JUDGE INDEPENDENCE - BETWEEN EUROPEAN UNION LAW AND NATIONAL LAW

Andrada-Georgiana MARIN[*]

Abstract

In this paper we aim to analyze a topical issue for specialists in national constitutional law and European law, namely the independence of the judge - between European Union law and national law.

The subject is of interest in the context of the ruling by the CJEU on several judgments on the rule of law, independence and impartiality of national judges, legal certainty, guaranteeing the national constitutional identity of EU Member States, binding judgments of Constitutional Courts, the supremacy of European Union law.

In this sense, we understand to see the theoretical aspects, the solutions pronounced by the CJEU of recent date regarding Romania, the position of the CCR compared to those ruled by the Luxembourg court, the review of recent decisions by the Court of Justice against Poland, as well as the opinions expressed in the specialized doctrine on this subject.

Keywords: *rule of law, separation, balance and cooperation of powers in the state, the judiciary, the principles of irremovability and independence of judges, system of political control of the content of judicial decisions, the principle of ensuring effective judicial protection in matters governed by Union law, applicable disciplinary regime national judges, national constitutional identity, sovereignty of the Member States of the European Union, cooperation between national and European Union courts.*

1. Introduction

Starting from the Romanian Constitution, at article 1 paragraph (4) stipulates that the Romanian state is organized according to the principle of separation and balance of powers - legislative, executive and judicial - within the constitutional democracy.

Thus, the legislative power belongs to the Romanian Parliament, the executive power is exercised by the President of Romania, the Romanian Government and the central and local public administration bodies, and the judicial authority is held by the courts, the Public Ministry and the Superior Council of Magistracy.

"Here it is necessary to specify that the separation of powers does not mean the lack of correspondence between them. The powers of the state must be distinct, but each is a whole. . . This principle, of the separation of the powers, must not introduce an absolute independency which should constitute the report of the powers as something negative, in the meaning that everything it does to one another, becomes a hostile action, designed to oppose to it."[1]

Also, from reading article 1 of the Romanian Constitution we find out that the Romanian state is a national sovereign and independent, unitary and indivisible state, whose form of government is the republic, being a state of law, democratic and social in which human dignity, rights and freedoms of citizens, the free development of the human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and are guaranteed.

We remind you that on December 8th, 2021, 30 years have passed since the adoption of the first Constitution after the fall of the communist regime in Romania, a Constitution that was adopted by the Constituent Assembly on November 21st, 1991 and approved by National Referendum on December 8th, 1991.

The Constitutional Court is the guarantor of the supremacy of the Constitution, being the only authority of constitutional jurisdiction in Romania.

At the same time, the Constitutional Court is independent of any public authority and is subject only to the Constitution and Law no. 47/1992 on the organization and functioning of the Constitutional Court.

According to art. 11 para. (3) of Law no. 47/1992 on the organization and functioning of the Constitutional Court, the decisions, judgments and opinions of the Constitutional Court are published in the Official Gazette of Romania, Part I. The decisions and judgments of the Constitutional Court are generally binding and have force only for the future.

In Romania, justice is administered by the High Court of Cassation and Justice and by the other courts established by law, according to art. 126 para. (1) of the Romanian Constitution, "The CCR, despite its name, is

[*] PhD Candidate, Faculty of Law, "Nicolae Titulescu" University of Bucharest (e-mail: andrada_marin549@yahoo.ro).

[1] Nicolae Popa, *General Theory of Law*, 6th ed., C.H. Beck Publishing House, Bucharest, 2020, p. 104.

not a law court, not part of the judiciary, but of the constitutional order."[2]

Magistracy is the judicial activity carried out by judges for the purpose of administering justice and by prosecutors in order to defend the general interests of society, the rule of law, as well as the rights and freedoms of citizens.

In order to administer justice, judges are independent and subject to the law. Thus, according to art. 2 para. (3) of Law no. 303/2004 on the status of judges and prosecutors, judges must be impartial, having full freedom to resolve cases brought before the court, in accordance with the law and impartially, with respect for the equality of arms and the procedural rights of the parties. Judges must make decisions without any direct or indirect restrictions, influences, pressures, threats or interventions, from any authority, even judicial authorities. Judgments in appeals do not fall within the scope of these restrictions. The purpose of the independence of judges is also to guarantee every person the fundamental right to have his or her case examined fairly, based solely on the application of the law.

Based on the aforementioned, this paper aims to analyze the independence of the judge - between EU law and national law, in the context of several judgments of the CJEU questioning the independence of (law) member states, preservation of national identity and supremacy of national constitutions.

2. Content

The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men, according to art. 2 of the Treaty on European Union.

Art. 4 para. (2) of the Treaty on European Union provides that the Union shall respect the equality of Member States in relation to the Treaties, as well as their national identity, which is inherent in their fundamental political and constitutional structures, including local and regional self-government. It respects the essential functions of the State and, in particular, those aimed at ensuring its territorial integrity, maintaining law and order and defending national security. In particular, national security remains the sole responsibility of each Member State.

The delimitation of the competences of the European Union is governed by the principle of attribution. The exercise of these powers is governed by the principles of subsidiarity and proportionality.

Under the principle of conferral, the European Union acts only within the limits of the powers conferred upon it by the Member States in the Treaties to achieve the objectives set out in those Treaties, so that any competence not conferred on the European Union by the Treaties belongs to the Member States.

At the same time, in accordance with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the European Union intervenes only if and to the extent that the objectives of the envisaged action cannot be satisfactorily achieved by the Member States either centrally or regionally. locally, but due to the size and effects of the planned action, they can be better achieved at the level of the European Union, according to article 5 of the Treaty on European Union.

Where the Treaties confer upon the European Union exclusive competence in a particular field, only the European Union may legislate and adopt acts with binding legal force, and Member States may do so only if they are empowered by the Union or to implement the Union acts.

The Treaty on the Functioning of the European Union sets out the areas in which the European Union has exclusive competence, namely: customs union, establishing the rules on competition necessary for the functioning of the internal market, monetary policy for Member States whose currency is the euro, conservation of marine biological resources common fisheries policy, the common commercial policy, the conclusion of international agreements where such a conclusion is provided for in a Union legislative act, or is necessary to enable the Union to exercise its internal competence, or to the extent that this could affect common rules or could change their scope.

