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The EU Court of Justice in the Process of European Construction and Integration

Abstract

The paper is devoted to the evolution of the role and place of the Court of Justice in the process of European integration. The author analyses the relationship between the development of primary European legislation, starting with the Treaty of Paris, and the current stage, following the Treaty of Lisbon. The relevant provisions of the founding treaties and the achievements of the case law at each stage and their impact on integration are examined. Their implications for the shaping of trends in the further development of the activity of the CJEU in the context of the current and upcoming challenges are identified.

KEYWORDS: Court of Justice, european integration, EU law, EU primary law, legal doctrine

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1 Introduction

"Europe will not be made all at once or according to a single plan. It will be built through concrete achievements that first create a de facto solidarity."[1] This is one of the most famous quotes from the Schuman Declaration, which has lost none of its relevance. Europe has gone through a long and sometimes difficult process of evolving and transforming, which continues to this day. This evolution has affected all aspects, including legal and organisational ones. Thus, many of the legal provisions of primary legislation, which formed the basis for the existence of European Communities, have been modified in various ways throughout the existence of the EU. In addition, we could observe a change in the institutional mechanism, different combinations of powers and competences between the bodies of these Communities. The European Communities did not have the traditional division of state power into legislative, executive and judicial branches. However, it is noteworthy that the Court of Justice has been a visible presence on the European arena throughout the development of a united Europe. Its role has obviously not been the same at different stages of the development of the European Communities, but the very fact that the Court was at the origin of the European Communities and is still involved in resolving the most sensitive issues within the united Europe is evidence of its special role. Obviously, such a player in the European arena could not be ignored by researchers, scholars or practitioners. Many sources are devoted to the history[2] and role of the Court of Justice at different times.[3] The phenomenon of the Court, its resistance to criticism and the unshakable authority of its judgments,[4] its contribution to European integration,[5] etc. are studied.

1 European Union, Schuman declaration May 1950.

2 Ditlev Tamm, "The History of the Court of Justice of the European Union Since its Origin", [in:] *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law*, ed. Court of Justice of the European Union (The Hague: T.M.C. Asser Press, 2013), 9-35.

3 Derek Beach, Martin Mennecke, *Between Law and Politics: The Relationship Between the European Court of Justice and EU Member States* (København: DJØF Forlag, 2001).

4 Karen J. Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe* (Oxford: Oxford University Press, 2001); Benjamin Werner, "Why is the court of justice of the European Union not more contested? Three mechanisms of opposition abatement" *JCMS Journal of Common Market Studies*, No. 6 (2016).

5 Henri de Waele, "The Role of the European court of justice in the integration process: A contemporary and normative assessment" *Hanse Law Review*, No. 1

This study attempts to examine the step-by-step evolution of the Court's role in the European integration process against the background of the reforms of the EU's founding legislation. This study's approach is grounded on the findings of scientific researches conducted by Ukrainian and European experts on the issues pertaining to the judicial system of the European Union. The methodological basis of the study is a combination of general and special methods of scientific knowledge, such as comparative, systemic analysis, historical and legal, systemic and structural methods. The use of the works of Ukrainian researchers in this article is due to the need to present the legal profession's view of the activities of the EU judicial institution within the framework of the integration processes and the preparation of the legal basis for Ukraine's membership. The research problem is to understand the processes in the judicial system that take place during the integration of a particular country and to formulate the coordination of legal doctrines in retrospect. In this case, prospective development helps to avoid legal deficiencies. The genesis of primary European legislation as reflected in the Court's case law are to be researched. Based on the study these steps will be presented in the form of stairs, with the lowest level representing the stage of the Court's establishment and the first years of its operation, and the highest level (for the purposes of this study) representing the stage following the signature of the Treaty of Lisbon. These steps symbolise the development of the Court's powers, capabilities and influence on the integration processes at each stage. They also symbolise the mutual influence of the judicial and legislative activities of the European institutions, resulting in specific, mostly landmark judgments of the Court. In this context, it is also necessary to identify the main external and internal challenges, as well as the prospects of their meeting and their influence on the further development of the Court as the guardian of the European legal order. Will the crisis on the European continent affect the ability of the EU, and therefore the Court, to function in the usual format and within the legal order established over decades? Will this European institution have sufficient strength and margin of safety to continue its upward trajectory towards establishing itself as the leading institution of European integration, despite the difficulties and obstacles? The historical context should help to answer these questions.

(2010); Arjen Boin and Susanne K. Schmidt, "The European court of justice: Guardian of European integration", [in:] *Guardians of Public Value,* ed. Arjen Boin, Lauren A. Fahy, Paul Hart (Switzerland: Palgrave Macmillan, 2021).

The geographical context has not been taken into account in this study, i.e. the periodisation has not been based on the stages of enlargement of the European Community/EU. In the author's view, such enlargement has not had a significant impact on the scope of the Court's jurisdiction. In addition, the stages of the Court's development have been distinguished according to the founding treaties, which have had a major impact on the competence component (and sometimes on the organisational component of the Court's activities).

The article is therefore divided into three parts, each of which corresponds to a different stage in the formation and development of the EU and, accordingly, to the emergence of the Court's role in the European integration process at that stage. Thus, the first part covers the initial period from the establishment of the Court on the basis of the Treaty of Paris to the Treaties of Rome. The second part covers the longest period in terms of chronology and the most intense in terms of the transformation of the legal order, the functioning and the scope of the Court's activities. The third part is devoted to the final phase following the Maastricht Treaty. This part will also attempt to outline the prospects for the future development of the Court's activities and role.

