

Abstract

The European Commission takes into account several factors when imposes fines for the violation of Competition Law. Among them, the circumstance of recidivism is usually appraised. However, no explicit legal provision for recidivism can be found in the primary or secondary legislation of the European Union. This situation could infringe the fundamental right, and principle of Community Law that states that criminal law must be legally foreseen, the so-called principle of *nulla poena sine lege*. It seems worth analyzing to what extent that principle is fulfilled by the European Commission and the European Courts.

The materials for this research have been fundamentally the decisions of the Commission and the Case Law of the European Courts, the Court of First Instance and the Court of Justice. Attention has been also paid to the decisions of the Commission of Human Rights and the European Court of Human Rights. In addition, specialized literature from journals, Commission's newsletters and Competition Law handbooks have been scrutinized.

This Article is composed of three parts. The first chapter analyzes the current scenario for the protection of the principle of legality in Europe. Therefore it analyses the Case Law of the European Court of Human Rights and the national legislations. In this section, attention is also given to the possibilities of challenging community acts before the Strasbourg's Court. The second part analyses the application of the aggravating circumstance of recidivism in the EC fining policy. The third chapter is devoted to the judicial review of recidivism by the European Courts, the CFI and the ECJ.

As a result of the research, it can be concluded that the EC enforcement of Antitrust Law poses serious doubts in relation to the principle of legality. Certainly, the Commission enjoys a wide discretion to justify competition fines and the judicial review has even extended it. This state of affairs may be justified politically but not legally. The principles of legality and legal certainty require a more transparent system. The influence of the ECHR and of the new bias towards criminalization may ameliorate this situation.