Where the Treaties confer on the European Union a shared competence with the Member States in a given field, the Union and the Member States may legislate and adopt legally binding acts in that field. Member States shall exercise their powers to the extent that the Union has not exercised its powers. Member States shall re-exercise their competence to the extent that the European Union has decided to cease exercising it.

Competences shared between the Union and the Member States apply in the following main areas namely: the internal market, social policy as defined in the Treaty, economic, social and territorial cohesion, agriculture and fisheries with the exception of conservation of marine biological resources,

[2] Nicolae Popa, (coord.), Elena Anghel, Cornelia Ene-Dinu, Laura Spătaru-Negură, *General Theory of Law. Seminar notebook*, 3rd ed., C.H. Beck Publishing House, Bucharest, 2017, p. 61.

environment, consumer protection, transport, trans-European networks, energy, freedom, security and justice, the common public health security objectives for the aspects defined in the Treaty.

The European Union is also responsible for supporting, coordinating or supplementing the action of the Member States in the following areas: protection and improvement of human health, industry, culture, tourism, education, vocational training, youth and sport, civil protection and cooperation. administrative.

To this end, the European Union has an institutional framework aimed at promoting its values, pursuing its objectives, upholding the interests of its citizens and its Member States, and ensuring the coherence, effectiveness and continuity of its policies and actions, through the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors.

According to art. 276 of the Treaty on the Functioning of the European Union, The Court of Justice of the European Union has no jurisdiction to review the lawfulness or proportionality of police or other law enforcement operations in a Member State, nor to rule on the exercise of the responsibilities incumbent upon Member States for maintaining order and the defense of internal security.

At the same time, the Court of Justice of the European Union shall ensure compliance with European Union law in the interpretation and application of the Treaties, ruling in accordance with the Treaties: (a) on actions brought by a Member State, an institution or a natural or legal person; (b) on a preliminary ruling, at the request of national courts, on the interpretation of Union law or the validity of acts adopted by the institutions; and (c) in other cases provided for in the Treaties.

In art. 267 of the Treaty on the Functioning of the European Union (ex art. 234 TEC) provides that the Court of Justice of the European Union shall have jurisdiction in a preliminary ruling concerning: (a) the interpretation of treaties and (b) the validity and interpretation acts adopted by the institutions, bodies, offices or agencies of the Union.

If such a matter is raised before a court of a Member State, that court may, if it considers that a decision in that regard is necessary for it to give judgment, to apply to the Court for a delivering on this issue.

If such a matter is raised in a case pending before a national court whose decisions are not subject to appeal under national law, that court shall be required to refer the matter to the Court of Justice of the European Union.

If such a matter is raised in a case pending before a national court concerning a person who is being held in custody, the Court shall give its decision as soon as possible.

According to the specialized doctrine, "jurisprudence occupies an important place among the sources of European Union law. The exercise by the Court of Justice of a regulatory activity is characterized, in particular, by the use of methods of dynamic interpretation, as well as by a wide use of general principles of law. '[3]

Returning to the Romanian Constitution, the decisions of the Constitutional Court are published in the Official Gazette of Romania. From the date of publication, the decisions are generally binding and have power only for the future, according to art. 147 para. (4).

Art. 148 of the Romanian Constitution, having the marginal name *Integration in the European Union*, provides the following:

1. Romania's accession to the constitutive treaties of the European Union, in order to transfer powers to the Community institutions, as well as to exercise jointly with the other Member States the powers provided by these treaties, is made by law adopted in the joint sitting of the Chamber of Deputies and the Senate, a two-thirds majority of deputies and senators.

2. As a result of accession, the provisions of the Treaties establishing the European Union, as well as other binding Community regulations, take precedence over the contrary provisions of national law, in compliance with the provisions of the Act of Accession.

3. The provisions of para. 1 and 2 shall apply *mutatis mutandis* to the accession to acts of revision of the Treaties establishing the European Union.

4. The Parliament, the President of Romania, the Government and the judicial authority guarantee the fulfillment of the obligations resulting from the act of accession and from the provisions of para. (2).

5. The Government submits to the two Houses of Parliament the draft binding acts before they are submitted to the approval of the institutions of the European Union.

In view of the above, the independence of the judge - between European Union law and national law becomes a topical issue for the Romanian doctrine in the context of the ruling by the Court of Justice of the European Union of decisions questioning the rule of law, national identity, the supremacy of the

[3] Augustin Fuerea, *Handbook of the European Union*, 5th ed., revised and added after the Lisbon Treaty (2007/2009), Universul Juridic Publishing House, Bucharest, 2011, p. 141.

Constitution, the primacy of European Union law, the binding force of judgments of the Court of Justice in Luxembourg, the relationship between national and European Union courts and the sovereignty of the Member States.

In this sense, in addition to the theoretical issues regarding the rule of law based on the principle of separation, balance and cooperation of the three powers - legislative, executive and judicial - in the state, the independence of the national judge, the binding nature of Romanian Constitutional Court decisions, supremacy Constitution, the sovereignty of the member states of the European Union, the assurance of the national identity of the member states, in the following we understand to see practical cases on the theoretical aspects enunciated above .

Thus, pursuant to art. 267 of the Treaty on the Functioning of the European Union, related cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, concern the interpretation of art. 2 and art. 19 para. (1) second paragraph of the Treaty on European Union, art. 325 para. (1) of the Treaty on the Functioning of the European Union, art. 47 of the Charter of Fundamental Rights of the European Union, art. 1 para. (1) and art. 2 para. (2) of the Convention on the Protection of Financial Interests, Commission Decision 2006/928 of 13.12.2006 establishing a mechanism for cooperation and verification of the progress made by Romania in achieving certain specific benchmarks in the field of judicial reform and the fight against corruption, as well as the principle of the rule of law.

In Case C-357/19 the following questions were referred to the Court of Justice in Luxembourg, namely:

1. „Art. 19 para. (1) of the Treaty on European Union, art. 325 para. (1) of the Treaty on the Functioning of the European Union, art. 1 para. (1) letter a) and b) and art. 2 para. (1) of the Convention on the Protection of Financial Interests and the principle of legal certainty must be interpreted as precluding the adoption of a decision by a body outside the judiciary (Constitutional Court) to rule on the legality of the composition of panels, necessary to allow extraordinary remedies against final judgments handed down over a period of time?