2 The European Court of Justice from the Schuman Declaration to the Treaties of Rome

The Schuman Declaration, although of a declaratory nature, is without doubt one of the most important documents in the construction of Europe. The principles and approaches to the coexistence of different States set out in it have become the basis for further European integration. The foundations for the institutions of the future united Europe reflected in the Declaration were developed and formalised in the Treaty establishing the European Coal and Steel Community (hereinafter the Treaty of Paris). This Community was the first formal step towards a united Europe. The importance of this step cannot be overestimated, as it laid the foundations for further integration processes in Europe. Common objectives, common institutions and a common market were identified as the main pillars on which the Coal and Steel Community was based.

What did this role of the Court mean for Europe at that stage? The Court played a leading role in the system of checks and balances, a safeguard against abuse of power by the Community institutions. Maintaining a balance between the interests of the Community and its individual Member States, as well as those of private persons, has been and remains one of the most difficult tasks for supranational entities. And the greater the degree of generalisation of the rules on which the entity is based, the more difficult this task becomes. The Treaty of Paris is an example of an act with very general provisions. Failure to understand the meaning and scope of certain provisions is often an obstacle to their correct application. For example, Article 4 of the Treaty of Paris listed the prohibited practices incompatible with the functioning of the Community's common market. One of these is the prohibition of discrimination in the coal and steel market between producers, consumers, etc. The lack of understanding of what is meant by the prohibition of discrimination in Article 4(b) of the Treaty of Paris was the basis of the case Geitling Ruhrkohlen-Verkaufsgesellschaft and others v. ECSC High Authority (Case 2/56). In this case, the applicant asked the Court to annul Article 8 of Decision No 5/56 of the High Authority of 15 February 1956 on the grounds that it infringed essential procedural requirements and two articles of the Treaty, in particular Articles 4(b) and 65.

The challenged article was upheld. But this judgment was also valuable because the Court provided an interpretation of the concept of "discrimination". This interpretation contributed to the unification of approaches to the understanding and application of this concept by all Member States, which is key to the proper functioning of the common market.[6] The example of this judgment shows that the Court has fulfilled the crucial mission of unifying the application and interpretation of the provisions of the Treaty of Paris. And this, in turn, is something without which supranational entities, customs unions, economic unions, etc. cannot exist. It follows the 'black letter' rule to focus on the primary sources of law.[7]

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6 Judgment of the Court from 20.03.1957, case ref. 2-56, Mining undertakings of the Ruhr Basin being members of the Geitling selling agency for Ruhr coal, and the Geitling selling agency for Ruhr coal v. High Authority of the European Coal and Steel Community.

7 Oleg Yaroshenko, Volodymyr Steshenko, Hanna Anisimova, Galina Yakovleva, Nabrusko Mariia, "The impact of the european court of human rights on the development of rights in health care" *International Journal of Human Rights in* Healthcare, No. 5 (2021).

> The "black letter" methodology of law is used to focus on the letter of the law and attempt to conduct a descriptive analysis of legal norms based on primary sources.[8]

This is a distinctive feature of the EU Court of Justice from the legal systems of some other countries, which not only do not adhere to the rule of law, but also categorically oppose the application of European judicial practice.[9]

In confirmation of the above, it should be noted that the first case brought before the Court was Case 1/53 Verband Deutscher Reeder v. High Authority. The case was withdrawn, shortly after the conclusion of the written procedure. The Court delivered its first judgment on 21 December 1954 (Case 1/54 France v ECSC High Authority). It concerned the annulment of acts of the High Authority for breach of the Treaty and abuse of power.

We cannot ignore such decisions as an interpretation of the Court's judgments. This was done on the basis of Article 37 of the Protocol on the Statute of the Court of Justice. This Article provides that "if the meaning or scope of a judgment is «in doubt», the Court shall construe it on application by any party or any institution of the Community establishing an interest therein."[10] A judgment was considered doubtful if the parties interpreted it differently. It is important to note that in a judgment on interpretation the Court can only clarify the meaning and scope of a previous judgment; it cannot deal with questions which were not settled by that judgment. Thus, in Case 5/55 Associazione Industrie Siderurgiche Italiane (ASSIDER) v High Authority of the European Coal and Steel Community, the interpretation of the judgment in Case 2/54 was given.[11]

We have a high regard for the interpretative work of the Court of Justice at that time, which contributed to the unification of law making, law

8 Oleg Yaroshenko, Volodymyr Steshenko, Hanna Anisimova, Galina Yakovleva, Mariia Nabrusko, "The impact of the european court of human rights on the development of rights in health care" *International Journal of Human Rights in Healthcare*, No. 5 (2021): 501-513, doi:10.1108/IJHRH-03-2021-0078.

9 Rafał Czachor, "Współpraca Sądu Konstytucyjnego Federacji Rosyjskiej z Europejskim Trybunałem Praw Człowieka w latach 1998-2022" *Prawo i Więź*, No. 3 (2024).

10 CVCE, Protocol on the Statute of the Court of Justice of the European Coal and Steel Community (18 April 1951) – consolidated version 1997 (Luxembourg: Consolidation CVCE, 1997).

11 Judgment of the Court from 28.06.1955, case ref. 5-55, Associazione Industrie Siderurgiche Italiane (ASSIDER) v. High Authority of the European Coal and Steel Community.

enforcement and legal understanding within the Community. In other words, these activities ensured the establishment and development of legal integration. We believe that legal integration is the basis for political and economic integration, as discussed by Schuman and other ideologists of a united Europe. It was not enough to proclaim common goals, common guidelines for several countries. It was not even enough to develop implementation mechanisms, primarily institutional, procedural and financial. It was important to create a common environment that would contribute to an awareness of the need to accept supranational law and to determine the format of its coexistence with national law. As Karen Alter has rightly written, "Legal integration is not simply the issuing of legal decisions, which create new doctrine, but more importantly the acceptance of this jurisprudence within national legal systems and by national politicians".[12] For example, in Poland, as one of the central countries of the European Union, the courts, with their means and procedures of evidence, have been evolving since the 16th century. Developed mainly in the practice of the courts of Małopolska, the judicial process gradually evolved under the influence of the Sejm constitutions. The most relevant in this regard was the reform of the court procedure, which directly affected the functioning of the justice system and contributed to the effective implementation of EU law.[13]

