?

Brussels, March 15-16th 2012

Legal Status Quo: I

- Treaty Articles protective of rights associated with administrative procedure
- For example: Art 15 TFEU – access to information; Art 296 TFEU – duty to give reasons
- Charter Rights directly associated with administrative procedure
- For example Art 41: right to good administration: Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. It includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
- For example Art 41(3): Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
- For example Art 47: the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article; fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law; legal aid for those who lack sufficient resources.

Legal Status Quo: II

- General Principles of Law Fashioned by ECJ/GC:
Centrality of creative role of EU courts
- Proportionality, fundamental rights, legal certainty, legitimate expectations, equality and procedural justice read into the Treaty, used as foundation for judicial review under Articles 263 or 267 TFEU.

Legal Status Quo: III

- Sector Specific Codes Setting Out Applicable Procedures Tailored to the Needs of the Particular Area
- For Example: Competition: Reg 1/2003, Reg 773/2004, Commission Notice, On the Rules for Access, Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty
- For Example: State Aids: Reg 659/1999, Reg 794/2004

Legal Status Quo: IV

- Contributions from EU Institutions
- For Example: European Ombudsman, The European Code of Good Administrative Behaviour (2005)
- Valuable Admixture of legal principles developed by the courts, plus other principles of good administration such as courtesy,

Where Next?: More Individual Studies?

- Further study of individual sectoral areas, with the aim of crafting sectoral rules for those sectors that do not currently have them, or improving those that currently exist
- Advantage of tailoring rules to needs of particular areas, but Herculean labour, with inefficiencies in terms of repetition and dangers of differential procedural rules applying across different areas for no objective reason

Where Next?: Value of a Code

- Jacques Ziller: 4 important benefits:
- It can enhance the clarity of, and facilitate access, to the law; increase the coherence of principles and procedures; set up default procedures to fill gaps in existing law; and establish the functions of administrative procedure.

Where Next?: Drafting a 'Code'

- 5 central issues in relation to individual decision-making
- 1: The Definitional Trigger for what Types of Single Act Decision-making are to be Covered: Same as in the Charter?
- 2: Coverage: Procedure or Substance or both?
- 3: Issues to be Included: For example: would we include issues such as cross examination,
- 4: Level of detail with which procedural or substantive rights are specified. Less detail means more judicial discretion, but more adaptability to the needs of particular areas
- 5: adapting the norms in the Code to composite procedures/shared administration