Supremacy and direct effect of EC law - Position of the constitutional court

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Abstract

Although it was originally established with the aim of cooperation and economic integration of its Member States, The European Union (EU) got a universal nature, becoming a real supranational organization whose legal acts, adopted by its institutions are directly applicable by Member States and when a conflict arises between the internal law of a Member State and the European Community (EC) law, the latter prevails.
By accepting the supranational jurisdiction, the EU Member States also accept to transfer parts of their sovereignty. However, not in all countries is easily accepted the renunciation of part of national sovereignty and the recognition of certain competencies to the supranational institutions. In this sense, the constitutional courts have often opposed to a complete transfer of national legal sovereignty and have insisted on their role as the "guardian" of the Constitution. Generally, these objections are based on the question whether EC law is capable to offer the same protection of rights with that offered to the national level.
If the national constitutional order limits the transfer of powers or the effects of supremacy, the highest national courts should decide whether these restrictions have been violated. This raises the issue of the "ultimate authority" or "ultimate arbitrator" in the case of conflict between national and community law. In this sense main objective of this manuscript is the direct effect of EU law in Albania as a Candidate state for the EU.

Keywords: Albania, EU law, Constitutional court.

Intoduction

Due to the lack of a legal basis regarding the relationship between community and national law, the solution of this issue was left to the European court. Therefore, the European Court of Justice (ECJ) strengthened its image as the "engine" of European integration, by creating the doctrine of supremacy of EC law. In its opinion, the primacy and direct effect of the EC law is based on its "special and original nature", especially to the fact that it constitute an independent legal system that derives from an autonomous legal source.
Article 6 of Constitution Treaty (not approved)[1] established a "supremacy" or "primacy clause", according to which "the Constitution and law adopted by the institutions of the European Union in exercising competences conferred on it shall have primacy over the law of the Member States.". This provision was not transferred to the Lisbon Treaty, which instead stated that based on the jurisprudence of the European Court of Justice, the Treaties and law adopted by the
European Union, prevail over the law of the Member States, under the conditions

[1] The Treaty establishing a Constitution for Europe of 2004 was an unratified international treaty intended to create a consolidated Constitution for the European Union.

laid down in the Court case-law. After the failure for establishing the European Constitution, the Lisbon Treaty only introduced a declaration referring to the European Court of Justice case-law, having attached an annex containing an opinion of the Council`s Legal Service according to which: "The fact that the principle of supremacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case-law of the Court of Justice" (Weatherhill, 2012, 79).

The principles elaborated by the European Court of Justice

The real impact of the ECJ only appears when we observe its activity in particular areas. It has to a very large extend influenced the constitutional and legal framework in terms of supranationalism and, inter alia, has elaborated the principle of direct effect of the EC law - that is, for each EU citizen without the mediation of member states - as well as the principle of supremacy of the EC law over national law[2]

ECJ elaborations on key notions of supremacy and direct effect of EC law represent a classic use of the teleological interpretation approach of this court. The text of the EU Treaty do not expressly states the idea that the European Union will be supreme, or the notion of direct effect, but the ECJ has elaborated the existence of these fundamental principles from the scope of the Treaty. According to the Court it is impossible to be created the structure that the Treaty aimed if the law is not supreme and directly applicable. Therefore, according to the ECJ, the Treaty implicitly contains these principles.

The basic principle of the supremacy of EC law over national law constitute a creation of ECJ, which has already declared the community law as primary, directly applicable and autonomous. These principles have been developed based on the concept of a "new legal order". In its pilot judgment Flaminio Costa v. ENEL (a dispute between the Italian laws on the national energy monopoly and the EC provisions on free movement of goods), the ECJ defined a clear hierarchy between EC law and national law, stating that "unlike the ordinary international treaties, the Treaty of the European Union has established its legal system which, with the entry into force of the treaty, becomes an integral part of the legal systems of Member States that their courts are obliged to apply".

From the ECJ first judgement of 1960`s, which emphasize the original character of the community order and its superiority to the national one (the latter is considered having no effect if conflicts with the community law), it can be observed the remarkable dynamism of this court and its tendency to position itself as a direct interlocutor of national judges and guarantor of community norms.

