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THE IMPACT OF THE EU COURT OF JUSTICE'S JURISDICTIONAL REASONING ON THE LAWMAKING PROCESS IN THE MEMBER STATES AND IN THE NEAR VICINITY

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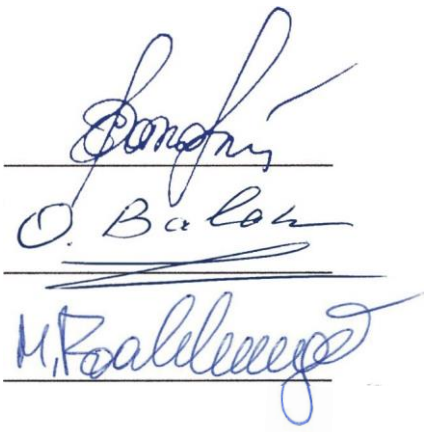

CONTENT:

1. CONCEPTUAL RESEARCH MILESTONES

Topicality and importance of the topic. Since the founding of the European Union (EU), it has gained more and more geopolitical influence through its economic development as well as its territorial expansion, but its expansion is due both to the euphoria of a unified Europe and to the desire of the Eastern European states to be part of the European economic success.

The Treaties of the European Union, primary law, and the case law of the Court of Justice of the European Union (CJEU) have formed an ever-closer Union. However, the Union has not yet reached the pinnacle of its institutional evolution to become the "United States of Europe" as it intended to implement the Treaty of Rome of October 29, 2004, by adopting a European Constitution (France and the Netherlands rejected ratification of the given Treaty by national referenda on May 29, 2005 and June 1, 2005 respectively).

However, the Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU) are the cornerstones of the European Union. They define both the areas in which the EU is entitled to act and the powers of its institutions. Thus, the EU can only act if the member states have authorized it to do so through the named treaties. This is defined by the *principle of conferral of competences*, stating that the European Union only has competences conferred by the EU Treaties. Accordingly, by the nature of the European Treaties it is understood that the Member States have not surrendered their sovereignty entirely. However, they have transferred certain national sovereignties.

To the Union has thus been transferred legislative competence in the *politic* areas set out in the Treaties (see Articles 2, 3, 4 and 6 TFEU).

The partial transfer of sovereignty already contains an immanent conflict of competences. This can be explained - but is also aggravated - by the fact that, under the TEU and TFEU, the EU has set itself objectives that can be achieved alternatively through areas of law such as civil or administrative law. Thus, the rules of competence do not cover areas of law, but areas of *politics* (e.g. it would be possible to improve consumer protection against dangerous products both through an administrative licensing regulation and through a tough preventive civil liability of the producer. From the perspective of the German Constitution in particular, as well as that of other Member States, measures of the first type would not be covered by the federal civil law competence. It should be reiterated that, in fact, the German Constitution provides for the distribution of competences between the Federation and its States largely according to law areas).

For its part, the Court of Justice of the European Union is responsible for protecting the law of the European Union (see Art. 19 TEU and Art. 251 and furth. TFEU). It rules on the actions of Member States, institutions and natural or legal persons.

Thus, the EU Treaties have established a European Union law which is mainly part of the national law of each Member State.

So the legal order of the European Union is emphasized in its independence, but at the same time it is not conceived as a legal order separate from that of the Member States, but as a global legal order in the sense of a legal community which is incorporated into and complemented by the legal orders of the Member States.

This highlights the potential for conflicts arising from the exercise of competence on both sides: both of the EU institutions and of the Member States. The CJEU, as guardian of the Treaties on their interpretation and application, is positioned at the epicenter of the conflict of competences, which is in constant need of clarification.

This dissertation consists of a survey of the case law of the CJEU and a discussion of judgments of wide-ranging importance, presenting their impact on European states. In this context, both the competence of the CJEU and, from the point of view of the specialized literature, but also of other national courts, their overreach are discussed. The *ultra vires* acts of the Court have also been closely analyzed.

The complexity of the study consists in particular in researching the extensive case law of the CJEU, identifying critical judgments (in terms of the literature) and discussing the jurisdictional reasoning. Thus, several examples from different states, both EU Member States and from the immediate vicinity, are brought in.