2. The second paragraph of art. 47 of the Charter of Fundamental Rights of the European Union (hereinafter referred to as the Charter) must be interpreted as precluding the finding by a body outside the judiciary of the lack of independence and impartiality of a panel to which it belongs. a judge with a leading position and who was not appointed at random, but on the basis of a transparent rule, known and uncontested by the parties, a rule applicable in all cases of that panel, the decision adopted being binding under national law?

3. Should the priority application of European Union law be interpreted as enabling the national court to overturn the application of a decision of the Constitutional Court in a referral for a constitutional dispute, which is binding on national law?"

In Case C-379/19, the following preliminary questions were asked:

1. „The mechanism for cooperation and verification of the progress made by Romania in order to achieve certain specific benchmarks in the field of judicial reform and the fight against corruption (hereinafter referred to as CVM), established according to Decision 2006/928 / EC and the requirements set out in the reports drafted under this mechanism, are they binding on the Romanian state?

2. Art. 2 correlated with art. 4 para. (3) of the Treaty on European Union must be interpreted as meaning that the obligation of the Member State to respect the principles of the rule of law also includes the need for Romania to comply with the requirements of the CVM reports established by Decision 2006/928/EC, including withholding the intervention of a constitutional court, a politico-jurisdictional institution, interpreting the law and establishing the concrete and binding application of it by the courts, exclusive competence conferred on the judiciary, and establishing new legal rules, exclusive competence attributed to the legislative authority? Does EU law require the removal of the effects of such a decision by a constitutional court? Does European Union law preclude the existence of an internal rule governing disciplinary liability for a magistrate who revokes the decision of the Constitutional Court in the context of the question raised?

3. The principle of independence of judges, enshrined in art. 19 para. (1) second paragraph of the Treaty on European Union and art. 47 of the Charter, as interpreted by the case law of the Court, [Judgment of 27 February 2018, Associação Sindical dos Juízes Portugueses (C - 64/16, EU: C: 2018: 117)], opposes the substitution of their powers by the decisions of the Court Constitutional (Decisions [no. 51/2016, no. 302/2017 and no. 26/2019]), with the consequence of the unpredictability of the criminal process (retroactive application) and the impossibility of interpreting and applying the law to the concrete case? Does European Union law preclude the existence of an internal rule governing disciplinary liability for a magistrate who removes from the application the decision of the Constitutional Court, in the context of the question posed?".

In Case C-547/19 the following question was asked:

1. „Art. 2, art. 19 para. (1) of the Treaty on European Union and art. 47 of the Charter must be interpreted as precluding the intervention of a

Constitutional Court (a body which is not, according to domestic law, a court) regarding the way in which the supreme court interpreted and applied the unconstitutional law in the activity of constituting court panels?"

In Case C-811/19, the following questions were asked:

1. „Art. 19 para. (1) of the Treaty on European Union, art. 325 para. (1) of the Treaty on the Functioning of the European Union, art. 58 of Directive 2015/849, as well as art. 4 of Directive 2017/1371 must be interpreted as precluding the adoption of a decision by a body outside the judiciary (Constitutional Court), which would resolve a procedural exception that would concern a possible illegal composition of the judgments, in relation to the principle of specialization of judges at the High Court of Cassation and Justice (not provided by the Romanian Constitution), and to oblige a court to send the cases, which are on appeal (devolutive), for retrial, in the first procedural cycle to the same court?

2. Art. 2 of the Treaty on European Union and Article The second paragraph of the Charter must be interpreted as precluding the finding by a body outside the judiciary of the unlawful composition of court panels in a section of the Supreme Court (panels composed of judges in office, who at the time of promotion also met the condition specialization required to be promoted to the criminal section of the Supreme Court)?

3. The priority application of Union law must be interpreted as allowing the national court to overturn the application of a decision of the Constitutional Court, which interprets a lower rule than the Constitution, the organization of the High Court of Cassation and Justice, included in the national law on prevention, detection and the sanctioning of acts of corruption, a norm constantly interpreted, in the same sense, by a court for 16 years?

4. According to art. 47 of the Charter, does the principle of free access to justice include the specialization of judges and the establishment of specialized panels in a supreme court?".

In Case C-840/19, the following questions were asked, namely:

1. „Art. 19 para. (1) of the Treaty on European Union, art. 325 para. (1) of the Treaty on the Functioning of the European Union and art. 4 of Directive 2017/1371, adopted pursuant to art. 83 para. (2) of the Treaty on the Functioning of the European Union, must be interpreted as precluding the adoption of a decision by a body outside the judiciary (Constitutional Court), which requires the referral for retrial of corruption cases in the appeal phase, for the non-constitution at the level of the supreme court of court panels specialized in this matter, although it recognizes the specialization of the judges who composed the court panels?

2. Art. 2 of the Treaty on European Union and Article The second paragraph of the Charter must be interpreted as precluding the finding by a body outside the judiciary of the unlawful composition of court panels in a section of the Supreme Court (panels composed of judges in office, who at the time of promotion also met the condition specialization required to be promoted to the Supreme Court)?

3. Should the priority application of European Union law be interpreted as enabling the national court to overturn the application of a decision of the Constitutional Court of Justice, given in a referral for a constitutional dispute, which is binding on national law?"

As regards the jurisdiction of the Court of Justice of the European Union to answer the questions referred in Case C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19 there have been opinions that the Court would not have jurisdiction to answer such questions as long as: (1) the addressed questions regard the compatibility of the law of the European Union with the jurisprudence of the national Constitutional Court, (2) in the law of the European union there cannot be found any reference regarding the application and the effects of judgments handed down by a national constitutional court, and (3) the questions referred are requested by the Court of Justice of the European Union to review the legality of judgments handed down by the national Constitutional Court.

The Court of Justice of the European Union has declared that it has jurisdiction to answer questions referred for a preliminary ruling: (1) the member states must comply with the obligations belonging to them according to the law of the European union, although the organization of the justice in the member states belongs to their competence, (2) It is for the Luxembourg Court of Justice to provide national courts with elements of interpretation and application of European Union law which are necessary for the resolution of the main national dispute, (3) the rejection of a question addressed by a national court can be disposed when the requested interpretation of the law of the European Union has nothing to do with the reality or the subject-matter of the main proceedings, that is to say, with regard to a hypothetical problem, and where sufficient facts and law are not made available to the Court to answer the questions referred, disciplinary investigations, (4) the independence of the national judges who have addressed the preliminary questions seems to be jeopardized, moreover there is the risk to be submitted to certain disciplinary inquiries, etc.

In Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, the Court of Justice of the European Union:

1. "Commission's Decision 2006/928 of December 13th, 2006 establishing a mechanism for cooperation and verification of Romania's progress towards certain specific benchmarks in the field of judicial reform and the fight against corruption is, as long as it has not been was repealed, mandatory in all its elements for Romania. The reference objectives set out in the Annex hereto are intended to ensure that this Member State complies with the value of the rule of law set out in art. 2 of the Treaty on European Union and are binding on the Member State concerned, in the sense that the latter is required to take appropriate measures to achieve those objectives, having due regard to the principle of sincere cooperation provided for in art. 4 para. (3) from the Treaty regarding the European Union, of the reports drawn up by the European Commission under the respective decision, especially of the recommendations formulated in the mentioned reports;

2. Art. 325 para. (1) of the Treaty on the Functioning of the European Union in conjunction with art. 2 of the Convention elaborated pursuant to article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Luxembourg on 26 July 1995, and Decision 2006/928 must be interpreted as precluding a national regulation or practice according to which judgments concerning corruption and fraud in the field of value added tax (VAT) which were not delivered at first instance by panels of judges specializing in this matter is null and void, so that the causes of corruption and VAT fraud in question must, where appropriate, be following an extraordinary appeal against final judgments, to be tried at first instance and / or on appeal, in so far as the application of that regulation or national practice is likely to create a systemic risk of impunity for the facts which constitute serious fraud affecting the interests of the Union or corruption in general. The obligation to ensure that such offenses are subject to criminal sanctions that are effective and dissuasive does not exempt the referring court from verifying the necessary observance of the fundamental rights guaranteed in art. 47 of the Charter of Fundamental Rights of the European Union, without this court being able to apply a national standard of protection of fundamental rights that would involve such a systemic risk of impunity;

3. Art. 3 and art. 19 para. (1) the second paragraph of the Treaty on the Functioning of the European Union and Decision 2006/928 must be interpreted as not precluding a national regulation or practice according to which decisions of the National Constitutional Court are binding on the courts of common law, provided that national law to guarantee the independence of the said Constitutional Court in particular from the legislative and executive powers as required by those provisions. On the other hand, those provisions of the Treaty on European Union and that Decision must be interpreted as precluding a national regulation according to which any failure to comply with the decisions of the national Constitutional Court by ordinary national judges is liable to disciplinary action;

4. The principle of the supremacy of European Union law must be interpreted as precluding a national regulation or practice according to which national courts governed by common law are bound by the decisions of the national Constitutional Court and cannot, therefore, risk disciplinary misconduct ex officio the jurisprudence resulting from the mentioned decisions, even if they consider, in the light of a decision of the Court, that this jurisprudence is contrary to art. 19 para. (1) second paragraph of the Treaty on European Union, art. 325 para. (1) of the Treaty on the Functioning of the European Union or Decision 2006/928 / EC ".

Judgment of the Court of Justice of the European Union delivered on 21 December 2021[4] it sets out a number of key ideas, namely: (1) the mechanism for cooperation and verification of Romania's progress towards achieving certain specific objectives in the field of judicial reform and the fight against corruption is in force for as long as Decision 2006/928 of the European Commission has not been repealed and the "recommendations" made through the European Commission Reports are binding on Romania, (2) European Union law opposes the application of a case law of the Constitutional Court leading to the annulment of the decisions delivered by the illegally composed panels of judges where this, in conjunction with the national limitation provisions, create a systemic risk of punishment of the facts constituting serious crimes of fraud touching the financial interests of the Union or of corruption, (3) European Union law does not preclude the ruling of the Constitutional Court from being binding on the courts of ordinary law as long as it is binding. while the Romanian state offers guarantees of independence of the Constitutional Court from the legislative and executive powers of the state, (4) non-compliance / non-application of the decisions of the Constitutional Court is not likely to attract the disciplinary liability of ordinary judges, this intervening only in totally exceptional and extraordinary situations, (5) common law judges may set aside the decisions of the Constitutional Court which are contrary to European Union law, without the

[4] https://curia.europa.eu/juris/document/document.jsf?text=&docid=251504&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=3315335.

risk of being subject to disciplinary action, in accordance with the principle of the rule of law.

Regarding the independence of the Constitutional Court from the legislative and executive powers of the state, we point out that in the specialized doctrine it was noted that the Constitutional Court "can be considered a public political-jurisdictional authority. The political character results from the way of appointing the members of the Constitutional Court, as well as the nature of some attributions, the jurisdictional character resulting from the principles of organization and functioning (independence and irremovability of judges), as well as other attributions and procedures."[5]

The judgment of the Court of Justice of the European Union provoked a wave of reactions in the Romanian state, specialists and legal practitioners conducted an analysis of the judgment of the Luxembourg Court, as well as the effects / consequences generated by its ruling.

On December 23rd, 2021, the Romanian Constitutional Court issued a press release expressing its position on the judgment of the Court of Justice of the European Union of December 21st, 2021 in related cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19.

Thus, through the Press Release, the CCR referred to the prerequisite situations that led to the referral of questions to the Luxembourg Court, namely: (1) the composition of the panels of five judges at the HCCJ (Decision no. 685/2018 published in the Official Gazette of Romania, Part I no. 1,021/29.11.2018), (2) the establishment of specialized panels in the field of corruption offenses at the level of the HCCJ (Decision no. 417/2019 published in the Official Gazette of Romania, Part I no. 825/10.10.2019), (3) the implementation of the technical supervision mandate (Decision no. 51/2016 published in the Official Gazette of Romania, Part I no. 190/14.03.2016) and (4) the competence of the Public Ministry - the Prosecutor's Office attached to the HCCJ to conclude collaboration protocols with the Romanian Intelligence Service (Decision no. 26/2019 published in the Official Gazette of Romania, Part I no. 193/12.03.2019).

In this regard, the Constitutional Court stated that, "none of these decisions (*indicated above*) was aimed at creating impunity for acts of serious fraud which harm the financial interests of the Union or corruption, nor the removal of criminal liability for such offenses."[6]

Through the Press Release, the Constitutional Court also offers the solution by which the Romanian state can respect the provisions of the Decision of the Luxembourg Court of December 21st, 2021, namely the revision of the Romanian Constitution in force.

