The Role of National Courts in the Process of Legal Integration in the European Union: Retrospective and Prospective

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Abstract The functioning of national courts as decentralized EU courts has been and will likely remain one of the most constitutive, complex, and intriguing aspects of the process of integration in the European Union. The fact that the law of the European Union can directly affect interests of individuals in the EU, and may be invoked and relied upon by them before national courts, which are in turn obliged to protect the rights individuals derive from EU law, have tremendous implications for the functioning of national judiciaries, and can hardly be overstated. It is the aim of this contribution to briefly look at the development of the role national courts play in the process of legal integration within the EU and, consequently, provide several reflections on the preconditions which seem necessary for the proper fulfillment of the tasks that national judges are assigned by the law of the European Union.

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1 Introduction

The functioning of national courts as decentralized EU courts has been and will likely remain one of the most constitutive, complex, and intriguing aspects of the process of integration in the European Union.[1] The fact that the law of the European Union can directly affect interests of individuals in the EU,[2] and may be invoked and relied upon by them before national courts, which are in turn obliged to protect those rights, have tremendous implications for the functioning of national judiciaries, and can hardly be overstated. As observed already two decades ago by Lord Slynn of Hadley: 'A judge sitting in a national court now has a dual function. His first task is to decide cases on the basis of domestic law. He must find the facts, apply the rule of domestic law, and give judgment in favor of one or other of the parties. At the same time, the national judge must, where relevant, apply European European law.'[3] In order to fully understand the immensity of the role of the national judge in applying and enforcing EU law that Lord Slynn of Hadley so briefly reflected upon, it is necessary to look into the process of legal development that has taken place within the Communities, later the European Union, since the 1960s of the last century. Even though much has been said and written, by both legal and political science scholars, about the role national judges play in the process of legal integration in the EU, the topic never seems to be exhausted.[4] It is the aim of this contribution to briefly look at the development of the role of national courts in the process of legal integration within the EU and, consequently, provide several reflections on the preconditions which seem necessary to the proper fulfillment of the tasks that national judges are assigned by the law of the European Union. Although this may seem like a somewhat ambitious aim, the analysis will have a somewhat sketchy character and a purely pragmatic

[1]This contribution is predominantly based on the doctoral thesis by the author, Jaremba 2012, defended on the 5th of October 2012, forthcoming in Nijhoff Studies in EU Law (2015).

[2]See Case 26-62 *NV Algemene Transport en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration* [1963] ECR 1: '(…) The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member states but also their nationals. Independently of the legislation of Member States, European law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage.'

[3]See Lord Slynn of Hadley 1993, p. 18.

[4]Just to mention several contributions: Miasik 2008; Kühn 2005; Bobek 2006; F. Mayer, The European Constitution and the courts. Adjudicating European constitutional law in a multilevel system. 9 Jean Monnet Working Paper, 2003; Prechal et al. 2005; Stone Sweet 2000; Jarvis 1998; Sciarra 2001; Weiler 1993; O. Pollicino, New emerging judicial dynamics of the relationship between national and the European courts after the enlargement of Europe. 14 Jean Monnet Working Paper, 2008; M. Cartabia, Taking dialogue seriously. The renewed need for a judicial dialogue at the time of constitutional activism in the European Union. 12 Jean Monnet Working Paper, 2007; Kilpatrick 1998; Chalmers 1997.

take, and will look into the practical obstacles which may jeopardize the proper functioning of national courts as decentralized EU courts at present and in the future.

This contribution consists of three parts. First, it will be looked into the judicial architecture in the EU and the role national judges are assigned to by the law of the Union. In this context, the problem of pivotal principles of EU law, such as supremacy, direct effect, and harmonious interpretation, will be sketched. Also the issue of the preliminary ruling procedure will be addressed. Subsequently, the obstacles which may hinder the proper fulfillment of the role EU law places to national judges will be briefly discussed. Finally, several conclusions will be drawn.

