PhD Theses

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The implementation of EU law, theoretical and practical problems

‘Judicial acts resulting Member States responsibility’

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Treaty of Rome was created much more in the spirit of functionalism in relation to The Treaty of Paris establishing the European Coal and Steel Community. EU legal order failed to find new projections until now in the erosion of barriers movement factors of production, and in terms of cutting back problematic national measures about the single market. Only legal development in EU citizenship can be seen as partial success.

Necessary rules for operation of the economic community may be called the European economic constitutionality, because these provisions are prior to all other measures of Member States or the Union itself.[1] Terms and criterias used in domestic law are obviously not applicable in expression of European economic constitution, and the latter cannot to be confused with the European Constitutional Treaty draft either. In my Thesis the process in which the Court of Justice examines national provisions associated with the four basic economic freedoms and citizenship their own criteria, also considered as part of European economic constitution.[2]

The French jurisprudence has the view that the community built on mostly negative form of integration – they certainly do not deny the importance of the role of positive forms of integration either – is built up on essentially neoliberal concept, and maintained this characteristic for the present days. In nature the negative form of integration is similar to the concept of functionalism, but basically it's a legal approach.

It is considered to be "neoliberal" to the extent that it mainly focusing on the – in process of dismantling barriers of the movement of factors of production by law – market against the state regulation. "Implied" social dimension of EU law is based upon the efficiency facilitated by single market and the positive effects of economic growth automatically produce their effects in social fields (employment growth, wages, improving quality of life), too.

Accepting the thesis of basically neo-liberal concept of the community does not mean that integration does not exist. Positive aspects of integration, such as the Common Agricultural Policy, but the former has more pronounced role within the rule of law.[3] Member States could carry on an active role in the economy since the integration and from the process of evolving the internal market.

In the 1970s – the beginning of spread of neo-liberal concept – EU law, mainly on the initiative of the state economy is gradually narrowed the scope of intervention, such as "making uncomfortable" large-scale operation of the public sector.

EU law "in itself" is not a guarantee of asserting basic rights[4], the Court may only take into account these provisions in interpretation of EU law. These are not substantially altered by the fact that the European Court of Justice "tries" to approach the practice of the European Court of Human Rights

[1] This advantage is reflected in hierarchy between EU acts, that a subordinate act of the founding treaties won't be applied with the opposite outcome of an economic objective. (Chapter 3). Lack of secondary ruling of the Union shall not result that EU law does not guarantee a basic economic freedom (Chapter 3).
In EU law delegation of powers is also defined by the economic freedoms. Meroni judgment of the Court of (9/56) of the delegation of the powers of EU law compatibility is one of the basic conditions (especially the delegation of the powers of the Commission, EU agencies).

[2] Intensity varies between the examined sectors, in case of economic provisions control is stronger.

[3] Negative integration is clearly superior in national land policy considered as the intersection of the positive and negative forms of integration of the negative integration. (Chapter 2)

[4] EU law punish the Member States only as a last resort, if they are violating seriously and continually basic democratic values. But this is only possible in exceptional cases, mainly in view of political criteria. On this basis, and paying attention on that the Court shall have regard to the enforcement of fundamental rights interpreting European Union law, cannot claim to enforce the fundamental rights of EU law enforcement, as well as the integration of the guarantee of fundamental rights would be built.

in practice.

Proposal of Advocate General Cruz Villalón – under which a genuine social dimension of EU law should form a counterweight against the free movement – was not accepted by the Court. The traditional unification exemplifying in private law – for opposition of Member States adhering own civil law traditions – the codification very burdensome.

The EU cohesion policy due to the low level of redistribution– the EU's GDP is around one percent – cannot approach importance of the single market. In some extent monetary union is positive integration to create a European System of Central Banks and European Central Bank.

However, the monetary union – in some ways – reduced scope for economic interventions by states (and the EU) of the fight against inflation has been nominated by the founding treaties for the European Central Bank as the main objective.

Chapter 2 also pointed out that the dismantling of barriers to movement of factors of production may also cause real conflicts of interests. And this conflict of interests – in all likelihood[5] – will show an increasing trend. Litigation, and judgments about acquisition of land-property point: If the Union "general economic interest" does not match the – perceived or real – Member States "economic" public interest, the argument in itself that belonging to the community and the inherent stability will compensate the potential disadvantages, is not sufficient for the enforcement of the provisions of the EU.