The Court of Justice was empowered to review the legality of decisions and recommendations of the Community institutions only as regards their compliance with the substantive and procedural rules laid down in the Treaty of Paris and its implementing acts. Looking more broadly at the annulment procedure and interpretation of the Treaty of Paris, we can see modest signs of the role of national constitutional courts. Disputes other than those relating to the application of the provisions of the Treaty of Paris or its implementing acts fell within the jurisdiction of the national courts. Perhaps the most important aspect of the Court's work from the point of view of European integration should be mentioned in this context. This is the Court's cooperation with national tribunals, as provided for in Article 41 of the Treaty of Paris. This article provides that national tribunals reviewing the validity of acts of the High Authority or of the Council may, if necessary, refer the matter to the Court of Justice. Although such a procedure could hardly be defined in terms of what we now understand

12 Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*.

13 Józef Koredczuk, "Ewolucja środków i postępowania dowodowego w procesie sądowym ziemskim w Polsce w XVI wieku" *Prawo i Więź*, No. 1 (2024).

by preliminary rulings, it became the basis for the development of something crucial to the modern European judicial system. There is currently no information on whether national courts made use of this possibility at the time. However, the very fact that national courts were involved in the creation of the Community's common legal framework was a good start to the European integration marathon.

To summarise the Court's role at this initial stage, it is worth noting that the Court's ambiguous nature makes it a unique supranational judicial institution.

First, the rule of law in the Community, its general binding nature and the inevitability of the consequences of non-compliance should be guaranteed by exercising the functions of a constitutional court. Given that the Treaty defines the powers of the Community institutions mainly through the objectives of the Treaty itself, without specifying them through specific powers, the Court had an exclusive role in determining the scope of these powers and the degree of discretion. The Court created a precedent and, in effect, rules of law for further application in similar cases. This contributed to the legal integration of the Community, in particular by minimising differences between Member States in their legal understanding and application of the provisions of the Treaty.

Second, by annulling acts incompatible with the Treaty of Paris, the Court has helped to balance the interests of the Member States and individuals against the interests of the Community. In our view, maintaining this balance is a key factor in the viability of any supranational entity. After all, the Member States have voluntarily agreed to sacrifice a part of their sovereignty (even if it is economic) in order to achieve more important goals and secure more important interests – sustainable development, economic stability, predictability of further development, etc. Violation of the rights of Member States or their individual entities may lead them to withdraw from the Community. In fact, it may call into question the very purpose of its existence.

Third, the interpretation of the rules, which was a derivative function of the Court of Justice, created legal certainty and ensured a uniform approach to the application of the Treaty rules in the different Member States.

Fourthly, the possibility to coordinate the efforts of the Court of Justice and the national tribunals in reviewing the validity of acts of the Community institutions was, in our view, perhaps the most important instrument of integration. It laid the foundations for the preliminary ruling procedure. The Court of Justice is now inconceivable without it.

3 The Court of Justice in the pre-Maastricht era

The next major step towards European integration was the signing of the Treaties of Rome in 1957 – the Treaty establishing the European Economic Community (EEC Treaty) and the Treaty on the European Atomic Energy Community (Euratom Treaty), which entered into force on 1 January 1958.

For the purposes of this research, we are interested in the provisions of the Treaties relating to the Court of Justice. A single Court was established whose activities covered all three Communities. Depending on which institution's act was being challenged, the provisions of the relevant treaty were applied. In 1958-1959, for example, the Court of Justice continued to hear cases only against the ECSC High Authority. This did not mean that other institutions did not raise grounds for challenge. The Member States, their private individuals and the institutions themselves were probably in the initial stages of adapting to the new situation, while the practice of challenging acts of the High Authority was already commonplace. The first case involving the Commission was initiated in 1959 and settled in July 1960, not in favour of the Commission.[14]

So, what have the Treaties of Rome brought to the Court's activities and mission? First of all, it should be noted that the purpose of the Court's activities has hardly changed. The Court was to ensure the observance of law and justice in the interpretation and application of the two Treaties. The only change is that the scope of its activities has been extended – it is no longer limited to the steel and coal industries. At the same time, the rules governing proceedings against Member States that fail to comply with their Treaty obligations have been clarified. This was a logical step since, by signing the Treaties, Member States voluntarily undertook to comply with them. It cannot be said that, under the Treaty of Paris, the States which breached the Treaty were not liable. Article 88 of the Treaty of Paris made it possible to impose sanctions on the offending state through a rather complicated procedure. However, the Treaties of Rome clearly defined who had the right to bring proceedings against the offending State. It was the Commission (Article 169 EEC Treaty) and other Member State by referring to the Commission (Article 170 EEC Treaty). Moreover, the Member State initially had to ask the Commission for an opinion. If the Commission did not deliver an opinion within three months, the Member State could refer

14 Judgment of the Court from 15.07.1960, case ref. 43/59, 45/59 and 48/59, von Lachmüller, Peuvrier, Ehrhardt v. Commission of the European Economic Community.

the matter to the Court of Justice. In these circumstances, Member States have not really exercised the right to complain against other Member States, while the Commission has exercised this right since 1961, albeit not very often.