2 The Role of National Courts in the Process of Legal Integration Within the Union: Retrospective

2.1 Judicial Architecture in the EU

EU Treaties create a system of judicial protection at the level of the European Union, but they do not establish separate EU courts in each Member State which could protect the rights individuals derive from the law of the Union. From the Treaties it follows that individuals can gain direct access to the supranational Court of Justice of the European Union (hereinafter the ECJ or the Court of Justice) only in order to challenge illegal actions undertaken by the Union.[5] As a consequence of this judicial architecture, all disputes which involve EU-law-related problems that arise between individuals and public authorities of the Member States or between two or more individuals are heard in national courts and tribunals. National courts are obliged to protect the rights that individuals derive from EU law and, at the same time, are expected to ensure the effectiveness of EU law and its uniform application across the Union. By and large, all national courts are decentralized EU courts and, consequently, all national judges are EU judges. As plausibly observed by Martinico, national courts play 'a fundamental role in the multilevel system.'[6] The above should be seen in the framework of the increasing influence of EU law on national laws. This process of affecting national laws by various sources of EU law implies that more and more laws, rules, and provisions that national courts apply in their daily work does in fact origin from the law of the Union.[7] To put it very basically, EU law is practically everywhere,

[5]See Articles 263, 265, 277 and 340 of the Treaty on the Functioning of the European Union (TFEU).

[6]From Martinico 2011, p. 84.

[7]On the process of Europeanisation of national public and constitutional laws see for instance Prechal et al. 2005; on the process of Europeanisation of national private laws see for instance Twigg-Flesner 2008; Keirse 2011; Hesselink 2011. For a general overview of the Europeanisation process see Jaremba 2012.

since it has encroached and influenced national laws in nearly every field of law. It has crept into the sphere of not only public but also private relations, including parties such as undertakings, consumers, employees, and employers. In situations in which the rights of those parties are breached, or the legal obligations are not met, a dispute will very likely be heard and decided by a national judge, be it administrative, commercial, labor, or family law judge. As mentioned above, this constitutive role placed on national courts cannot be found in the EU Treaties which are almost silent on this issue.[8] It is the ECJ that has played a pivotal role in establishing the tasks of national courts regarding the application of EU law. This jurisprudential development started in the 1960s and will be briefly sketched below.

2.2 *Direct Effect, Supremacy, and Harmonious Interpretation*

In 1962, judges in the Dutch Administrative Tribunal (*Tariefcommissie*) adjudicating in final jurisdiction were dealing with a dispute between a postal and transportation company named Van Gend en Loos and the Dutch customs authorities. Van Gend en Loos imported urea-formaldehyde from West Germany to the Netherlands which was charged with a tariff on the import. The company paid the tariff but objected to this decision of the Dutch customs authorities and claimed a return of the customs paid. In order to support its claim it submitted that the tariff was incompatible with EC law, and more precisely with Article 12 of the Treaty of Rome, what is now Article 30 TFEU.[9] Having problems with interpretation of the mentioned Treaty article, the Dutch judges decided to resort to a relatively new and unknown legal instrument, that is to say, to the possibility of referring a preliminary question to the Court of Justice under Article 177 of Treaty Establishing the European Economic Community, what is now Article 267 TFEU. In its preliminary question the national court asked the ECJ whether the concerned Treaty article could directly confer rights on the nationals of a Member State and whether those rights could be enforced in national courts.[10] The referring Dutch court

[8]Only Article 267 TFEU directly refers to national courts. However, several Treaty articles refer to national courts or concern national courts in an indirect way, for instance Article 4(3) TEU which enshrines the principle of royal cooperation and Article 19 TEU in which it can be read that 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'

[9]Article 30 TFEU prohibits any custom duties on imports and exports and any charges having equivalent effect. This prohibition also applies to custom duties of a fiscal nature.