Differing views of crisis management – in which some Member States shall take the victim for several Member States, or the survival of the integration – and the Common Agricultural Policy are well known. The decisions are taken too slowly, the large-scale, long-or medium-term objectives of intergovernmental decisions were not really able to foster. Difficulties in operation of military or the foreign collaborations are also known. I think that, as explained above, does not require a lot of evidence that in the current situation, the functional integration and negative forms based community can be viable in the long term.

Economic communities built on functional basis are primarily maintained and developed by law, and in this case law of the EU courts plays a major role - compared to the inner (continental) systems, but also to the English law.

This is also necessary because of the most important measures in the operation of the established economic community are not based on primarily political cooperations decisions, but on the EU's rule of law, principally the consistent[6] practice of the Court to dismantle obstacles to the mobility of factors of production and citizenship – with elements of legal technics– help to reinforce the European identity.

I believe that the situation when EU public interest is contrary to the interests of the Member States is considered to be one of the most problematic areas in implementing EU law. Section 3 (also) has confirmed that opposing positions of the operation of the business community are not for the secondary Union legislation[7], but also the founding treaty provisions, and the Court's practice has a

[5] Any escalation of the economic crisis and as a result of differences in the economies in southern Member States, and those are joined in 2004 and 2007.
[6] Competition is an area where the European Commission plays an important role.
[7] It is important to note that in drafting procedure of secondary legislation the Member States are directly involved (The Council). The secondary acts of the Union have really a "secondary" role in the founding of the provisions of the contract, and in relation to the practice of the Court. Provisions of a directive shall not apply if it would damage the fundamental economic freedoms guaranteed by the founding treaties, but conversely basic economic freedoms shall not depend on wether a directive is created or not (Chapter 3).

greater significance.

This paper demonstrates that a community containing conflicts of interests[8], held together by law, does not have the means to enforce their own. The founding treaties of the EU does not have any issue on conflicts between EU and national law, primacy of EU law over national legislation and contains no sanctions breaching EU law by the Member States either. Both ways of enforcing EU law – the infringement procedure and the preliminary ruling procedure – contains taxonomic gaps, structural weaknesses. The European Court's judgments do not involve sanctions, and it has no cassation or legal reformation rule.

The infringement procedure is not suitable for the "effective" enforcement of EU law, mainly due to the discretion of the Commission. The same is for preliminary ruling due to the nature of cooperation between national courts and the European Court of Justice.

Editors of founding treaties "selected" the infringement procedure to enforce EU law. The infringement procedure due to structural weaknesses – the discretion of the Commission to even start it, the Commission's political weakness – is not able to fulfill the objectives set out in the founding treaties. Enforcement of judgments arising from the infringement proceedings – from the 1980s – has become more and more difficult, so the Maastricht Treaty introduced the possibility of financial sanctions, in case of a Member State fails to comply with the judgment arising in infringement proceedings.

The sanctions imposed by the Maastricht Treaty, namely the failure to fulfill obligations arising from the proceedings judgments are not complied with the Commission may institute proceedings before the Court, in which a lump sum or penalty payment may be imposed.

The Court's case-law – beyond a literal interpretation of the contract, as the two penalties are designated with word "or"– can decide the combined application of two penalties. This is contrary to the principle of ne bis in idem, as well as with the principle that the courts cannot go beyond the parties' claims.

The European Court has interpreted that reasons for combined use of the two sanctions is to make a Member State to fulfill its obligations with using economic pressure. We can add this "a certain amount of" deterrence intent. However even joint use of the two sanctions cannot remedy the shortcomings of the infringement procedure.

This sanction is not deterrent for a Member State, because if the government puts an end to the infringement after judgment of the infringement procedure – which takes for years in most cases –, it does not have to comply with sanctions. This finding may be especially true if the Member State can get political-economic transition and economic advantage violating the law.