Research aims and objectives. The aim of the research is to comprehensively analyze the jurisprudence of the CJEU and to determine its impact on EU Member States and its immediate vicinity. Thus, the aim is not only to analyze in detail a number of CJEU judgments, but also the reasoning behind them. In order to achieve this goal, it is necessary to start from the origins of the European Union and to perceive the very idea of the founders of this extraordinary entity, not only from a legal point of view, but also from a political and social point of view.

To achieve the objective of the dissertation the following **research objectives** are highlighted:

1. analysis of jurisdictional reasoning in the context of doctrinal reflections;
2. analyzing primary and secondary law and their relationship to national legal systems;

3. analysis of the competences of the European Union, the relationship of constitutional courts and the statute in relation to European law and the Court of Justice of the European Union;

4. analysis of the principles codified in the Fundamental Treaties of the European Union and their incidence in the case law of the Court of Justice of the European Union;

5. analysis of *ultra vires* acts and their inherent conflicts between the CJEU and national courts;

6. analyzing the relationship between the CJEU and the work of the Court of Justice of the European Free Trade Association;

7. analyzing the impact of CJEU case law on the lawmaking process in EU Member States before and after EU accession;

8. analyzing the influence of the jurisprudence of the CJEU on the process of normative creation in the Republic of Moldova.

Research hypothesis. The research in the present dissertation is based on the hypothesis that the identification of the jurisdictional reasoning of the CJEU will allow to understand the nature and effects of the jurisdictional acts adopted by the bodies of the European Union judicial system and thus will contribute to increasing the level of preparation of the academic environment and the authors of the legal acts in the EU Member States and the states in its immediate vicinity in order to harmoniously transpose the European Union acquis into their legal order, including that of the Republic of Moldova.

The decisive influence of the Court in Luxembourg, which, moreover, cannot be measured only on a regional scale, is in principle a positive factor, since the primary purpose of the European Union's fundamental treaties is to secure the peace in Europe. If the Court applies and interprets the Fundamental Treaties, there is no obvious risk that the daily lives of European citizens and those in the immediate vicinity would be adversely affected. The problem could arise, however, when the CJEU assumes powers that the fundamental Treaties cannot have. In such circumstances, the problem of EU Member States defending themselves by invoking an *ultra vires* act remains. The solution for the states in the immediate vicinity is simpler. They could be content to refrain from taking over that case law. However, if only part of the case law of the Court were to be taken over, the reasoning would also only partly be reflected in the national legal system. Only half of the EU principles of the Fundamental Treaties could not contribute to the well-being of the society. Thus, as the EU is still in an unfinished formative process, the reasoning of the CJEU's case law must either be accepted or rejected in its entirety.

Scientific novelty of the results. The jurisprudence of the CJEU influences the rule-making process in the states in the EU's immediate vicinity, even if the EU and those states have only an ordinary diplomatic relationship. The jurisdictional rationale can be found in the states concerned. This is obviously also true for the Republic of Moldova. Although with some difficulties, the incidence of the jurisdictional reasoning of the CJEU on the process of normative creation is nevertheless a positive, necessary and a current legal reality. Through this scientific endeavor, we have identified and analyzed the jurisdictional reasoning underlying the decisions of the CJEU. Thus, the *important scientific problem solved* consists in identifying the jurisdictional reasoning and highlighting the critical areas in harmonizing national legislation with that of the EU.

Summary of the research methodology and justification of the chosen research methods. The synthesis of the research methodology consists in researching the theories present in the specialized literature and developing a thesis by applying the methods and principles of interpretation in law science. Thus we show in the present study that both the analysis of CJEU case law and its impact on the EU Member States and those in the immediate vicinity is of crucial importance for lawyers specializing in public international law, civil international law, European Union law, as well as for representatives of other professions such as sociologists, philosophers, politicians, doctors, etc. In this vein, we have resorted to the fundamental legal methods for theoretical and practical procedures of analyzing the case law and the legislative acts concerned.

In addition, we investigated decisive and correlated events. Thus a) the *grammatical method*, b) the *systematic method*, c) *the historical method*, d) *the teleological method* and e) *the logical method* were applied. It should be noted that the methods of interpretation were applied not individually, but cumulatively through a mutual correlation.

Approval of research results. Research results, conclusions and recommendations finalized in the course of the study have been presented at a considerable volume in the texts of scientific articles in specialized journals, as well as discussed and evaluated in national and international conferences. In particular, the research results have been published in the Journal of the National Institute of Justice and the Journal of Legal University Studies.