[10]Case 26-62, above n. 2. The first of referred questions was as follows: 'whether Article 12 of the ECC Treaty has direct application within the territory of a Member States, in other words, whether nationals of such a state can, on the basis of the article in question, lay claim to individual rights which the courts must protect'.

could by no means have an idea that this rather straightforward (but at the same time very complex) question would become one of the most fundamental and landmark issues in the legal development of integration process within the European Union. The answer provided by the ECJ, in which it was held that the concerned article is indeed capable of 'creating individual rights which national courts must protect' was of utmost importance. From this moment, those are the national courts of the Member States which are involved in the system of judicial protection of the rights individuals derive from EC/EU law and which are obliged to protect those rights against unlawful actions of their own states. Put bluntly, the decision of the Dutch administrative court to resort to the ECJ with her legal question concerning EC law, and the groundbreaking answer provided by the Court of Justice to this question changed the legal reality in national courts of the Member States for ever.

However, the above is not intended to imply that just one single judgment of the ECJ was sufficient to change the course of legal developments in the Union. It quickly occurred that the *Van Gend en Loos* case was just the first one in a set of ECJ's decisions that increasingly involved national courts in the process of EU integration, and by means of which the ECJ changed the nature of judicial work. In course of time the ECJ pronounced various decisions in which the obligations of national courts with regard to the application of EU law were broadened and enhanced. Just one year after *Van Gend en Loos*, the ECJ decided that not only can EU law be invoked and relied upon by individuals in national courts, it also takes precedence over national law in case of collision between both.[11] The general argument underlying this decision was that the European Union creates its own legal system, which constitutes an integral part of legal systems of Member States, and the efficacy of it would be undermined if national law could take precedence over the law of the Union.[12] The principle of supremacy, also called primacy, became a frequent matter addressed by the Court of Justice ever since. In several judgments, the ECJ gradually gives a practical shape to the principle. For instance, in the *Simmenthal* case, the ECJ arrived at the conclusion that national courts which deal with a situation of collision between national and EU law are obliged to set aside those conflicting national provisions and apply the relevant EU law provisions instead.[13] In the following years, the Court of Justice pronounced dozens of important decisions in which the principles of supremacy and direct effect, and the legal obligations of national courts which are attached to both principles were defined and elaborated upon.[14]

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[11]See Case 6/64, *Flaminio Costa v. E.N.E.L* [1964] ECR 585, the part on the submission that the Court was obliged to apply the national law.

[12]See ibid.

[13]See Case 106/77, *Amministrazione delle Finanze dello Stato v. Simmenthal SpA* [1978] ECR 585, paras 14, 16, 21, and 24. See also C-159/91, *Criminal proceedings against Jean-Claude Levy* [1993] ECR I-4287, para 9; C-347/96, *Solred SA v. Administración General del Estado* [1998] ECR I-937, para 30.

[14]For a broad overview of the jurisprudential development in that regard see Jaremba 2012.

From the extensive line of jurisprudence of the Court follows, however, that different rules apply to different sources of EU law. In that context, it was for instance held by the ECJ that specific Treaty provisions can be invoked by individuals against their Member States and other individuals[15] but provisions of directives which are invoked in horizontal situations (that is to say between two individuals) are not capable of producing direct effect.[16] The latter implies that in specific situations the concerned individual might not be capable of enforcing her rights that stem from EU law provisions, and that the national court hearing the dispute is not obliged to directly apply those EU provisions to the case at hand. To partly remedy this evident gap in the system of judicial protection, the Court of Justice established another principle, namely the principle of harmonious interpretation,[17] interchangeably called indirect effect, consistent or conforming interpretation. Basically speaking, the principle of harmonious interpretation expects national courts to interpret national law in conformity with EU law, ''insofar as it is given discretion to do so under national law,'[18] whereby it broadens the obligations assigned to national courts by EU law even further. Without going too much into the details of the principle, it should be observed that conforming interpretation carries several practical implications for national courts. First, national judges are obliged to interpret the provisions of national law in light of the EU legislation in question, and they are expected to give effect to it by means of interpretation. Provisions of national law must be given such a meaning that it will conform to EU law and achieve an outcome consistent with its objective. From a more technical point of view, it does not matter whether the specific national law predates or postdates the concerned EU legislation,[19] and it is necessary that the national judge looks into the entire body of national law and interprets it in a manner to achieve the prescribed results. Finally, the obligation to construe national law in conformity with a directive is limited by the notion of *contra legem*