Art. 150 of the Romanian Constitution, with the marginal name of the *Revision Initiative*, provides that:

(1) The revision of the Constitution may be initiated by the President of Romania at the proposal of the Government, by at least a quarter of the number of deputies and senators, as well as by at least 500,000 citizens with the right to vote.

(2) Citizens initiating the revision of the Constitution must come from at least half of the country's counties, and in each of these counties or in the municipality of Bucharest must be registered at least 20,000 signatures in support of this initiative.

Also, in art. 152 of the Romanian Constitution provide the limits of the revision, respectively:

(1) The provisions of this Constitution regarding the national, independent, unitary and indivisible character of the Romanian state, the republican form of government, the integrity of the territory, **the independence of the judiciary**, political pluralism and the official language may not be subject to revision.

(2) Nor can any review be carried out if it results in the abolition of the fundamental rights and freedoms of citizens or their guarantees.

(3) The Constitution may not be revised during a state of siege or a state of emergency or in time of war.

In 2014, an attempt was made to revise the Romanian Constitution, regarding the content of art. 148 on integration into the European Union.

Thus, the legislative proposal to revise the Romanian Constitution was intended, among other things, as art. 148 para. (1) and (2) are amended to read as follows:

"1. Ratification of the Treaties amending or supplementing the Constitutive Treaties of the European Union and of the Treaties amending or supplementing the North Atlantic Treaty Act shall be made by a law adopted in a joint meeting of the Senate and the Chamber of Deputies, with the vote of two-thirds of senators and deputies.

(2) Romania shall ensure the observance, within the national legal order, of the law of the European Union, in accordance with the obligations assumed by the Act of Accession and by the other treaties signed within the Union".

The Constitutional Court by Decision no. 80/2014 on the legislative proposal on the revision of the Romanian Constitution, published in the Official Gazette of Romania, Part I no. 246 / 07.04.2014, among others, found that the amendment of para. (2) in art. 148 of the Constitution is unconstitutional, keeping in mind the following considerations:

„451. Judgment of 9 March 1978 of the Court of Justice of the European Communities (now the

[5] Ioan Muraru, Elena Simina Tănăsescu, *Constitutional Law and Political Institutions*, 14th ed., vol. I, C.H. Beck Publishing House, Bucharest, 2011, p. 270.

[6] Press release, December 23, 2021 - Romanian Constitutional Court (ccr.ro).

European Union) in Case C-106/77 stated that *"under the principle of the rule of Community law, the provisions of the treaty and the directly applicable documents of the institutions have as effect, in their relations with the national law of the Member States, by the mere fact of its coming into force, the ipso jure inapplicability of any provision contrary to existing national law, but also - because that provision is an integral part, with rank higher to the internal norms, from the legal order applicable in the territory of each Member State - to prevent the valid adoption of new national laws, in so far as they are incompatible with Community rules."*

452. The Court notes that the current text of the Constitution provides that the provisions of the Treaties establishing the European Union, as well as other binding Community regulations, take precedence over the contrary provisions of national law, in accordance with the provisions of the Act of Accession. In connection with the notion of "internal laws", by **Decision no. 148 of April 16th, 2003 on the constitutionality of the legislative proposal to revise the Romanian Constitution, the Court made a distinction between the Constitution and the other laws**. Also, the same distinction is made at the level of the Fundamental Law by art. 20 para. (2) the final sentence which provides for the application of international regulations as a matter of priority, unless the *Constitution or domestic laws* contain more favorable provisions.

453. The Court notes that the constitutional provisions do not have a declaratory character, but constitute mandatory constitutional norms, without which the existence of the rule of law cannot be conceived, provided by art. 1 para. (3) of the Constitution. At the same time, the Basic Law represents the framework and the extent to which the legislator and the other authorities can act; thus, the interpretations that can be brought to the legal norm must take into account this constitutional requirement contained in art. 1 para. (5) of the Fundamental Law, according to which in Romania the observance of the Constitution and its supremacy is mandatory.

454. Also, by Decision no. 668 of May 18th, 2011, published in the Official Gazette of Romania, Part I no. 487 of July 8th, 2011, established that the obligatory acts of the European Union are norms interposed within the constitutionality control.

455. Establishing that the law of the European Union applies without any circumstance in the national legal order, not distinguishing between the Constitution and other domestic laws, is equivalent to placing the Basic Law in the background of the legal order of the European Union.

456. From this perspective, the Court notes that the Basic Law of the State - the Constitution is the expression of the will of the people, which means that it cannot lose its binding force only by the existence of a discrepancy between its provisions and those of Europe. Also, accession to the European Union cannot affect the supremacy of the Constitution over the entire legal system (see also the judgment of May 11th, 2005, K 18/04, delivered by the Constitutional Court of the Republic of Poland).

457. At the same time, the Court finds that the courts of constitutional contention *"have jurisdiction by way of jurisdiction, but have full jurisdiction over the powers which have been established. The CCR is subject only to the Constitution and its organic law of organization and functioning no. 47/1992, its competence being established by article 146 of the Fundamental Law and by Law no. 47/1992"* (see, in this sense, the Decision no. 302 of March 27th, 2012, published in the Official Gazette of Romania, Part I no. 361 of May 29th, 2012).

458. Therefore, to accept the new wording proposed in art. 148 para. (2) would be tantamount to creating the necessary preconditions for limiting the jurisdiction of the Constitutional Court, in the sense that only normative acts that are adopted in areas not subject to the transfer of powers to the European Union could still be subject to constitutional review, while normative acts regulates, from a material point of view, in the shared areas would be subject exclusively to the legal order of the European Union, being excluded the constitutionality control over them. Or, regardless of the field in which the normative acts regulate, they must respect the supremacy of the Romanian Constitution, according to art. 1 para. (5).

459. Thus, the Court notes that such an amendment would constitute a restriction on the right of citizens to apply to constitutional justice for the defense of constitutional values, rules and principles, *i.e.* the abolition of a guarantee of those values, rules and principles, which they also include the sphere of fundamental rights and freedoms."