2. THESIS CONTENT

Chapter 1 entitled "*Doctrinal and normative approaches to the impact of the jurisdictional reasoning of the Court of Justice of the EU on the process of lawmaking in the Member States and the near vicinity*" includes two subchapters of content and reveals the analysis of the doctrinal framework in the field of the doctoral thesis. In this context, we analyzed both the jurisdictional reasoning in the context of the doctrinal reflections and the normative context in the field of the impact of EU acts on the national legal order of the Member States and the Republic of Moldova.

We proposed a perception of jurisdictional reasoning, which helped us to obtain a clearer analysis of the case law of the Court of Justice of the European Union. First of all, however, we presented the definitions of different authors, who demonstrated the complexity of the factors underlying enlightened reasoning.

Thus, it has been shown that different authors approach jurisdictional reasoning through a different prism of ideas. Some of them resort to mathematical formulas to present the desired pragmatism in jurisprudence. Others resort to complex ideas, combining philosophical views and those derived from political debates. Each author therefore understands jurisdictional reasoning in terms of certain factors that influence it. The given factors can be both abstract and concrete, but all of them springing from society, although the multitude of factors present in their research seem to divide the perception of reasoning itself. We have found that factors determined by long and complex chains of argumentation are not mutually exclusive but complete each other. Thus, we have presented a more optimistic definition, while adding to the complexity already present at the core of the perception of jurisdictional reasoning. Essentially, we have emphasized that jurisdictional reasoning must be perceived in a multidimensional light with an accumulation of values and vast influences. It, therefore, is shaped both by the values of society in the aggregate and by the values perceived by the magistrates of the different courts themselves. The latter, however, can be understood as the transposition of societal values through individual and subjective perception.

Because of the Union and the multitude of perceptions found in each Member State, the Court of Justice of the European Union is respectively obliged to apply its jurisdictional reasoning in the light of the combination of factors influencing it. In each EU Member State there is still a difference in perception and legal knowledge in relation to its neighbors. Being appointed by each Member State, the judges of the CJEU form a plurality of legal sources

through the presence of each judge. The judgments of the CJEU are based on an accumulation of views reflected in the decisions of the judges.

Based on a multitude of visions, it is obvious that in some areas they coincide, and in others they are opposed or even have, in essence, a different perception not only because of the different language underlying the perception of different reasoning, but also because of the different evolution in a different society.

We found that, for a more effective perception of the jurisdictional reasoning, we need to take into account particularly the social, political and philosophical influence emanating from the Member States of the European Union, so that the jurisdictional reasoning of the Luxembourg magistrates can be more clearly perceived.

Consequently, we analyzed the normative context of the incidence of EU acts in the national legal order. We have focused on the two branches most strongly influenced in this respect, namely administrative law, and financial market regulation.

By their very nature, words, particularly those in a law, must be subject to a predictable interpretation. Because of the subjective, and thus individual, perception of each person, judgments need to be cautious about the given fact. For this reason, the task of adapting *the verba legis* to the specific facts of the case before the court is the responsibility of the lawyers.

For this reason, it is not surprising that every court in Europe comes to be criticized, from time to time, for decisions that risk being perceived as setting arbitrary judicial standards. We have pointed out that the CJEU, in particular, has frequently become the target of criticisms that go beyond the mere evaluation of judgments and turn into institutional criticisms that undermine the authority and legitimacy of the magistrates and, along with theirs, the authority and legitimacy of the European Union *per se*.

Article 291 (1) TFEU provides that Member States are obliged to take all necessary steps - based on national law - to implement binding EU acts. The implementation of EU law is conditional on the application of national law, which is subject to a selective obligation of adaptation based on the principle of effectiveness and equivalence.

Member States thus ideally focus on the requirements of European Union law according to their national dogmatic and socio-cultural circumstances, which causes Member States - even with basic dogmatic similarities or historical experiences - to often develop divergent implementations. Obviously, the implementation of EU law requires the application and instrumentalization of national administrative law. The Member States have the fundamental competence, and even the task, to organize themselves everything necessary for the implementation of European law and, correspondingly, of the indispensable procedural law. It is

only natural that, in all these steps, the Member States are bound by the principle of effectiveness and equivalence. Member States are therefore not able to act arbitrarily, but, on the contrary, are obliged to promote and cooperate in the development of European Union law.