[15]See for instance Case C-415/95, *Union royale belge des sociétés de football association and others v. Bosman and others* [1995] ECR 4291, where the ECJ ruled that Article 45 TFEU (ex Article 39 EC) has a horizontal direct effect, or Case C-281/98, *Roman Angonese v. Cassa di Risparmio di Bolzano SpA* [2000] ECR 4139, where the Court held that Article 54 TFEU (ex Article 48 EC) applies also to private parties. See also a recent Case C-171/11 *Fra.bo SpA v. Deutsche Vereinigung des Gas- und Wasserfaches eV (DVGW) – Technisch-Wissenschaftlicher Vereinin* [2012] ECR 00000, in which the ECJ decided to give horizontal direct effect to Article 34 TFEU on the free movement of goods in specific situations.

[16]See Case 152/84, *M. H. Marshall v. Southampton and South-West Hampshire Area Health Authority* [1986] ECR 723, para 48.

[17]See judgment in Case 14/83, *Sabine von Colson and Elisabeth Kamann v. Land Nordrhein-Westfalen* [1984] ECR 1891, para 26.

[18]Case 14/83, *Von Colson*, para 28. In the C-397/01 to C-403/01, *Bernhard Pfeiffer* et al. *v. Deutsches Rotes Kreuz, kreisverband Waldshut eV* [2004] ECR I-8835, the Court of Justice uses the term 'to as far as possible extent', see para 113.

[19]See Joined Cases C-397/01 to C-403/01, *Bernhard Pfeiffer*, para 115.

interpretation,[20] by general principles of law such as legal certainty and non-retroactivity, and by the prohibition of imposing criminal liability.[21] The principle of harmonious interpretation together with the principles of direct effect and supremacy constitute three fundamental rules that explain the role of national courts *vis-à-vis* EU law. From the above discussion it follows that national courts are endowed with a very fundamental task which boils down to, on the one hand, enabling individuals to invoke and rely on EU law and, on the other hand, requiring them to apply and enforce EU law and protect individuals' rights flowing from it in order to ensure the *effet utile* of EU law. However, the story of the participation of national courts in the process of legal integration in the Union would be incomplete without the preliminary ruling procedure which will be sketched below.

3 The Preliminary Ruling Procedure

In fact, the principles discussed above would have never been established if national courts had not resorted to the procedure of preliminary question which is enshrined in Article 267 TFEU.[22] Those national courts had decided to refer to the ECJ their legal questions regarding interpretation of EU law that had arisen with regard to cases pending before them. It follows from Article 267 TFEU that the ECJ has jurisdiction to give preliminary rulings concerning the interpretation and validity of the Treaties, and on the validity and interpretation of acts of the EU institutions, bodies, offices, or agencies.[23] When a question concerning the aforementioned areas arises before any national court or tribunal, a judge may request the ECJ to give a ruling on it if she considers it necessary to give a judgment. If such a question is raised before a court or tribunal of last instance, that court or

[20]See Case C-212/04, *Konstantions Adeneler and others v. Ellinikos Organisamos Galaktos* (ELOG) [2006], para 110.

[21]See for instance Case C-101/01, *Bodil Lindqvist* [2003] ECR I-12971, para 24, and Case C-305/05, *Ordre des barreaux francophones et germanophone and Others* [2007] ECR I-5305, para 28.