By Decision no. 148/16.04.2003 on the constitutionality of the legislative proposal to revise the Romanian Constitution, published in the Official Gazette of Romania, Part I no. 317/12.05.2003, the Constitutional Court noted the following:

"With regard to the issue of the transfer of some Romanian attributions to the community institutions, the Constitutional Court holds that the text of art. 145^1 envisages the sovereign exercise of the will of the Romanian state to adhere to the constitutive treaties of the European Union by a law, the adoption of which is conditioned by a qualified two-thirds majority. The act of accession has a twofold consequence, namely, on the one hand, the transfer of tasks to the Community institutions and, on the other hand, the joint exercise, with the other Member States, of the powers provided

for in those Treaties. As regards the first consequence, the Court notes that, by the mere membership of a State in an international treaty, it diminishes its powers within the limits set by international law. From this first point of view, Romania's membership of the United Nations, the Council of Europe, the Organization of European Union States, the Central European Free Trade Agreement, etc. or Romania's quality as a party to the Convention for the Protection of Human Rights and Fundamental Freedoms or to other international treaties has the significance of a restriction of the powers of the state authority, a relativization of national sovereignty. But this consequence must be correlated with the second consequence, that of Romania's integration into the European Union. In this regard, the Constitutional Court notes that the act of integration also has the significance of sharing the exercise of these sovereign attributes with the other component states of the international body. **Thus, The Constitutional Court finds that through the acts of transfer of some attributions to the structures of the European Union, they do not acquire, by endowment, a "super-competence", a sovereignty of their own.** In reality, the Member States of the European Union have decided to jointly exercise certain powers which have traditionally been in the realm of national sovereignty. It is obvious that in the current era of globalization of human issues, interstate developments and interindividual communication on a global scale, the concept of national sovereignty can no longer be conceived as absolute and indivisible, without the risk of unacceptable isolation. In view of all this, the Court notes that, as Romania's desire to join the Euro-Atlantic structures is legitimized by the country's interest, sovereignty cannot be opposed to the goal of accession.

However, the Constitutional Court is to examine whether the provisions on accession to Euro-Atlantic structures are subject to the limits of the review, in relation to the concepts of sovereignty and independence. With regard to the sovereignty of the state, as its peremptory feature, the Court observes that it does not fall under the incidence of art. 148 of the Constitution, which establishes the limits of the revision of the Constitution, instead the independent character of the Romanian state falls under this incidence. Independence is an intrinsic dimension of national sovereignty, even if it is independently enshrined in the Constitution. In essence, independence takes into account the external dimension of national sovereignty, giving the state full freedom of expression in international relations. In this respect, it is obvious that the accession to the Euro-Atlantic structures will be made on the basis of the independent expression of the will of the Romanian state, not being a manifestation of will imposed by an entity external to Romania. From this point of view, the Court finds that the introduction of the two new articles in the Constitution – art. 145^1 and 145^2 - does not constitute a violation of the constitutional provisions regarding the limits of the revision. On the other hand, the Court also notes that accession to the European Union, once achieved, entails a series of consequences that could not have occurred without proper regulation, of constitutional rank. The first of these consequences requires the integration into the national law of the acquis communautaire, as well as the determination of the relationship between the community normative acts and the internal law. The solution proposed by the authors of the revision initiative envisages the implementation of Community law in the national space and the establishment of the rule of priority application of Community law over the contrary provisions of domestic law, in compliance with the provisions of the Act of Accession. The consequence of accession is that the Member States of the European Union have agreed to place the acquis communautaire - the founding treaties of the European Union and the regulations derived from them - on an intermediate position between the Constitution and other laws, when it comes to binding European regulations."

Having regard to the judgment of the Court of Justice of the European Union of December 21st, 2021 in Case C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19 "The worrying issues in this judgment are that legal uncertainty may arise in any of the Member States [19] in the sense that, whatever a Constitutional Court decides on a national rule, that decision can be applied by some common law courts and not by others, as well as the fact that it violates the jurisdiction of the constitutional courts, although this is established by the fundamental law. Thus, the CJEU automatically places itself above any constitutional court of the Member States, but does not stop there, but places inclusively the common law courts above any constitutional court of the member states, giving a real hit to the democratic state of law, that it is presumed to defend."[7]

We must remember that the judgment of the Court of Justice of the European Union of December 21st, 2021, comes against the background of some differences between the CCR.[8] and the Luxembourg Court of Justice[9] on the Section for the Investigation of Crimes in Justice.

[7] https://www.juridice.ro/764579/cvm-cjue-si-ccr-de-ce-cvm-a-expirat-in-2010-si-o-analiza-a-suprematiei-si-primatului-in- the-relations-between-the-national-legal-order-and-the-legal-order-of-the-eu-part-a-ii.html.

[8] https://www.ccr.ro/wp-content/uploads/2021/06/Decizie_390_2021.pdf.

[9] https://curia.europa.eu/juris/document/document.jsf?docid=241381&text=&dir=&doclang=RO&part=1&occ=first&mode=DOC&pageIndex=0&cid=4421197.

The specialized doctrine stated the following: "First of all, the harmonization of the internal law with the European law cannot be complete, and the application of the principle of the preeminence of the European norms over the internal ones will always generate tensions and conflicts. (...) These differences have two main sources: the insufficient delimitation of the powers that have been transferred by the national states to the Community institutions from the powers that remain in the competence of the states and the existence of different arbitrators making decisions to resolve legal disputes (CJEU, Constitutional Courts and national courts). In the absence of a supreme arbitrator, in addition to the ordinary legal conflicts, *i.e.* those subject to the judgment of the various arbitrators, legal conflicts arise even between arbitrators. It is the main vulnerability of the communitarian institutional system, generating frustrations both for the sovereigns and for the Europeans: some fear due to the supposed abandon of the sovereignty, others fear due to the excesses of some arbitrary sovereignty. Secondly, precisely because there is no supreme court to arbitrate disputes between arbitrators, namely differences between the CJEU and the Constitutional Courts, as well as between the latter and national courts (Sarmiento and Weiler's proposal to set up such a court cannot be adopted in the foreseeable future), these disputes concerning the delimitation of the powers of application of European law can now be resolved only through dialogue between arbitrators."[10]