Under Article 171 of the EEC Treaty, if the Court of Justice finds that a Member State has failed to fulfil one of its obligations under the Treaty that State is required to take the measures necessary to comply with the judgment of the Court. In the case of Commission of the EEC v. Italian Republic (Cases 45-64), the Court found that Italy had failed to fulfil its obligations under Article 96 of the EEC Treaty, and ordered it to demonstrate compliance with the Treaty within three months.[15]

For much of the first decade of the Rome Treaties, the Court's case-law was still dominated by appeals against acts of the High Authority of the Coal and Steel Community, with a gradual increase in the number of appeals brought by both Member States and individuals against decisions of the Commission. As a general rule, the Court of Justice was empowered to review the legality of acts other than recommendations or opinions of the Council and the Commission. To this end, it has jurisdiction to rule on actions brought by a Member State, the Council or the Commission on grounds of incompetence, error of substantial form, infringement of this Treaty or of any legal provision relating to its application, or abuse of power (Article 173(1) of the EEC Treaty and Article 146(1) of the EAEC Treaty).

In principle, the action for annulment of decisions contrary to the provisions of the founding Treaties remained one of the main activities of the Court of Justice and at this stage took on more defined and clearer forms. This type of judicial practice continued to be actively developed, contributing to legal certainty, compliance with European law and, ultimately, the rule of law.

Two innovations in the Treaties of Rome deserve particular attention. The first concerns the preliminary ruling procedure, which was only hinted at in the Treaty of Paris. The EEC Treaty (Article 177) and the Euratom Treaty (Article 150) clearly defined the grounds on which the Court could give preliminary rulings. They related to the interpretation of the Treaties of Rome, the validity and interpretation of acts of the Community institutions and the interpretation of the statutes of bodies set up by an act of the Council, where such statutes so provide. The first request for

15 Judgment of the Court from 1.12.1965, case ref. 45-64, Commission of the EEC v. Italian Republic. European Court.

a preliminary ruling brought before the Court of Justice from the Court of Appeal of The Hague.[16]

The importance of this procedure for the development of law enforcement and the legal order of the EEC as a whole cannot be overestimated. This is as obvious as the need for the existence of the Court of Justice. The subjectivity in the perception and interpretation of information by individuals, caused by various factors (education, traditions, external circumstances, etc.), is multiplied when it comes to differences in the perception of information at the level of different States (with different cultures, mentality, political factors, etc.). This is probably the only way to offset the factors that objectively impede a unified approach to understanding and enforcing the law in a united Europe.

It is worth mentioning a landmark case that was considered in the context of the preliminary ruling procedure. This is the well-known case C-26/62 NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Revenue Administration (hereinafter – the van Gend & Loos case). This case was revolutionary in the context of the application of European law in general and the formation of a new legal order and doctrine of the European Economic Community. In the case itself, one of the issues raised by the Administrative Court of the Netherlands before the Court of Justice was as follows: Whether Article 12 of the EEC Treaty is directly applicable in the territory of a Member State, in other words, whether nationals of such a state may, on the basis of that Article, claim individual rights which the Courts must protect?[17] It is considered that this is not the question of the direct effect of Article 12 raised by the Dutch court, but a question of the more general quality of the authority of EU law. The judgment epitomised, however, a more general challenge to EU law.[18] This decision divides Community rules into those that have direct effect and those that do not. It is not clear from the wording of the relevant provisions which rules have such effect and which do not. This has meant that in every case of application of a Community rule, the national

16 Judgment of the Court from 6.04.1962, case ref. 13-61, Kledingverkoopbedrijf de Geus en Uitdenbogerd v. Bosch GmbH, Maatschappij tot voortzetting van de zaken der Firma Willem van Rijn.

17 Judgment of the Court from 5.02.1963, case ref. 26-62, NV Algemene Transport – en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration.

18 Damian Chalmers, Luis Barroso, "What Van Gend en Loos stands for" *International Journal of Constitutional Law*, No. 1 (2014).

court has had to ask the Court of Justice for a preliminary ruling. In this case, the European Court of Justice emphasised the beneficial impact of its new direct effect doctrine on the European integration process as a whole:

> [t] he vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by Articles 169 and 170 to the diligence of the Commission and of the Member States.[19]

Indeed, many "individuals" (which, in actual fact, were often business firms) used the direct effect doctrine in order to attack protectionist trading rules and, later, other national rules that they considered to be incompatible with Community law. They thus contributed to making the rules of Community law stick. Therefore, since Van Gend en Loos, three types of questions which national courts pose in the framework of the preliminary reference on interpretation of Community law have been identified: 1) "pure" questions of interpretation of EU law; 2) questions about the direct effect of an EU law norm, or about other factors that may affect its application by the national court; and 3) the question of compatibility between EU law and national law.[20]

Tomuschat[21] wrote that "Van Gend & Loos was one of those founding determinations that have profoundly shaped the constitutional architecture of the European integration process. First, Van Gend & Loos has dethroned the governments of the Member States as masters of the implementation process under the integration treaties. Second, Van Gend en Loos, in combination with the doctrine of supremacy of Community Union law (C-6/64, this will be discussed later), has widely opened the gates of the Courts to individual claimants. The Court has secured for itself a place right at the hub of the integration. The third, European legislation has become to play the secondary role as it can be challenged, in whatever form, before a judicial body". In other words, this judgment was a turning point both for the Court itself and for the development of European legal integration. In carrying out its activities, including the interpretation of

19 Judgment of the Court from 15.07.1964, case ref. 6-64, Flaminio Costa v. ENEL.

20 Bruno De Witte, "The impact of van Gend en Loos on judicial protection at European and national level: three types of preliminary questions", [in:] *50th anniversary of the judgment in van Gend en Loos* (Luxembourg: Publications Office of the European Union, 2013).