[22]Previously Article 234 EC Treaty. The Treaty of Lisbon slightly reformed the preliminary ruling procedure. As a result of the disappearance of the pillars, the ECJ acquired jurisdiction to give preliminary rulings also in the area of freedom, security and justice. Regarding police and judicial cooperation in criminal matters, the jurisdiction of the Court has become binding and no longer subject to a declaration by each Member State. Regarding the issue of visas, asylum and immigration, any national court or tribunal (not only the highest courts) has now the competence to request preliminary rulings.

[23]Any EU measure, also a non-binding measure, may be subject to review by the ECJ; see Case C-322/88, *Salvatore Grimaldi v. Fonds des maladies professionnelles* [1989] ECR 4407, para 8.

tribunal is then obliged to bring the case to the ECJ.[24] The preliminary ruling has gradually proved to be one of the most fundamental mechanisms for building and elaborating the legal order of the European Union.

Namely, the national judges who decided to resort to the ECJ with their EU-law-related problems gave the Court of Justice the possibility to define and develop the Union's system further by means of giving specific interpretation to the general and often open-ended provisions of Union's law. To put it simply, national courts have been propelling the process of legal integration within the Union by providing the Court with legal questions concerning EU law.[25] In Rheinmühlen-Düsseldorf, the ECJ held that the procedure of preliminary ruling is cardinal for the 'preservation of the Community character of the law established by the Treaty. It aims at ensuring the coherence of European law across all the Member States.'[26] Elsewhere, the Court observed that the participation of national courts in the procedure is 'an index both of judicial cooperation between the Court of Justice and the national courts of the Member States and of the integration of European law into national law.'[27]

It should be emphasized that the procedure of preliminary ruling can be put in motion exclusively by the national judge, and it is also left to the national judge to apply the interpretation provided by the ECJ to the factual case pending before her.[28] This is why the willingness of national judges to involve in the process of dialogue with the ECJ, and their cooperation with the Court of Justice have been crucial for the further development of the Union's legal framework and the legal integration within the Union. Hence, the willingness of national judges to use the procedure is a *sine qua non* for the evolution of a European legal system.[29] As observed elsewhere '(…) under today's circumstances, national and European judges should collaborate and communicate more with one another, showing that they are co-actors in European law.'[30] This is why the involvement of national

[24]The term of the last instance court should be understood as including the highest courts, and all the courts against the decisions of which there exist no further remedy. See Case 6/64, *Costa v. ENEL*, the part on the application of Article 177; see also Case C-99/00, *Criminal proceedings against Lyckeskog* [2002] ECR I-4839.

[25]See Craig and De Búrca 2011, pp. 442–443.

[26]Case 166-73, *Rheinmühlen-Düsseldorf v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1974] ECR 33, para 2.

[27]From ECJ 1973, pp. 16–17. Stone Sweet formulates it as follows: 'As the ECJ's doctrines of direct effect and supremacy gradually took hold, Article 234 EC emerged as a kind of central nervous system for the enforcement of EC law and the coordination of the EC and the national legal order.' See Stone Sweet 2007, p. 924.

[28]See for instance Case 17/81, *Pabst and Richarz KG v. Hauptzollamt Oldenburg* [1982] ECR 1331, para 12.

[29]From Chalmers 1997, p. 174.

[30]From Hirsch Ballin 2005, p. 19.

courts in the process of dialogue with the ECJ has gained enormous academic attention, and has been broadly discussed by legal and political science scholars ever since.[31]

4 National Courts in the EU: Prospective

From the above it clearly follows that national courts have been playing an essential role in the process of legal integration within the European Union. With the entry into force of the EU Charter of Fundamental Rights as EU primary law, the role of national courts has become even more prominent. It namely occurs that national courts should also protect the rights stemming from the Charter when Member States implement EU law.[32] One of the anticipated implications of the Charter is the increasing number of requests for a preliminary ruling by national courts received by the Court of Justice.[33]

