Jog-Állam-Politika, 2025/4.105
DOI: 10.58528/JAP.2025.17-4.105

TANULMÁNYOK

MARINKÁS GYÖRGY

How a 'Supranational Administrative Court' Became the Quasi 'Constitutional Court' of the European Integration? – Certain Aspects of the CJEU's Early Years

ABSTRACT

The CJEU, originally created as a 'supranational administrative court' with rather restricted powers intended to mitigate the fears of creating – as expressed by Jean Monnet – a 'government of judges', evolved into the quasi 'constitutional court' of the European integration. Creating such a court was, in fact, the original German proposal during the negotiations on the European Coal and Steel Community. The CJEU, by virtue of its precedent-dviven approach, has shaped the acquis communautaire in a remarkable manner through its judgments, acting as a quasi-legislator. It has significantly contributed to the advancement of European integration and, according to some views, has transformed the Treaties into a 'constitution'. Starting with the doctrine of direct effect – that is to say, holding that the Treaties are not merely binding on the governments of Member States but are also legally enforceable by individuals in national courts – and by granting supremacy to the Community law, the CJEU has expanded its own powers and curtailed the powers of the Member States. Besides historical, political and legal factors that facilitated the CJEU's evolution into the quasi 'constitutional court' of the EU, the current study examines the importance of inherent personal motivations and the personal nexuses among the often-overlapping circle of persons who sat at the negotiating tables of the Founding Treaties and/or later interpreted the treaty provisions as either judges or advocate generals of the CJEU or as members of the Legal Service of the High Authority of the European Coal and Steel Community /Commission of the European Economic Community.

Keywords: Court of Justice of the European Union ■ European Coal and Steel Community ■ European Economic Community ■ Van Gend en Loos ■ principle of direct effect ■ Costa v. ENEL ■ primacy of EU law

I. THE INTENDED ADMINISTRATIVE COURT OF THE ECSC

The CJEU[1] as a precedent-driven,[2] quasi constitutional court acting as a quasi-legislator, has shaped the *acquis communautaire* in a remarkable manner through its judgments. The case-law of the CJEU has contributed to the deepening of European integration[3] to such an extent that, according to Eric Stein, it is not exaggerating to say that it has turned the Treaties into a 'constitution'.[4] It is sufficient to recall the doctrine of direct effect – namely, that the Treaties are enforceable by individuals before national courts – and the principle of supremacy of EU law. Ferdinand Weber argues that the latter principle is the CJEU's own 'constitutional identity.'[5] Through these principles, the CJEU has expanded its own powers and curtailed the powers of the Member States. In some cases, the principles and rules laid down in its judgments have subsequently been incorporated into the Treaties (e.g. the Plaumann test). In other cases, these rules and principles remain 'merely' enshrined in its 'well-established' case-law, which, according to co-authors Derlén and Lindholm, became solidified within 35 years. By comparison, the same process took around 100 years for the United States' Supreme Court (hereafter: USSC).[6]

One may ask how it became such an influential actor, when, at the beginning, it was not so evident and was not in line with the intentions of the Founding Fathers, who, under the Paris Treaty, created a court with rather modest competencies, based on the French model of administrative justice. It was a compromise for the French, who initially opposed the idea of creating a permanent court, as Jean Monnet feared creating a 'government of judges' above the High Authority, resulting in a kind of governance which was decades later labelled as 'juristocracy'.[7]

Despite the enthusiasm of the Founding Fathers for the European 'peace project' and the alleged federalist nature of the Paris Treaty – elaborated on in de-

[1] For the sake of simplicity, the author uses the 'CJEU' abbreviation despite the name of the court changed throughout the decades: its first name was the Court of Justice of the European Coal and Steel Communities under the ECSC Treaty. Later, it was altered to the Court of Justice of the European Communities by the EEC Treaty. Its current name was determined by the Lisbon Treaty.

[2] As co-authors Derlén and Lindholm argue, the CJEU is a precedent-driven court; however, there are several differences compared to the United States' Supreme Court (USSC). For example, the CJEU is not that straightforward when it comes to overturning its own case-law. In their view, the most notable exemption was the Keck-judgment, in which the CJEU stated: 'the Court considers it necessary to re-examine and clarify its case-law on this matter.' See: Derlén –Lindholm, 2017, 682-683.; See also the Keck-judgment: CJEU, C-267/91 and C-268/91 (joined cases), Keck and Mithouard, Judgment, 24 November 1993.

[3] For a detailed analysis on deepening an integration, see Schimmelfennig – Winzen, 2020, 226.

[4] Stein, 1981, 1-27. See also: Budai, 2020, 43-57.; Várnay, 2017, 85-113.

[5] Weber, 2022, 770–771. See also: Marinkás, 2024.

[6] Derlén – Lindholm, 672.

