

ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION IN RELATION TO THE CONSTITUTIONAL COURT OF MEMBER STATES OF THE EUROPEAN UNION

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***ABSTRACT:** ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION HAS PROVEN TO BE EXTREMELY IMPORTANT IN UNION CONSTITUTIONAL SYSTEM, WHICH MAKES US SEE A SIMILARITY WITH NATIONAL CONSTITUTIONAL COURT. IN THIS SENSE WE PRESENT THE COMMON ELEMENTS OF BOTH PUBLIC AUTHORITIES.*

***KEY WORDS:** COURT OF JUSTICE OF THE EUROPEAN UNION, CONSTITUTIONAL COURT OF THE MEMBER STATES, EUROPEAN UNION*

I. INTRODUCTION

Court of Justice of Luxembourg is the supreme authority in matters of European Union law, because the structural nature of the Treaty; it has worked to supplement voids and thus created an innovative and bold legislation, it interprets the Treaties and the rest of EU legislation so as to promote what they consider to be more in the spirit than the letter of the Treaties.

At the same time, the Court of Justice has helped constitutionalising Community law order, the growth in importance of jurisdictional control being significant, a leveling of jurisdictional protection system based on the community model which is the best way to ensure compliance with EU law in all areas.

By its very purpose, EU law appears as an autonomous right, equally binding for all member states, its application requiring, at the highest degree, an effective judicial protection, to face those situations in which the principles of Union law face various obstacles or deductions from national authorities.

Over the years the Court has made important contributions to the specification and development of legal principles registered in the Treaties, thus facilitating a better understanding and implementing them. (Pillars integration translated into rules of law are represented by two main principles: direct applicability and the primacy of EU law, which formed the foundation of a new legal system in the European area).

Therefore, the Court of Justice has proved to be extremely important in union constitutional system, which makes us see in this a similarity with national Constitutional Court.

II. PRESENTATION OF THE ASPECTS COMMON TO BOTH COURTS

Analyzing the competences we observe that, the Court of Justice of the European Union does not decide directly the nullity of a normative act, of an administrative measure or a procedural act carried out during the administration of justice, as it is for a court of common law, it confining to the decision of inconsistency with the provisions of the documents that are part of EU law, from where we conclude that the documents, measures must be canceled or reformulated, their remaining in a criticized form by the Court being equivalent to a case of attracting the responsibility for union level for non-fulfillment some commitments undertaken by the Treaty. [1]

Since its founding, its role was ruling on the legality of acts of community institutions and its conformity with the founding Treaties, which, in national law, is within the Constitutional Court area, namely to ensure the conformity of a normative act with the Constitution, considering that, in a system based on respect for the law was not possible that a coercive act adopted by the Community is not liable for judicial review.

The criticism comes from the fact that the founding and modifying Treaties do not constitute the fundamental law, as the Constitution in a national state because the constitutional system of powers at the EU level cannot speak of a separation of powers as we find in national law. Nevertheless, if we look carefully at the European Union's constitutional evolution we observe that Lisbon Treaty is named the Reform Treaty; this is fully deserved, new political-juridical document, although not named the Constitution, it is like a fundamental law in its content. [2]

The function of the Court of Justice of the European Union's constitutional court is exercised in the action for annulment (the court can cancel an institution act or sanction their refusal or abstention to decide on the obligations of the Treaty), [3] on the compatibility of an agreement between the Union and one or more states or international organizations with the Treaty, when solves conflicts between the Commission and states for failure to fulfill their obligations under the Treaty.

It was found along its work the fact that the Court formulated decisions for conflicts of the union's policy, these being criticized by the politicians [4], as well as lawyers [5] and this makes the similarity between this and national Constitution Court to be clear, often Constitutional Court decisions were in this direction.

The political character results from the method of selecting the members; all European Constitutional Courts are constituted in the same way, proposals coming from appointing authorities of the Member algorithm based on political criteria, in terms of selection criteria of judges: qualification, prestige, personality, concessions were often made, political in nature, which has led to the delivery of solutions in this direction. And from this perspective we find similarities with Union Court. [6]

Designation of judges of the Court of Justice must be made by Member States under a procedure referred to art. 253-255TFUE. [7]

Criticism of this procedures for the designation is that in reality is a formal procedure, the establishment of the Committee to propose a candidate for the Court is to eliminate the false impression of political interference in nomination of the member of the Court of Justice.

Under this aspect we consider that instead of being simplified, the designation procedure was complicated; first the release of an advisory opinion, then political parties

negotiations to establish the person to be nominated, all this takes more time and, in terms of the effect, does not bring any improvement.

In the European Constitutional systems [8] National Constitutional Court has the function of arbitrator in resolving political conflicts and function conciliator and guarantor of political life and stability in society and the state, because the base of each constitutional litigation is a political problem.

The years after 1990, were marked by transformation, legal and administrative actors have contributed significantly to the large-scale policy changes, and judicial control appeared as an important force in the process of political decision-making and institutional change.

