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THE PLACE AND ROLE OF THE COMPARATIVE LAW METHOD WITHIN THE INTERPRETATION OF THE COURT OF JUSTICE OF THE EU

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Abstract

The term „interpretation” was left in shades by The EU Functioning Treaty, but it shows the communication of the content and applicability limits in space and time of that particular legal norm. All the methods used for discovering the content of the legal norms in order to proceed to its practical enforcement is what interpretation is all about. The European Court of Justice of the EU provides the only official interpretation of the European legal norms, using at this extent several ways to accomplish that, such as grammatical interpretation which, most of the time, needs to be completed by the teleological one. The teleological interpretation ensures the fact that the main purpose of the EU legislation is to recourse to the general principles of the EU Law, but also to the interpretation of the secondary law according to the Founding Treaties. In this generous frame of interpretation, the comparative law method applied by the European Court of Justice enables the hand- in -hand relation between this particular method of interpretation and the constitutional traditions common to the member states.

Key words: *The Court of Justice of the European Union, comparative law method, common member states constitutional traditions, teleological interpretation.*

INTRODUCTION

One of the most crucial roles of the Court of Justice of the European Union (CJEU) is to interpret European Union law through preliminary rulings, ensuring the proper application of European legislation and eliminating the risk of

divergent interpretations among different countries' courts. This occurs when a national court handling a specific case has doubts about the interpretation and application of a EU legislative act or simply wishes to know whether a legislative act or national practice complies with EU law. In both situations, the court utilizes the mechanism by which it requests the opinion of the CJEU. The response of the CJEU takes the form of a judgment rather than a mere opinion. Consequently, the receiving national court is bound by the interpretation when resolving the case on its docket, and the preliminary ruling becomes mandatory for other national courts facing a similar issue. Article 267 of the Treaty on the Functioning of the European Union (TFEU) "does not define the term interpretation, which, however, in its usual sense, means communicating the content and material scope of the legal norm in question in space and time. Union legal norms, due to the terminology used, their objectives, and the high level of abstraction, are often unclear, confusing, and challenging to understand, even for a specialist" (*Gyula 2023, p. 417*).

"Law reflects social evolution" (*Popoviciu, 2014, p. 20*). Member states are the ones responsible for ensuring the effectiveness of European Union law, especially through preliminary questions addressed by the national judge of the supreme union court. "Considering the importance of combating all forms of discrimination, it has become necessary over time to adopt a coherent legal framework to establish and implement efficient mechanisms to promote equality and prevent, eliminate, and sanction discrimination" (*Cîrmaciu, 2018, p. 42*).

In its interpretative activity, the methods used by the Court of Justice can take the form of grammatical interpretation, often complemented by the systematic-teleological interpretation method, oriented towards the basic objectives of the Union. This latter interpretative typology exists in the principles of Union law and fundamental ideas from treaties. Thus, the systematic-teleological interpretation method implies an autonomous interpretation of Union law, without reference or similarity to domestic law, precisely to ensure uniform application of EU law in all member states. The interpretation is oriented towards the useful effect of regulations, aiming to achieve optimal conditions for the functioning of the EU. As an example, in the Euro Box judgment¹ "the national court that has exercised the option or met the obligation to refer to the Court with a request for a preliminary ruling under Article 267 TFEU cannot be prevented from immediately applying Union law in accordance with the decision or the Court's case law; otherwise, the useful effect of this provision is diminished². Last but not least, the interpretation of secondary law is always done in accordance

¹ cauzele conexe C-357/19, C-379/19, C-547/19, C-811/19 și C-840/19

² Cristina-Maria Florescu, *Note la Hotărârea CJUE din 21 decembrie 2021 pronunțată în cauzele conexe Euro Box Promotion și alții. Soluționarea litigiilor de contencios administrativ și fiscal: între obligativitatea deciziilor Curții Constituționale a României și supremația dreptului UE*, pe www.juridice.ro.

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with the primary law of the European Union. Acting as a Supreme Court of Justice, the CJEU faces a challenging task when called upon to formulate the clearest interpretation while leaving the main dispute on the docket of the national court untouched. Following the preliminary ruling issued by the Union judge, the national court will apply, in a concrete manner in the case brought before it, the interpretation provided by the Court of Justice. In this process, the national judge must ensure that the full effect of Union law is fully respected in the main dispute, leaving unapplied, *ex officio*, any national regulation or practice that proves to be incompatible with Union requirements expressed in a legal norm benefiting from direct effect.

I. THE COMPARATIVE LAW METHOD

The term "interpretation," left undefined by the Treaty on the Functioning of the European Union, terminologically designates the communication of the content and limits of material application in space and time of the legal norm in question. The entirety of methods used to discover the content of legal norms, for the purpose of applying them to concrete cases, constitutes the action of interpretation. The Court of Justice of the European Union (CJEU) provides the sole official interpretation of Union legal norms, employing various methods, including the grammatical method, focusing on the "interpretation of the word," often complemented and corrected by a systematic-teleological interpretation method. The latter aims at the primary union goal, involving recourse to the principles of Union law and guiding ideas from primary EU law to ensure the functioning capacity of the EU, and the interpretation of secondary law in accordance with primary law. In this generous framework of interpretation, the application of the method of comparative law by the Court of Justice appears conclusive, intertwining it as a method of interpretation with the common constitutional traditions of the member states.