[7] The term originates from Ran Hirschl. See Hirschl, 2004, 286. For the Hungarian literature, see Pokol, 2019, 190.

tail below –, the task of the CJEU was 'only' to exert legal control over the High Authority's functioning, since it was the only way to make the French delegation accept a permanent court. Other founding states – to a varying degree – wanted a court with broader competence. In particular, the Belgian and Luxembourgian representatives insisted that the court to be established should have jurisdiction to adjudicate certain non-legal questions like the socio-economic effects of the High Authority's acts in a Member State. The Germans were even more ambitious they wanted a court similar to the newly established German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) on the supranational level that would ensure the development of a European 'Rechtsstaat'. They also insisted on granting *locus standi* for firms and associations of firms as private litigants against the decisions of the High Authority. In their view, it was necessary, since the proposal on the High Authority vested it with the power to address decisions directly to individual firms without any possibility to appeal to domestic courts against those decisions. Thus, without locus standi before the proposed supranational court, these firms and associations of firms would be deprived of legal protection. Furthermore, they considered the appeals from private litigants as a means to facilitate the development of a uniform legal system. Something that became reality through the preliminary ruling procedure, as elaborated on in detail later.

The final provisions agreed by the parties were close to the French vision. It resembled the French Council of State (Conseil d'État): all the procedures under French administrative law were incorporated[8], and the position of Advocate General was created based on the model of the Rapporteur Public[9] at the Conseil d'État. However, it is inevitable that important concessions were made to both the Benelux and German delegations. Under the ECSC Treaty, the CJEU became a mix of an administrative court – that would review the legality of the decisions and actions of the High Authority –, and a classic international court of arbitration with the competence to resolve disputes between the Member States and the Community. Nevertheless, it was neither a Supreme nor a constitutional court as it lacked an effective enforcement mechanism, and the independence of the judges was only guaranteed by the secrecy of decision making: the TFEU 255 panel was only established some sixty years later, based on the provisions of the Lisbon Treaty. Without any similar provisions, the nomination of judges remained within the sole discretion of governments, which never vetoed each other's candidates. Furthermore, the locus standi of individuals was rather restricted as they were not allowed to bring general decisions and acts of the High Authority before the Court. However, the 'seeds' of a 'supranational constitution-

[8] Lagrange, 1979, 1-13.

[9] For a detailed description of the rapporteur public's role, please visit the website of the Conseil d'État: https://www.conseil-etat.fr/actualites/quel-est-le-role-du-rapporteur-public.

al court' were sown by Article 41[10] of the ECSC Treaty. Even if no procedure was ever initiated under Article 41 of the ECSC Treaty – a predecessor to Article 177 of the EEC Treaty on the preliminary ruling procedure –, this provision vested the CJEU with the competence of the sole interpreter of the Treaties.[11] Proposed by Maurice Lagrange – member of the French delegation and later the CJEU's first Advocate General[12] – this provision originally aimed at clarifying the division of work between the CJEU and the national courts, and became one of the most – if not the most – important tools for the CJEU to help develop the integration. – Lagrange clearly pointed out the potential of the preliminary ruling procedure.[13]

II. THE COURT UNDER THE EEC TREATY

When the negotiations started on establishing the European Economic Community (EEC), the court system became a central issue again. The main question was whether a single court should serve all the three communities – which based on the Spaak Committee report[14] facilitated the preservation of the integration efforts – or the proposed EEC should have a separate Court of Arbitration constituted by technical experts since the new organisation – based on the experiences of the failed negotiations on the European Defence Community and the European Political Community[15] – would be more of a technical integration without pronounced federal intents. Again, the French were against a permanent court. Their foreign minister, Georges Vedel, argued that an ad hoc tribunal would be sufficient to settle the possible institutional issues. Eventually, the parties agreed that the CJEU would serve the three communities. However, some of its competences were curbed – in Lagrange's view – as a punishment

[10] Article 41 of the ECSC Treaty: 'The Court shall have sole jurisdiction to give preliminary rulings on the validity of a c t s of the High Authority and of the Council where such validity is in issue in proceedings brought before a national court or tribunal.'

[11] Lagrange, 1979, 6.; Rasmussen, 2008, 83-84.

[12] Rasmussen, 2008, 83.

[13] 'What must be avoided – and this is a danger which becomes apparent as cases under Article 177 multiply – is that this Court, under the guise of interpretation, might more or less substitute itself for the national court which, let us not forget, retains jurisdiction to apply the Treaty and the regulations of the Community which have been incorporated into national law by ratification. Finding a clear-cut division between application and interpretation is indeed one of the most delicate problems posed by Article 177, all the more so because this dividing line corresponds to that of the jurisdiction of the Community Court and the national courts, a problem which no court has had the task of resolving in case of conflict.' See Case 6-64, Costa v E.N.E.L., Opinion of Advocate General Maurice Lagrange, 25 June 1964, para. I/B.

