

Relationship between EU law and national law in the context of case law of judicial bodies

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Abstract

The European Union requires its Member States to fulfil their commitments stemming from the membership in the EU responsibly and to assist in carrying out tasks flowing from the Treaties and to achieve the Union's objectives in accordance with the principle of sincere cooperation. This scientific thesis points out the responsibility of Member States to fulfil their obligations in bona fide in accordance with principle pacta sunt servanda and it refers to well established case law of the Court of Justice of the EU clarifying the application primacy of EU law over national laws. At the same time it opens the discussion about decisions of constitutional courts related to the primacy of EU law in some EU Member States, in particular in Germany and Poland. This scientific thesis points out the significance of EU law in the process of further deepening of European integration and promoting rule of law values common to the EU Member States.

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1. Introduction

The European Union (EU) ranks among economic regional organizations. Its characteristic feature is that its activities have transnational character, which is reflected in its legal relationships. From its establishment the EU considers peaceful coexistence between nations as its priority, which is clearly reflected in values it is based upon. Matúšová states that Lisbon Treaty “clearly declared Europe of rights and values. Human dignity, freedom, democracy, equality, principles of the rule of law and respect for human rights are the main values of the European Union anchored in the preamble of the Lisbon Treaty. The Lisbon Treaty highlights the significance of principles upon which the EU is based in its functioning. They are principles of democracy, rule of law, human rights and fundamental freedoms, protection of human dignity, as well as principles of equality and solidarity.”³ The values of the EU stipulated in article 2 of the Treaty on the European Union⁴ have

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³ Matúšová, S. (2013). *Global, European, psychological and educational dimensions of values and culture*. In *Teacher and Values. European Values and Cultural Heritage – the Challenge for Education*. Ružomberok: Katolícka univerzita. 488 s. ISBN 978-80-561-0089-9.

⁴ OJ EU C 202. 7.6.2016.

been adopted by all Member States and they have undertaken to fully respect them. Values of the EU are common for all Member States and great importance is attached to them from the point of view of European law.⁵

Charter of Fundamental Rights of the European Union stipulates that: *The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.*⁶ These values are in particular human dignity, freedom, equality and solidarity; principles of democracy and the rule of law. Decisions of constitutional courts in several Member States have posed several questions to which the Court of Justice EU responds in a coherent way.

2. Methodology and objective

The thesis clarifies the relationship of the EU law and Slovak law in the context of responsibility of a State for its obligations stemming from the membership in the EU, using the legal logic and relevant legal regulation as well as the case law of European and national courts. In addition, we have focused on the impact of the EU law on introduction of rules for proper functioning of internal market and economic policies. The benefit of this study for the theory and practice is to open discussion on the relationship of the EU law and national law of EU Member States and its application in practice. In dealing with this issue we have drawn information from scientific literature, from primary and secondary EU law, from the case law of the Court of Justice and other sources. With regard to the objective of this thesis we have adjusted the chosen scientific methods, including synthesis, analysis, induction, deduction, legal logic.

3. Principle of sincere cooperation

Europe and the EU cannot even today be considered only as territory formed solely under the processes of international economic cooperation. Economic integration is a process of deepening the economic relations and coordinated economic cooperation of States that participate in this process.⁷ This process also includes ensuring compliance with the rules and standards of the European Union. Although the European Union supports the system of a free and open market and liberalization, at the same time it adopts also a number of regulatory measures that have to be implemented by the Member States, and they have to adapt to them within their legal and economic circumstances.⁸ Europe at the outset of its integration process and at present as well declares itself as the territory and community of values

⁵ Jančíková, E., Pasztorová, J., *Promoting EU values in international agreements*. In „Juridical Tribune - Tribuna Juridica“. Volume 11, Issue 2, June 2021, p. 204.

⁶ OJ C 326, 26.10.2012, pp. 391-407.

⁷ Milošovičová, P. at all. (2015). *Development of Slovak-German economic relations*. In: Globalization and its socio-economic consequences, Žilina, ISBN 978-80-8154-191-9, p. 439.

⁸ Bakytová, J. (2016). *Development of Slovak-Spanish investment relation*. In: Hradec economic days 2016: double-blind peer reviewed proceedings of the international scientific conference. Hradec Králové: University of Hradec Králové, 2016, S. 73 CPCI-SSH.

of European civilization. Peace and prosperity remain important European value.⁹ The membership in each international organization implies rights and obligations to the Member States that are anchored in the founding treaties that Member States acceded to. The spectrum of obligations differs in each international organization. We have focused in our study on obligations stemming from the membership in the EU in relation to the duty to respect the EU law.

