Abstract

In this dissertation we are trying, on the basis of decisions of various courts, to outline the development of the principle of primacy doctrine in the European legal environment. It would be difficult to overestimate the importance of the principle of primacy for the proper operation of the European Union today. If member states had the power to ignore an act of the European Union by adopting or giving precedence to a provision of national law, no uniform and coherent European legal order could exist. The principle of primacy was developed nearly fifty years ago by the Court of Justice in its case law for furthering this very end.

But European Union law is just one of many legal orders operating within European states. At the same time there are national law, international law, and other legal orders derived from it, particularly European Union law and Council of Europe law, on the territory of member states . In selecting decisions, we were careful to include as many as possible mutual relations among these legal orders.

For objective reasons, the relationship between **European Union law and national law** is the most represented. The roots of the doctrine of direct effect of the provisions of the EEC Treaty and its precedence of application can be traced back to *Van Gend en Loos* and *Costa* rulings. The Court of Justice, using the teleological approach, distinguished the Treaty from ordinary international law and stated that "the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals". On the basis of these reasons it concluded that certain provisions of the Treaty can under certain conditions have direct effect in a national legal order. But direct effect of Treaty provisions could be very difficult to enforce, if national courts could apply a conflicting provision of national law instead. If individual rights are to have any meaning, European law must have precedence over national law; otherwise the States could default on their commitments simply by adopting new national norms. The Court of Justice concluded that "the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as community

law and without the legal basis of the community itself being called into question." It framed, in this way, the doctrine of the principle of primacy of Community law over national law, which is the central theme of this dissertation.

The Court of Justice has never retreated from its position on its case law; on the contrary, it has gone further. It has for instance declared the primacy even of secondary Community legislation over member state constitutions. On other occasions it has held that national courts must immediately secure enforcement of directly applicable Community norms, even though applicable provisions of national law provide otherwise and the national courts do not have the power to do so under the constitution of the state concerned.

A response to the case law of the Court of Justice was forthcoming. As it later turned out, it was German courts, with the leadership of the Federal Constitutional Court, which later earned a prominent position amongst their peers. As early as the sixties, German academics were amongst the first to commence the debate on the case law of the Court of Justice on the principle of primacy and its influence on the cherished German legal order. Reading the first decision of the Federal Constitutional Court on the topic might have suggested that it accepted the legal assertions of the Court of Justice. Later it continued and in 1971 it was the first amongst the European highest courts to change national legal doctrine and accorded primacy to European law over national law.

The open issue was the possible constitutional limits of the principle of primacy. In the *Solange I* ruling the Federal Constitutional Court changed the trend and held that unless the process of European integration reached the stage where the Community itself had a catalogue of fundamental rights, German ordinary courts could refer cases to the Federal Constitutional Court if they believed that the ruling of the Court of Justice was inconsistent with fundamental rights contained in the German constitution. Later we saw a "thaw" in the relationship of the Federal Constitutional Court towards the Court of Justice, leading to the *Solange II* ruling, where it held that if the European Communities secured effective protection of fundamental rights, the Federal Constitutional Court would no longer exercise its power to review secondary Community legislation.

In the early nineties though, the Federal Constitutional Court delivered a judgment which is perhaps the most significant threat to the principle of the primacy of European law addressed to the Court of Justice by a national court. In the *Maastricht Treaty* decision, the Federal Constitutional Court threatened to ignore the ruling of the Court of Justice if it failed to distinguish between the enforcement of sovereign competence conferred on limited purpose and the amendment of Treaties. It strongly criticized the democratic situation within the European Union and concluded that there could not be democracy in the European Union without a common language and *demos*. The conclusion of this ruling was largely confirmed in recent *Lisbon Treaty* judgment. Here the Federal Constitutional Court held that Germany did not accept absolute primacy of the application of Union law on the basis of constitutional inadmissibility.

The Constitutional Court of the Czech Republic was inspired, in its case law, by the legal pronouncements of the Federal Constitutional Court of Germany. For the first articulation of its opinion, it used the first opportunity possible. Here it held that every public authority is obliged to apply Community law instead of conflicting national law. In its next ruling however, it reserved for itself the power of constitutional review. On another occasion it held that it does not have a power to rule on the constitutionality of European law norms, even when they are included in provisions of national law. In its *Lisbon Treaty* judgment, it somewhat revised its case law when it held that in the event of a clear conflict between the Constitution and European law, which could not be eliminated on any interpretation, the constitutional order of the Czech Republic must prevail.

In stark contrast to the case law of the Czech Constitutional Court stands the jurisprudence of the Constitutional Court of the Slovak Republic. The Slovak Constitutional Court over the same period has not pronounced on the issue of the primacy of European law and has only touched the topic in its *Constitution for Europe* ruling.

The relationship between **national law and European human rights law** is depicted in the series of decisions of the European Court of Human Rights and those of German courts in the *Loizidou* case. Here the European Court of Human Rights postulated the existence of a European

public order. This judgment is significant because the European Court of Human Rights eventually distinguished, though not radically, the Convention from the tools of interpretation of ordinary international law. It pointed out the differences between it and the International Court of Justice in an attempt to distinguish the legal order of the Convention from international law.

The relationship between **European law and international law** is depicted in the series of decisions of the Court of First Instance and the Court of Justice in the *Kadi* case. Firstly there was a good attempt by the Court of First Instance to give a hierarchical order to the relationship of European and international law when the Court of First Instance held that obligations stemming from the UN Charter have precedence. On appeal, however, the Court of Justice decided that international agreements could not interfere with constitutional principles of the EC Treaty, including the principle according to which all Community acts must respect fundamental rights.

Last, but not least, the relationship between **European law and European human rights law** is depicted in the series of decisions of the Court of Justice and the European Court of Human Rights in the *Matthews* case and the *Bosphorus* case. The *Matthews* judgment is the first ruling, in which the European Court of Human Rights was asked to review an alleged infringement of the Convention by the norms of European law. The European Court of Human Rights articulated the principle that member states are also bound by the Convention in transferring of competences to supranational organizations. The *Bosphorus* judgment was labelled the "*Solange II*" of the European Court of Human Rights, because the European Court of Human Rights arrived at conclusions similar to those of the Federal Constitutional Court. The European Court of Human Rights held that the protection of fundamental rights within the Community was equivalent to that of the Convention. The best possible solution to the problem would be the accession of the EU to the Convention. The Lisbon Treaty provides for not only the legal basis, but also the end to be achieved. After accession, the European Court of Human Rights would have full competence over European law.

This dissertation aims to cover the development of the principle of primacy and its intricate background, demonstrating the importance of this principle for integration processes in Europe. It is obvious that development has not been straightforward. One of the very few features common

to all judicial bodies mentioned is the pursuit of their own case law, own legal system and own authority, whether it is the Court of Justice in *Van Gend en Loos*, *Costa* and *Kadi* cases, the Federal Constitutional Court in the *Maastricht* and *Lisbon* cases or the Czech Constitutional Court in the *Sugar Production Quotas* case. This is precisely the weak spot to which we would like to draw attention. We consider that the situation is not sustainable in the long run. There is great risk in diverting case law by multiplying international adjudication bodies of arriving at situations of conflict at some point, with conflicting decisions which could have great implications in the context of the European Union. It is therefore necessary to examine and critically assess various case laws and positions of relevant courts and to point out common ground, but also points of discord, in order to prevent conflicting rulings. We would be happy if this dissertation provided at least a small contribution in this regard.