We have found that Member States' legal systems react in a more varied and complex way to the influence of EU law than might have been expected. In some cases, Member States start early to adapt their national legal systems to the requirements imposed by EU regulations. In other cases, Member States try to impose their views on the interpretation, application and implementation of both the principles and the regulations of EU law. In such situations, obligatory arise cases which guide the development of the national law of the Member States and ensure both the cooperation and convergence of the legal systems of the Member States, in order to make the European Union more unified and more favorable for all European citizens.

Regarding the regulation of financial markets, we have looked at the multiplication of texts at different levels of law which may seem disproportionate to the benefit of regulation, but inevitably lead to a loss of systematization, coherence, linguistic clarity and legal certainty between Member States.

It is therefore obvious that the tendency of the regulations is to rely more on excessive linguistic concretization rather than to leave room for jurisdictional interpretation and concretization. Paradoxically, however, if these options are pursued, there is a need for jurisdictional interpretation and concretization anyway, because of the divergences between Member States.

In the light of what we have analyzed, we have emphasized that the Republic of Moldova can prepare for these obstacles. On 30 August 2014, the Association Agreement between the Republic of Moldova and the European Union including the European Atomic Energy Community was signed. Therefore, the state has already assumed a number of obligations in implementing certain EU directives and, thus, harmonizing national legislation with the European one.

By analyzing the regulatory context and its impact on national legal systems, we have obtained a first insight into the obstacles encountered by Member States. We have thus determined that the Republic of Moldova - after signing the Association Agreement - is also trying to pave the way for an eventual smooth integration and harmonization of EU law.[1]

[1] V. Medak, P. Vehar. „Armonizarea legislației ca element cheie pentru succesul procesului de integrare a Republicii Moldova în Uniunea Europeană". Chișinău, 2022, pag. 109 ș.u.

The research made it possible to analyze the impact of European normative acts in national legal systems, and the subsequent approach helped us to determine the legal and jurisdictional reasoning.

Chapter 2 entitled "*The Court of Justice of the European Union and ultra vires acts*" includes three subchapters of content and reveals the analysis of the competences and presence of the CJEU in the European legal system.

The Luxembourg Court is responsible for interpreting and applying the Fundamental Treaties. Through its judgments, the Court seeks to harmonize national rules in the areas assigned to the EU with the law of the European Union. Thus, the perception of the European Union itself is essential.

The judgments of the CJEU can only be fully understood if we can perceive the competence, composition, and jurisdictional history of the CJEU in the foreground. For this we had to demarcate the General Court as the first instance with the Court of Justice as the second instance. The perception of the jurisdictional institution by the general public is, of course, to see the CJEU as a single court.

The existence and activity of the Court of Justice of the EU is governed by Art. 19 TEU and Art. 251 - 281 TFEU. It should be noted, in order to exclude any possible confusion, that the CJEU has a General Court present (according to Art. 256 TFEU), which has limited jurisdiction and always rules at first instance. When it comes to the Court of Justice of the European Union, it is considered as a whole within the meaning of Article 19 TEU, so together with the General Court. When it is referred to as the '*Court of Justice*', it means the second and last instance of the Court of Justice of the European Union within the meaning of Article 256 (1) and (2) TFEU. Decisions given by the General Court may be appealed to the Court of Justice but only reduced to the issues on applying the law.[2]

In concreto we have analyzed the multitude of procedural languages of the CJEU which are all the twenty-four official languages in the Member States of the European Union. In fact, the claimant has free choice as to the language of the proceedings. However, if the action is directed against a Member State or a natural or legal person of a Member State, the official language of that Member State is the language of the proceedings. The parties may request derogation from this rule by a joint application. The language of the case shall be used in particular for oral and written pleadings, including all annexes, and in the minutes and decisions of the court. Documents drawn up in another language shall be translated into the language of the

[2] Poalelungi, Mihai. „Originea Uniunii Europene și obiectivele atinse", in: Studii Juridice Universitare, 2023, pag. 126 ș.u.

case. Statements of witnesses and experts may be made in another language but must be translated into the language determined in the proceedings.

The President of the CJEU and the Presidents of the Chambers may use another official language instead of the language determined in the judgment when they conduct the hearing. The Registrar shall provide translation into the language of the case. The rapporteurs may also present their preliminary reports and session reports in another official language. The same applies to questions put by the Judges and the Advocates-General during the hearing. The Registrar shall arrange for translation into the language of the case.