The relationship between national law and EU law is not clearly regulated in the EU primary law. Ensuring uniform application of the Union law is considered as the foundation of the EU, its guarantee a prerequisite of the legal community of its Member States.¹⁰ There were efforts to address the issue that resulted in the wording of Constitution for Europe (2004), however, it has finally not entered into force after the ratification process in some Member States failed. Subsequently, in 2007 the Lisbon Treaty was adopted amending the Treaty on the EU and the Treaty on the Functioning of the EU.¹¹ Article 4 paragraph 3 TEU explicitly stipulates the principle of sincere cooperation, on the basis of which the Union and the Member States respect and assist each other in carrying out the tasks which flow from the Treaties¹². The Member States are obliged to take measures of general or specific nature in order to ensure the fulfilment of obligations stemming from the Treaties and from the acts of institutions. The principle of sincere cooperation implies the obligation of Member States to facilitate the achievement of its tasks and to refrain from any measure, which could jeopardise the attainment of the Union's objectives (Article 4 paragraph 3 TEU). This duty includes a mutual legal obligation both for the EU and its Member States to assist each other, which means that it is the obligation of all EU institutions to provide the Member States with adequate assistance in complying with principle of rule of law.¹³ The obligation of the Member States to respect the obligations stemming from international law is also enshrined in the Vienna Convention on the Law of the Treaties. According to settled case-law, it follows from the principle of sincere cooperation laid down in Article 4(3) TEU that the Member States are obliged to take all the measures necessary to guarantee the application and effectiveness of EU law (judgment of 31 October 2019, *Commission v Netherlands*, C-395/17, EU:C:2019:918, paragraph 95 and the case-law cited).¹⁴

⁹ Matúšová, S. (2014). *Sustainability of values and sustainability values* In Ivanička, K. at al. *Sustainability of innovation in the development of Slovakia* 2014. Bratislava: Wolters Kluwer, 309 s. ISBN 978-80-8168-036-6, p. 255.

¹⁰ Králiková, K., Funta, R., *Obligation of the European Commission to review national civil court judgements?* In Juridical Tribune-Tribuna Juridica, Volume 12, Issue 2, June 2022, p. 215, ISSN 2247-7195.

¹¹ OJ EU C 202. 7.6.2016.

¹² OJ EU C 202. 7.6.2016.

¹³ European Commission (2019). Communication from the Commission to the European Parliament and the Council a new EU. Framework to strengthen the Rule of Law. COM/2014/0158 final.

¹⁴ Court of Justice EU (2020). Case- 316/2019. Judgment 17 December 2020. ECLI:EU:C:2020:1030.

4. Relationship of Slovak law and EU law

In the Slovak legal system, the responsibility for compliance with international obligations stemming from international treaties binding on the Slovak Republic is stipulated in Article 1 paragraph 2 of the Slovak Constitution.¹⁵ In this context we can talk about the constitutional principle of compliance with international obligations. Acting in compliance with international obligations in accordance with the principle *pacta sunt servanda* represents the significant criterion for the functioning of a state governed by the rule of law. *Pacta sunt servanda* is based on the principle of good faith (*bona fide*). Explicit reference to *pacta sunt servanda* in an international legal instrument was first made when drafting the Vienna Convention on the Law of Treaties of 1969 (UN).¹⁶ The Convention of 1969 provides for in the third part, denominated “the Respect, application and interpretation of treaties”, at art. 26 entitled “*pacta sunt servanda*” that any treaty being into force binds the parties and should be executed by these in good faith.¹⁷

In applying the principle *pacta sunt servanda* attention should be drawn to the decision of the International Court of Justice in case *Gabcikovo-Nagymaros* (Hungary v. Slovakia (1997)).¹⁸ In case *Gabčikovo-Nagymaros*, The International Court of Justice observed the dual element of *pacta sunt servanda* as enshrined in the Vienna Convention:

- a) Treaty provisions are innately binding in nature.
- b) The duty to perform the innately binding obligations in good faith.