The discussion above addresses only the most fundamental tasks of national judges in the context of EU law,[34] but it supports the observation by Weiler that 'when European law is spoken through the mouths of the national judiciary it will also have the teeth that can be found in such a mouth and will usually enjoy whatever enforcement value that national law will have on that occasion.'[35] Without, first, the input of national judges and, then, their willingness to cooperate and fulfill their EU-law-related tasks, the European Union might be a different organization from what it is now. The increasingly broadening scope of the tasks and obligations which national courts are expected to fulfill in relation to EU law implies that the application thereof and consequently its effectiveness and uniformity are very much dependent on national courts. However, the system of obligations which are placed on national courts soon proved to be troublesome, for it required that national courts execute tasks that they would normally not exercise

[31]Those authors provide various and often competing theories aimed at explaining the problem of the determinants of national judges' behavior in the process of legal integration within the European Union. To name just a few contributions: Alter 2001; Dehousse 1998; Jarvis 1998; Micklitz 2005; Slaughter, Stone Sweet, Weiler (eds) 1997; Volcansek 1986; Tridimas and Tridimas 2004; Wind 2010.

[32]See orders in case C-339/10 Asparuhov Estov and Others [2010] ECR I-0000, para 13; and Case C-457/09 Chartry [2011] ECR I-0000, para 25. It should however be stressed that the Charter is intended to complement the existing system of protection of fundamental rights, it does aim at replacing it.

[33]See European Commission 2013, p. 7. As observed in the document: "The community of law, on which the Union is based, relies on national courts. Only if national judges fully exercise their powers, can the rights that Union law grants to citizens be effectively guaranteed", see p. 8.

[34]There are also other tasks and obligations which are placed on national courts by means of EU law which follow from for instance the principle of state liability, the obligation to apply EU law *ex offic*io, or the principle of effectiveness.

[35]See Weiler 1993, p. 422.

under national law, or that would in fact extend far beyond their constitutional competences, and were not necessarily in accordance with the local legal traditions.[36] National developments clearly show that the relationship between the ECJ and national judges, and between the judges and EU law is not per se smooth and bright.[37]

The reasons for this problem are multifarious. It seems that in order for the respective tasks and obligations to be adequately fulfilled by national courts several preconditions must be met. The first one relates to the Member States' legal frameworks. It is essential that the national constitutional, institutional, and procedural legal frameworks create an environment that simply allows national courts to fulfill the tasks which are placed on them by EU law. All Member States should therefore undertake all possible steps to eliminate the existing constitutional and procedural obstacles at the national level that impede the fulfillment of the EU-law-related tasks.

Secondly, the national judges must be adequately prepared to decide on EU law matters. This implies that they must be properly educated in the field of the law of the European Union, be it institutional, procedural, or material EU law. The national judge will not resort to EU law and apply it if she is not familiar with it, or even worse, not aware that specific EU law regulates the matter at question. The national judge will be skeptical about turning to the ECJ if she does not know the ins and outs of the preliminary ruling procedure and the existing jurisprudence of the ECJ regarding the concerned EU law matter. One should agree that without a certain amount of confidence in the field of EU law and its application, the national judge will likely remain somewhat hesitant to resort and apply EU law to the cases at hand, or will even try opposing it. It is therefore necessary to undertake even more steps that will provide national judges with relevant EU law knowledge and skills. This in turn will actively involve them in the structure of judicial protection system in the European Union. It is on the national and European policy makers to enhance their activities aimed at providing national courts with relevant EU law knowledge, be it at the university level or during judicial vocational training.[38]

Thirdly, the judicial environment and the 'operational context'[39] in which national judges function play an immense role. It can be observed that most judges have a common goal, i.e., to be as efficient as possible and decide the cases

[36]See Lasser 2009, p. 248. See for instance Case C-213/89, The *Queen v. Secretary of State for Transport, ex parte: Factortame Ltd and others* [1990] ECR I-2433 in which there was no competence for English courts to grant interim relief to the applicants. In accordance with the claim of the applicant, such a situation was in breach of EU law. The Court decided that any national rule that may impede the full effect of Union law must be set aside by the national court.