ECJ, by a unique judgment, has introduced the principle of mutual recognition of member states' standards, which has replaced the troublesome and long harmonization of norms and standards, thus creating one of the most important conditions for the Internal Market project. One of the most important reasons for achieving this great impact was because it succeeded, by a well oriented and intelligent strategy, to include to the jurisdiction of the EC also the national courts.[3]

[2] Case Flaminio Costa v. ENEL, 6/64 (1964), ECR, EUR-Lex-61964J0006 –EN.

[3] Rapporto Europa dopo la strategia di Lisbona: dove andiamo?", a cura del Centro di Ricerca Re-

It should be noted, that thousands of ECJ preliminary rulings, mainly in such sectors like free movement, free movement of goods, free movement of services, equality and social rights, fundamental rights as well as EU citizenship, have had direct and extended effects on the lives of EU citizens, a fact that is not well-known (Famiglietti, 2010).

If we could make an assessment, we would say ECJ has a greater importance compared to the national Constitutional Courts, since it has given some decisive impulses to the integration process. Its role, as well as the legal order for the construction of which it has given a substantial contribution, are undoubtedly of the most prominent indicators of the European Union's *supranationalization*, which fundamentally distinguishes it from the other international Organizations.

The direct applicability is the main feature of the legal order, which in the sense of Article 249 of the Treaty (former Article 189) shall be binding in its entirety and directly applicable in all Member States. For these reason it does not require any regulation in the national legal order, since the EU legal order can produce direct effects on the national law of each Member State, by recognizing to the citizens real rights which the national judge should protect. The Court has had the occasion to clarify the position to be taken in case of incompatibility between EC and nations norms, stipulating the superiority of EC law to that national. In this sense, any national judge has the obligation to apply the community law and to protect individual's rights guaranteed by it, by not applying the incompatible norms of national law, regardless of whether they were adopted before or after the community norms.

In its *Van Duyn* judgement,[4] the Court has stated this principle for the first time. In order to affirm this principle, the Court proceeded in two ways: either through punitive judgement or through the principle of interpretation in compliance with EC law. In the first case, the Court has affirmed the principle according to which the citizens may ask for the directives to be directly applicable.[5] Concerning the interpretation in compliance with EC law, the ECJ has ruled that the national court should interpret the national law in the light of the directives. Following this orientation, the national judge must interpret the law in accordance with the community principles. From 1990`s 12 the Court has not only emphasized the principle of responsibility of a Member State which has not adapted its norms with the directives, but has also emphasized the liability of the State and its obligation to make reparation for the consequences of the loss and damages caused to the citizens because of this.[6]

The direct effect of EC law is, along with the principle of precedence (*stare decisis*), a fundamental principle enshrined by the ECJ that enables individuals to immediately invoke EC law before national courts, independent of whether national law exist.[7] This principle has been enshrined by the Court in the judgment of Van Gend en Loos of 5 February (1963). In this judgment, the Court stated that EC law not only engenders obligations for EU countries, but also rights for individuals. Individuals

gione Piemonte, 2010.

[4] Case 41-74, Yvonne van Duyn v Home Office [1974].

[5] Judgements in cases no.148/78 [1979] Ratti and no.152/84 [1986] Marshall. 11 Case no.14/83 [1984],

[6] Cases no.C-6/90 and no.C-9/90 [1991], Andrea Francovich and Danila Bonifaci etc.

[7] http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14547_en.htm.

may therefore take advantage of these rights and directly invoke European acts before national and European courts. However, it is not necessary for the EU country to adopt the European act concerned into its internal legal system.[8]

There are two aspects to the principle of direct effect, a vertical and a horizontal one. Horizontal direct effect is consequential in relations between individuals. This means that an individual can rely to the direct effect of the treaties dispositions in order to file a lawsuit against other individuals at the national courts. While the horizontal effect refers to relations between individuals, the vertical effect is of consequence in relations between individuals and the state, what means that individuals can invoke a European provision and be protected by it before the national courts. According to the type of act concerned, the ECJ has accepted either a full direct effect (i.e. a horizontal direct effect and a vertical direct effect) or a partial direct effect (confined to the vertical direct effect).[9]