Sieber - Gasser is of the opinion, that: “*pacta sunt servanda* is a key principle in international law, which ensures order, stability and legal security in international relations. It renders commitments in international law generally binding unless a country decides to withdraw from them.”¹⁹

The respect for law and the rule of law is of significant importance for the EU. Compliance with the rule of law is not only a prerequisite for the protection of all fundamental values listed in Article 2 TEU. It is also a prerequisite for upholding all rights and obligations deriving from the Treaties and from international law.²⁰ The Lisbon Treaty does not explicitly state in its provisions the precedence of the

¹⁵ Act. No. 460/1992 Coll. Constitution of the Slovak Republic.

¹⁶ UN (1969). Vienna Convention on the law of Treaties. Available: http://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtmsg_no=XXIII-1&chapter=23&Temp=mtmsg3&clang=_en. [cit. 05.06.2022].

¹⁷ Popescu, D.N. (2009). *The principle pacta sunt servanda: doctrine and practice*. Lex et Scientia International Journal. Nbr. XVI-1, January 2009. pp. 128-137.

¹⁸ International Court of Justice (1997). *Gabčikovo-Nagymaros Project* (Hungary/Slovakia), Judgment, 1. C. J. Reports 1997, p. 7 Available: <https://www.coursehero.com/file/143450690/INTRODUCTIONdocx/>. The maxim *Pacta Sunt Servanda* is recognised as a universally accepted principle, a promise to be bound by any | Course Hero. Kenyatta University. [cit.05.06.2022].

¹⁹ Sieber-Gasser, C. (2021). Flexibility in International Economic Law vs. *Pacta Sunt Servanda*. In: Sieber-Gasser, C., Ghibellini, A. (eds) *Democracy and Globalization*. Economic Analysis of Law in European Legal Scholarship, vol 10. Springer, Cham. https://doi.org/10.1007/978-3-030-69154-7_9.

²⁰ European Commission (2019). Communication from the Commission to the European Parliament and the Council a new EU. Framework to strengthen the Rule of Law. COM/2014/0158 final.

EU law over national law, however, the supremacy of EU law is expressed in the Declaration No. 17 that was attached to the Treaty to this effect.²¹

The Slovak Republic respects the primary law as well as secondary legislation of the EU in accordance with the principle *pacta sunt servanda*. The relationship with the EU law is regulated by Article 7 paragraph 2 of the Constitution according to which „*Slovak Republic may, by an international treaty, which was ratified and promulgated in the way laid down by a law, or on the basis of such treaty, transfer the exercise of a part of its powers to the European Communities and the European Union. Legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic. The transposition of legally binding acts which require implementation shall be realized through a law or a regulation of the Government according to article 120 paragraph. 2*“. This provision in fact stipulates the principle of primacy of the EU law over domestic legal acts.

In this context it is necessary to focus on the case law of the Court of Justice of the EU. The Court of Justice firstly confirmed the precedence of EU law over national law in its well known judgement *Costa v. ENEL*, 6/64.²² The Court of Justice further explained the conditions of supremacy of EU law in case *Simmenthal*, 106/77.²³ “*In accordance with the principle of the precedence of Community law, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures not only by their entry into force render automatically inapplicable any conflicting provision of current national law but – in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each Member States...also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with community provisions.*” In other words, national provision that contradict with a legal act of the EU cannot be applied. According to settled case law of the Court of Justice, EU law takes precedence in case of conflict between the legal act of the EU and the one of national law. In case of EU law we can talk about the transnational law. Key element of transnational law is its direct applicability.

Philip C. Jessup described transnational law „*to include all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories.*”²⁴

Transnational law describes an area of law that regulates cross-border relations, be they commercial, political or societal, challenging the binary manner of

²¹ Wefersová, J. (2016) The correct application of EU legislation in the area of health sector in Slovakia In: Hradec economic days 2016. Double-blind peer reviewed proceedings of the international scientific conference. Hradec Králové: University of Hradec Králové, 2016, p.218.

²² Court of Justice EC (1964). Judgment of the Court of 15 July 1964. *Flaminio Costa v. E.N.E.L.* ECLI identifier: ECLI:EU:C:1964:66.

²³ Court of Justice EC (1978). Judgment of the Court of 9 March 1978. *Amministrazione delle Finanze dello Stato v. Simmenthal SpA.* Case 106/77. ECLI identifier: ECLI:EU:C:1978:49.