[14] The Brussels Report, The General Common Market, 21 April 1956 (Unofficially referred to as the Spaak Report).

[15] For a detailed introduction of the process, see Rasmussen, 2008, 79-83.

for the early 'activism' under the ECSC Treaty:[16] The locus standi of individuals was narrowed under Article 173 of the EEC Treaty[17] – compared to those under Article 33 of the ECSC Treaty[18] –, and also the Commission was given full discretion to decide on bringing the Member States' infringements before the CJEU, which is evident from comparing the wording of the ECSC and EEC Treaties.[19] On the other hand, Article 177 of the EEC Treaty,[20] inspired by the Italian constitutional system and recommended by Nicola Catalano – member of the Italian delegation and later judge of the CJEU[21] – gave a tool to the CJEU that was clearly underestimated by the negotiators.[22] It is worth mentioning that Giangaleazzo Stendardi an Italian law professor – who later represented Mr. Costa in the Costa v. ENEL case[23] –, was of the view that the preliminary ruling procedure could

[16] In its order brought in joined Cases 7/54 and 9/54 (Groupement des industries sidérurgiques luxembourgeoises of 23 April 1956) the CJEU ingeniously combined Articles 33, 35 and 88 of the Treaty – action for annulment, action for failure to act and infringement procedures, respectively – based on a purely literal interpretation of Article 33 (7), to allow a group of iron and steel undertakings to challenge the legality of a High Authority decision which refused to find that a Member State had failed to fulfil its obligation under Community law. See Lagrange, 1979, 6-7.

[17] Article 173 of the EEC Treaty: 'The Court of Justice shall review the lawfulness of acts other than recommendations or opinions of the Council and the Commission. For this purpose, it shall be competent to give judgment on appeals by a Member State, the Council, or the Commission on grounds of incompetence, of errors of substantial form, of infringement of this Treaty or of any legal provision relating to its application, or of abuse of power. Any natural or legal person may, under the same conditions, appeal against a decision addressed to him or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and specific concern to him.'

[18] Article 33 of the EEC Treaty: 'The Court shall have jurisdiction in actions brought by a Member State or by the Council to have decisions or recommendations of the High Authority declared void on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law
relating to its application, or misuse of powers. […] Undertakings or the associations referred to in Article 48 may, under the same conditions, institute proceedings against decisions or recommendations concerning them which are individual in character or against general decisions or recommendations which they consider to involve a misuse of powers affecting them.'

[19] Article 88 of the ECSC Treaty: '[…] If these measures should prove inoperative, the High Authority will lay the matter before the Council'; Article 169 of the EEC Treaty: '[…] If such State does not comply with the terms of such opinion within the period laid down by the Commission, the latter may refer the matter to the Court of Justice.' – Italics added by the author.

[20] Article 177 of the EEC Treaty: 'The Court of Justice shall be competent to make a preliminary decision concerning: (a) the interpretation of this Treaty; (b) the validity and interpretation of acts of the institutions of the Community; and (c) the interpretation of the statutes of any bodies set up by an act of the Council, where such statutes so provide. Where any such question is raised before a court or tribunal of one of the Member States, such court or tribunal may, if it considers that its judgment depends on a preliminary decision on this question, request the Court of Justice to give a ruling thereon. Where any such question is raised in a case pending before a domestic court or tribunal from whose decisions no appeal lies under municipal law, such court or tribunal shall refer the matter to the Court of Justice.'

[21] Tommaso, 2023, 5-15.

[22] Rasmussen, 2008.

[23] CJEU, C-6/64, Flaminio Costa v E.N.E.L., Judgment, 15 July 1964.

help tackle the rule of law issues within his country, Italy.[24] The recent rule of law clashes with the CJEU and certain Member States' constitutional courts have clearly proved him right.[25]

With the new competences, the CJEU under the EEC Treaty – which under the ECSC Treaty displayed a rather restrictive attitude towards international law – became the quasi 'constitutional court' of the EU.[26] The literature offers two mainstream theories for this turn: Eric Stein in his 1981 study[27], argued that it was the Legal Service of the High Authority – later called the Legal Service of the Commission of the European Economic Community –, which advocated its pro-integration agenda before the Commission and finally through the Commission before the CJEU. Hjalte Rasmussen, in his 1986 book[28], argued that the CJEU's current influential role is attributable to its judicial activism. The truth lies somewhere in between, as more recent research show: Morten Rasmussen – based on the recently opened CJEU archives – argues that Stein was more than right; however, the CJEU, which stripped of its initial conservative perception of international law – unintentionally facilitated by the change in the composition of the court – became 'activist' and started to utilise the preliminary ruling procedure, a new competence added by the EEC Treaty. As Weber argues, the CJEU found the 'constitutional identity' of the EU legal order in the unrestricted primacy.[29]