The Court was the target of politicians who sought to weaken its legitimacy as a court and in this regard to Baroness Thatcher's famous speech held during a debate on the ratification of the Maastricht Treaty by the United Kingdom, in which this insisted on specifying that the decisions taken by the Court in certain things are very bad for Britain, showing that its decisions it has greatly expanded powers against centralized national state institutions and his methods interpretation of law, different from those of national courts are not accurate or good.

In its opinion, the Court of Justice is using European integration objective to guide all its judgments through which, in a certain time, it has promoted decisions in favor of a unitary European state. It is busy to reinterpret so many things in order to give more powers to itself and the community to our detriment.

In addition to statements of the British politician joins the Austrian Chancellor Wolfgang Schäussel, who in an interview has criticized the Court for systematically expanding the powers of the Union, criticism that appeared as a result of a decision of the Court in which the restrictions on students from other Member States who wished to study at Austrian universities were illegal. [9]

We believe that such criticism from politicians come to show the Member States that it must be interfered to temper the Court of Justice's actions, as well as an observation to the political aspect of its decisions.

Must be criticized also the Commission's intervention in proceeding against an EU country for failure to comply the directives of the Treaty. In this regard, we believe that the Commission, as the executive organism of the European Union, eminently political, supervises the state government guilty of infringement of the Treaty, and after a monitoring mechanism notifies the Court of Justice. In our opinion, this mechanism delays the application of sanction culpable state.

We believe that the delay is political in nature, by many negotiations between the State concerned and the EU institutions not only delay the sanctioning procedures to be applied to the state for failure to comply of EU law.

The juridical predominant character is retrieved in the organization and functioning, statute of judges and the procedural rules of verifying compliance normative acts with the Constitution, at the same time the Court of Justice has followed in its activity a policy of legal integration, giving substance lines traced by the Treaty, thereby increasing the effectiveness of EU law and promote its integration into national legal systems, what, also from this point of view, the Court of Luxembourg has elements in common with the Constitutional Court.

Court decisions adopted are obligatory both the Constitutional Court of the Member States and the Court of Justice, effects exerted on everyone, *erga omnes*, not only those who are process parties, *inter partes litigantes*, more these constitute a source for jurisprudence of national law and Union law, so that the decisions of national courts the effects are exercised at national level. [10]

In this respect, the court who raised the question of constitutionality, and all courts called to give judgment in that case are obliged as in solving of the case with which were referred to comply with the judgment of the Court, and if the some problem arises in another case, the judge will respect the decision of the Constitutional Court. [11]

Regarding the Union Court decisions, effects of its decisions are exercised over all Member States, on the same principle of law. [12]

But there are critics in this regard, so that in most cases Member States have not seen in the Court of Luxembourg a similarity between this and their Constitutional Courts, some of them do not even recognize union court decisions (Germany), others considering its positions within the constitutional system of the Union, even more consider welcome cooperation between national Constitutional Court and Union Court.

Federal Constitutional Court of Germany has established in Solage I cause that, as long as union law has not yet reached a level of fundamental rights protection equivalent to that provided in the German Constitution and a similar level of democratic legitimacy of its legislative power, The Court will continue to control secondary Union legislation, in accordance with national constitutional standards.[13]

In Solage II cause, after eight years, the German Constitutional Court expressed itself in the sense that the minimum level specified in the first decision has been reached and as long as communities, primarily through Court of Justice, will continue to ensure effective protection of fundamental rights, the Constitutional Court will not be able to control secondary legislation in relation to the Constitution, although will take account of union court. [14]

We believe that, cooperation between the Court of Justice of the European Union, as constitutional court and constitutional courts of the Member States is not foreseeing any hierarchy between them, within the current constitutional union that direction is not taken into account, instead Treaty allows the contentious national courts to refer questions to the Court of Justice for a correct interpretation and application of union norms. [15]

Constitutional Court of Romania was more reserved, aligning the trend former communist states of Central and Eastern Europe, meanwhile become Member States of the European Union, showing that there is no positive legislator and neither court having jurisdiction to interpret and apply European law disputes why to incite the subjective rights of citizens.

Using a rule of European law in the constitutional control, as interposed norm the reference involves on the basis article 148 (2) and (4) of the Constitution, cumulative conditionality: of the one part, this rule is sufficiently clear, precise and unambiguous the Court of Justice of the European Union and, on the other part, the norm should apply to a certain level of constitutional relevance, so that its normative content to support possible breach by the national law of Constitution-reference only direct norm in constitutional control. [16]

In such a hypothesis the Constitutional Court's approach is distinct from the mere application and interpretation of the law, competence belonging to courts and

administrative authorities, or any matters of legislative policy promoted by Parliament or Government, as appropriate.

The implementation in constitutional control decisions of the Court of Justice of the European Union or formulation itself of questions to determine the content of European standard is left to the discretion of Constitutional Court.

