

BINDING EFFECT OF CJEU JUDGMENTS

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Abstract: The fundamental mission of the Court of Justice of the European Union is to ensure that 'in the interpretation and application of the Treaties the law is observed'. As such the Court decides in various types of proceedings – mainly in preliminary reference procedure, infringement procedure and review of legality of legislative measures. These proceedings pursue different aims and as a result of that, the binding effect of judgments given in these proceedings is different. The aim of the presentation would be to analyse the binding effect that these judgments have on member states' courts. The focus will predominantly be made on the preliminary rulings concerning interpretation of European Union law.

Keywords: Binding effect, Court of Justice of the European Union, judgment, preliminary ruling.

1. Introduction

The Court of Justice is the judicial authority of the European Union, its role is to '*ensure that in the interpretation and application of the Treaties the law is observed*'.¹ Treaty on the Functioning of the EU further specifies the jurisdiction of the Court, i. e. what cases it may hear and decide.

The Court fulfils various functions – it reviews the legality of legislative measures, therefore it performs the function of a constitutional court in most countries. It annuls decisions of Union bodies, therefore it performs the function of an administrative court. It also has competence to conduct proceedings that are unique and distinctive for EU law – it enforces EU law obligations towards member states which act contrary to EU law and also and probably most importantly, the Court gives rulings in preliminary reference procedures regarding the interpretation and validity of EU law.

The significance of this institution of the European Union is rather obvious – in the supranational international organization where various interests of member states, Union bodies and individuals compete, the existence of a neutral and respected authority with competence to resolve disputes among them and ensure that everyone complies with its obligations is vital.

Since the topic of this paper is the binding effect of the Court of Justice of the European Union judgments, it is necessary to define what is meant by bindingness. For the purposes of this paper binding effect of a judgment means an obligation of a member state court to apply the judgment, not respecting the judgment is a ground for appeal.²

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¹ Article 19 of the Treaty on European Union.

² For further reference on bindingness and precedential effects of judgments see PECZENIK, ALEKSANDER: The Binding force of Precedent, in MACCORMICK, NEIL – SUMMERS, ROBERT S. (eds.): *Interpreting Precedents, A Comparative Study*, 1997, Ashgate, Dartmouth, 461-479.



It stems from the Treaties that Court's decisions are binding on the parties of the proceedings. It also follows from the very nature of the Court of Justice as a judicial authority and it is not disputed. Conversely, a lot has been written about the legal effects of Court's judgments in general, i. e. legal effects to people, member states and their institutions and EU institutions that are not parties of the proceedings.

1.1 Perception of judgments in common law and on the EU level

The question arises whether Court's judgments are binding to the same extent as precedents in common law legal culture or whether they are binding merely upon the parties. The answer is of course neither of these possibilities, the extent of binding effect of CJEU judgments lies somewhere in between these two positions.

The judgments of the Court of Justice of the European Union cannot be regarded as precedents as they are understood in English law. There are number of differences between precedential judgments of English courts and CJEU judgments. It would be outside of the scope of this paper to thoroughly analyse the differences between English and EU law, suffice it to say that the historical origins of these two legal systems are too diverse to be combined and that they simply function differently.

To support the above statement, I shall indicate perhaps the most pertinent differences between decisions of English Courts and of the Court of Justice. In English court cases, the focus is made on the facts of the case. This may be evidenced by the practice of 'distinguishing'³ – since the rule contained in previous judgment is never general but very specific, English judges have to carefully find the facts of the case at hand and either apply the earlier rule (follow a precedent) or not apply it (distinguish a precedent) on grounds that the facts of the case at hand are different. The rule has to be inferred from previous judgment, i. e. the precedent (inductive method).⁴

The practice of CJEU is rather similar to the practice of a continental judge who finds a legal norm, which is general, and applies it to the facts of the present case (deductive method),⁵ while legal, i. e. not factual, evaluation of the present case is the focal point for the CJEU. In interpretative judgments of the Court of Justice in preliminary reference procedure the Court doesn't even apply the legal solution on the facts of the case, it provides the legal solution and then refers the case back to national court and it is the national court which has to make the final decision.

English judges create law even in areas with no legislation, they create new legal principles, new norms both general or very specific. Whole branches of law are judge-made in English law, e. g. the law of trust. On the contrary, CJEU does not create new rules out of nowhere, it infers them from existing law, even if it sometimes infers them only from 'the spirit of the Treaties' as it did in the famous judgment *Van Gend & Loos*⁶ when it inferred the doctrine of direct effect of EU (then EC) law. It may be

³ KNAPP, VIKTOR: *Velké právní systémy* [Significant Legal Systems], 1996, C. H. Beck, Praha, 170.

