

THE ROLE OF THE CJEU JURISPRUDENCE IN SHAPING THE PRINCIPLES OF LAW

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ABSTRACT: *All the treaties concluded between the Member States, as well as the multitude of normative acts issued by the institutions and bodies of the European Union have given birth and created the Union law. In addition, the CJEU's decisions have a crucial role in the development of the law. This study explains the role and mission of the Court of Justice of the European Union where the silence of the treaties intervenes, as well as the power of its decisions.*

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The Court of Justice of the European Union is, at European level, the "engine" that has determined the creation and development of general principles of law. The importance of judicial practice is also felt in the formation of national and European law, contributing, through normative support, to the continuous development of the law. (Chivu, 1978)

Jurisprudence represents the third side of a triangle, along with doctrine and legislature, having a major implication in the development and interpretation of law, often filling in a legislative gap.

The jurisprudence, in general, shows Professor Mircea Djuvara, "many times realizes the law differently than the strict letter of the law, the custom or the doctrine." (Djuvara, 1995) It should be mentioned that not in all legal systems the judicial practice is considered a source of law and, respectively, not always it is recognized as a principle.

European law, however, is at the center of the CJEU's jurisprudence, which is more of an interpretative source than a creative one, in the sense that the Court's main role is to interpret the law, and only secondly to create new rules.

Making a *brief comparison, in our system of law*, the judge has the role to apply the law, and not to create the law. According to art. 5 paragraph 2 and 3 of the Code of Civil Procedure "No judge can refuse to judge on the grounds that the law does not provide, is unclear or incomplete. If a case cannot be resolved neither on the basis of the law, nor on the custom, and in the absence of the latter, or on the basis of the legal provisions regarding similar situations, it will have to be judged on the general principles of law, taking into account all its circumstances and taking into account the requirements of equity."

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At the same time, similar with the Court of Justice of the European Union, at national level, the High Court of Cassation and Justice ensures, as it is stated in the Romanian Constitution in the art. 126 paragraph 3, "*the interpretation and unitary application of the law by the other courts according to its competence.*" However, the sign of equality between these two courts cannot be put, because their role is different. The decisions of the High Court do not create rules of law or principles, but they interpret the law in a certain situation, explaining its real meaning.

At European level, being an atypical jurisdiction, the CJEU is presented in different forms, such as a civil, administrative, constitutional or international court. However, regardless of the matter, its main mission is to guarantee the surveillance of the law in the interpretation and application of the treaties. In this context, we point out that this is a constitutional jurisdiction, because it judges the compliance of the treaties and the institutional balance. The CJEU as an administrative court is explained by the fact that it judges the legality of individual acts and sanctions those who violate their community obligations. Last but not least, it is also an international court, as it has the task of exercising control over the behavior of the Member States in order to respect their Community obligations and to judge the disputes between the Member States.

In the content of art. 280 of the TFEU it is stated that "*The judgments of the Court of Justice of the European Union have enforceable force.*" In other words, this enforceable force is binding on both Member States and citizens of the Member States.

The role of the Court also resides in a supervisory activity on the binding effect of its judgments. It exercises its authority by guaranteeing respect for European law and by sanctioning those who violate it, by virtue of its contentious prerogative.

Moreover, the Court also has an interpretative role, exercising in this respect a "normative mission," (Isaac & Blanquet, 2012) that is to interpret the word of the treaties by reference to the laws of the Member States, foreshadowing certain rules and principles. The normative function of the Court also derives from the judicial function, which means that the judge solves the disputes with which he was referred, interpreting the law when it is not clear or complete, thus contributing to the development of the law.

However, in accordance with the provisions of art. 267 of the TFEU, the Court, in addition to judging a specific case, also confers its own creative meaning in the interpretation and application of the treaties. Where the law does not provide, it is up to the judge to describe the meaning of the legal provisions and to outline rules and principles for future application. In this regard, among the rights and principles recognized and enshrined by the Court we mention: the principle of legality, the principle of proportionality, the right to a fair trial, the right to defense, etc.

In expressing its authority, the Court of Justice of the European Union has developed a *normative prerogative and a jurisprudential one*. The jurisdiction of the Court to adjudicate disputes inevitably entails the task of "creating law." However, the Court's functional jurisdiction is subject to certain restrictions, meaning that it is limited to the law built by the Member States, in order to join a common community, namely the Union.