"The method of comparative law can be defined as an interpretative tool serving the Court of Justice in resolving certain constitutional or legislative gaps, conflicts, and ambiguities. While the method of comparative law focuses primarily on the legislation of member states, it does not exclude international law or even the law of third countries, such as that of the USA." (Koen Lenaerts and K. Gutman, Oxford, 2015, p. 37).

The legitimacy of the Court of Justice's use of this interpretation method arises from several provisions of the Treaty on European Union, specifically Article 6(3), which mandates the Union to respect "fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the common constitutional

traditions of the Member States, as general principles of Union law"³. Assimilated to the primary law of the European Union, as a legal force, after the Lisbon moment in 2009, the Charter of Fundamental Rights of the European Union states that fundamental rights recognized in the Charter and resulting from the common constitutional traditions of the member states will be interpreted in accordance with their respective traditions.

Regarding the full effect of EU law, the Court of Justice has emphasized the prevalence of Union law in the power balance between a national court and the Court of Justice. The preliminary ruling procedure is particularly important, and the Union court holds the exclusive interpretative power of EU law. In exercising this exclusive competence, the Union judge specifies "the extent of the principle of the supremacy of Union law over the relevant provisions of that law, regardless of the interpretation of national law or Union law provisions retained by a national court that does not correspond to the interpretation of the CJEU."⁴. In this context, recent case law of the CJEU reinforces the principle of the supremacy of Union law, in the sense that it must be interpreted in such a way that any national regulation or practice according to which the common law courts of a member state are obliged to respect the decisions of the constitutional court or the Supreme Court of that state, "cannot, for this reason and at the risk of disciplinary liability of the judges concerned, leave unapplied ex officio the case law resulting from the mentioned decisions, even if they consider, in light of a decision of the Court, that this case law is contrary to provisions of Union law which have direct effect"⁵.

In the scope of the application of the method of comparative law, not only does the primary law of the EU come into play, but also secondary law that can offer a useful framework for clarifying certain provisions of derivative law. Called upon to interpret the notion of "spouse" in Directive 2004/38, the Court of Justice adopted a neutral attitude, considering the legal recognition of same-sex marriage had changed since the adoption of the Directive, as noted by the Advocate General in the Coman case and others⁶.

In fact, the application of the method of comparative law entails the Court of Justice finding a common denominator in the convergence of the legal systems

³ *Tratatul asupra Uniunii Europene*, publicat în Jurnalul Oficial al Uniunii Europene nr. C 326/19/26.10.2012.

⁴ Cristina-Maria Florescu, *Note la Hotărârea CJUE din 21 decembrie 2021 pronunțată în cauzele conexate Euro Box Promotion și alții. Soluționarea litigiilor de contencios administrativ și fiscal: între obligativitatea deciziilor Curții Constituționale a României și supremația dreptului UE*, pe www.juridice.ro.

⁵ Hotărârea CJUE pronunțată de Marea Cameră din 24 iulie 2023 privind cererea de decizie preliminară formulată de Curtea de Apel Brașov – România, Cauza C-107/23, publicată în JOUE nr. C 321/16).

⁶ Hotărârea din 5 iunie 2018, *Coman și alții*, C-673/16, EU:C:2018:385.

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of member states. The deeper this convergence, the more the Union court tends to follow it. Temporally, the method of comparative law seems to have been present in the interpretative activity of the Court of Justice since the 1960s, when Advocate General Lagrange presented the idea on June 4, 1962, that when applying this method, the Court of Justice "chooses from those solutions of the member states which, taking into account the objectives of the treaty, seem to be the best."⁷. In situations where it has to rule on the compatibility of a national measure with Union law, the European court will gauge the diversity of legal systems to know exactly how reliable and accepted its decision will be at the level of the member states. Thus, "to the extent that there is no harmonization at the EU level, and national diversity does not undermine one of the principles on which the EU is based, the absence of consensus militates in favor of finding a solution that does not risk generating misunderstanding or resistance in certain member states, which could affect the effectiveness and uniform application of EU law." (Koen Lenaerts, 2022, p.17).

CONCLUSION

The application of the comparative law method by the Court of Justice of the European Union, especially in the context of major social changes leading to a spontaneous convergence of the legislations of member states, brings a new dynamic. It allows the legal order of the EU to naturally address these changes, aligning the legal culture of the EU with that of the member states. The EU's established motto, "Unity in Diversity," takes on new meanings in the context of the Court of Justice's application of the comparative law method, ensuring "mutual influence between the EU and national legal orders, thus creating a common space of law." (Koen Lenaerts, 2022, p.18).

The legal order of the European Union and its foundation on the two pillars represented by the direct applicability of Union law and its supremacy over national law are fully defended when the Court of Justice ensures the uniform and prioritized application of Union law in all member states. Even though it is not a perfect concept, the legal order of the European Union has an invaluable contribution to resolving the political, economic, and social issues of the member states.

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