The main points of the action are published in a notice in all 24 official languages in the Official Journal of the EU (OJEU). Hearings before the CJEU and the General Court are public. Exceptionally, the public may be excluded ex officio or at the request of the parties for important reasons. This decision is often taken in trademark or other intellectual property hearings. Judgments of the CJEU are also delivered in open court.

We have pointed out the distinction between the CJEU and the Court of Justice of the European Free Trade Association (EFTA Court), which is also in Luxembourg and is even located close to the CJEU. However, it has other competences, is completely independent and has no direct link with the European Union.

In practice, there have been situations when the EFTA Court was the first to state its position on a legal matter on the interpretation of the applicable law of the European Union and the EFTA Member States.[3] Similarly, there are judgments in which the EFTA Court does not follow the case law of the CJEU. An example would be the judgment on the evolution of the precautionary principle in food law.

However, we have found that this situation does not lead to a conflict but seems to lead to a partnership between the EFTA Court and the CJEU. The example of the precautionary principle in food law should be mentioned again, where the EFTA Court chose a jurisdictional line contrary to that of the CJEU. When it came to the same matter, the CJEU abandoned its previous case law and took over the EFTA Court's line of jurisdiction.[4] In practice, possible divergences are mitigated by legal dialogues between magistrates, which informally is part of the magistrates' cooperation. This is not least due to the proximity of the courts, which are geographically located 500 meters from each other.

[3] As an example to mention jud. of EFTA Court from 16.06.1995, nr. E-84 și E-9/94; jud. of EFTA Court from 17.11.1999, nr. E-1/99; jud. of EFTA Court from 05.04.2001, nr. E-3/00; jud. of EFTA Court from 23.11.2004, nr. E-1/04; Jud. of EFTA Court from 27.01.2010. nr. E-4/09.

[4] Case *Comisia Europeană vs. Danemarca*, in jud. CJEU din 23.09.2003, nr. C-192/01.

However, the decades long trend in which the EFTA Court is guided by the case law of the CJEU, which largely sets the tone and direction of the jurisdiction, is evident.

Next, we have established that the design of CJEU judgments and their reasoning can only be seen in a state's national legal system if we understand what the CJEU actually interprets. The legal sources of the European Union appear to be limited, almost always with EU primary law in the foreground. Over the years, however, the European legal system has evolved enormously. There is a multitude of legislative acts that define the secondary law of the European Union. On the other hand, the question of lawmaking is also of great importance in this case, as we cannot analyze a legislative act without understanding the lawmaking of that act. Although the process of lawmaking in the European Union is similar to that of a democratic structure - which is very well known - it has certain divergences, which makes it easier to distinguish them particularly in the light of the division of powers in the state. In order to understand the decisions of the CJEU, it is also necessary to understand EU lawmaking, as the Court analyzes all matters referred to it for consideration from this point of view in its choice of reasoning.

We present the evolution of the legal construct of the European Union entity based on three pillars. In 1992, the first pillar constituted the three existing Communities (ECSC, EEC and Euratom - supranational Communities; current Titles II, III and IV of the TEU), the second pillar was the established matter of common foreign and security politics (current Title V of the TEU) and the third pillar determined cooperation in the fields of justice and home affairs (current Title VI of the TEU).

Thus, we found that because of the fragmented construction of the EU - as only the first pillar represents supranational communities, while the other two pillars are intergovernmental cooperations - it was not recognized as a legal personality at that time. Recognition of legal personality would imply the incorporation and replacement of the three communities of the first pillar, which was at the time not achieved. The EU was, therefore, at that time still a legal body in the making and was considered to be 'established' and not yet 'completed'.

The Treaties of 1997, 2001 and 2007 modified the pillar structure, although their differentiation became more blurred. The pillar model as a formative stage of the EU was finally finalized to the extent that the intergovernmental cooperation until then became full EU politics.[5] It was given a legal personality which allowed the existence of (i) the *Treaty on European Union*,

[5] Hakenberg W. Europarecht. München, 2012. pag. 18.

as amended, (ii) the *Treaty on the Functioning of the European Union* (hereafter "TFEU") and (iii) the *Charter of Fundamental Rights of the European Union*, all of the same rank.