Such an attitude related to cooperation between European and national constitutional court and judicial dialogue between them, without raising issues related to the establishment of hierarchies between these courts. [17]

In this case, although the meaning of European standard was cleared by the Court of Justice of the European Union, requirements arising from this decision are not relevant constitutional rather they taking legislative requirement to adopt norms in point the judgments the Court of Justice of the European Union otherwise by finding possibly applying article 148 (2) of the Romanian Constitution. [18]

Basically, Romanian Constitutional Court does not reject the possibility of referral to the Court of Justice, but the interpretation and application of Union, powers are divided between the national courts (administrative authorities) and the Court of Justice and the Constitutional Court's interpretation of Union law. For the Constitutional Court, reference norm is the Constitution, recourse to the preliminary ruling mechanism can be considered if the European norm to interpret has constitutional relevance, and the same norm has a direct or an act clarified. [19]

III.CONCLUSION:

Analyzing the two authorities, the union and national, we found that the experience of the Court of Justice of the European Union in building their authority is similar to how the national constitutional courts have built authority, judges were attracted to the project the Court of Justice as a result of acceptance by national governments to a transfer of powers, keeping important elements of sovereignty for the Member States.

REFERENCES

- [1]. Duculescu V., Duculescu G., *Justiția Europeană. Mecanisme, Deziderate și Perspective*, The publishing house Lumina Lex, Bucharest, 2002, p.212
- [2]. Bobaru A.D., *Curtea de Justiție a Uniunii Europene – garant al aplicării uniforme a dreptului Uniunii Europene*, The publishing house Universitară, Bucharest, 2014, p.86
- [3]. Bobaru A.D., *Încălcarea unei cerințe procedurale esențiale-cauză de anulare a unui act comunitar*, in *Legea și Viața Review*, no 9/2008, p.50-52
- [4]. Arnall A., *Solitar: Curtea Europeană de Justiție și dezintegrarea dreptului Uniunii Europene*, in *Romanian Review of European Law*, no 1/2011, p.28-54
- [5]. Alter K. J., Vargas J., *Explaining Variation in the Use of European Litigation Strategies: EC Law and UK Gender Equality Policy*, in *Comparative Political Studies*, 2000, p.316-346
- [6]. Bobaru A.D., *Curtea de Justiție a Uniunii Europene – garant al aplicării uniforme a dreptului Uniunii Europene*, The publishing house Universitară, Bucharest, 2014, p.87
- [7]. Treaty of Lisbon provided in article 255 TFUE the establishment a Committee issue an opinion non the candidates ability to perform the duties of a judge, before the governments of the Member States make the appointments in accordance with articles 253 and 254. Appointment of judges by receiving the opinion of the Committee, composed of experts in law, prior the agreement the Member States governments, in our opinion will not solve the problem of political interference, the

final decision of appointment is for the governments of the Member States, who decide to send the Court of Justice of the European Union jurists proposed political party in power, by algorithm allocation of functions, Dragomir E. and Niță D., *Tratatul de la Lisabona. Versiunea consolidată a Tratatului privind Uniunea Europeană și Tratatul privind funcționarea Uniunii Europene*, The publishing house Nomina Lex, Bucharest, 2009, p.229

- [8]. Cușmir M., *Sisteme constituționale europene (concepte și practică juridică-politică)*, Theses doctor habilitat in law, Chișinău, 2008, www.cnaa.acad.md (visited at 10.01.2010)
- [9]. Arnall A., *Solitar: Curtea Europeană de Justiție și dezintegrarea dreptului Uniunii Europene*, in *Romanian Review of European Law*, no 1/2011, p.28-54
- [10]. Bobaru A.D., *Curtea de Justiție a Uniunii Europene – garant al aplicării uniforme a dreptului Uniunii Europene*, The publishing house Universitară, Bucharest, 2014, p.88
- [11]. *Justiția constituțională: funcții și raporturile cu celelalte autorități publice*, www.confeuconstco.org, (visited at 30.05.2013), p.4
- [12]. Bobaru A.D., *Rolul Curții de Justiție a Uniunii Europene în procesul de interpretare și aplicare uniformă a dreptului Uniunii Europene*, The publishing house Universitară, Bucharest, 2011, p.298-302
- [13]. Zanfîr G., *Curțile Constituționale, între orgoliul statutului special și asumarea unui rol activ în sistemul judiciar european*, in *Romanian Review of European Law*, no 5/2011, p.82-97
- [14]. ibidem
- [15]. Bobaru A.D., *Curtea de Justiție a Uniunii Europene – garant al aplicării uniforme a dreptului Uniunii Europene*, The publishing house Universitară, Bucharest, 2014, p.89-90
- [16]. www.forumuljudecătorilor.ro, judge Dragoș Călin about Constitutional Court of Romania and European Union Law (visited at 04.03.2015)
- [17]. ibidem
- [18]. ibidem
- [19]. ibidem