Within the Legal Service of the High Authority a body based on collegial decision making, Michel Gaudet – former member of the Conseil d'Etat with a strong pro-integration commitment – soon became an influential actor, which influence lasted long: later, when he was the leader of the Legal Service of the Commission of the European Economic Community[30] he was nicked as the 'Eleventh Commissioner'.[31] His colleagues at the Legal Service like shared his pro-integration attitude. Other influential persons from the network of lawyers contributed to the deepening of the integration, among others, Walter Much, the member of the German delegation that negotiated the 'Paris Treaty', and the first two Advocate

[24] In his view, an activist conception of the rule of law was the solution to tackle the remainders of the Fascist era's legal provisions that hindered the creation of a real market economy and were contrary to the Founding Treaties. See Arena, 2019, 1020-1022.

[25] Please see Budai, 2024, 19–44.

[26] It was also facilitated by the fact that the ECSC Treaty, being a traité loi ('law making treaty') defined the competences of Community institutions more precisely. By contrast, the EEC Treaty, being a traité cadre (framework treaty) sets broad objectives to be achieved progressively by national administrations. See Chamon, 2010, 297-298.

[27] Stein, 1981, 1-27., 24.

[28] Rasmussen, 2024.

[29] Weber, 2022, 70-71.

[30] Gaudet later became the director of the Legal Service of the EEC's Commission and after the Merger Treaty entered into force the director of the Legal Service of the Commission of the European Communities. – See ICC International Court of Arbitration Bulletin.

[31] Although the 'Hallstein Commission' only consisted of nine commissioners.

Generals of the CJEU, Maurice Lagrange[32] and Karl Roemer. Much in his 1952 study[33] argued that the Paris Treaty was constitutional in its nature and that the ECSC was a step towards creating a federal state. Lagrange and Roemer were of the view that the constitutional nature of the CJEU is not rooted in some teleological interpretation, but in its role under the Paris Treaty as an administrative court, aimed at protecting the rights and freedoms of the citizens against the executive power,[34] which was displayed in the opinion of Roemer in the Meroni-case[35] and later Lagrange's opinion in the Costa-case.[36]

III. THE VAN GEND EN LOOS DECISION

The real milestone was the Van Gend en Loos case, in which the CJEU became 'the constitutional court' of the EU by creating the principle of direct applicability.[37] The Legal Service of the Commission recognised the importance of the case and Gaudet drafted three different interpretations of the case and their outcomes: the first two were based on conservative interpretation of international law and rejected the direct effect of Article 12, which according to the Legal Service would have had negative consequence on the future of the integration: the enforcement of European law would depend on national governments, and the legal protection of citizens in the common market would be weak. The third interpretation proposed that clearly formulated treaty stipulations (e.g., Article 12) should have internal effect in the legal orders of the Member States and primacy *vis-à-vis* national legislation, whether antecedent or posterior. In the Legal Service's view, this was needed to create a coherent and solid legal order for the common market and the protection of national citizens. The Legal Service made

[32] Lagrange was a colleague of Gaudet at the Conseil d'Etat – and a friend –, who recommended Gaudet to Jean Monnet for the position at the Legal Service of the High Authority.

[33] Much, 1952, 105.

[34] Rasmussen, 2008, 85.; Rasmussen, 2012, 378-379.

[35] Advocate General Roemer took the view that, in a modern State founded on the rule of law, generally accepted conditions should be established on the delegation of the administrative powers of public authorities to private associations. First, the delegation must be based on law, which specifies the content of the delegation precisely and provides a sufficient level of control for the delegator. Second, a complete system of legal protection against the measures adopted by these associations must exist. Legal protection may be achieved by assimilating associations' decisions to those issued by the public authorities to make them subject of review according to the general rules of administrative law. See CJEU, C-9/56, Meroni & Co., Industrie Metallurgiche, SpA v High Authority […], Opinion of Advocate General Karl Roemer, 9 March 1958. For an analysis in the literature, please see Chamon, 2010, 281-305.; Teleki, 2023, 234.

[36] See: Case 6-64, Costa v E.N.E.L., Opinion of Advocate General Maurice Lagrange, 25 June 1964, para. I/B.