21 Christian Tomuschat, "Introduction", [in:] *50th anniversary of the judgment in van Gend en Loos*.

provisions of the Treaties or other legal acts, the Court took into account not only the wording of the provision but also the context in which it arose and the objectives pursued by the rules of which it was a part. In effect, the Court has become a creator of rules, norms and legal order, largely without any dissuasive or limiting factors. This also gives rise to the idea that the European Court of Justice has the characteristics of a constitutional court. After all, it is no news to anyone that constitutional courts play an important role in the legislative process and enjoy a rather wide and even unlimited "discretionary power" in interpreting constitutions.[22]

Let's return to the concept of the supremacy of Community law over national law, first articulated by Van Gend en Loos and finalised by another landmark case, C-6/64 – Flaminio Costa v. E.N.E.L. The supremacy of Community law is defined as "the capacity of a rule of Community law to override inconsistent rules of national law in domestic court proceedings."[23]

A landmark judgment in Flaminio Costa v. ENEL has established the principle that EU law supersedes national law in EEC Member States. This decision distinguishes the EEC Treaty from other international treaties because the Treaty has created its own legal system which, when the Treaty enters into force, becomes an integral part of the legal systems of the Member States and which their courts must apply. The incorporation of Community provisions into the laws of each Member State and, more generally, the wording and spirit of the Treaty make it impossible for the states to give priority to a unilateral and retrospective measure over a legal system which they have accepted on the basis of reciprocity.[24]

This judgment was delivered in a context where the initial enthusiasm for the project of European integration was slowly ebbing away. The nation states could veto any proposals for greater integration, the Commission could not on its own force the nation states to deepen integration – and no other primary political actor was to be seen who possessed the ability to retrieve the integration process.[25] However, the Court became the actor which, instead of observing the possible failure of European integration,

22 Kristina Trykhlib, "Law-Making activity in the case law of the constitutional court of Ukraine" *International and Comparative Law Review*, No. 2 (2019).

23 *The Evolution of EU Law (3rd ed.)* ed. Paul Craig, Gráinne de Búrca (Oxford: Oxford University Press, 2021).

24 Judgment of the Court from 15.07.1964, case ref. 6-64, Flaminio Costa v. ENEL.

25 Anna Katharina Mangold, "Costa v ENEL (1964): On the importance of contemporary legal history", [in:] *Inter-Trans-Supra? Legal Relations and Power Structures in History*, ed. Eliana Augusti, Norman Domeier, Fritz Georg von Graevenitz, Markus J. Prutsch (Saarbrücken: AV Akademikerverlag, 2011).

presided over it. It turned the course of Europe's common history in the direction that led to our present. In other words, by the mid-1960s, it was largely thanks to the Court that the "international" primacy of treaties – that is the prevalence of treaty provisions over domestic legislation in the relations between the contracting parties – was already well established.[26]

Continuing the theme of the primacy of European law over the national law of the Member States, we would like to quote another landmark judgment of the Court of Justice in the case of Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel (C-11/70). This case challenged the validity of measures in the common market for cereals. According to the applicant, the measures were contrary to certain structural principles of German Constitutional law, which must be protected under Community law. Consequently, the primacy of supranational law must yield before the principles of German constitutional law.[27] In other words, the Court was asked to determine the limits of the supremacy of Community law, whether it also applied to the constitutions of the Member States – acts of supreme legal force, inviolable and unconditional. This was and still is a very sensitive issue for the Member States of the Community, and now of the EU. Even today, countries have different perceptions and views on the relationship between European legislation and national constitutions.

In the judgment above, the Court of Justice stated that

> reference to the rules or concepts of national law in order to judge the validity of measures adopted by the institutions of the community would have an adverse effect on the uniformity and efficacy of Community law. The validity of such measures can only be judged in the light of Community law. Consequently, the validity of a Community measure or its effect within a Member State cannot be affected by the fact that it is contrary either to fundamental rights as they are formulated in the constitution of that state or to the principles of a national constitutional structure.[28]

26 Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*.

27 Judgment of the Court from 17.12.1970, case ref. 11-70, Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel.

28 Judgment of the Court from 17.12.1970, case ref. 11-70, Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel.

This ruling met with unprecedented resistance from the Member States. Countries such as Germany, Italy and France refused to accept and implement it. France's top officials called for the Treaty to be revised to limit the powers of the Court of Justice. This country also became the first to actually pass national legislation overturning a Court ruling. The National Assembly passed the Aurillac Amendment, part of a judicial reform bill, which made it illegal for national courts to enforce the primacy of EC law.[29] Belgium reacted calmly to the ruling and its conclusions. Since then, the Belgian Constitutional Court has remained one of the most pro-European jurisdictions, applying EU law and regularly referring cases to the Court of Justice.[30]

It can therefore be said that the principles of direct effect and supremacy, finally established in the 1960s and 1970s, have had a profound impact on European integration.[31]

Another area in which the Community's jurisdiction was extended at this stage was the possibility for the Court of Justice to influence the activities of the EEC as a subject of international law, as provided for in Article 228 of the EEC Treaty. In particular, the Court was empowered to give an opinion on the conformity of an international agreement, which the Community intended to conclude with other countries or international organisations. A similar provision was contained in Article 103 of the Euratom Treaty, as amended by the scope of application. An example is the Court's Opinion of 11 November 1975 (1/75). The opinion in the affirmative noted in particular that the term "agreement" is understood in a broad sense to refer to any binding commitment entered into by entities subject to international law, regardless of its formal purpose. Moreover, the compatibility of an agreement with the provisions of the Treaty must be assessed in the light of all the rules of the Treaty, that is to say, both the rules defining the scope of the powers of the Community institutions and the substantive rules.[32]

The last step in this long stage was the adoption of the Single European Act in 1986. In addition to certain institutional and procedural changes in the Community, this Act supplemented and amended the provisions of the three founding Treaties, including those relating to the functioning

29 Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*.

30 Philippe Gérard, Willem Verrijdt, "Belgian Constitutional Court Adopts National Identity Discourse: Belgian Constitutional Court No. 62/2016, 28 April 2016" *European Constitutional Law Review*, No. 1 (2017).