²⁴ Jessup, Philip C. (1956). *Transnational Law*. New Haven: Yale University Press, 1956, p. 2.

legal thinking — international/ national, public/private, state/non-state law. Unlike international and national law, transnational law does not have a hierarchical structure, but a “polycentric” one, with multiple sources.²⁵

5. Case law

Discussions on the primacy of EU law have been taking place at certain intervals since the 1970s in a number of Member States²⁶. Most intensively in Germany, where after the judgement in case *Internationale Handelsgesellschaft GmbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (Case-11/70)²⁷ in which the Court of Justice confirmed the primacy of EC law further to its previous judgements (Van Gend en Loos, Case 26/62 and Costa v. ENEL, Case 6/64), the Federal Constitutional Court (*Bundesverfassungsgericht*) issued its ruling in so called *Solange I* judgement²⁸ in 1974. This often referred ruling in the discussions of the relationship of national constitutions *vis a vis* the EU law represents the manifestation of hesitance to accept the supremacy of the EU law on the side of the Member States. The reason was the catalogue and guarantees of fundamental rights of individuals were enshrined in the national constitution, and not in the EU law, since the Charter of Fundamental Rights did not exist by that time. This approach was partially revised by the subsequent *Solange II* judgment of 1986²⁹ where the existence of the EU catalogue of fundamental rights was recognised further to the evolving case law of the Court of Justice. While in “*Solange* rulings” *Bundesverfassungsgericht* expressed its views on the primacy of German Federal Constitution in the context of fundamental rights protection, it confirmed its attitude as the sovereign in interpreting German constitution and constitutionality of international treaties concluded by Germany in cases *Maastricht I and II*³⁰. By these decisions and later in case of *Lisbon judgement*³¹ the *Bundesverfassungsgericht* confirmed the dualist approach of implementing international and European law in German national law as opposed to the monistic approach of the Court of Justice when confirming the primacy of EU law. And while it found no objections in the

²⁵ Bostan, A., *Transnational law – a new system of law*. In Juridical Tribune - Tribuna Juridica, Vol.11, Special Issue, October 2021, p. 354, ISSN: 2247-7195.

²⁶ In Italy case (1973). *Fragd* (Fragd v. Amministrazione Delle Finanze Dello Stato case (1989)) case Frontini (Constitutional Court, Frontini v. Ministero Delle Finanze case (1973)).

²⁷ Court of Justice EC(1970). Judgment of the Court of 17 December 1970. *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*. Case 11-70. ECLI identifier: ECLI:EU:C:1970:114.

²⁸ German federal Constitutional Court (1974). *Beschluß des Zweites Senats von 29 Mai 1974 BvL 52/71*. <http://www.ervat.unibe.ch/dfr/bv037271.html> [online 4.11.2022].

²⁹ German federal Constitutional Court (1986). *Beschluß des Zweites Senats von 22 October 1986 BvR 197/83*.

³⁰ German federal Constitutional Court (1993). Judgment on the Maastricht Treaty of October 12, 1993 Case BvR 2134/92, 2 BvR 2159/92. Available: <https://iow.eui.eu/wp-content/uploads/sites/18/2013/04/06-Von-Bogdandy-German-Federal-Constitutional-Court.pdf> [online 04.09.2022].

³¹ *Bundesverfassungsgericht* (2009). *Beschluß 123, 257 von 30. Juni 2009 BvR 2/08*. Available: http://www.bverfg.de/e/es2009063_0_2bve000208.html. [cit.023.09.2022].

German Constitution against the ratification of the Lisbon Treaty, it set limits to tighter European integration by stipulating a set of state functions that have to be retained at the level of Member States.