⁴ BOGDAN, MICHAEL: *Concise Introduction to Comparative Law*, 2013, Europa Law Publishing, Groningen, 100-101.

⁵ Ibid.

⁶ Judgment of the Court of 5 February 1963. *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*. Case 26-62.

argued that there is a fine line between interpreting and creating law and the Court's interpretation sometimes transgresses the line, however, the fact that when it declares new rights or obligations, the Court always *infers* them and carefully explains it, it is clear that not even the Court itself perceives itself as a legislator or creator of law. In reality, all EU lawyers agree that CJEU judgments do not possess equal binding effect as English precedents.

On the other hand, there are many legal scholars who have an opinion that CJEU judgments in general have binding effect only *inter partes* and as regards other parties, they are only of persuasive authority.⁷ I believe that this opinion is not correct and I will try to state reasons why.

2. Binding effect of preliminary rulings concerning interpretation of a Union act

The Court has explicitly stated that its judgment is binding for the referring Court in cases *Munari*⁸ and *Milchkontor*.⁹ That may also be deduced from the art. 267 TFEU¹⁰ and from the very essence of the proceedings.¹¹ The judgment of the CJEU is equally binding to the national courts which hears the case upon appeal.¹²

First argument in favour of *erga omnes* binding effect concerning interpretation of Union acts is the principle of legal certainty. Legal certainty is one of the fundamental legal principles of EU law, well established in the Court's case-law.¹³ The same holds for the principle of protection of legitimate expectations which is intertwined to the former.¹⁴ It is self-evident that legal certainty and the protection of legitimate expectations couldn't be achieved without a minimum level of stability, which essentially means that like cases should be treated alike. Naturally, this is important for all legal orders, EU and national, but it is especially important in the EU due to its transnational nature – in 28 member states interpretation of legal norms may easily get significantly inhomogeneous.

Second argument strongly in favour of general binding effect of CJEU judgments is the very aim of preliminary reference procedure – it should ensure homogeneous

⁷ 415 Precedent in EC law.

⁸ Judgment of the Court of 3 February 1977. *Luigi Benedetti v Munari F.lli s.a.s.*, Case 52-76.

⁹ Judgment of the Court of 24 June 1969. *Milch-, Fett- und Eierkontor GmbH v Hauptzollamt Saarbrücken*. Case 29-68.

¹⁰ See para 4 of the Opinion of AG Reischl in case *Luigi Benedetti v Munari F.lli s.a.s.* Case 52-76.

¹¹ As M. Bobek and J. Komárek rightly say in their commentary: “What other reason would have the otherwise very demanding and costly procedure, that delays the proceedings in front of the national court for about two years? Surely not just to nurture academic disputations.” BOBEK, MICHAL – KOMÁREK, JAN: *Koho vážou rozhodnutí ESD o předběžných otázkách?* [Whom do the ECJ decisions bind?], in *Právní rozhledy*, issue 19-20 (2004).

¹² *Ibid.*

¹³ For further reference see ARNULL, ANTHONY: *The European Union and its Court of Justice*. 2006, 2. ed. Oxford University Press, Oxford, 336-337.

¹⁴ For further reference see ARNULL: *op. cit.*, 336.

interpretation and application of EU law. Truly homogeneous interpretation of EU law is at best achieved when preliminary rulings concerning interpretation of Union law are respected beyond the case in which they were given.

AG Warner in his opinion in case *Manzoni*¹⁵ observed that if preliminary rulings concerning interpretation had no binding effect, national courts could disregard them if they saw fit. It would deprive the preliminary reference procedure of its purpose, which is the uniform interpretation and application of Union law, if it was accepted that preliminary rulings have no binding effect except in the case in which they were given. AG Warner also aptly points out that provisions of the Statute of the Court entitling Union institutions and Member states to submit their observations in preliminary reference cases would “*correspond to the use of a sledgehammer to crack a nut*” if the ruling in such cases would be binding only to the court submitting the reference preliminary ruling.

Another argument is that the nature of the judgments is declaratory,¹⁶ that was confirmed by the Court in case *Denkavit*¹⁷ by stating that the interpretation of legal acts must be applied from the time of its coming into force. So if a provision of Union law has general binding effect, its interpretation should possess the same qualities. As a result of that, the interpretation of a legal act given by the Court in essence becomes a part of the act and acquires its general applicability and erga omnes binding effect. Moreover, the interpretation, which is given by the Court in preliminary ruling, does not give answer specific to the dispute in original proceedings before national court, it is general and as such it is suitable for general application in other cases.