31 Boin, Schmidt, "The European court of justice: Guardian of European integration".

32 Opinion of the Court from 11.11.1975, opinion ref. 1/75.

of the judiciary. With regard to the Court of Justice, it is worth noting the creation of a separate court (now called the General Court) to act as a court of first instance in certain categories of cases brought by individuals and legal persons. This measure relieved the Court of Justice, whose caseload was increasing year by year. In 1953, the Court had only 4 cases, in 1954 10, in 1958 43, in 1978 268 and in 1988 373. These changes had no direct impact on the integration process. However, the institutional expansion of the Community judiciary demonstrated the growing role of supranational courts in shaping the European legal order and established them as important actors not only in law enforcement but also in law-making, particularly where the Treaty is silent or ambiguous.

The interim result of this stage is that the legal order has indeed been established. And this has happened to a large extent thanks to the Court of Justice. It can be said that the Court has acquired the characteristics of a single guardian of the law in the Communities, whose jurisdiction and importance are constantly growing. Thus, at this stage, a very important and influential role for the Court in the future development of the Community has been established, which represents a certain departure from its original role as envisaged by the Treaty of Rome. In addition to steps that are obviously positive for the integration process, such as the establishment of the doctrine of direct effect and the primacy of European law over national law, there are also problematic aspects that will be evident throughout the existence of the united Europe. The question of the relationship between primary European law and the provisions of the constitutions of the Member States is still relevant for the EU today. This is one of the challenges that the EU will have to face as it continues to develop the European legal order.

4 The Role of The Court of Justice in the modern stage of the European integration process

With the establishment of the European Union itself on the basis of the Maastricht Treaty of 1993, the modern phase of European integration began. At this stage of the construction of a united Europe, the Court of Justice was already recognised as a driving force for integration. Its power and

influence were considerable and, contrary to the expectations of many academics, practitioners and sceptics, have not diminished.[33]

The Union shall be served by a single institutional framework, which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the "acquis communautaire".[34] The legal basis for the functioning of the institutions was provided by both the Treaties establishing the three Communities and the new Treaty, which, inter alia, supplemented and updated their provisions. In the context of the subject matter of the study, it should be noted that there have been no significant changes in the approaches to the Court's activities. The Court has conducted various types of proceedings, in particular preliminary rulings, actions for annulment of acts of the Union institutions and infringement proceedings, which have been developed and improved over time.

We believe that the most important function of the Court of Justice in the context of the further development of European integration has been and remains the preliminary ruling procedure, which has enabled fruitful cooperation between national courts and the Court of Justice. This, in turn, has contributed to the creation and development of a uniform legal environment based on the principles of the rule of law, the primacy of EU law and a harmonised approach to law enforcement. Specifically, it aids to prevent legal flaws.[35] It is important to note that the Court's judgments in this phase have not been as extensive as in the previous phase. Thanks to the achievements of the judicial system accumulated in the previous stages, they mainly contributed to strengthening the position of EU legislation in areas of exclusive Union competence – customs union, trade policy, fisheries policy (partially), competition rules necessary for the functioning of the internal market, etc.

Consider, for example, the judgments on the free movement of workers as one of the components of the functioning of the EU internal market. These are judgments in cases C-55/94, C-415/93 and others. The Court has held that national measures liable to hinder or make less attractive the exercise of the fundamental freedoms guaranteed by the Treaty must satisfy four conditions.

33 Werner, "Why is the court of justice of the European Union not more contested? Three mechanisms of opposition abatement".

34 Treaty on European Union from 29.07.1992, case ref. OJ C 191.

35 Sannikov Dmytro, "Problems of land legislation of Ukraine and European union integration" *Journal of Legal, Ethical and Regulatory*, No. 20 (2017).

1. They must be applied in a non-discriminatory manner.
2. They must be justified by imperative requirements in the general interest.
3. They must be suitable for securing the attainment of the objective, which they pursue.
4. They must not go beyond what is necessary in order to attain it.[36]

In its judgment in Case C-265/95, the Court helped to ensure compliance with another important principle underpinning European unity – the principle of the free movement of goods. In finding an infringement of Article 34 of the EEC, which prohibits quantitative restrictions on trade between Member States, the Court not only clarified the concept of prohibited quantitative restrictions and equivalent measures, but also recognised that infringements in this context may also take the form of inaction. In particular, it held that a Member State's failure to act or, as the case may be, its failure to adopt appropriate measures to prevent obstacles to the free movement of goods created, in particular, by acts of private individuals within its territory in respect of products originating in other Member States is just as likely to hinder intra-Community trade as was an act of a positive nature.[37]

The Court has not only ruled on the correct application and interpretation of substantive EU law. Procedural questions concerning the activities of national courts have also come before the Court. For example, in Joined Cases C-430/93 and C-431/93 Schijndel, the Court considered the extent to which national courts are free to apply Union rules and, more generally, to raise the question of the conformity of national rules with Union rules, and thus going beyond the scope of the dispute as defined by the parties, unless the parties have so specified.[38]

Following the signing of the Treaty of Amsterdam in 1997, the Court's jurisdiction was partially extended. According to Article K.7 of the Treaty of Amsterdam the Court of Justice has jurisdiction

> to give preliminary rulings on the validity and interpretation of framework decisions, and decisions on the interpretation of conventions [on police and

36 Judgment of the Court from 30.11.1995, case ref. C-55/94, Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano.

37 Judgment of the Court from 9.12.1997, case ref. C-265/95, Commission of the European Communities v. French Republic.

38 Judgment of the Court from 14.12.1995, case ref. C-430/93 and C-431/93, Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten.

judicial cooperation] and on the validity and interpretation of the measures implementing them.[39]

