

The Supremacy of the EU Law: “To What Extent is There a Contrast between How the Supremacy Introduction of EU Law has been Viewed from the Perspective of the Court of Justice of the European Union and from the Perspective of National Courts?”

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Abstract The uniformity of the European Union (EU) legal structure is dependent on the doctrine of supremacy, hence the idea of the supremacy of EU law is essential. The concept was developed by the European Court of Justice (ECJ), previously referred to as the Court of Justice of the European Union (CJEU). Despite a direct provision for the doctrine in the Treaty, the ECJ has constantly held that it is implied in the Treaty. Moreover, the ECJ states the doctrine of supremacy is necessary as it forms the foundation for the development of a novel legal order and subsequently, this means that it should take precedence over any national laws. In line with the CJEU's viewpoint, national courts should do away with laws that conflict with EU norms in any given case. However ultimately, it is the member states that determine whether the supremacy of EU law is acceptable and applicable within their borders. As such, there have been challenges with the overall integration process of the doctrine of supremacy of the EU law. One such instance was highlighted by the German Constitutional Court (the Bundesverfassungsgericht) wherein the supremacy issue was considered unfinished thus leaving a lot of ambiguity and controversy against its unconditional acceptance. The European Union, like other traditional international organisations, was created by treaties. However, access by member states requires the delegation of specific competencies associated with national sovereignty to a higher international organization and its institutions. The CJEU has been crucial in defining the legal nature of the EU and its judgments have transformed the status of the organization and impacted the entire EU integration process. For instance, the *Van Gend en Loos* judgment both defined EU law as community law, wherein member states had limited rights and subjects of the law included member citizens, as well as stating that the EU is not merely an agreement between contracting parties.

Keywords EU law, European Court of Justice (ECJ), CJEU, *supremacy*

1. Introduction

The supremacy of the EU law is a legal principle that holds that the law is primary to all the other national laws of the member states of the EU. This legal principle is derived from a CJEU interpretation, whereby EU law always needs to be given priority over national laws (Lindeboom, 2018). This priority also includes the constitution of the member nations of the EU. However, the precedence as required by the CJEU has not been unconditionally accepted by the national courts as they believe that the doctrine is likely to

undermine their constitutional guarantees. This paper aims to discuss the contrast that exists regarding how the doctrine of supremacy has been viewed by the CJEU and the national courts.

2. Supremacy of EU Law

The CJEU helps in determining the legal structure of the EU. The judgments of this court have brought about changes to the nature of the organization. The aspects of the community of law under the *Van Gend en Loos judgment* implied that the law had a role to play in European Unification (Apostolovska-Stepanoska & Ognjanoska, 2020). To facilitate an integration process, the CJEU introduced the doctrine of supremacy of community law, which was not previously formal under the European

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Community Treaty.

This was based on the fact that the goal of developing a uniform common market between the member states could be affected if the national laws could be given priority over the EU laws. According to CJEU, the supremacy of the European Union law was crucial as it could enhance the uniform application of the law and help in attaining efficacy of the law among its members. Supremacy implies that the national courts were required to avoid any national norms that could conflict in instances where the European Union rule is applicable in a particular case. However, there have been challenges in embracing the doctrine. This is due to the bi-dimensional nature of the doctrine. Also, the doctrine continues to be marked with a lot of controversies since the CJEU requires that it becomes unconditionally accepted (Baranski, 2020). While the CJEU holds that supremacy is important in enhancing uniformity among the member states, the national courts are concerned that there are instances where the European Union law is likely to undermine the domestic constitutional guarantees to the national courts.

3. The Doctrine of Supremacy under CJEU

At the time the doctrine of supremacy was introduced, it was not formally under the European Community Treaty (ECT). However, the CJEU stipulated that it was implied in the treaty based on the concept of how the new legal order needed to be developed. The doctrine above doctrine was addressed in *Costa v ENEL (1964)* whereby there was a clash between the EU law and the domestic laws (Mihaylov, 2017). The CJEU held that in instances where such conflicts could be experienced, the EU law is considered to be supreme. This is based on the fact that there was nothing that could undermine the community nature of EU law. In this case, the doctrine was addressed and CJEU came up with a legal argument that could justify the court's position. The court developed the concept of a new legal order, which was independent and developed voluntarily by the member states while their rights were limited permanently (Perju, 2020). This statement was justified by referring to Article 247 TFEU, which holds that the member states could be bound by the law, which confirms the supremacy of the community law.