Regarding the jurisprudential law created by the Court, it is worth mentioning that its interpretative reasoning was foreshadowed on the basis of the integration of the states in the European Union. In this context, the way in which the treaties were structured determined the limits of their subsequent interpretation. By virtue of its

jurisprudential role, the Court has the obligation to ensure a balance between the development of the Union's powers, on one hand, and to respect the will of the treaty authors, on the other. This is because in the impulse of the Member States to create a new collectivity, namely the Union, they must be oriented in the sense of not distorting the will of the treaties and assigning themselves excessive power.

How does the Court enrich the treaty provisions? First of all, having a leading role in the European legal integration and in the application of international conventions, the international judge is "responsible for the uniform international application, which is a fundamental requirement of the Community legal order." (Voicu, 2005) The uniform application of the law within the union does not endanger the national identity of the Member States. It is precisely by enshrining the principle of subsidiarity that European law does not replace national law, but supplements it.

Secondly, as we have shown above, the Court supplements the treaties by its decisions, setting up certain rules and principles of law. An example in this regard is the judgment given in the Algeria case¹ in which was raised the issue of unilateral Community acts, the Court stating that, "although it is a matter known by administrative law, the treaties did not contain provisions regarding them, so the international judge had to solve the problem by appealing to the laws, doctrine and jurisprudence of the Member States."

Another aspect that needs to be considered is the one related to the strength of the interpretations given by the Court of Justice.

According to art. 267 of the TFEU "*The Court of Justice of the European Union is competent to rule, as a preliminary matter, on: (a) the interpretation of the treaties; (b) the validity and interpretation of acts adopted by the institutions, bodies, offices or agencies of the Union.*" This article incorporates the Court's judicial function, and, as can be seen, its jurisdiction is not limited only to prejudicial questions.

In this context, the question arises whether *the interpretation given by the Court in a particular case has a binding effect only for the court for which it has applied or for the all other courts as well?* In other words, could another Member State, in a similar situation, give another interpretation? It is obvious that for the court in the Member State that has referred the Court, the interpretation is mandatory. But for another Member State? The answer must be nuanced. It should be noted that, in this case, it is not a judged working authority, but an interpreted working authority, which, in its turn, can be absolute or relative. (Denizeau) In this respect, the specialized doctrine (Chapus, 1960) distinguishes between the adherents of the relative theory, who do not agree with the obligation of interpretation for all the Member States, in the sense of not limiting the European law through an interpretation given in several cases. On the contrary, the adherents of the absolute theory argue that the interpretation is mandatory for all Member States, precisely to ensure the uniform and homogeneous application of the legal provisions.² (Ploșteanu & Miron, 2014)

¹ Case of Algeria CJEU from 12th July 1957 C-7/56

² We consider that in support of this interpretation there must be taken into account the principle of the supremacy of European Union law.

Faced with these opposing positions, the Court responded in the *Da Costa en Schaake* case³, stating that "as the last paragraph of Article 177 of the EEC Treaty obliges, without any restriction, national courts, whose judgments are not likely to be challenged by a judicial appeal in domestic law, to address to the Court any questions regarding the interpretation presented before them, and the interpreting authority given by it under article 177 may deprive this obligation of its purpose and thus void it; whereas this is the situation where the question referred is practically identical with a question which has already been the subject of a preliminary ruling in a similar case; whereas the Court, when offering, in the context of a case pending before an internal court, an interpretation of the treaty, is limited to deducing from the letter and its spirit the significance of the Community rules, the application in this case of the rules thus interpreted being reserved the national court; whereas this attitude is in line with the function assigned to the Court by Article 177 which seeks to ensure unity of interpretation of Community law in the six Member States; whereas the interpretation questions addressed in the present case are identical to the ones resolved, as indicated above, and as no new element has been presented to the Court (...) The Court holds that there is no basis for a new interpretation of Article 12 of EEC Treaty. "

Therefore, the Court settled the dispute between the adherents of the different theories, establishing a potential unique significance for all the debates that could be foreseen regarding the same issue.

In conclusion, the role of the CJEU in the uniform interpretation and application of the laws of the Member States is one of major importance, from the origin of the Union law. The Court of Justice is constantly a source of legislative evolution and a "tool" that ensures European unity.

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³ Case of *Da Costa en Schaake* CJEU from 27th March 1963 28-30/62