In such circumstances, the EU has become more than an international organization, but less than a federal state like the United States of America. The EU is a dynamic *sui generis* (from lat. "*one of a kind*") entity with a legal personality, which can legislate in certain areas of supranational law. Art. 3 (1) TEU states for example that the objectives of the European Union are to promote (i) peace, (ii) values and (iii) the well-being of its people.

Understanding the nature of the Fundamental Treaties and the depth of the rules in them, including the reasoning intended by the great founders of the EU, we have concretized the legal sources in the EU, which are only apparently simplified in nature. A deep analysis reveals that the Fundamental Treaties are riddled with legal principles that are codified on the one hand and developed by the CJEU over the years on the other. They are to be found in every judgment, no matter how broad or brief. The principles of European Union law are also to be found in everyday life through their determination and guiding European Union directives and ordinances. We also observe the process of normative creation. It is only by visualizing EU legal acts that we can also interpret the decisions of the CJEU. This is the only way to understand the localization of the evolution of the principles in question in the interpretations of the Luxembourg Court.

The differentiation between primary and secondary law proves to be an essential one, because the principles developed by the CJEU flow from the reasoning of the Fundamental Treaties. It is only through the prism of the fundamental Treaties that we can essentially understand primary and secondary law as interpreted by the CJEU. The Court exercises most of the powers offered to it by the national courts' initiation of the preliminary question procedure. The CJEU is - although apparently - a body analogous to the courts of a Member State, it diverges from the perceptions of national lawyers. It not only interprets the Fundamental Treaties in the analogous role of a constitutional court interpreting the constitution but also gives preliminary interpretations. The definition of preliminary has an entirely different rationale than the mandatory character that some people's erroneous perception would suggest it lacks. Thus, its rulings are binding without the need for another legal step to transpose them.

Another relationship explored was that between EU law, national constitutions, the ECHR and the European Court of Human Rights (ECtHR). In this way we establish the interdependence between all these legal sources and institutions. The conflicts present between all these legal sources and the institutions that are obliged to interpret and protect them are immanent to them.

Even if at times a divergence can be observed between the case law of the institutions concerned, it is clear that, in their judgments, the CJEU, the EFTA Court and the ECtHR dominate the European legal arena. Each of them in one area more than in another. The conflicts that have arisen so far have shown the willingness of the jurisdictional actors to work together. The protective instinct, however, which is present in the rulings of the different courts, is under-understood.

From the very beginning, following the ancient Roman principle "*Ubi non accusator, ibi non iudex*", we also analyzed the theoretical and practical procedure of how to submit an application to the CJEU. In particular, we looked into the preliminary questions procedure, the action for failure to fulfil obligations, the action for annulment, the action for failure to act and the appeal. The submission of the applications helped us to understand the CJEU's judgments, unwittingly reading the judgments with the legal principles of substantive and procedural law in mind, as they exist in every legal system. Putting them at the basis of our analysis gave us the possibility to better perceive the vision of magistrates who have a very detailed and pedantic analytical thinking. We have found that CJEU rulings are sometimes so complex that they can be compared to chaos theory in mathematics, essentially stating that several actions appear chaotic in a narrow view, while they may be regular in a broader view despite individual reactions.[6] In this way we have observed that the interpretation of the Luxembourg magistrates also leads to reactions on all EU laws. Although sometimes a judgment may seem arbitrary, it makes sense in the whole system of EU law.

Chapter 3 entitled "*The impact of the CJEU's jurisdictional reasoning on policy, social economics and lawmaking in the light of ultra vires acts*" includes five subchapters of content. We resort to *in concreto* analysis of the relevant judgments. A good and clear example, to begin with, for the analysis of jurisdictional reasoning from the perspective of a fundamental right in the Fundamental Treaties was the investigation of the right of free movement of goods. We set ourselves the ambition to understand the body of judgments of the CJEU in spite of their huge number, it being practically impossible to analyze them separately and unreasonable to focus on perceiving reasoning solely on the basis of statistics. Moreover, it was necessary to understand the starting point of each magistrates' reasoning in order to find a characteristic. So, most effective was to analyze the right of free movement of goods and the development of CJEU jurisprudence based on this principle.

[6] Argyris J., Faus G., Haase M. Die Erforschung des Chaos. Eine Einführung für Naturwissenschaftler und Ingenieure. Braunschweig/Wiesbaden, 1994, pag. 438.