The Court has, however, no possibility of any EU law enforce – no matter what kind of principles are evolved on conflicts of EU and national law – if the Commission or the Member States shall not initiate proceedings. Therefore, only the preliminary ruling procedure was suitable for the application of EU law to enforce, as the entities – following their own interests in litigation – will

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This phenomenon is also felt in EU citizenship: in Bidar judgment the directive stated in vain that migrant students may not require a scholarship in the host Member State. Founding treaties changed, EU citizenship was created, and the most important attribute is right for free movement that is not an absolute right. But it was enough to form a a citizenship law formulation wich states – in spite of the directive –, that the migrant students under certain circumstances can require scholarship from the State.

[8] The national identity and minority-related problems will increase the number of conflicts of interest charged situations (Chapter 3).

contribute to the application of EU law to promote as well.

However, the purpose of this procedure – based on the letters of the founding treaties – is not to guarantee the rights of legal entities coming from the EU legal system, and not the application of EU law enforcement, but to ensure uniformity of interpretation of EU law.

The preliminary procedure cannot be regarded as an independent procedure, but rather can be defined as intermediate cooperative process between the Court and the national courts. The Court does not have jurisdiction to determine directly that national legislation precludes to EU law.

The Court transformed the questions of national courts in a long time process to give an answer that one can use – ultimately – to determine the question of the national provisions of EU law to be incompatible.

The Court made a big step towards better enforcement declaring the primacy of EU law, direct effect, the sui generis nature of EU law. The European Court of Justice put the national courts to the "heart of enforcement" of EU law.

The obligation of applying principle of primacy of EU law found by the European Court, covers the administration and the legislature as well. Accordingly, the legislature should be harmonized with the EU law in national legislation, and to be laid down for the application of EU law provisions. Public sector bodies should also be considered by the Union law precludes the application of national provisions. In practice, the enforcement of EU law by national courts effectively enforce the principle of primacy.

The direct effect of EU law – except regulations – cannot be found in founding treaties. ECJ is working on that the principle of direct effect should not prevent performing entities' rights based on the EU legal system. Therefore, the principle of direct effect – increasingly – replaces other principles that take into account these criteria precisely, thus promoting the establishment of the single market.

Public bodies – mostly because of the hierarchical structure – are not suitable for the practice of national law and EU law to ensure the primacy of the latter in case of collision. Besides, the founding treaties did not create a similar mechanism to the preliminary ruling procedure, which can be required by public authorities as well.

Composers of the founding treaties – indirectly –formulated the institutional and procedural autonomy of the Member States that do not have established special procedures of the EU legal system to enforce rights arising.

This autonomy, however, is also limited by several principles of EU law: in this context the EU legal order from entitlements to national procedural rules may not be lower than the internal legal order from entitlements for employees than the rules or the national procedural rules do not render virtually impossible or excessively difficult the EU legal system resulting from the exercise of rights.

It also caused uncertainty in cases where an economic basis for national legislation with EU law on freedom of the direct examination of the compatibility of the rules of procedure of that State did not provide the opportunity. As a trial to determine damages, and the authority to issue addressed in court to contest the framework for.

As seen in Court's practice, European Union law does not require existence of the rule for direct procedure determining compatibility between a provision of national law and the EU, if the existing mechanisms indirectly ensures testing compatibility of the relevant national provisions and EU law.

Limitation of the institutional and procedural autonomy raises uncertainty. The solutions developed by the Court leads to differences in the economic rights and exercise of rights arising from Union citizenship in practice.

In the latter case it is much more difficult to prove economic harm and an economically inactive citizen has a lot less opportunity to undertake the type of dispute which indirectly provides testing compatibility of national legislation in question with EU law.

The right to judicial review – which is a part of the constitutional traditions of Member States and also guaranteed by the European Convention on Human Rights – the institutional and procedural autonomy can be interpreted as a limit.

In system of preliminary rulings by national courts are free to ponder, to appeal to the European Court of Justice to interpret EU law. The courts of the Member State adjudicating at last instance, however – according to the principle – must ask the European Court of Justice.

Doctrine of Acte Clair–experience has shown that the national courts are very broad sense in interpreting it – in some circumstances, the national court adjudicating at last instance is not mandatory in the European Court of Justice. Such may be the case if the Court's case-law, in particular highlighted the question of the legal situation is unclear when, or EU law in terms of resolving the main question is not relevant. The literature suggests that national courts of last instance – in most cases – are not the basis of criteria developed by the European Court staying the preliminary ruling procedure. I think that this can cause serious problems in the EU legal order from entities privileges, and thus indirectly to the EU justice.