At the same time, the following ideas were retained according to which: "It all starts with the fact that the EU is neither a federation, nor a confederation, nor a simple union of states. (…) *Each state agreed to cede some of its sovereignty upon accession. However, it is difficult to see how much the treaties require them to give in. States have not lost their sovereignty, but they do not have full sovereignty either. (...) The CJEU is trying to attract more powers than the treaties give it, which is upset by the Constitutional Courts or they do not accept what is legitimate for the CJEU to exercise. The only way to resolve differences is through dialogue. And this dialogue has great syncope. (...)* There are also excesses on the part of the CJEU, which should be wiser when adopting radical solutions, because they generate reactions not only from the CCR. There have been reactions in the Czech Republic and in Germany, not to mention Poland and Hungary. It is a question of a certain national identity protected by the founding treaty. National identity can have some values and principles that, if violated, the reactions are also violent. Sovereign accents are the result of decisions in which the arguments were too radical. The key is a balance between sovereignty and EU authority. This is a difficult time for the EU."[11]

Also, "although its role is to determine whether a law respects the Constitution, for several years the CCR has exceeded its traditional competence. Thus, through several decisions he intervened directly in the act of trial, establishing with binding effect for the Romanian judges what composition to have certain panels of judges, how to apply the law in certain cases, what evidence to remove or be preserved, what acts should be considered illegal. However, these aspects are not related to the Constitution. Moreover, according to the fundamental act of the country, justice is administered through the courts, and the CCR is not part of the court system. Now, the CJEU judgment analyzed above establishes the relationship between the CCR and the courts: ordinary judges are the first European judges and they must be excluded from any form of interference,[12] represents another opinion compared to the Judgment of the Court of Justice of the European Union of December 21st, 2021.

On the legal nature of the European Union, "we believe that the European Union, since it was not founded by a nation or a people, could not be assimilated to a nation-state or a constitutional structure. It is an international *sui generis* organization, created on the basis of treaties concluded between sovereign states, which have decided to exercise joint powers for an indefinite period of time."[13]

Among the pending cases pending before the Court of Justice of the European Union, we mention:

c. **Case C-216/21** by which the Ploiești Court of Appeal addressed the following preliminary questions to the Court, namely:

1. The Cooperation and Verification Mechanism (CVM) established by European Commission Decision 2006/928 / EC of December 13th, 2006 shall be deemed to be an act adopted by an institution of the European Union within the meaning of art. 267 TFEU, which may be interpreted as The Court of Justice of the European Union? Content, character and extent [OR. 58] of the European Union Decision established by European Commission Decision 2006/928/EC of December 13th, 2006 are limited to the Treaty on the Accession of the Republic of Bulgaria and Romania to the European Union, signed by Romania in Luxembourg on April 25th, 2005? Are the requirements formulated in the reports prepared within the CVM binding for the Romanian State?

[10] https://dilemaveche.ro/sectiune/tilc-show/articol/dialogul-necesar-dintre-ccr-si-cjue.
[11] https://spotmedia.ro/stiri/politica/valeriu-stoica-interviu-citu-pnl-video.
[12] https://vedemjust.ro/cjue-21-dec-2021/.
[13] Laura-Cristiana Spătaru-Negură, *European Union Law - a new legal typology*, Hamangiu Publishing House, Bucharest, 2016, pp. 80-81.

2. The principle of the independence of judges, enshrined in the second paragraph of art. 19 (para. 1) of the Treaty on European Union (TEU) and art. 47 of the Charter of Fundamental Rights, as well as in the case law of the Court of Justice of the European Union, reference to art. 2 TEU, in the sense that it also concerns the procedures for the promotion of judges to office?

3. This principle is violated by the establishment of a system of promotion to the higher court based exclusively on a summary assessment of the activity and conduct of a commission composed of the chairman of the court of judicial review and its judges, which performs separately the periodic assessment. of judges, both the evaluation of judges for promotion and the judicial control of judgments handed down by them?

4. The principle of the independence of judges, as enshrined in the second paragraph of art. 19 (1) of the Treaty on European Union (TEU) and art. 47 of the Charter of Fundamental Rights, as well as in the case law of the Court of Justice of the European Union, art. 2 TEU, where the Romanian state disregards the predictability and legal certainty of European Union law, accepting and complying with the CVM and its reports for more than 10 years, and then unexpectedly changing the procedure for promoting judges to positions of against CVM recommendations?"[14] and

d. **Case C-430/21**, by which the Craiova Court of Appeal referred the following questions for a preliminary ruling, namely:

1. "The principle of the independence of judges, enshrined in the second subparagraph of art. 19 (1) TEU in relation to art. 2 TEU and art. 47 of the Charter of Fundamental Rights of the European Union, precludes a national provision such as that of art. 148 (2) of the Romanian Constitution, as interpreted by the Constitutional Court, by Decision no. 390/2021, according to which the national courts do not have the power to analyze the conformity of a national provision, found to be constitutional by a decision of the Constitutional Court, with the legal provisions of the European Union?

2. The principle of the independence of judges, enshrined in the second subparagraph of art. 19 (1) TEU in relation to art. 2 TEU and art. 47 of the Charter of Fundamental Rights of the European Union, precludes a national provision such as art. 99 (s) of the Law no. 303/2004 on the status of judges and prosecutors, which allows the initiation of disciplinary proceedings and disciplinary sanctions against judges for non-compliance with a decision of the Constitutional Court, provided that the judge is called upon to establish the priority of application of European Union law. decisions of the Constitutional Court, a national provision which deprives the judge of the possibility of applying the judgment of the Court of Justice of the European Union which he considers a priority?

3. The principle of the independence of judges, enshrined in the second subparagraph of art. 19 (1) TEU with reference to art. 2 TEU and art. 47 of the Charter of Fundamental Rights of the European Union, precludes national judicial practices prohibiting the judge from disciplinary proceedings, to apply the jurisprudence of the Court of Justice of the European Union in criminal proceedings such as the appeal regarding the reasonable duration of the criminal trial, regulated by art. 488^1 of the Romanian Code of Criminal Procedure? "

In Case C-430/21, the Advocate General asks the Court of Justice of the European Union to answer the questions referred as follows: "The principle of the independence of judges, enshrined in the second subparagraph of art. 19 (1) TEU with reference to art. 2 TEU and with the art. 47 of the Charter, precludes a provision or practice of national law according to which the national courts of a Member State have no jurisdiction to examine the conformity with European Union law of a provision of national law which has been found to be constitutional by a decision of the Constitutional Court of that Member State. A fortiori, the same principle precludes the initiation of disciplinary proceedings and the imposition of disciplinary sanctions on a judge as a result of such an examination."[15]

It should be noted that, to date, the Luxembourg Court of Justice has not ruled on Cases C-216/21 and C-430/21, and the Opinion of the Advocate General is not binding on the Court, in complete independence, a legal solution in the assigned case.