[37] It is worth mentioning that according to Lagrange, it was already established in the above mentioned 7/54 and 9/54 cases; See also: Lagrange, 1979, 9-10.

it clear how important the case at hand was. Employing a teleological interpretation of the Treaties, the Legal Service argued that the nature of the Communities went beyond customary international law, constituting a proper Droit Communautaire, which is not applicable only among governments. This assertion was based both on the special institutional and legal character of the Communities and the far-reaching nature of the Common Market. The Legal Service's interpretation was close to a federal model, where all European legal norms would have direct effect, thus could be invoked before national courts. However, the Legal Service cautiously avoided going into details, arguing that it was for the CJEU to decide which European legal norms had an internal effect.[38] The Commission picked the third option and advocated it before the CJEU, which was not surprising as the then-president, Walter Hallstein, shared Gaudet's views and gave plenty of rope to the director of the Legal Service regarding the Commission's submissions to the CJEU.[39]

However, something else was needed for the U-turn of the CJEU besides the arguments of the Legal Service: a change in the composition of the Court, by which the nominating governments unintentionally changed the balance of conservative international lawyers – who most probably would have refuted the direct applicability of a classic international treaty[40] – and pro-integration judges within the body that resulted in a 4:3 vote in favour of direct applicability. Without the two new, judges with federalist views, namely Robert Lecourt and Alberto Trabucchi – who persuaded Rino Rossi and Louis Delvaux [41] –, the CJEU presumably would have ruled in line with the arguments of Belgium, Germany, the Netherlands, the opinion of Advocate General Roemer,[42] and the draft judgment made by judge-rapporteur Léon Hammes,[43] that is against the direct

[38] Rasmussen, 2012, 386-388.

[39] Pokol, 2019, 138.

[40] As Morten Rasmussen argues – based on the reminiscence of the then staff members – Otto Riese, Jacques Rueff, and Adrianus van Kleffens were the charismatic personalities within the CJEU. Considering Riese's adherence to textual interpretations based on international law and the administrative and diplomatic experiences of Van Kleffens and Rueff, it is not surprising that the Court did not adopt a teleological methodology or a federal understanding of European law advocated by the Legal Service of the Commission. See Rasmussen, 2012, 380.

[41] Based on an interview with Paolo Gori, the référendaire of Catalano and then Trabucchi, the two Italian judges Catalano and Rossi did not get along well, which among others was attributable to Catalano's difficult personality. Trabucchi – who was the opposite of Catalano in this regard – found the common tone with Rossi from the very beginning. See Tommaso, 2023, 12.; Rasmussen, 2014, 148.; Rasmussen, 2012, 389.

[42] CJEU, C-26/62, van Gend & Loos v Netherlands, Opinion of Advocate General Karl Roemer, 12 December 1962.

[43] The president of the CJEU André Donner and Otto Riese took side with Hammes. See Rasmussen, 2012, 389.

applicability of Article 12, just like in the earlier Bosch-case[44] in which the 'pre-1962 set-up' CJEU – despite the Legal Service submitted very similar arguments to those were submitted in the Van Gend en Loos[45] – ruled against the direct applicability of Article 85 of the EEC Treaty per the case at hand.[46] The above proves Peter Hilpold's argument that the constitutional courts and the CJEU are so-called 'border organs' ('Grenzorgane'), which operate on the line between law and politics. As we have seen from the rule of law debates between the CJEU and some member states' Constitutional Courts[47]. the composition of these courts and their chambers may determine or at least influence the court's ideological stance and therefore sometimes these courts are 'packed' intentionally. However, as Morten Rasmussen points out, this was not the case in changing the Italian judge in the middle of his term, and was most obviously not the intention of the anti-federalist Charles de Gaulle. [48] It is claimed that Alberto Trabucchi was nominated because his brother was the Minister of Finance. As a private law professor at the Universita' degli studi di Padova, he was not a likely candidate. As for the new French judge, de Gaulle had first offered Réne Cassin the possibility, but he was found to be too old. De Gaulle's new candidate was Robert Lecourt, an old friend with a different worldview. According to Morten Rasmussen, this demonstrates the extent to which de Gaulle – or the person who recommended Lecourt to him – remained ignorant about the legal dimension of European integration and the potential vested in the CJEU.[49]

In its internal assessment of the ruling in Van Gend en Loos, the Legal Service was generally satisfied with the outcome, but it was also noted that the question of primacy remained unsettled by the CJEU.[50] Why was this such an im-

[44] CJEU, C-13/61, Kledingverkoopbedrijf de Geus en Uitdenbogerd v Robert Bosch GmbH and Maatschappij tot voortzetting van de zaken der Firma Willem van Rijn, Judgment 6 April 1962; It is worth mentioning that the Bosch case was the first ever preliminary procedure before the CJEU. For a detailed analysis of the case, please see van Leeuwen, 2018, 408-421.

[45] Rasmussen, 2014, 136-163.

[46] However, the picture is more complex. While it is true that unlike in the Van Gend en Loos, the CJEU did not avail itself to elaborate on the Legal Service's argument regarding the sui generis nature of the community law and – as mentioned above – per case excluded the direct applicability of Article 85, in theory the CJEU did not exclude it: '[…] raises the question whether Article 85 has been applicable from the time of entry into force of the Treaty. The answer to this question must in principle be in the affirmative.' SeeCJEU, C-13/61, Bosch, Judgment 6 April 1962, Grounds of Judgment, point 'B'.