The controversial judgement drawing major attention in recent years came in May 2020³², in which *Bundesverfassungsgericht* challenged the supremacy of the EU law and ruling of the Court of Justice issued in the preliminary ruling proceedings. It found the bond buying scheme of the European Central Bank (ECB) as illegal under German law, unless the German central bank was able to duly justify the purchase of bonds under the ECB's program. What is important to mention in this context, *Bundesverfassungsgericht* in fact questioned the ruling of the Court of Justice, moreover it considered it as *ultra vires* act that was not binding. The German Constitutional court did not even consider to ask the Court of Justice for further preliminary ruling under article 267 TFEU and thus challenged the primacy of EU law by depriving the judgement of its legal effects in Germany. The European Commission launched infringement proceedings against Germany in June 2021 for violating the fundamental principles of EU law, in particular the principles of autonomy, primacy, effectiveness and uniform application of Union law, as well as the respect of the jurisdiction of the Court of Justice under Article 267 TFEU³³. The concerns of the European Commission were fully justified since such acts by the national constitutional court were in the position to represent a serious precedent for the supreme and constitutional courts of other Member States. And, indeed, the most welcoming reactions to the *Bundesverfassungsgericht* came from Poland and Hungary. Political statements stressing the precedence of national constitutions and exceeding of principle of conferral have been confirmed in the legal language by the constitutional courts of both countries, on 7th October by the Polish Constitutional Court³⁴ and on 10 December 2021 by the Hungarian Constitutional Court³⁵. The European Commission closed this politically followed and legally very important infringement procedure against Germany quite soon, in December 2021³⁶. The Commission justified its decision to close the infringement procedure by three reasons, based on guarantees of German Government, which has, firstly, formally confirmed that it recognises the principles of autonomy, primacy, effectiveness and uniform application of Union law, as well as the values in Article 2 TEU, including the rule of law. Secondly, it recognized the competence of the Court of Justice of the

³² Bundesverfassungsgericht (2020). Urteil des Zweites Senats vom 5. Mai 2020, 2BvR 859/15-, Rn.1-237. Available: http://www.bverfg.de/e/rs20200505_2bvr085915.html [online 23.09.2022].

³³ European Commission (2021). Press corner, June infringement package: http://keydecisions.europa.eu/newsroom/content/june-infringements-package-key-decisions-2_en. [online 23.09.2022].

³⁴ Trybunał Konstytucyjny (2021). Assessment of the conformity to the Polish Constitution of the selected provisions of the Treaty on the European Union. Ocena zgodności z Konstytucją RP wybranych przepisów Traktatu o Unii Europejskiej (trybunal.gov.pl). Available: Trybunał Konstytucyjny: Ocena zgodności z Konstytucją RP wybranych przepisów Traktatu o Unii Europejskiej (trybunal.gov.pl) [cit.05.08.2022].

³⁵ Constitutional Court (2021). Case -X/ 477/2021. Available: http://x_477_2021_eng.pdf (hunconcourt.hu)[cit.09.09.2022].

³⁶ European Commission (2020). December infringements package: key decisions (europa.eu) http://ec.europa.eu/commission/press-corner/detail/en/INF_20_2142.

European Union as the sole authority entitled to finally review the legality of acts of Union institutions. Thirdly, the German government, explicitly committed itself to use all means to avoid repetition of similar decision of a national court, in accordance with the duty of sincere cooperation enshrined in the Treaties. This means that when it comes to the EU law, *Bundesverfassungsgericht* has to refrain from adjudicating in the areas covered by it. German executive has thus confirmed its commitments stemming from the EU membership, including the obligation to play an active role in order to avoid possible similar situations caused by its judicial authority in the future.

In case of Poland, the proceedings before the Constitutional Court were initiated by Prime Minister who filed the motion with the aim to determine about the compatibility of Articles 1 and 19 of the Treaty on European Union with the Polish Constitution. The Constitutional Tribunal in its ruling, not surprisingly, considered that these provisions of the EU Treaties are incompatible with the Polish Constitution, by which it challenged the primacy of EU law. The ruling, *inter alia*, states that the EU authorities act outside the scope of the competences conferred on them following which the national Constitution is not the supreme law in Poland. The ruling of 7 October followed the ruling of the Constitutional Tribunal of 14 July 2021, by which it asked the cancellation of the order of the Vice-President of the Court of Justice on interim measures in another infringement proceedings related to the disciplinary regime of judges.

The reaction of the European Commission has been prompt and, similarly, as in above case in respect of Germany, it initiated infringement procedure in December 2021 against Poland for violating EU law by its Constitutional Tribunal³⁷. According to the Commission, both rulings of the Constitutional Tribunal are violating the principles of autonomy, primacy, effectiveness and uniform application of EU law and the binding effect of decisions of the Court of Justice of the EU. The Constitutional Tribunal cannot rule that disregarding obligations of the Member State under EU law is unconstitutional and thus interpret the EU law and division of competences between the Union and its Member States. This infringement proceedings are still pending. The issue is more complex, as the European Commission expressed concerns about the independence and impartiality of the Constitutional Tribunal not meeting the requirements of a tribunal previously established by law under Article 19 paragraph 1 of the TEU. The same concern has been expressed by the European Court on Human Rights in Strasbourg when handling individual complaints³⁸. The Polish Constitutional Tribunal reacted to this judgement too: on 24 November 2021 it ruled that article 6 of the European Convention on Human Rights that stipulates the right to fair trial before an

³⁷ European Commission (2020). Rule of Law: Commission launches infringement procedure (europa.eu). Available: <https://europa.eu/newsroom/content/rule-law-european-commission-launches-infringement-procedure-safeguard-independence>.