As noted in the specialized doctrine, Romania is not the only Member State that encounters difficulties in its relations with the European Union, more precisely with the Luxembourg Court of Justice regarding the independence of the judiciary, an eloquent example in this respect, but not singular, being the case in Poland.

As regards Poland, the Court of Justice of the European Union has recently been referred either by way of the infringement procedure or by reference for a preliminary ruling on the interpretation and application of European Union law on justice in Poland, independence judges and the rule of law.

[14] https://curia.europa.eu/juris/document/document.jsf?text=&docid=244581&pageIndex=0&doclang=RO&mode=req&dir=&occ=first&part=1&cid=4297347.

[15] https://curia.europa.eu/juris/document/document.jsf?text=&docid=252467&pageIndex=0&doclang=RO&mode=req&dir=&occ=first&part=1&cid=4275317.

Thus, I briefly state cases C-619/18[16], **C - 192/18**[17], in Joined Cases C-585/18, C-624/18 and 625/18 in Joined Cases **C558 / 18 and C-563/18**[18], **C-824/19**[19]**C-791/19**[20]**, C-487/19**[21]**, etc.**

In those cases, the Court of Justice of the European Union has ruled on the rule of law, effective judicial protection in areas governed by European Union law, the principles of immovability and independence of judges, the statute of the National Council of Magistracy, the composition of the Supreme Court of Poland, the disciplinary regime applicable to judges, the deliverance of some decisions by the Constitutional Court of Poland repealing the provision on which the jurisdiction of the referring court is based, the power to leave unenforced national provisions that do not comply with European Union law and so on.

In conclusion, against de decisions delivered by the Court of Justice of the European Union, there were issued opinions according to which the Luxembourg court exceeds its jurisdiction, thereby ruling that a national court of common law is superior to the Constitutional Court, moreover it could leave a decision of the Constitutional Court unenforceable if it disregards European Union law, which gives rise to a strong phenomenon of uncertainty about legal certainty and security.

At the same time, the decisions of the Luxembourg Court according to which the national courts may not give effect to some judgments handed down by the Constitutional Court, although the Romanian Constitution expressly provides that they are generally binding, could give rise to abuses, favors or discrimination unjustified in the administration of justice, which would raise more suspicions about the impartiality and independence of national judges.

In this sense, we understand the view according to which, "we cannot exclude that in one case a judge should consider a decision of the Romanian Constitutional Court compatible with Union law, and another judge should consider the opposite: a disagreement of the court against of a decision of the Constitutional Court based on its possible incompatibility with EU law must be duly substantiated and, in particular, if an issue is addressed for the first time, may lead to a referral to the CJEU preliminary ruling."[22]

Last but not least, we refer to Case C-493/17[23] in which, following the judgment of the Court of Justice in Luxembourg, the German Federal Constitutional Court declared it to be *ultra vires*, which is why the judgment will not be applied in Germany.[24]

We believe that the solution adopted by Germany to the judgment of the Court of Justice of the European Union is not a preferable one, but on the other hand, the national constitutional identity of the Member States of the European Union cannot be undermined, which is why cooperation is the solution.

In this sense, the specialized doctrine noted that, "the original conception regarding the relationship between the national courts and the CJEU does not reflect the reality. The report remains one of cooperation, but many developments have transformed it from a *horizontal* and *bilateral* report to a *vertical* and *multilateral* report. These developments include: the declaration of the supremacy of European Union law; developing the doctrine of precedent; *acte clair* doctrine; delegation of sectoral responsibility to national courts; the exercise by the CJEU of control over the cases it will hear; blurring the line between interpretation and application. These changes highlight the development of a judicial hierarchy of the European Union, in which the CJEU is at the top, in the position of the Constitutional Court of the Union of last degree, assisted by the national courts, applying and interpreting the law of the Union.[25]

3. Conclusions

In view of the above, in this paper we have tried to analyze the independence of the judge - between

[16] https://curia.europa.eu/juris/document/document.jsf?text=&docid=215341&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4911000.

[17] https://curia.europa.eu/juris/document/document.jsf?text=&docid=219725&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=5404843#Footnote*.

[18] https://curia.europa.eu/juris/document/document.jsf?text=&docid=224729&pageIndex=0&doclang=RO&mode=req&dir=&occ=first&part=1&cid=5855516.

[19] https://curia.europa.eu/juris/document/document.jsf?text=&docid=238382&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=9472300.

[20] https://curia.europa.eu/juris/document/document.jsf?text=&docid=244185&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=9469224.

[21] https://curia.europa.eu/juris/document/document.jsf?text=&docid=247049&pageIndex=0&doclang=RO&mode=lst&dir=&occ=first&part=1&cid=9471282.

[22] https://www.juridice.ro/763772/note-la-hotararea-cjue-din-21-decembrie-2021-pronuntata-in-cauzele-conexate-euro-box-promotion-si-altii-solutionarea-litigiilor- de-contencios-administrativ-si-fiscal-entre-obligativitatea-deciz.html.

[23] https://curia.europa.eu/juris/document/document.jsf?text=&docid=208741&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=9947756.

[24] https://ceere.eu/pjiel/wp-content/uploads/2020/06/pjiel-2020-1-editorial.pdf

[25] Paul Craig, Grainne de Burca, *European Union Law. Comments, jurisprudence and doctrine*, 6th ed., translation: Georgiana Mihu and Laura-Corina Iordache, Scientific control and translation revision: Beatrice Andresan-Grigoriu, Translation revision: Laura-Corina Iordache and Ruxandra Antal, Hamangiu Publishing House, Bucharest, 2017, p. 569.

European Union law and national law, seeing theoretical and practical issues, as well as the opinions expressed in the doctrine on the situation between the solutions pronounced by the Court of Justice of the European Union and the CCR.

Cooperation between national and European courts is essential and yet difficult to achieve, but in this context the Court of Justice of the European Union must not confer new powers, it must not give rise to a state of uncertainty as to how application and interpretation of law (both national and European) must be without prejudice to the national constitutional identity and sovereignty of the Member States, as we also consider that the solution of not giving effect to provisions laid down by the European is to follow.

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