At this stage, the political role of the Court of Justice is growing as it increasingly touches on more sensitive issues such as citizenship, labour rights, corporate governance, etc. It is worth mentioning the Viking and Laval cases (C-438/05 and C-341/05 respectively), in which the right to strike, although recognised as a fundamental right forming part of the general principles of Community law guaranteed by the Court, may be subject to certain restrictions. It is for the national court to determine whether such restrictions on these freedoms can be justified on the grounds of the protection of the relevant fundamental rights and that the restriction "pursues a legitimate aim compatible with the Treaty and is justified by overriding considerations of public interest."[40] The Mangold v. Helm judgment (C-144/04), while recognising the inadmissibility of age discrimination as a fundamental principle of the EU, established that differences in treatment based on age do not constitute discrimination if, in the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary. These judgments have been the subject of considerable criticism, ultimately raising concerns about a possible reduction in the Court's role in the EU integration process.[41]

The Treaty of Lisbon came into force in 2009. It was another attempt at reforming the EU after the failure of constitutional reform. The Treaty of Lisbon amended the Treaty of Maastricht and the EEC Treaty, renaming them the "Treaty on the Functioning of the European Union." It gave the EU a legal personality, which it did not have before, replacing the Communities, made the Charter of Fundamental Rights legally binding and introduced a number of institutional reforms.

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39 European Union from 10.11.1997, case ref. C340/4, Treaty of Amsterdam Amending the Treaty on European Union. The Treaties Establishing the European Communities and Related Acts.

40 Judgment of the Court from 11.12.2007, case ref. C-438/05, International Transport Workers' Federation and Finnish Seamen's Union v. Viking Line ABP, OÜ Viking Line Eesti; Judgment of the Court from 18.12.2007, case ref. C-341/05, Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet.

41 Werner, "Why is the court of justice of the European Union not more contested? Three mechanisms of opposition abatement".

The judiciary could not remain unaffected by the major changes introduced by the Treaty of Lisbon, which altered the institutional mechanism of the EU. Since then, the modern history of the EU judiciary in its current form – the Court of Justice of the EU (CJEU), comprising the Court of Justice (formerly the Court of Justice of the European Communities) and the General Court (formerly the Court of First Instance) – has begun. However, the CJEU took its "place in the sun" in the process of European integration and in the institutional mechanism of the EU, even before the signature of the Lisbon Treaty.

At the same time, we cannot ignore the existing threats to the unity and to the common principles that have been developed over a long period by the European institutions and by the Member States. There have been repeated violations of the rule of law in some Member States, notably Poland (see, for example, C-824/18, B., C.D., E.F., G.H., I.J. v. Krajowa Rada Sądownictwa; C-791/19, Commission v. Poland). In addition, the Polish Constitutional Tribunal issued a much-criticised decision in October. It declared certain provisions of the EU Treaty unconstitutional.[42] Although the Constitutional Tribunal's decision does not change anything for either the EU or Poland, such decisions are a gross violation of the rule of EU law. They even trigger discussions about Poland's possible withdrawal from the EU.[43] A striking example of such disintegrating manifestations are the cases Hungary v. Parliament and Council (C-156/21) and Poland v Parliament and Council (C-157/21). Countries have been trying to repeal Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. This regulation allows the EU to reduce funding to Member States in the event of a proven breach of the rule of law by these states, if this breach is a threat to the EU budget. They argued that the Regulation lacked a legal basis, violated the procedure laid down in Article 7 of the Treaty on European Union, exceeded the EU's powers as well as the principle of legal certainty.[44] In effect, Poland and Hungary were trying to avoid the financial consequences of breaking EU law. The Court upheld the regulation, confirming once again that the rule of EU law is a fundamental principle and a guarantee of European unity.

42 Judgment in the name of The Republic of Poland from 7.10.2021, ref. no. K3/21.

43 David Gregosz, Piotr Womela, Katharina Geschier, *Polens Verfassungsgericht bringt Brüssel in Bedrängnis* (German: Konrad-Adenauer-Stiftung, 2021).

44 Opinion of Advocate General Campos Sánchez-Bordona from 2.12.2021, case ref. C-156/21, Hungary v. European Parliament and Council of the European Union; Judgment of the Court from 16.02.2022, case ref. C-157/21.

We will not underestimate the scale of the threats to European integration at this stage. At Maastricht, member states protected their sovereignty by resisting further transfers of power to supranational institutions and by watering down, through negotiation and political compromise, ideas that could lead to greater integration. Monetary reform, increased involvement of EU institutions in national budgetary and fiscal policies, migration and border control are just some of the painful issues that have become a bone of contention with numerous debates on the legitimacy of the EU's interference and conflicts among states as well as between the EU institutions and member states.[45] The crisis of sovereignty plays a disintegrating role, shaking up society, creating imbalances and increasing Euroscepticism. At the same time, we focus on the Court of Justice, which has so far managed to overcome the challenges of disintegration facing the European Union.

Given that the Court's interpretative practice at the beginning of the millennium was considered by scholars to be somewhat "audacious,"[46] it can be concluded that the dynamics of legal integration will only increase. For example

> the Constitutional Court of Ukraine does not have direct powers to establish new legal norms in accordance with national legislation [...]. However, in the process of constitutional interpretation, the court practice in Ukraine actually demonstrates the existence of law-making activities, which leads to the extension of its discretionary powers to law-making, following the example of the EU court.[47]

Furthermore, the progress of international collaboration will reinforce this development.[48] The Court of Justice has the last word, and it will certainly use it. Indeed, this may be a cause for concern. The Court can overturn the actions of the European institutions on the grounds of abuse of power. And who will overturn the Court's decision if it goes beyond its

45 Nathalie Brack, Ramona Coman and Amandine Crespy, "Sovereignty conflicts in the European Union" *Les Cahiers du Cevipol*, No. 4 (2019).

46 Olivier Costa, Nicolas Jabko, Christian Lequesne, Paul Magnette, "The spread of control mechanisms in the European Union: Towards a new form of democracy?" *Revue française de science politique*, No. 6 (2001).