As far as primary legislation is concerned, the ECJ established the principle of the direct effect in the Van Gend & Loos judgment. However, it laid down the condition that the obligations must be precise, clear and unconditional and that they do not call for additional measures, either national or European. The principle of direct effect also relates to acts from secondary legislation that is those adopted by institutions on the basis of the founding Treaties. However, the application of direct effect depends on the type of act:

- *Regulations* always have direct effect. Article 288 of the Treaty on the Functioning of the EU specifies that regulations are directly applicable in EU countries. The ECJ clarified that this is a complete direct effect.
- *The directive* is an act addressed to EU countries and must be transposed by them into their national laws. However, in certain cases the ECJ recognises the direct effect of directives in order to protect the rights of individuals. According to the Court case-law, a directive has direct effect when its provisions are unconditional and sufficiently clear and precise and when the EU country has not transposed the directive by the deadline. However, it can only have direct vertical effect; EU countries are obliged to implement directives but directives may not be cited by an EU country against an individual.
- *Decisions* may have direct effect when they refer to an EU country as the addressee. The Court therefore recognizes only a direct vertical effect.
- *International agreements*. In the *Demirel* case, the ECJ recognised the direct effect of certain agreements in accordance with the same criteria identified in the Judgement *Van Gend en Loos*.
- *Opinions and Recommendations* do not have legal binding force. Consequently, they are not provided with direct effect.

Position of the Constitutional Court

It can be said that the constitutional jurisprudence is divided between the two poles: from one side it recognizes the full legitimacy of the community phenomenon, with

[8] Case no.26/62 [1963], Algemene Transporten Expeditie Onderneming van Gend en Loos v. Nederlandse Administratie der Belastingen.

[9] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l14547&from=EN.

the derogations that it brings in the constitutional system, and from the other one, it reserves to the constitutional judge the ultimate control on the conformity with the constitutional principles and the protection of the inalienable rights of the individual. Nowadays the supremacy of the EC law is indirectly incorporated in treaties. Also, the supremacy of the EC law over the national legislation has been accepted by the courts of member states (De Witte, 1999). But the idea of a full autonomy of the EC legal order is not accepted by all member states. On the contrary, the national constitutional courts in most cases consider that the special legal status of the EC law derives from their national constitutional order, in the sense that it comes only because the member states have accepted, through respective constitutional changes, to recognize and cede parts of their sovereignty, recognizing some power to the supranational institutions (Posch, 2008).

Constitutional courts of former communist countries, which have joined EU lately, have often showed distrust or resistance regarding the principle of supremacy of EC law over national constitutional system, emphasizing that they are the guardians of the national standards for the protection of human rights and rule of law principles. This is a very well known type of behaviour, supported by a number of constitutional courts of the so-called "old Europe". But this resistance is accompanied by paradoxes, which means that while EU accession is supposed to be the most sustainable guarantee for human rights and democracy, how can it be objected on the same basis the supremacy of EC law? (Sadurski, 2006)

Indeed, the supremacy of EC law has been widely accepted by the member states courts when it comes to the relation between EC law and the ordinary national law, but when it comes to the national constitutional law and its fundamental principles we face different doctrinal opinions that lead to different results.

In the famous case, *Costa v. Enel*, mentioned above, even though the ECJ judgement was not based on a conflict between EC law and the national constitutional law, it emphasized that the validity of a Community measure or its effect within n a member state cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the Constitution of that state or the principles of its constitutional structure. This was confirmed by the Court in the *Internationale Handelsgesellschaft* case,[10] based on a conflict between the Community law and German constitutional law. In this judgement the Court stated that "recourse to the legal rules or concepts of national law in order to judge the validity of measures adopted by the institutions of the community would have an adverse effect on the uniformity and efficacy of community law. The validity of such measures can only be judged in the light of community law." The Court held the same position in the *Dow Chemical* case.[11] In its *Kreil*[12] and *Connect Austria*[13] cases, the Court does not mention the constitutional status of the provisions that come in conflict, but underlines that it does not pay any attention to the legal status of a national regulation incompatible with the community legal norms. According to the ECJ, the community law has

[10] Case no.11-70, of 17 December 1970,http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smarapi!celexplus!prod! CELEXnumdoc&numdoc=61970J0011&lg=en.

[11] Cases no.97/87 to no.99/87, Dow Chemical [1989] ECR 3165.