³⁸ European Court of Human Rights (2021) Judgment of 7 May 2021 *Xero Flor v. Poland* C-4907/18 Available in [https://hudoc.echr.coe.int/eng#{"documentcollectionid2":\["grandchamber","chamber"\],"itemid":\["001-211421](https://hudoc.echr.coe.int/eng#{).

independent court, is incompatible with the Polish Constitution insofar it concerns the Polish Constitutional Tribunal as a court. Its ruling is based on the role of the Polish Constitutional Tribunal, which is adjudicating the hierarchy of legal norms, and not complaints of individuals, and therefore the judgements of the Strasbourg court are not binding on it.

Hungarian Constitutional Tribunal, like its Polish homologue, also decided on a motion filed by the Hungarian Minister of Justice and European Affairs asking whether Hungary has to follow the judgement of the Court of Justice issued in the infringement proceedings³⁹ in which the Hungarian procedure for granting international procedure and return of illegally resident third-country nationals was declared as incompatible with EU law. In its ruling of 10 December 2021⁴⁰ the Hungarian Constitutional Tribunal ruled on the basis of Hungarian Constitution that “where the joint exercise of competences is incomplete, Hungary shall be entitled, in accordance with the presumption of reserved sovereignty, to exercise the relevant non-exclusive field of competence of the EU, until the institutions of the European Union take the measures necessary to ensure the effectiveness of the joint exercise of competences.” The Constitutional Court also stated that the exercise of shared competences by the EU institutions may not lead to lowering the level of protection of fundamental rights as guaranteed by the Hungarian Constitution.

Another statement of Constitutional tribunal came from Romania. The Romanian Constitutional Court in its statement of 21 December 2021⁴¹ also *de facto* rejected the Court of Justice decision on the primacy of EU law, nonetheless with different reasoning: a revision of Romanian Constitution is first required. It is the first Constitutional Court of the Member State expressly admitting the national constitution is unclear about the hierarchy of European *vis a vis* national laws, including constitution. National judges are, according to Romanian Constitution, not obliged to disapply the rulings of Constitutional Courts which are contrary to EU law and therefore it is necessary to revise the Constitution to this effect. The Court of Justice confirmed it expressly in its ruling issued by Grand Chamber on 18 May 2021⁴² in responding six preliminary questions posed by Romanian courts: “*By virtue of the principle of the primacy of EU law, a Member State’s reliance on rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of EU law. In accordance with settled case-law, the effects of the principle of the primacy of EU law are binding on all the bodies of a Member State, without, inter alia, provisions of domestic law relating to the attribution of*

³⁹ Court of Justice EU (2018). Judgment of the Court (Grand Chamber) of 17 December 2020. European Commission v. Hungary, Case C-808/18. ECLI identifier: ECLI:EU:C:2020:1029.

⁴⁰ Constitutional Court (2021). Case -X/ 477/2021. Available: https://hunconcourt.hu/uploads/sites/3/2021/12/x_477_2021_eng.pdf. [cit.04.09.2022].

⁴¹ Constitutional Court of Romania (2021). Statement of 21 December 2021 <https://www.ccr.ro/en/press-release-23-december-2021/> [online.03.08.2022].

⁴² Court of Justice EU. Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, ECLI:EU:C:2021:393. Available: <https://fra.europa.eu/en/caselaw-reference/cjeu-joined-cases-c-8319-c-12719-c-19519-c-29119-c-35519-and-c-39719-judgment> [online.03.08.2022].