[47] See Marinkás, 2024.

[48] It is worth mentioning, however in a letter written by Gaudet to Donald Swatland – one of those American lawyers who advised the Founding Fathers on certain institutional issues – Gaudet contemplated that maybe a change in the Court's composition would induce a change in its attitude, namely it would be using all its capacities and do a 'statement job', that is acknowledging and completing the sui generis 'European legal order', some of which's elements were turned down at the negotiation tables. However, he quickly dismissed the idea, since it was far beyond his power. See the letter of Michel Gaudet to Donald Swatland (dated: 31 December 1957). Published in: Bailleux, 2013, 371-375.

[49] Rasmussen, 2008, 91-92.

[50] Affaire 26/62, Service juridique des exécutifs européens, Bruxelles, le 25 février 1963, Note à l'attention de MM. les membres de la Commission, HAC.BAC 371/1991.

portant issue? An explanation is provided by Advocate General Lagrange in his opinion delivered in the next milestone case: Costa v. E.N.E.L. Lagrange argued that while under the Treaties, the Community institutions were accountable for transgressing their competence before the CJEU – which was entitled to annul or declare their acts illegal–, no guaranties existed for a scenario in which the Member States' authorities acted beyond their competences. In Lagrange's view, the primacy of EU law provided a solution for this 'constitutional' issue. It was a handy solution considering that it was already established in France, the Netherlands, Luxembourg, and Belgium was about to establish it at the time. As for Germany and Italy, Lagrange did not see it as impossible for their supreme courts to accept the principle of supremacy.[51]

The CJEU in its Costa-judgment ruled – in line with the recommendation of the Commission – that the preliminary reference was admissible. Even though the Italian domestic law at hand was found to be in conformity with Community law, the principle of primacy was added. The CJEU argued that primacy had already been accepted by the Member States when they ratified the Treaties. The silence of the EEC Treaty with regard to the principle of primacy was circumvented by the Court by emphasizing the special nature of the Community: its 'unlimited duration', its own 'personality' and 'legal capacity', as well as 'real powers stemming from a limitation of sovereignty or transfer of powers from the states to the community'. Probably the most convincing argument was that if Member States were allowed to replace European law with subsequent domestic legislation, it would render Article 189 of the EEC Treaty – on the direct effect of regulations – meaningless and would have resulted in an uneven application of Community law, giving rise to a discrimination on basis of nationality, which was prohibited under Article 7 Article of the EEC Treaty. By ruling so, the CJEU laid the cornerstone for a new Community legal order of a semi-federal character. The CJEU still needed to convince national courts to apply these doctrines, however.[52]

IV. SUMMARISING THOUGHTS

The study explored and introduced those factors that facilitated the CJEU – originally created as a supranational administrative court – to evolve into the quasi 'constitutional court' of the integration. Besides the historical and political factors, namely the mutual hope and enthusiasm 'to end all wars' through the European peace project, and the legal factors (e.g., the hidden potential in the preliminary ruling procedure), it was the personal factor that contributed most

[51] Case 6-64, Costa v E.N.E.L., Opinion of Advocate General Maurice Lagrange, 25 June 1964, para. I/B; Rasmussen, 2008, 96.

[52] Rasmussen, 2008, 96-97.

to the CJEU's evolution through the first decade of its functioning. The personal conviction and faith of Michel Gaudet and his fellow colleagues in a federal Europe and their systematic, planned efforts – such as establishing the CJEU's ruling on the direct applicability and primacy of community law – played an important role. They were convinced that what was left out of the Treaties could be made part of the community law through the judgments of the CJEU. By the end of the day, they were right. Likewise, the preliminary ruling procedure, which was proposed by Nicola Catalano and perceived as a tool for protecting the rule of law by Giangaleazzo Stendardi, lived up to expectations. Sometimes, however unintentional acts were needed to further facilitate the CJEU's evolution: it happened that an otherwise talented and sharp-sighted politician, Charles De Gaulle, seriously underestimated the potential power vested into the CJEU by the Founding Treaties and appointed Robert Lecourt as a judge. Lecourt's views were the total opposite of the French government's at the time. Lecourt, together with the other newly appointed judge Alberto Trabucchi, who shared Lecourt's federalist views, convinced two other judges – in which Trabucchi's personality played an important role – to decide in favour of the direct applicability in the 1962 Van Gend en Loos judgment. As a result, the very same Court, which earlier, in its 'pre-1962 setup', rejected the notion of direct applicability in its 1961 Bosch judgment, a year later voted in favour with a 4:3 ratio. All of these examples prove the importance of personal factors in shaping the CJEU into the court we know today.

