**SARA L**aw **R**esearch **C**enter
**I**nternational **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2022), pp. 368-374

# BRIEF CONSIDERATIONS REGARDING THE SUPREMACY OF THE UNION REGULATION IN RELATION TO NATIONAL ACTS

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***Abstract***

*The European Union is an international integration organization in the sense that we constantly retain requests from some European states for accession. The EU is not an international organization in the classical sense, departing significantly from the terminology established by international law. So, we are in the presence of an autonomous governance, with individual rights and powers. In this sense, the member states have given up part of their legislative sovereignty in favour of the Union in order to jointly exercise the prerogatives deriving from this transfer. Also, the European Union is based on sources of law that give rise to a legal system distinct from the systems of the member states, characterized by its supremacy in relation to the latter.*

*The present study aims to address the issue of the supremacy of the Union law system, in relation to the national law, with special reference to the supremacy of the main source derived from the Union, the regulation, in relation to the sources of the national legal order.*

**Key words:** *supremacy; union legal order; sources of union law; CJEU; national acts.*

## INTRODUCTION

As the specialized doctrine holds, the European Union is a superstate governance characterized by the fact that it is based on its own legal order. The Union legal order or Union law system has the following characteristics:

- *It is a supra-state order* in relation to the national legal order, its main objective being the unification of the national regulations of the member states *(T. Avrigeanu pp. 70-84)*, an objective which, although designed at the union level, is carried out at the level of the member states, as the case may be by adopting internal measures for the application of a Union regulation or by ensuring the transposition of a Union directive or decision into the system of internal law.

- It is *an autonomous legal order (I.N. Militaru, 2011, pp.87 et seq.)* in relation to the national legal system but integrated into the latter. What does it mean? It means that the Union law system is based on its own sources of law classified in the specialized literature as primary legislation *(see in this sense, I. Boghirnea and all. 2011, pp 333-342)* and secondary or derivative legislation (constituted by union legislative acts with binding legal force, these being regulations, directives, decisions, adopted by the union co-legislator - Commission, Parliament- Council through a legislative procedure as the case may be, ordinary or special, to which one added the union acts without binding legal force (opinions and recommendations).

- It is a *supreme legal order* compared to the national legal system. *(M. Grigore and al., 2011, pp 305-309).*

## 1. THE SUPREMACY OF THE UNION SYSTEM IN RELATION TO THE NATIONAL LEGAL SYSTEMS OF THE MEMBER STATES

The supremacy of the union system was established for the first time at the jurisprudential level by the reference Decision of the Court of Justice of July 15, 1964. Thus, in its Decision, the Court of Justice, currently referred to as the CJEU, established the supremacy of the law of the European Economic Community, currently the Union European "on the national laws" of the member states. In the Court's decision, it was also specified that the direct effect of the creation of the EEC consisted in the fact that the member states transferred their powers to adopt legislative acts and thus limited their legislative sovereignty. Therefore, it is mentioned in the considerations of the decision that the member states cannot adopt national laws that contradict the legislation of the European Union without calling into question the very legal basis of supranational governance. If, however, the states do so, the Union legislation should prevail over the laws before the national courts.

The Court also clarified in its jurisprudence subsequent to Costa v. E.N.E.L. the scope of the supremacy principle.

In this sense, it is noted that the principle of supremacy:

*(i)- applies to all binding Union acts,* regardless of whether they represent primary legislation (remember, the treaties), secondary legislation (regulations, directives, decisions, etc.) or jurisprudence of the CJEU *(N.E. Hegheş, 2019, pp. 131- 138).*

*(ii)- refers to all national acts* regardless of their nature (laws, government ordinances, etc.), regardless of whether they are issued by the legislative or executive power of a member state

*(iii) includes provisions of a national constitution* that contradict Union law. In this regard, we recall the Court's decision in Case 11-70, where in point 3, the court orders that no rule of national law, including a decision of the constitutional court, can contravene European Union law. Also, in the judgment

pronounced in Case 314/08, point 85 states that the pre-emption of Union law implies the obligation of the national court to apply supranational law and to leave the contrary national rules unapplied, even in the conditions where there is a decision of the national constitutional court given in support of national norms.

