

Dialogue and cooperation between the CJEU and national courts

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Introduction

*“The **spirit of cooperation** which must prevail in the preliminary ruling procedure requires the national court ... to have regard to the function entrusted to the Court of Justice”*

C-212/04, para 42; C-571/10 para 41.

Dialogue and Cooperation between the CJEU and National Courts

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Shared Responsibilities;
Distinct Roles

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Duty of Consistent Interpretation

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Who has the last word?

Intrinsic tension?

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Mutual Trust and the Network
of National Courts

1

Shared Responsibilities; Distinct Roles

The central role of national judges as
the 'ordinary judges of EU law'

The ECJ as a 'national court'

COME LA METTI
È BUONA.



dal 1923

Shared Responsibilities

National Courts = the first line of defence

Simmenthal, 1976

“A national court which is called upon, within the limits of its jurisdiction to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provision by legislative or other constitutional means.”

Judgment of 15 December 1976 in Case 35/76 (*Simmenthal S.p.A. v. Italian Minister of Finance* [1976] ECR 1871).

*.Why is empowering
national courts so
effective in protecting
EU primacy ?*



The Right to Refer

A direct line of communication with the ECJ

Case C-614/14, Ognyanov, paras 15 and 25

“...the preliminary ruling procedure...constitutes the keystone of the European Union judicial system, which, by setting up a dialogue between one court and another, ...has the object of securing uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy...”

“...a national court may choose to refrain from referring questions for a preliminary ruling to the Court, in order to avoid, on the one hand, being disqualified and exposed to disciplinary penalties or, on the other, lodging requests for preliminary rulings that are inadmissible. Consequently, **such a rule is detrimental to the prerogatives granted to national courts and tribunals by Article 267 TFEU** and, consequently, to **the effectiveness of the cooperation between the Court and the national court and tribunals** established by the preliminary ruling mechanism”



What is the ECJ's role ?

Article 19 TEU

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. **It shall ensure that in the interpretation and application of the Treaties the law is observed. ...**

3. The Court of Justice of the European Union shall, in accordance with the Treaties:
 - (a) rule on actions brought by a Member State, an institution or a natural or legal person;
 - (b) **give preliminary rulings**, at the request of courts or tribunals of the Member States, **on the interpretation of Union law or the validity of acts adopted by the institutions**;
 - (c) rule in other cases provided for in the Treaties

Separation of functions

“[The preliminary ruling procedure is] based on a clear separation of functions between the national courts and the Court of Justice, **the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law**”

Case C-582/21, Profi Credit Polska, 9 April 2024,
Pt 31.

Interpretation of national law

=> national courts

Interpretation of EU law

=> European Court of Justice

Overlap - does the ECJ interpret national law ?

The constitutional amendment *could be consistent with EU law*, as long as national courts remained free:

- to refer questions to the ECJ at *whatever stage of the proceedings* they consider appropriate, even after the review of constitutionality
- to adopt any measure necessary to ensure provisional judicial protection of EU rights, and
- to disapply the national legislative provision they consider contrary to EU law, even after the constitutionality review

Melki and Abdeli (C-188/10 and C-189/10)

22 June 2010

KUBERA

(C-144/23) 15 October 2024

Overlap - do national courts interpret EU law?

Referring courts must provide:

- A summary of the facts
- The relevant national case law
- And **since 1 November 2012**, an explanation as to *why* the question is referred and their view on how national law interacts with the EU law at issue

Article 94

Content of the request for a preliminary ruling

In addition to the text of the questions referred to the Court for a preliminary ruling, the request for a preliminary ruling shall contain:

- (a) a summary of the subject-matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the questions are based;
- (b) the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law;
- (c) a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of European Union law, and the relationship between those provisions and the national legislation applicable to the main proceedings.

2

Duty of Consistent Interpretation

*What tools do the national courts
have at their disposal?*

Article 4(3) TEU

Pursuant to **the principle of sincere cooperation**, the Union and the Member States shall, in full mutual respect, **assist each other in carrying out tasks which flow from the Treaties.**

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall **facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.**

Consistent Interpretation in practice

Radlinger and Radlingerová C-377/14

*“...This obligation to interpret national law in conformity with EU law is **inherent in the system of the FEU Treaty**, since it **permits national courts**, for the matters within their jurisdiction, to **ensure the full effectiveness of EU law** when they determine the disputes before them”*

Bauer and Willmeroth (C-569/16 and C-570/16)

*“...requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that the directive in question is **fully effective** and to achieving an outcome **consistent with the objective pursued by it**”*

Consistent Interpretation

- A principle of *general application*
- Consistent interpretation =/direct effect
- Thus cannot lead to the 'disapplication' of the provision (*Popławski*, C-573/17, para 68)

Limits:

- NC are not expected to use interpretive tools that not at their disposal
- *Contra legem* - Back-up: *Francovich case law*
- General principles of law
 - Legal clarity
 - Respect of fundamental rights (ex: Article 49 of the Charter, *Makeleio and Zougla* (C-555/23 et C-556/23)).