CITATION

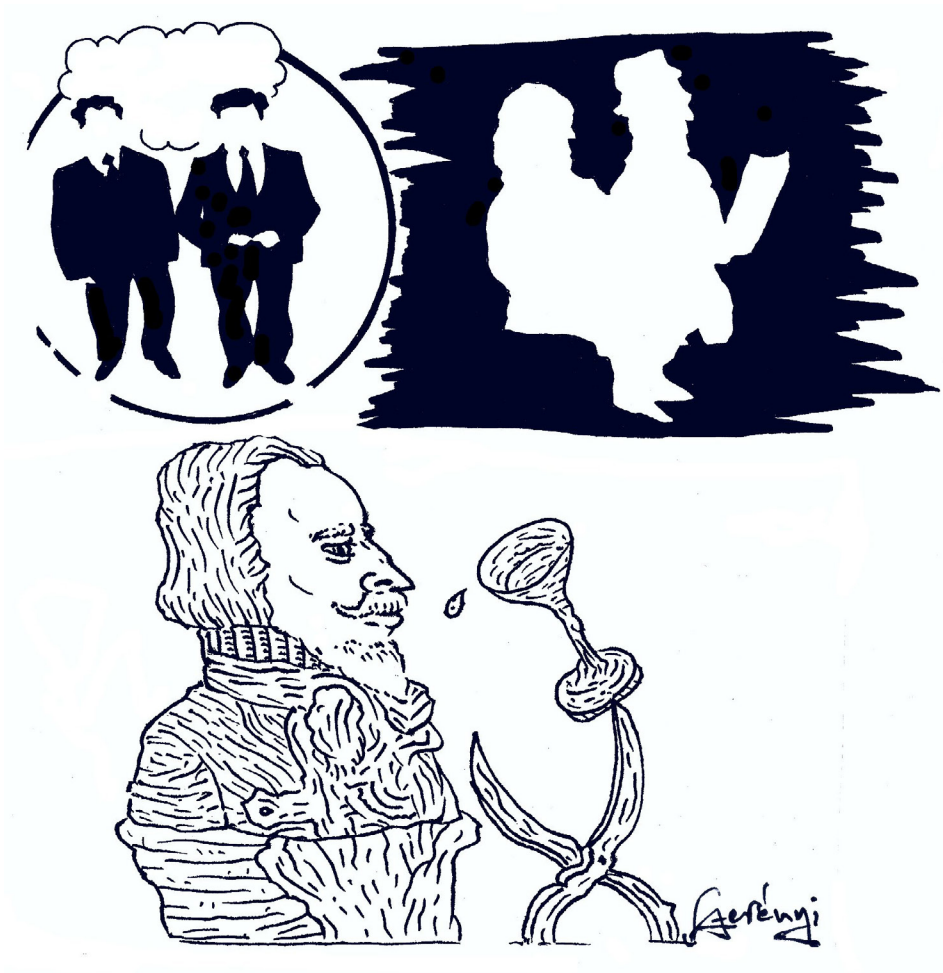
• Marinkás, György. „How a 'Supranational Administrative Court' Became the Quasi 'Constitutional Court' of the European Integration? – Certain Aspects of the CJEU's Early Years." *Jog–Állam–Politika: Jog- és politikatudományi folyóirat*, vol. 17, no. 4, 2025, pp. 105-117. https://doi.org/10.58528/JAP.2025.17-4.105

BIBLIOGRAPHY

• Arena, Amedeo (2019): From an Unpaid Electricity Bill to the Primacy of EU Law: Gian Galeazzo Stendardi and the Making of Costa v. ENEL. In: *The European Journal of International Law*. 30(3).
DOI: https://doi.org/10.1093/ejil/chz056.
• Bailleux, Julie (2013): Michel Gaudet, a Law Entrepreneur: the Role of the Legal Service of the European Executives in the Invention of Ec Lawa nd the Birth of the Common Market Law Review. In: *Common Market Law Review*. Vol. 50/2013.
DOI: https://doi.org/10.54648/cola2013052.
• Budai Péter (2020): A new theoretical framework of the law of intergovernmental organizations and its applicability to the European Union. In: *Pécs Journal of International and European Law.* No. 1/2020.