Last but not least, at the jurisprudential level, through the Decision of December 21, 2021 issued by the Court of Justice of the European Union, it was decided that the Constitutional Court in Romania is obliged to comply exactly with the Union law and in the event that it issued a decision which in the view of the Romanian national judge violates EU law, it can leave the decision of the constitutional authority in Romania unapplied.

Thus, at paragraph 246 of its reasoning, the CJEU reaffirmed the specificity elements of the union system, as they were established in the Judgment pronounced in the case of Costa v. E.N.E.L. Specifically, the Court ruled that an order was created through the Treaty concerning the European Community legal system proper to supranational governance, the result of the agreement of the signatory states of the treaty, as a result, no singular state measure can prevail over the union system which, although autonomous, is integrated into the national legal systems, since, in such a hypothesis, one wouldn't be able to achieve the standardization of national legal systems. In the same sense, paragraph 248 of the reasoning of the CJEU mentioned above also provides.

Also, within the same decision, it is mentioned that through the constitutive treaties, a system specific to the communities is born, as a consequence, from the moment of the accession of an applicant state, the Union law becomes priority and binding both for the acceded state and for its national courts (paragraph 245 ); The European Union Treaty is considered a constitutional charter (paragraph 247), thus explaining the functionality of the principle of supremacy of supranational law over national legislation (paragraph 250).

Within the framework of Declaration no. 17 regarding the pre-emption of Union law accompanying the Treaty on the functioning of the European Union**:**

(i) the principle of the supremacy of supranational law over national domestic law has been reaffirmed, thus it is stipulated that the constitutive and subsequent treaties, as well as the secondary legislation adopted by the union co-legislator, have priority over national law, as provided by the jurisprudence of the CJEU'

(ii) was mentioned that although it is not expressly provided for in the treaty, it is an essential union principle. In support of this thesis, the jurisprudence of the CJEU states that the supremacy of supranational law is its primary principle. So, currently, although the pre-emption is not inserted in the reforming treaty, it will not in any way modify the existence of the principle and the existing jurisprudence of the Court of Justice of the European Union. We conclude that, due to its originality, based on its own and independent legal sources, the Union

law cannot be opposed to national provisions without the question arising to what extent the legal foundation considered at its establishment is still maintained.

## 2. SUPREME REGULATION - SOURCE OF UNION LAW

European Union legislation is classified into primary legislation and secondary legislation. The primary legislation, also known as the primary source of the Union law system, has in its composition *(a) the constituent treaties of the three European Communities (b) the subsequent or amending treaties of the constituent treaties of the European Union, (c) the treaties of accession to the supranational governance (d) the protocols annexed to them, (e) additional agreements amending certain sections of the founding treaties, (f) the Charter of Fundamental Rights, (g) the general principles established by the Court of Justice of the European Union (see for more details A Fuerea, 2006, pp. 27 et seq.)*

Secondary legislation of the European Union is the body of legislation based on the EU treaties. The legal acts of the European Union can be found in article 288 of the TFEU, so the text of the article provides that the institutions of the Union can adopt legal acts based on the powers conferred by the treaties. Specifically, according to the provisions of the above-mentioned article, it is the Union normative act that is characterized by generality, having a mandatory content and being directly applicable in the national legal order. As for the directive, it is considered to have a direct but conditional and limited effect in the sense that it must be transposed into the legislation of the recipient state, the competent authorities determining the manner of transposition.

Last but not least, when we discuss the union decision, it is imperative to identify that they can be, as the case may be, member states or individuals.

Article 289 of the reform treaty makes the distinction between acts that have undergone a legislative process and acts without a legislative process. As regulated by the previously mentioned article, *legislative acts* are legal acts that go through an ordinary[1] or special[2] legislative procedure to which are added the acts adopted at the citizen's initiative or at the indication of the European Central Bank or at the request of the Court of Justice of the European Union.