In *Da Costa*¹⁸ the Court ruled that a MS court may not refer an issue to the CJEU if there already is a previous judgment of the CJEU on the particular issue. The Court said that the obligation stipulated in article 267 of TFEU to refer an issue of EU law to the Court may be deprived of its purpose and emptied of its substance by the previous judgment. This has been later confirmed by the famous *CILFIT*¹⁹ case, in which the Court further added that this rule applies even to cases that are not factually strictly identical and it is irrelevant in which type of proceedings the interpretation has been

¹⁵ Opinion of AG Warner in case *Renato Manzoni v Fonds national de retraite des ouvriers mineurs*. Case 112-76.

¹⁶ LENAERTS, KOEN – MASELIS, IGNACE – GUTMAN, KATHLEEN: *EU Procedural Law*, 2014, Oxford University Press, Oxford, 245.

¹⁷ “The interpretation which [...] the Court of Justice gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation [...]”. Judgment of the Court of 27 March 1980. *Amministrazione delle finanze dello Stato v Denkavit italiana Srl*. Case 61/79.

¹⁸ Judgment of the Court of 27 March 1963. *Da Costa en Schaake NV, Jacob Meijer NV, Hoechst-Holland NV v Netherlands Inland Revenue Administration*. Joined cases 28 to 30-62.

¹⁹ Judgment of the Court of 6 October 1982. *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*. Case 283/81.

made – this rule has further been denoted as ‘acte éclairé doctrine’. Explicit acknowledgment of the Court that member state’s courts may apply a previous judgment even to cases with non-identical factual background therefore essentially means that a CJEU judgment constitutes a general legal rule which is to be applied generally to future cases. This is a confirmation of the above arguments and of very strong binding effect of CJEU judgments in preliminary reference procedure.

The acte éclairé doctrine is strengthened by the Court’s rules of procedure²⁰ which set forth that the Court may decide not to hear a case and rule by reasoned order if a question referred to the Court for a preliminary ruling

- ❖ is identical to a question on which the Court has already ruled,
- ❖ or the reply to such a question may be clearly deduced from existing case-law,
- ❖ or where the answer to the question is clear and admits no reasonable doubt.

It may be argued that the language of the Court merely recommends the national courts to follow its previous judgments,²¹ however, it seems that if the Court mentions the possibility of a national court to submit another request for preliminary ruling, it indicates the possibility to clarify the meaning and extent of the previous interpretation rather than the possibility that it may reverse its previous judgment (but this option is also not excluded). This is further supported by the fact that judgments of the Court may too be subject to interpretation in preliminary ruling procedure.²²

It is necessary to say that to claim that judgments in preliminary reference procedure only bind the court which has requested preliminary ruling would have absurd consequences – it would put an obligation on national courts to ask for a preliminary ruling again and again even if the Court has already given the answer and the Court would have the duty to deal with the case and give the ruling every time. Functional judicial cooperation couldn’t exist in such circumstances and the role of the Court would be weakened.

Moreover, it follows from the CJEU jurisprudence that member states may be held liable for disregarding CJEU judgments.²³ In case *Larsy*²⁴ the Court held that non-application of EU law including CJEU jurisprudence could be regarded as breach of EU law and constitute liability of a member state. In case *Köbler*²⁵ the Court explicitly stated that if a member state court breaches EU law, that breach is attributable to member state and the member state is consequently obliged to make good damage caused to individuals. Furthermore, not respecting the duty to refer a matter for

²⁰ Art. 99 of the Rules of Procedure of the Court of Justice of the European Union.

²¹ BARCELÓ, JOHN J.: Precedent in European Community Law, in MACCORMICK, NEIL – SUMMERS, ROBERT S. (eds.): *Interpreting Precedents, A Comparative Study*, 1997, Ashgate, Dartmouth, 423.

²² Lenaerts – Maselis – Gutman: *op. cit.* 223.

²³ See also *ibid.* 102-103.

²⁴ Judgment of the Court (First Chamber) of 28 June 2001. *Gervais Larsy v Institut national d'assurances sociales pour travailleurs indépendants (INASTI)*. Case C-118/00.

²⁵ Judgment of the Court of 30 September 2003. *Gerhard Köbler v Republik Österreich*. Case C-224/01.

preliminary ruling by a member state court against whose decision there is no remedy might lead to the commencement of infringement procedure by the Commission.²⁶ The fact that member states could be held liable for disregarding Court's judgments essentially means that the judgments do produce binding effect beyond the particular case.

3. Binding effect of preliminary rulings concerning validity of a Union act

The situation regarding bindingness of preliminary ruling concerning validity of EU measures is slightly less complicated and less controversial. If the Court declares an act of an EU institution invalid in the preliminary reference procedure, a party who has not been a party to the original proceedings may rely on the judgment. In the case *International Chemical Corporation*²⁷ the Court held that *"although a judgment of the Court given under article 177 of the Treaty²⁸ declaring an act of an institution [...] to be void is directly addressed only to the national court which brought the matter before the Court, it is sufficient reason for any other national court to regard that act as void for the purposes of the judgment which it has to give"*.²⁹ As follows from this statement, the Court for the purposes of attaining legal certainty and uniform application of EU law basically authorized the national courts to treat such judgments as legally binding erga omnes.