- Budai Péter (2024): Guy Fiti Sinclair's Approach and its Application to EU Law: the Development of the Rule of Law as a Case Study. In: *ELTE Law Journal.* No. 1/2024. DOI: https://doi.org/10.54148/ELTELJ.2024.1.19.
- Chamon, Merijn (2010): EU Agencies: Does the Meroni Doctrine Make Sense? In: *Maastricht Journal of European and Comparative Law.* Vol. 17/2010, Issue 3. DOI: https://doi.org/10.1177/1023263X1001700304.
- Derlén, Mattias – Lindholm, Johan (2017): Peek-A-Boo, It's a Case Law System! Comparing the European Court of Justice and the United States Supreme Court from a Network Perspective. In: *German Law Journal.* Vol. 18/2017. DOI: https://doi.org/10.1017/s2071832200022100.
- Hilpold, Peter (2021): So Long Solange? The PSPP Judgment of the German Constitutional Court and the Conflict between the German and the European 'Popular Spirit'. In: *Cambridge Yearbook of European Legal Studies.* Vol. 23/2021. DOI: https://doi.org/10.1017/cel.2021.3.
- Hirschl, Ran (2004): *Towards Juristocracy. The Origins and Consequences of the New Constitutionalism*. Harvard University Press, Cambridge, Massachusetts, USA.
- ICC International Court of Arbitration Bulletin. Vol. 14/2003, No. 1. (Available at: https://jusmundi.com/en/document/publication/en-michel-gaudet).
- Lagrange, Maurice (1979): The Court of Justice of the European Communities from the Schuman Plan to the European Union. In: *Mélanges Fernand Dehousse.* Vol. 2/1979.
- Marinkás György (2024): Current Issues of the (Unconditional) Primacy of Eu Law in the Case-law of the Constitutional Courts of Germany, Hungary and Romania. *CBPE*. 27 May 2024. (Available at: https://cbpe.pl/current-issues-of-the-unconditional-primacy-of-eu-law-in-the-case-law-of-the-constitutional-courts-of-germany-hungary-and-romania/. Accessed on: 9 June 2025).
- Much, Walter (1952): *Die Amtshaftung im Recht der Europäischen Gemeinschaft für Kohle und Stahl: auf der Grundlage einer rechtsvergleichenden Untersuchung der Amtshaftungssysteme in Deutschland und in Frankreich.* Klostermann, Frankfurt am Main, Germany.
- Pavone, Tommaso (2023): Making the European Court Work: Nicola Catalano and the Origins of European Legal Integration (January 27, 2023). In: Gallo, Daniele – Mastroianni, Roberto – Nicola, Fernanda G. – Cecchetti, Lorenzo (eds.): *The Italian Influence on European Law: Judges and Advocates General, 1952–2000*. Hart Publishing, Oxford, United Kingdom. DOI: http://dx.doi.org/10.2139/ssrn.4339824.
- Pokol Béla (2019): *Európai jurisztokrácia – Az Európai Unió jurisztokratikus szerkezetének kérdései*. Dialóg Campus, Budapest.
- Rasmussen, Hjalte (1986): *On Law and Policy in the European Court of Justice*. Brill – Nijhoff, Leiden, The Netherlands. DOI: https://doi.org/10.1163/9789004639966.
- Rasmussen, Morten (2008): The Origins of a Legal Revolution – The Early History of the European Court of Justice. In: *Journal of European Integration History*. Vol. 14/2008. DOI: 10.5771/0947-9511-2008-2-77.
- Rasmussen, Morten (2012): Establishing a Constitutional Practice of European Law: The History of the Legal Service of the European Executive, 1952–65. In: *Contemporary European History.* Vol. 21/2012, Issue: 3. DOI:10.1017/S0960777312000252.
- Rasmussen, Morten (2014): Revolutionizing European law: a history of the Van Gend en Loos judgment. In: *International Journal of Constitutional Law*. Vol. 12/2014, Issue 1. DOI: https://doi.org/10.1093/icon/mou006.

• Schimmelfennig, Frank – Winzen, Thomas (2020): *Ever Looser Union? Differentiated European Integration Oxford*. Oxford University Press, Oxford, United Kingom. DOI: https://doi.org/10.1093/oso/9780198854333.001.0001.
• Stein, Eric (1981): Lawyers, Judges and the Making of a Transnational Constitution. In: *The American Journal of International Law*. Vol. 75/1981, Issue 1.
DOI: https://doi.org/10.2307/2201413.
• Teleki Bálint (2023): *Az „ügynökségesedés" tendenciája az Európai Unióban és annak hatásai az uniós és a magyar közigazgatásra'.* Doktori (PhD) értekezés. Nemzeti Közszolgálati Egyetem, Budapest.
• Van Leeuwen, Karin (2018): Paving the road to 'legal revolution': the Dutch origins of the first preliminary references in European law (1957–1963). In: *European Law Journal.* Vol. 24/2018, Issue 6.
DOI: https://doi.org/10.1111/eulj.12296.
• Várnay Ernő (2017): Az Európai Bíróság és a bírói aktivizmus délibábja. In: *Állam- és Jogtudomány.* 2017/2. sz.
• Weber, Ferdinand (2022): The Identity of Union Law in Primacy: Piercing Through Euro Box Promotion and Others. In: *European Papers 2022*. Vol. 7/2022, No. 2. DOI: 10.15166/2499–8249/597.



Szerényi Gábor grafikája