[37]To name just a few contributions: Alter 2001; Dehousse 1998; Jarvis 1998; Micklitz 2005; Slaughter et al. 1997; Volcansek 1986; Tridimas and Tridimas 2004; Wind 2010.

[38]On the problem of education in the area of EU law see Jaremba 2012 and Coughlan et al. 2011.

[39]The term 'operational context' is borrowed from Bell 2006, p. 30.

without any undue delay.[40] This implies that judges may tend to rely on heuristics and may tend to resort to the law which they are most knowledgeable of, and which is directly at their disposal, that is to say, national law. The daily backlog of cases, accompanied by the notorious lack of time may therefore effectively hamper the engagement of national judges with EU law, since overwhelmed judges can simply have not enough time at their disposal to deepen the EU-law-related matter, and/or resort to the preliminary ruling procedure and wait for the answer of the ECJ to their question.[41] Finally, the Court of Justice needs to more closely examine the uniformity and coherence of its own jurisprudence and it should be more open to the fact that local legal cultures may establish boundaries which the judges are not supposed to exceed. Also, chances that the national judge resorts to the ECJ and the Court's judgments are followed, and enforced by national courts will be higher if its case law is communicated in a clear language to the national courts, and is transparent and concise.[42] Put differently, the process of cooperation between national courts and the ECJ can only proceed in a positive manner if it is based on mutual openness, respect, responsiveness, and collaboration.

5 Conclusions

The involvement of national judges in the process of legal integration in the Union is one of the most outstanding features of the legal order of the EU. Undoubtedly, the European Union expects much from the national judge. It gives her new tasks and responsibilities but it also endows her with new competences. However, the fact that all national judges in all Member States eagerly participate in the process of legal integration in the European Union, eagerly apply EU law and turn to the Court of Justice with their problems concerning interpretation of EU law, and eagerly resort to the sources of EU law in their daily practice can by no means be taken for granted.

Some judges are not properly educated in the matters of EU law and its application which render the fulfillment of the discussed tasks impossible. They may also be unfamiliar with specific methods of legal interpretation, such as teleological or systemic interpretation, the use of which is encouraged by the Court of Justice but which overstep the locally accepted boundaries of judicial discretion. Some are hindered by such prosaic reasons as lack of access to EU law sources or

[40]See Jaremba 2012.

[41]Ibid.

[42]See M. Bobek, 'Of feasibility and silent elephants: the legitimacy of the Court of Justice through the eyes of national courts'. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2129683. Accessed 3 December 2012, who suggests that the Court should avoid controversial judgments, and be predictable, feasible, and concise. Furthermore, the style of the case law should, in the opinion of the author, be more discursive, analytical, transparent, and conversational.

foreign language skills. Others are hampered by national constitutional, procedural, or institutional legal framework, or a simple lack of time. Some may also lack willingness to cooperate and engage with EU law, or trust in the ECJ. They may also lack courage to step out of the common line of proceeding and go beyond the mere application of the state rules. Hence, without sufficient commitment on the part of the Member States and the EU institutions to do everything in their power to facilitate the functioning of national courts as decentralized EU courts, and without *loyal cooperation*[43] on the part of national judges themselves, the full uniformity and effectiveness of EU law may remain somewhat elusive notions.

Case law, legislation, and documents

Case law

Case 26-62, *NV Algemene Transport en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration* [1963]

Case 6/64, *Flaminio Costa v. E.N.E.L.* [1964] ECR 585

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[43] Article 4(3) TEU.

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Legislation
Treaty on the Functioning of the European Union (TFEU)

Report
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