The Court's practice shows that an internal appeal against preliminary ruling injunctions does not conflict with the principles of EU law. It can also hinder the realization of the primacy of EU law.

Doctrine of Acte Clair, and the reference to the order process against internal appeal options with EU law compatibility of EU law also point to structural weaknesses. It is true that reasons are somewhat different: the doctrine of Acte Clair was necessary, because otherwise too much litigation risk in the viability of European Court.

Compatibility of internal appeal options ordering the preliminary ruling with EU law may be a result of a Member States' procedural autonomy, and the separation of preliminary ruling procedure, and the Proceedings before the European Court of Justice.

The infringement procedure and the preliminary ruling procedure modifications, and principles on conflicts between national law and EU law that are either in the founding treaties modifying, or as case-law as a result have been created, not been sufficient to implement Union law, and the legal entities privileges effect. I believe that this situation has led to the creation of State Penalties.

Different theoretical judgments of the European Court of Justice has developed in the 1970s case law, according to invalidate acts which brought in breach of EU law by Member States. Many of these judgments based on that work, we can conclude that the founding treaties implicitly included in the system of State liability rules. In the late 1980s, the European Court of Justice (Francovich, Brasserie du Pecheur) case law has established that a claim directly to the European Union (EU)

legal order comes[9]. This was surrounded by a lively scientific debate.

It could be heard in the judgments, and a part of the literature cannot be considered legitimate to establish a system of responsibility by the Court since its creation and the founding treaties of the EU legislative bodies should be to. Other authors argue that part of the Court's responsibility to establish systems integration can only be justified when real danger of collapse.

The liability regime established by the Court claim for damages resulting directly from the EU legal order, however, to implement their system is responsibility of the Member States within the interior. The Member States' procedural autonomy of EU legal order from the limitations similarly applies to the principle of equal treatment, according to the national liability rules under EU law claims as a result may not be less favorable than those stemming from national law claims in the case, and the effectivity principle, according to which national liability rules do not make it impossible to assert claims for damages resulting from the EU legal order.

There are instabilities around the way compensation extent is limited by EU law. The Court understands that compensation has to be adequate. Legislature's responsibility has a radically different meaning in comparison with administration responsibility for decisions.

This reduces the legislator's discretion[10] and the court's traditional role has changed in the case that a Member State does not contain the legislative responsibility applicable rules, the proceedings of the national courts themselves have to develop the principles and rules under which a judgment.

Despite national courts has fundamental role in applying primacy of EU law, for EU law – due to its independence[11] and specific characteristics – the most difficult to control at this branch.

One of the last steps of subjectivity[12] of preliminary ruling procedure, the responsibility of Member States' arising from their judicial acts met with many obstacles of legal certainty, the principle of res iudicata, judicial independence, and the rule of law.

The Court of Justice – having regard to the specific conditions relating to the courts – the legislative and administrative measures compared to only be responsible for the more severe cases require a finding of State responsibility.

Comparing Köbler and Trahetti judgments it can be seen clearly: areas corresponding to the economic constitution is only realistic possibility of Member States to establish legal liability arising from acts, opposed to citizenship of the Union or provisions ensuring free movement the employees (persons). [13]

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[9] In many views European Court of Justice, not only found in those judgments that the claim for damages resulting directly from the EU legal order, but also the principle of State liability based on these judgments.

[10] Ownership of land development regulations seen in Section 2, this trend occurs exponentially. The land policy space decreases due to uncertainties surrounding the role of the legislature, and the finding of incompatibility with EU law poses a significant threat to a stable control, the possibility of requiring land reform.

[11] Difficult to gain control of the Authority shall contribute to the cooperative nature of the preliminary ruling procedure, which is not included under the hierarchical relationship between the Court and the national courts in respect.

[12] The preliminary ruling procedure subjectivity appointed by the German and French literature, the process by which the European Union Court of Justice of the founding treaties based on the letters of EU law is applied uniformly to the procedures introduced gradually to the legal entities of EU legal system resulting from privileges enforce suitable method converts.

[13] Köbler's permission, I think - rather similar to citizenship. However, the economic constitutionality belonging to judge the work of allowing religious freedom, except when the Member State may require their own citizenship. In the early 1990s, case-law suggests that in cases where the State's responsibility to determine if the introduced measures which could jeopardize the single market, and thus the existence of integration as well.