3

Who has the final word?

A true dialogue, or merely a series of monologues?

Is there an intrinsic tension?



ECJ

Must have final say on legality of EU law.

Otherwise:

- Primacy rendered meaningless
- Diverse interpretation of EU law across MS would lead to chaos



National Courts

EU law is based on the conferral of powers, the State cannot confer power it does not have

- Thus - National Courts must be able to review EU action ?

Confrontations and Solutions

Weiss judgment - all bark and no bite



Other examples:

- *Landtová case*, the Czech Constitutional Court - limited to the specific circumstances of the case
- *Ajos Case*, the Danish Supreme Court
- *Taricco I and II*, the Italian Constitutional Court



4

The Network of National Courts

Cooperation *between* national courts

Mutual Trust

Article 2 TEU

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities...

Opinion 2/13

Those values *imply* and *justify* the existence of mutual trust between the Member States that those values will be recognised and that EU law will be implemented.

Judicial cooperation in criminal matters

- Mutual recognition = cornerstone of judicial cooperation
- Necessary in an 'area without internal borders'

Opinion 2/13, 18 December 2014

- **Two negative obligations**
 - Cannot require higher standards than provided by EU law
 - Cannot inquire into whether fundamental rights are being respected in a particular case (save in exceptional circumstances)

Melloni, Case C-399/11

- First reference of Spanish Constitutional Court
- Constitutional entitlement to a retrial if found guilty in absentia
- Lower protection in EAW Framework decision
- Spanish Court forced to execute, despite constitutional law

Limited exceptions to Mutual Trust

- Piecemeal development of the exceptions to Mutual Trust - one step at a time

Limits:

- ***N.S. & M.E. et al***: presumption of compliance with fundamental rights “must be regarded as rebuttable”
 - End of automaticity in mutual recognition
- ***Aranyosi***: Prohibition on torture cannot be violated under any circumstances
- **Two step test:**
 - objective, reliable, specific and up-to-date information, whether there is a *real risk* of inhuman or degrading treatment
 - *substantial grounds to believe* that the execution of the EAW would entail a *real risk* that Article 4, would be breached.

Direct Horizontal Dialogue between national courts

CK et al , Case C-578/16 PPU

= an institutional establishment of a direct **horizontal** dialogue.

82 ...Articles 31 and 32 of the Dublin III Regulation require the Member State carrying out the transfer to communicate to the Member State responsible such information concerning the state of health of the asylum seeker as to allow that Member State to provide him with the immediate health care required in order to protect his vital interests.

83 The standard form set out in Annex VI to the implementing regulation and the common health certificate found in Annex IX to that regulation may thus be used to inform the Member State responsible that the asylum seeker concerned requires medical assistance and care upon his arrival, ... information must be communicated within a reasonable period of time before the transfer is carried out, in order to provide the Member State responsible with sufficient time to take the necessary measures. The Member State carrying out the transfer may, in addition, obtain from the Member State responsible the confirmation that the necessary care will be fully available upon arrival

Exceptions to mutual recognitions in civil matters

C-633/22 Real Madrid Club de Fútbol:

‘enforcement of a judgment <...> must be refused where it would give rise to a manifest breach of the freedom of press, as enshrined in Article 11 of the Charter, and thus an infringement of public policy in the Member State in which enforcement is sought’

EUROPEAN JUDICIAL NETWORK

- |N 2017: creation of a secure exchange platform for MS courts
- Access to all non-confidential documents on the curia website
- Aim: to promote mutual knowledge and understanding of national legal systems
- Access to important decisions of national courts, selected by national Supreme and Constitutional courts
- Research and educational documents



Conclusion - Communication is Key



- Communication has developed with the successive steps of EU integration
- Channels of communication are fluid, and constantly in evolution
- Truly a 'dialogue' - each side has the power to influence the other
- Doubting mutual trust must remain the exception in 'an area without internal borders', can (sometimes) be remedied by communication