Moreover, the Court stated that a national court may ask for a preliminary ruling regarding the same act that has already been declared void once again but the questions should rather be limited to *"the grounds, the scope and possibly the consequences of the invalidity established earlier"*.³⁰ It is implicit in the judgment that should the national court raise a question concerning validity of the act, it would be simply referred to the previous judgment of the Court.

4. Binding effect of other types of judgments

4.1 Annulment judgments

As regards judgments in proceedings in which the Court reviews the legality of legislative acts, the judgment that declares the act void is naturally binding erga omnes.³¹ The situation is, however, not so crystal clear with regard to judgments which do not declare a measure invalid since an earlier dismissed action to annul an act does not prevent a party (be it the same or a different one) to file an action for annulment

²⁶ ARNULL: *op. cit.* chapter 9.

²⁷ Para 13 of the Judgment of the Court of 13 May 1981. *SpA International Chemical Corporation v Amministrazione delle finanze dello Stato*. Case 66/80.

²⁸ Today art. 267 TFEU.

²⁹ Emphasis added.

³⁰ Para 14 of the Judgment *International Chemical Corporation*.

³¹ CRAIG, PAUL – DE BÚRCA, GRÁINNE. *EU Law, Text, Cases and Materials*, 2008, 4. ed., Oxford University Press, Oxford, 572.

again. Nevertheless, the Court also in these cases refers to its previous judgment and dismisses the claim if the action is founded on the same reasons.³²

4.2 *Judgments given in infringement proceedings*

Basically the same as for review of legality judgments is true for judgments given in infringement proceedings before the CJEU. It is so because a judgment in which the Court holds that a member state breaches EU law does not declare illegal a member state legal act but a legal situation which exists in that member state.³³ And if the Court declares illegal particular situation in one member state, identical legal situation in another member state shall be deemed illegal too. Opposite course of action would basically be a denial of equality of member states.

The Court also stated that “where the Court has found that a member state has failed to fulfil its obligation [...], it is the duty of the national court, to take account [...] of the elements of law established by that judgment in order to determine the scope of the provisions of Community law which it has the task of applying”.³⁴ Here the Court explicitly places a duty on the courts of the member states to apply its previous judgments.

5. Binding effect of CJEU judgments generally

Binding effect of CJEU judgments in general may also be induced from its judgment in Foto-Frost³⁵ case – here the Court held that member state courts may consider the validity of a Union act, they may conclude that the grounds for invalidity claimed by the parties are unfounded and consequently the act is valid. However, if they have doubts about the validity of the act, they have no authority to declare the act void, they must refer the question to the Court under Art. 267 TFEU. The Court based its reasoning on grounds of the need of preserving legal certainty and coherent and uniform application of EU law. Barceló comes to a conclusion that this applies not only to acts of other EU institutions but also, a fortiori, to CJEU decisions. Therefore a member state court may not choose not to apply CJEU judgment if it perceives it incorrect, it either has to apply it or it has to refer the question of its correctness or proper interpretation to the CJEU.³⁶

³² See Judgment of the Court of 16 May 1979. *Ditta Angelo Tomadini Snc v Amministrazione delle finanze dello Stato*. Case 84/78.

³³ TOTH, ÁKOS G: The Authority of Judgments of the European Court of Justice: Binding Force and Legal Effects, in *Yearbook of European Law*, 1984, vol. 4, issue 1, 53.

³⁴ Judgment of the Court of 14 December 1982. *Procureur de la République and Comité national de défense contre l'alcoolisme v Alex Waterkeyn and others; Procureur de la République v Jean Cayard and others*. Joined cases 314/81, 315/81, 316/81 and 83/82.

³⁵ *Foto-Frost v Hauptzollamt Lübeck-Ost*. Reference for a preliminary ruling: Finanzgericht Hamburg - Germany. Case 314/85.

³⁶ BARCELÓ: *op. cit.* 423.

6. Conclusion

From preceding arguments it may be clear that the level of authoritativeness attributed by the Court to its judgments is very high. There are numerous reasons for which the various CJEU decisions should be treated as binding beyond the particular case. The reasons should not be evaluated according to national rules which apply in member states, they have to be considered exclusively in light of the specific nature of EU law and EU judicial system.

To conclude, although the Court never explicitly held that its judgments shall be perceived and applied as precedents, in its decision-making it treats them and it demands national courts to treat them as de-facto precedents.

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