In practice, the judgments establishing judicial responsibility will not be massive their effect will be more symbolic. Thus cooperative relationship was changed between national courts and the European Court of Justice. Under EU law it can be beneficial that it is "considered as a closed system". However, EU law does not know what to do when a lawsuit for damages in the trial court ultimately do not want to pay for the damage caused by the trial court.

Responsibility on judicial acts amends relations of justice as well: the national court must take into account – in case of enforcement of the damage resulting from the judicial act – the EU institutions – the European Commission, among others – standpoint of EU law interpretation.

It seems that the European Court of Justice applies stricter rules of liability Member States as non-contractual liability of the Union, despite the fact that this is provided only in the founding treaties.

These two systems should be closer to each other based on criteria of rule of law. Based on these criteria it would not be acceptable why it is more difficult to enforce the Union's responsibility than the responsibility of Member States.

It can be easily confuted, that responsibility of the Member States – the legal responsibility arising from the judicial acts as well – was formed in order to enforce the rights of individuals. In this case, how to explain to non-contractual liability of the Union to determine the individuals are much more difficult?

We can find an explanation in functionalist perspective for the liability system arising from the situation. Member States – for political reasons – wanted to set up the integration, but also for political reasons, decided to develop a functional approach of economic community.[14]

The founding treaties have established a system that does not have means to operate – to enforce the legal system. However an economic community based on forms of negative integration, a fundamental requirement the existence of a consistent substantive law, and enforcement mechanisms that includes sanctions as well.

Thus, a community is created, which cannot or poorly takes into account the economic realities, since opposite of practice of the Court on economic constitutionalism become relevant the basic requirement of stability, and that EU law is not able to take into account the economic interests (the four freedoms, and the associated with national competition law provisions restricting the case).[15]

The community is set up in such circumstances will not be able to give correct answers to issues related to the single market.[16] I do not see a solution to the social deregulation[17] caused by multinational companies or the southern and eastern member states' economic[18] development or competitiveness divergences caused by the tensions.[19] Also, for political reasons, is unable to closer

[14] Basically fearing form excessive restriction of their sovereignty.
[15] Accordance with the practice of the Court could involve economic interests are not acceptable to the public interest. Court of Justice, C-109/04
[16] Besides these drawbacks I think of single market – economic – benefits as positive.
[17] This also affects the founding Member States.
[18] Chapter 2 shows that the economically weaker Member States – in some cases – more threatened by sanctions of the union.
[19] We should also note the monetary union rules 'enforcement' mechanism. The practice of the Court, the Council shall not be obliged to impose penalties – Convergence criteria in violation of Member States. However, the euro crisis, against the interest of the business community or existence-threatening situation exists incurred – German proposal – the possibility of a court-imposed sanctions. This is – I think, in the case of monetary union would become part of the economic constitution.

integration – taking into account the interests of each Member State, the differences between the Member States – and move toward cooperation.

Responsibility of Member States is needed – paradoxically more and more as problems are increasing – maintenance of the integration, but it is necessary for the Union to economic decision-making discretion, which undermined the Union's contractual liability. Basically, this “dilemma” motivated the Court's developing activity.

Today, transformation business community at a level of that would work on a political basis – approximate the direction of the European Coal and Steel Community system – or the union to offset fiscal disparities, there is not so much chance.

In the meantime, we can trust – that citizenship, though it couldn’t play a similar role in maintaining of the integration as the economical community –, over time can contribute to creating a European identity[20] that the community based on single market develop a community based on political cooperation that takes into account economic differences between the Member States. Interestingly enough, so there would be no need for such sanctions.

As the European Court waits with “tougher sanctions”[21] on citizenship over decades it can be established a European identity, which is based on real economic cooperative.[22]

In this situation, the grounds of integration could convergence internal – continental – systems, which serve as a frame of operating the integration, not as former or as an actuator. In this situation it is not certain that it’s specifics would be necessary either.

[20] The Court of citizenship can contribute to the development of a European citizenship, which at present allow building an enhanced economic integration.
[21] It can do it now because integration rests on the economic community.
[22] Development of European identity, community citizenship is a more appropriate tool than economic community.