[12] Cases no.97/87 to no.99/87, Dow Chemical [1989] ECR 3165.

[13] Case no.C-462/99, Connect Austria [2003] ECR I-5197, regarding Article 133/4 of the Constitution.

precedence over any national regulation, regardless of its status in the internal legal order, and the fundamental principles of the national constitutional law are not able to challenge or oppose this concept of supremacy.

The positions of national constitutional courts regarding the principle of EC law supremacy over the constitutional national are very different. Since they consider that the national legal order found the basis for the Community law and its supremacy, they consider that have the power to review its compliance with national provisions. National courts positions vary and three groups of states have been identified:

- *The first group*: composed of Austria, Luxembourg and the Netherlands. Their courts accept the supremacy of Community law even over the national constitutional law.
- *The second* and the largest group, accepts the supremacy of Community law over the national constitutional law but with some limitations. The most prominent country in this group is Germany, as the Federal Constitutional Court (*Bundesverfassungsgericht*) states that it has jurisdiction where the Community law violates fundamental rights, although this jurisdiction will not be exercised as long as the same effective protection of fundamental rights provided by the Constitution is also provided by the Community. We found similar concepts also in Italy, Denmark, Spain, Ireland and the United Kingdom.
- *The third group* does not accept the supremacy of Community law and it includes France, Greece and Poland.

Federal Constitutional Court of Germany

Article 24 of the Constitution of the Federal Republic of Germany allows the transfer of sovereign powers to intergovernmental institutions, whereas according to Article 25 the general rules of international public law constitute an integral part of federal law. They have precedence over laws and directly create rights and obligations for individuals that reside in the federal territory.

Based on these provisions, it is clear that their content forms the basis for the application of the supremacy doctrine and not the special nature of EC law, doctrine elaborated by the ECJ. The German courts generally did not have any difficulty to accept the supremacy of EC law. However the issue that raised difficulties and discussions was whether the Community law would have precedence over the fundamental, inalienable human rights provided by the fundamental national law. The most important, the German courts accept the supremacy of the Community law if it does not conflict with the German Constitution (Craig, de Búrca, 2007, 362).

Initially, the Federal Constitutional Court of Germany refused to recognize the supremacy of EC law, without any conditions. In the 1974 famous *Solange (I)* judgement, the Court states that "Article 24 of the Constitution does not open the way to amending the basic structure of the Constitution, which forms the basis of its identity, without a formal amendment to the Constitution, that is, it does not open any such way through the legislation of the inter-state institution."[14] The Court

[14] Case Solange I - Internationale Handelsgesellschaft von Einfuhr- und Vorratsstelle für Getreide und Futtermittel, judgement of 29 May 1974, BVerfGE 37, 271 [1974] CMLR 540.

also emphasized that it shall not renounce from its power to protect fundamental rights in case of conflict with the Community law and does not accept the supremacy of EC law over fundamental rights in the cases referred to the European Court. According to that Court, that part of the Constitution that regards fundamental rights constitutes an fundamental inalienable feature of the Constitution and it`s a part of the constitutional structure of the Constitution. In conclusion, the Court stated that "provisionally, therefore, in the hypothetical case of a conflict between Community law and part of the Constitutional law, or the guarantees of fundamental rights in the Constitution, the guarantee of fundamental rights in the Constitution prevails as long as the competent organs of the Community have not removed the conflict of norms in accordance with the Treaty mechanism." Any modification of the Treaties that would destroy the identity of the structure of the German Constitution would be declared null. According to the Court the fundamental rights guaranteed by the Constitution are inviolable, essential, not subject to qualifications and these fundamental rights will prevail over the Community law.

In conclusion, in this case, the German Constitutional Court stated that the EC legislation did not violate the German constitutional fundamental rights. In its decision the Court also argued that the Community still lacks a democratically legitimated Parliament directly elected by general suffrage which possesses legislative powers and to which the Community organs empowered to legislate are fully responsible on a political level. It still lacks in particular a codified catalogue of fundamental rights, the susbtance of which is reliably and unambiguously fixed for the future in the same way as the substance of the Constitution.