*jurisdiction, including constitutional provisions, being able to prevent that.*⁴³ The Court of Justice has already confirmed the duty of national courts to give full effect of provisions of EU law, including the duty to refuse to apply any conflicting national provisions at their own motion without requesting to set it aside by the constitutional court⁴⁴. Thus, the benchmarks as established by the Mechanism for Cooperation and Verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption⁴⁵ have to be applied by national authorities and courts, which have to set aside the conflicting national laws, even of constitutional nature. This, again, confirms the primacy of EU law, even if it has the form of Decision of the European Commission, over national law, including the constitution and rulings of the constitutional court. It also implies that national court has to disapply the national provisions in case they violate EU law, even if it is contrary to the ruling of constitutional court.

Prominent Polish lawyer Fryderyk Zoll compiled an extensive study in 2022 called *Primacy of EU law and jurisprudence of Polish Constitutional Tribunal*. It follows from his conclusions that: *"the use of the constitutional courts to legalize the massive infringements of the internal and European law is one of the most important threats to the rule of law, due to the immense power of the constitutional courts and lack of remedies against their judgments."*⁴⁶ It seems that no legal system is perfect, and that is why we are of the opinion, that it is necessary to define precisely the relationship of the constitutional law of the EU Member States at one hand, and EU law, which takes precedence over national legislation, on the other hand.

6. Discussion

The European Union cannot be considered as traditional international grouping of states. As a result of this, integration processes of countries and political cooperation were intensified, especially in Europe.⁴⁷ It was established on the basis of international treaty and it has specific characteristic features as well as own specific legal system. The system of EU law represents *sui generis* body of law. The Union can be characterised as supra-national organization with independent system

⁴³ Court of Justice EU (2021). Judgment of the Court (Grand Chamber). 18.Mai 2021. In Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19. ECLI:EU:C:2021:393 Paragraph 245 of the judgement referred to in note 33.

⁴⁴ Court of Justice EU (2020). Judgment of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraph 215; *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 161. [cit.03.08.2022].

⁴⁵ European Commission (2006): Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption, OJ L 354, 14.12.2006, pp. 56-57.

⁴⁶ Zoll, F. at all (2022) *Primacy of EU law and jurisprudence of Polish Constitutional Tribunal* European Parliament, Brussels ISBN 978-92-846-9446-4.

⁴⁷ Achimská, V. (2015), *International comparison of the liberalization of the postal sector. Globalization and its socio-economic consequences*, Žilina, ISBN 978-80-8154-191-9, P.18.

of legal norms, different from the international ones, which is applicable in the territory of the Member States. The case law of the Court of Justice of the EU plays a significant role forming a number of fundamental principles having impact on the application of law in the Member States of the EU.

In order to pursue the policies of the Union effectively, EU law has to be fully implemented by the Member States. The principle of the primacy of EU law is based on the idea that where a conflict arises between an aspect of EU law and an aspect of law in national law, EU law will prevail. If this were not the case, it would be difficult to persuade the EU Member States not to allow their national laws to take precedence over primary or secondary EU legislation. In this respect the Court of Justice plays a unique role in enforcing the obligations of the Member States as defined by EU law. National courts also have the discretion to refer the matter to the Court of Justice, if they consider that the case pending before them raises questions involving the interpretation of EU law. The EU law have thus become superior to national law in areas where the EU Member States ceded their sovereignty to the Union. This has been confirmed by the Court of Justice consistently, and most often recently in cases involving constitutional issues, judicial systems and other issues connected to sovereignty as well.

7. Conclusion

The European Court of Justice has long been hailed as an independent motor of European integration.⁴⁸ Further to concrete judgements of the Court of Justice of the EU as well as courts of the EU Member States we have clarified the relationship of EU law and national law.

The European Court of Justice (ECJ) has long been hailed as an independent motor of European integration.

In this connection, it is necessary to focus on the interpretation of EU law, as well as on the obligations of the Member States stemming from international treaties that they have acceded to. In other words, obligations stemming from both primary and secondary EU law are binding for all EU Member States. It means that they take precedence over national legislation. However, a question remained, whether they would also take precedence over national constitutions of the Member States. Since the primacy of EU law is not explicitly stated in the Treaties, the constitutional courts of some Member States are still reluctant to accept the fact, that in case of conflict between EU law and national law, it is the national constitution that has to be set aside. In this respect, we are of the opinion that the application practice and knowledge of judicial authorities will bring new solutions, that will require compromise not only on the part of the Union itself, but also on the part of its Member States.

⁴⁸ Blauberger, M. at Al. (2017). *The European Court of Justice and its political impact*. In West European Politics. Vol. 40. No 4.907-918.

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