[1] "The ordinary legislative procedure consists in the joint adoption by the European Parliament and the Council of a regulation, a directive or a decision, on the proposal of the Commission". See in this regard paragraph (1) of Article 289 of the TFEU in conjunction with the provisions of Article 294 of the TFEU. According to Article 297 of the TFEU, legislative acts adopted in accordance with the ordinary legislative procedure must be signed by the President of the European Parliament and by the President of the Council.

[2] "The adoption of a regulation, a directive or a decision by the European Parliament with the participation of the Council or by the Council with the participation of the European Parliament constitutes a special legislative procedure". See in this regard paragraph (2) of Article 289 of the TFEU. Legal acts adopted in accordance with a special legislative procedure must be signed by the president of the relevant institution.

## BRIEF CONSIDERATIONS REGARDING THE SUPREMACY OF THE UNION REGULATION IN RELATION TO NATIONAL ACTS

Based on Article 290 TFEU, the Union co-legislator has the power to delegate to the European Commission the authority to adopt the so-called delegation acts with the role of amending the non-essential issues of the legislative act.

*The implementing acts* are adopted by the European Commission under the conditions of Article 291 of the TFEU when it is necessary to adopt uniform measures in order to apply mandatory Union acts

*Union regulation*. According to art. 288 paragraph 2 of the reform treaty, the regulation is the Union normative act that is characterized by generality, having a mandatory content and being directly applicable in the national legal order, so we can highlight the following characteristics:

*The regulation has general applicability* and as a result this feature differentiates the Union norm from the Union's secondary legal instruments.

The Regulation becomes applicable starting from the date mentioned in its text and when the text does not provide, it becomes applicable starting from the twentieth day after its publication in the Official Journal of the European Union.

With a view to the uniform application of the Union legislation in the national systems, *the content of a regulation is mandatory for them, as a result* the contrary national provisions remain unapplied. In the same approach, we specify that in the specialized literature it has been opined that no member state is allowed to apply incompletely or selectively the provisions of the Union regulation.

*The regulation has direct applicability* in national systems. From the moment of its entry into force, the regulation is an integral part of the legal systems of the member states.

However, we cannot fail to mention that there are situations in which, for a correct and complete application of a Union regulation, it is necessary to adopt some national - internal - measures for the application of the Union rule, the latter of which can take the form of a law, of a government ordinance, etc. (O.G. no. 8/2019) We exemplify in this sense, the provisions of article 29 of Regulation (EU) 2017/1939 which stipulates that when a crime within the competence of the EPPO is apprehended, which is punishable by a penalty of at least four years in prison, the delegated European prosecutors have the power to take or request, as the case may be, investigative measures such as, for example, searches, confiscations, interceptions, etc. The mentioned measures may be subject to conditions of consistency with domestic law in situations where domestic law contains applicable limitations regarding certain persons or qualities possessed by them. In the situation of a legislative interference as specified above, can the supremacy of the Union regulation still be supported?

The answer is also this time an affirmative one. Our belief is supported by the fact that whenever the Romanian legislator draws up a national act in the sense of the above-mentioned, he does it eminently on the basis of the provisions inserted in the very content of the Union regulation that disposes in this sense, so

that the internal norm does not add or modifies but clarifies within the limits conferred by the text of the union provision itself.

## CONCLUSIONS

*The European Union was founded on fundamental values, becoming a legal reality in the sense that it is a creation of the law that pursues its objectives exclusively through the law, with the Union citizen and the member states at the centre of its interest.*

*The study aimed to answer the question to what extent do we retain the supremacy of the Union regulation in relation to the national acts? As was to be understood, one cannot discuss the supremacy of a derivative source of the Union law system without first arguing the prevalence of the Union legal order over the national law system. Thus, I brought arguments in support of the above, both of a jurisprudential and legislative nature.*

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