In 1986, the Constitutional Court took another famous decision, known as *Solange II*[15]29, concerning the conflict of law between the German national legal system and EC law on import licensing system, although ECJ had given a judgement on its validity. Even in this case there is a conflict between Community law and national law on fundamental rights. In this decision, the Constitutional Court did not renounce from its jurisdiction on the fundamental rights, but only emphasized that "...so long as the European Communities and in particular the case law of the European Court, generally ensure an effective protection of fundamental rights as against the sovereign powers of the Communities which is to be regarded as substantially similar to the protection of fundamental rights required unconditionally by the Constitution, and in so far as they generally safeguard the essential content of fundamental rights, the Federal Constitutional Court will no longer exercise its jurisdiction to decide on the applicability of secondary Community legislation cited as the legal basis for any acts of German civil courts or authorities within the sovereign jurisdiction of the Federal Republic of Germany, and it will no longer review such legislation by the standard of the fundamental rights contained in the Constitution." In this case, the Constitutional Court stated that she reserves to review the compatibility of Community legislation with fundamental German rights as far as ECJ continues to protect fundamental rights in the right way.

[15] Case Solange II - Wünsche Handelsgesellschaft judgement of 22 October 1986, BVerfGE 73, 339, case number: 2 BvR 197/83, Europäische Grundrechte-Zeitschrift, 1987, 1, [1987] 3 CMLR 225, noted by Frowein (1988) 25 CMLRev 201.

After *Solange I* and *Solange II*, the German Federal Constitutional Court adopted some other very important decisions showing the same tendency, where the most prominent belongs to the case known as that of Maastricht, which refers to a lawsuit against the signature by the German state of the Treaty of Maastricht. The defendant claiming that this Treaty would violate the principle that all state powers stem from the people and the fundamental rights of the German Constitution. In this case, the Constitutional Court ruled that it have the power to control the respect by the Community institutions of the limits of their powers and the compatibility of the Community law with the foundations of the German Constitution (Sadurski, 2008).
In this 1994 judgement[16]31, the Court made it clear that it will not renounce its power to decide on the compatibility of Community law with the fundamental principles of the German Constitution. Most important, the Court ruled that the power of control over the purpose of the Community institutions competences should be exercised by the court itself. Consequently, the German courts held that they have the ultimate power to decide whether the actions or measures approved by the Community institutions fall within the scope of their power. The Court consider that since it is not clear to what extent the German legislator has given the approval for the transfer of sovereign powers, it may be possible for the European community to request and exercise powers that are not specified.
Although the doctrine of EC law supremacy is elaborated by the ECJ, which is the highest judicial body of the European Union, the implementation of this doctrine in most member states is not satisfactory as they continue to establish the authority of the EC law in compliance with the internal legal order, mainly that constitutional, and not with the ECJ case-law.

Constitutional Court of Italy

The interaction between Italian and European legislation is founded in Article 11 of the Italian Constitution, according to which "Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations" and Article 117, paragraph 1, according to which "Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations."
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By its decision of no.348 of 2007, the Italian Constitutional Court, by interpreting such an value, stated that the constitutional foundation for the direct application

[16] Case Brunner v. The European Union Treaty, [1994] 1 CMLR 57.

of the Community law is found in Article 11 of the Constitution, whereas Article 117, paragraph 1 just confirms such an orientation/position distinguishing between the obligations deriving from the "community legal order" and those arising from "international obligations". Italy being part of a wider supranational legal order has renounced part of its sovereignty with the only restriction for the inviolability of the principles and fundamental rights guaranteed by the Constitution.

The jurisprudence of the Italian Constitutional Court has gone through four phases (Casese, 2009).

The first phase belongs to the period from 1964 to 1973. At this first stage, the Court has not recognized the superiority of Community law and it held that where a national and EC norm conflict, the most recent in time should prevail over the older one without regard to its origin. In 1964 the Constitutional Court in the famous *Costa-ENEL* case, asserted that the relation between Community and national norms was no different from the relationship between two national sources of law possessing the same binding authority. From the Court`s point of view, there were no reasons to attribute a superior legal force to European norms (Cartabia, 1990).