Similarly, another judgment regarding the supremacy of the European Union can be seen in the *Internationale Handelsgesellschaft (1970)*. Here, the CJEU stipulated that in as much as EU law is a secondary law, it was considered to be more significant when compared to the Germany Constitution. The ruling of the CJEU, in this case, was based on the argument that the protection of fundamental rights was also a major concern for the treaty. Also, it was based on the fact the legality of a community regulation could not be judged about a national law as it could have impacts on the uniform nature of law.

The two cases above clearly show that EU law always

prevails over the national laws of any EU member state (Lindeboom, 2018). As seen in the *Costa* case, the CJEU court provides a formula that guides the application of the supremacy doctrine where it stipulates that the domestic courts need to apply the community law to protect rights conferred to individuals. This implies that it is a requirement not to apply any domestic rules which are not compatible with European law.

4. Reception of the Doctrine by National Courts

As seen above, the CJEU courts consider the doctrine important as it enhances uniformity in the application of the law, helps in ensuring that treaty rights are accessible by EU citizens and helps in ensuring that the member states do not pursue self-interest in legislation. On the contrary, the domestic courts view the supremacy of the EU law differently. The courts of the EU member nations are important in ensuring the law is applied effectively. Also, the attainment of legal integration by CJEU has been made possible due to the inclusion of the courts in the ruling procedures as seen under Art 27 TFEU (Berski, 2016). However, under the European Union doctrine of supremacy, the CJEU has hierarchical authority in matters regarding EU law. The national courts have not always fully agreed to the principles of the doctrine whereby European law is always given priority over national laws. Since the inception of the doctrine of supremacy, the national courts have been concerned with the principles of supremacy. As seen in the *Van Gend en Loos (1963)* case, the national courts were concerned with the concept of the new legal order, which implied that under the supremacy doctrine EU law could be binding to all member states.

Further, the courts have been concerned with the principles of supremacy as seen in the *Costa* case whereby it is held that they need to avoid a law or regulation in cases whereby it infringes the use of EU law in a particular case (Phelan, 2011). Further, the other concern of the national courts with the supremacy doctrine is in cases whereby the doctrine could undermine the domestic constitutional guarantees. As seen in the *Internationale Handelsgesellschaft case*, due to the application of the doctrine, it could be considered that the domestic constitutional guarantees were undermined as the CJEU ruled that the EU law could be considered to be more significant when compared to the German constitution. Due to the above, the national courts whose main role is to protect constitutional freedoms have had concerns that due to the freedoms, their constitutional mandates are as well challenged by the European Union law (Rosas, 2022).

Also, it can be argued that in as much as the doctrine is considered to be unconditional, several member states have expressed reservations about the unconditional acceptance of the supreme law. Most nations have based their acceptance of the law on their domestic constitutional requirements and

not its supreme nature (Smith, 2018). This is evident in *French Cour de Cassation in Café Jacques Vabres (1975)*, whereby the primacy that was given to the EU law was not because of its supreme nature but instead due to the authority of the domestic legal requirement. It was stipulated that the Art 55 of the French constitution itself granted priority to an international act in cases where there was a conflict with internal law.

5. Conclusions

The development of a common legal order that takes precedence among EU member states has been essentially based on the doctrine of supremacy. Based on the CJEU perspective, the sovereignty of the European legal order could be attained through law supremacy. However, even though the doctrine has been accepted by the CJEU courts, the domestic courts of the member states have not unconditionally accepted the doctrine since it is bidimensional. It is still surrounded by controversies since the CJEU requires unconditional acceptance implying that the sovereignty of the member states is affected.

Legislation

Treaty on the Functioning of the European Union.

Case Laws

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