47 Kristina Trykhlib, "Law-making activity in the case law of the Constitutional Court of Ukraine" *International and Comparative Law Review*, No. 2 (2019): 27-75. doi:10.2478/iclr-2019-0014.

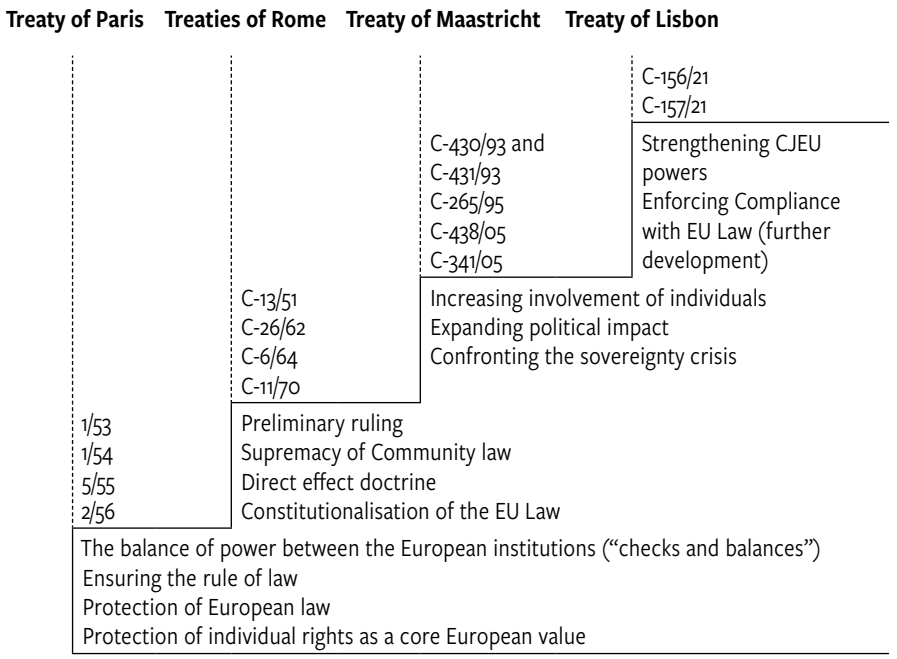
48 Cherniavskyi Serhii, Holovkin Bohdan, Chornous Yuliia, Bodnar Vasyl, Ilona Zhuk, "International cooperation in the field of fighting crime: Directions, levels and forms of realization" *Journal of Legal, Ethical and Regulatory Issues*, No. 3 (2019).

own? There is no guarantee that this will not be the case, especially if the threats to the unity of Europe are of a real nature.

Nevertheless, we can say that today the CJEU, through its various roles accumulated over the course of its history, contributes to the process of European integration by providing a legal framework that promotes cooperation and unity among member states, by ensuring the coherence and effectiveness of EU legal system and by developing EU legal principles and doctrine. In particular, the main roles of the Court of Justice in the context of integration are as follows:

- Ensuring the supremacy of EU law
- Promoting the rule of law
- Interpreting EU law
- Enforcing compliance with EU law
- Protecting individual rights
- Reviewing the legality of EU acts
- Developing EU legal doctrine
- Promoting legal certainty.

Figure 1. The EU Court of Justice and the European integration process.



The achievements of the European legal system secured both by the provisions of the founding treaties and by judicial practice, are schematically illustrated in Figure 1. The results have a snowball effect, accumulating the achievements of previous periods into a single legal architecture. Broadly speaking, the previously mentioned is intended to safeguard subjective civil rights and interests that are legally established. The journey of the CJEU is not over. We believe that the next step will also be upwards, not downwards. The main thing is not to overload these stairs, which may not be able to bear their own weight and will be destroyed, undoing all the efforts made to get so high.

5 Conclusion

From an international judicial body with rather limited powers, scope and perception, the CJEU has evolved into a universal, multifunctional judicial institution, perhaps the most influential of all European institutions. Along the way, through its interpretation and promotion of European law, the Court has been actively involved in changing the foundations of European integration – from purely economic co-operation between individual states to socio-political symbiosis across most of the European continent. Having the characteristics of an administrative court and gradually acquiring the characteristics of a constitutional court, the Court has indeed given constitutional features and significance to acts of primary European legislation, despite the formal absence of an EU Constitution. This process began with the landmark judgments in Van Gend en Loos and Costa v E.N.E.L. In its subsequent jurisprudence, the CJEU has sought to create a unique legal environment in which the equality of all Member States in the application of European law is guaranteed, while at the same time ensuring its primacy over national legislation, including constitutions. The Court has also influenced the law-making process by eliminating gaps and uncertainties in EU law. With each successive treaty, more and more specific provisions were laid down, designed to create an increasingly homogeneous environment for their application. The Court has played an important role in this process. By interpreting treaty provisions when they were ambiguous or had gaps, it has effectively created a new legal reality, a new order, covering new horizons. As a result, the EU has acquired some of the formal

characteristics of a state, without affecting the form and nature of the international organization. And the Court itself has become firmly established, not only in the regulations but also in the minds of most officials and ordinary citizens, as an integral part of the EU, a guarantor of the rule of law and EU principles, a voice of legality and justice.

The case-law has also outlined the vectors of the future development of the European Court of Justice, the challenges it will have to face. The environment created by the Court is not always homogeneous at present, especially when it comes to issues of national identity and national sovereignty. On the one hand, this does not pose a threat to the unity of the EU as long as resistance to key EU principles comes from individual countries and is not systemic. On the other hand, it sets a precedent that could be followed by other member states, calling into question what they have been working towards for more than 70 years. It is not known how soon the EU will face another existential crisis, but what is known is that in the context of the Court's activities, much, if not everything, has been done for the further development and prosperity of a united Europe.

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