By judgement of no.183 of 1973, the Court altered its position (*second phase*) by individualizing in Article 11 of the Constitution the foundation for the limitation of sovereignty because of the accession to the European Community. So the Court abandoned its previous statement by suggesting a procedure for review of statutes not conforming to a previously enacted Community norm.As a result, the Court held that possible contradictions between national and community law would be resolved by its direct intervention. If the Court found that the norms were inconsistent in the case, it would then declare the national norm unconstitutional for violation of Article 11 of the Constitution. The limitation of sovereignty based on Article 11 guaranteed however respect for the fundamental principles of the Italian order.

The third phase belongs to the period from 1984 to 2008 where the most important decision is that of 1984, the *Granital* case. In this case, the Court held that the legal orders, that national and Community law are independent and separate, and that does exit a relation based on the recognition of the European Community`s powers. The Court accepted that Community norms having direct effect should always prevail over national norms and should consequently be applied by judges regardless of the time of their enactment.

The Court accepted the supremacy of the Community law and, at the same time underlined the inability of judges and public administration to apply national norms that conflict with the Community norms According to this new position of the Court, it is up to ordinary judges to address a preliminary request to the ECJ. "The issue of compliance with Community legislation constitute a logical and legal "*prius*" in relation to the issue of constitutionality, because it involves the implementation of the censored norm and, as a result, the importance of the issue of constitutionality."

This new position marks a "self-detachment" of the Constitutional Court from the dialogue with the ECJ, unless the European norm violates the fundamental principles of the constitutional order and the fundamental rights of the individual.

The fourth stage begins with the decision (*ordinanza*) no.103, of 2008, which establishes a direct dialogue between the Constitutional Court and the ECJ. According to this

decision, the Constitutional Court refers to Article 234 of the Treaty on the European Community; if there were no possibility for the judge or court to request the ECJ to give a preliminary ruling, than the general interest for the uniformity application of the Community law would be harmed.

Constitution of the Republic of Albania

The Constitution of the Republic of Albania accepts the supremacy of international law over the internal law,[17] but the adaptation of the Community law to the Albanian legal order is not explicitly provided yet. The European integration vision highlights that the Albanian Constitution does not contain provisions that oppose Albanian membership or that aren't in compliance with the European legislation. However, it is expected that after the accession to the EU a kind of confusion will be created in the relationship between the principles of sovereignty of the Albanian state and the supremacy of the EU institutions and the application of Community law to the Albanian legal order. The Albanian Constitution does not contain any specific provision on the primary EC law, nor does it distinguish between the legal rules of international law and the legal rules of Community law. According to the ECJ case-law, it is the Community law rather than the national law of the Member States which sets out the conditions under which it applies in the territory of the Member States. Therefore, the Albanian Constitution should expressly grant to the EC legislation a special authority, based on the doctrine of supremacy and direct effect.

Conclusions

Based on the approach of the Federal Constitutional Court of Germany (known as the "*Solange story*"), even other constitutional courts have resisted to "give" their national legal sovereignty and have insisted on their role as guardians of any power transfer from national level to the European one. This resistance is based on their mistrust on the democratic legitimacy at the supranational level as well as on the EU`s ability to provide for the protection of the principles of rule of law and human rights, at least at the same level with the protection offered by the national constitutional structure.

The European Court of Justice has not accepted the power of the Member States courts to decide on the constitutionality of the community acts. In the Court approach, in case of a conflict arising between the Community and the national law, the national constitutional courts should get aside and send the case to the ECJ, which is the only organ invested with the power to decide if such conflict exist and how it should be resolved.

[17] The Constitution of the Republic of Albania also provides for the relationship between internal and international law. According to Article 5 of the Constitution, the Republic of Albania applies international law that is binding upon it, whereas Article 122 provides that any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires the issuance of a law. An international agreement that has been ratified by law has superiority over internal laws that are not compatible with it.

The purpose of this paper is not to put into question the role of the ECJ, but on the contrary to highlight its role as the highest judicial body of the Union, in giving the full "supranational" character to the European Union, where a very important element is the supremacy of *actio comunnaitaire*.

Despite this, as far as the community phenomenon is a creation of the member states, which have accepted in what manner and to what limits can be extended the transfer of sovereign powers to supranational institutions, the ultimate power to control the compliance with the fundamental constitutional principles and the inalienable rights of the individuals belongs to the constitutional court. However, the latter is abstained and step aside if it considers that the protection provided by the European legislation and ECJ is at the same level of protection offered by the national constitution.

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