On the basis of the example of just one freedom, we were also able to analyze the other areas in which jurisdictional developments are taking place at a rapid pace. Thanks to the evolution of information, for example, we also have the opportunity to observe the jurisdictional adaptation of the CJEU to the practical reality, which then has to be adapted to the legal reality. The given field has given us a picture of a natural development, whereas a field in hibernation cannot give a clear picture of the jurisdictional direction taken. With the help of the constantly evolving areas, we have been able to analyze the legislation of the Member States before and after their accession to the EU. Thus, we have highlighted a reality of the current jurisdictional development.

We have determined the intention of the CJEU when it rules on political and social issues in the EU. The Court seeks to ensure the order of competition, the right to free movement, the enforcement of the values of European Union law both inside and outside the EU. We have concluded that European integration has not yet been successful in all areas, in particular with regard to the EU's powers to sign agreements with third countries. However, we note that integration has come a long way, worthy of a union for which it was created and not least thanks to the case law of the Court of Justice of the European Union.

In a system with several jurisdictional levels (in addition to the division of competences not on the basis of legal areas, but on the basis of politics, following the example of the European Union) it is natural that conflicts between administrative, constitutional and judicial institutions will arise. Thus, it is necessary to analyze not only the positive but also the negative impact, in order to have a clearer perception of all the principles underlying the decisions of the CJEU. The law interpreted and the principles developed by the CJEU have always been and are present in the fundamental Treaties. That is why the Court only examines them in specific cases where it has to reach a conclusion. From this exercise a complete picture of the jurisdictional reasoning can be obtained.

We have analyzed a cumulation of areas of law. Thus, we have shown that the perception of the case law of the Luxembourg Court can only be understood as a whole. Starting with the perception of the reasoning of the Fundamental Treaties, continuing with the Court's competences, both legal and geographical reflections, the understanding of the application of the principles of EU law, as well as the understanding of the overstepping of the limits attributed to the CJEU, must also raise questions about possible *ultra vires* acts, ending with the incidence of case law in the law-making process. Each decision of the CJEU is therefore based on the idea that European Union law is supreme over national law, but not over constitutional law, as we saw

indirectly in the example of the Romanian State with reference to the decisions of the Romanian Constitutional Court.

To ensure compliance with the EU legal framework, EU Member States have introduced comprehensive monitoring and enforcement mechanisms. We have found that effective implementation of EU law has required, more than that, intensive cooperation between governments, courts and legal experts within the EU. Specialized working groups have been set up to monitor the application of EU law and to ensure that national legislation complies with European requirements. The lengthy and complicated harmonization process has ultimately led to greater legal certainty and efficiency within the European legal community.[7] Discussions on the effects of EU accession on national sovereignty and legal systems have accompanied this process and have led to deeper legal integration and cooperation between Member States.

We have shown that the case law of the Court of Justice of the European Union has an immanent place in the national legislation of the EU Member States, as it has a direct impact. CJEU judgments enable both legal entities and individuals to claim their rights at the national level and often motivate extensive adaptations of national law to achieve harmony with EU law. However, national courts also play an important role in the development of EU law and, indirectly, its harmonization. Thus, they rule on the disputes at issue in the Member State concerned and thus indirectly contribute to the formation of European case law, including the harmonization of the national legal system with that of the EU.

We then analyzed a large number of cases brought before the CJEU, also showing the impact of its rulings. EU citizens are thus directly concerned. The influence of the Court's case law also extends to citizens who do not live directly in the EU but are in its immediate vicinity. Apart from the underlying scenario, where citizens of states in the immediate vicinity come into contact with a cross-border subject in the EU, it is also clear that the case law of the CJEU covers a wide field of law, which the legislature of the given states simply cannot ignore. Technical, social, and political developments are currently largely taking place in the former colonizing or financially dominant states. Thus, it is natural that the jurisprudence of the given entities should be the first to face certain legal and scientific questions, which have not yet become a reality in the other states. However, this does not mean that the other states are at a total disadvantage, because the opportunity for early evolution is missing. Since every development has its moments of setbacks, the states in the vicinity should use the opportunity to take what works from the CJEU case law and ignore what is not yet finalized. Thus, following

[7] M. Dobbins, D. Drüner și G. Schneider, in: Kopenhagener Konsequenzen: Gesetzgebung in der EU vor und nach der Erweiterung, Zeitschrift Für Parlamentsfragen, 2004, pag. 51.

the presentation of previous jurisprudence, the Republic of Moldova could take it over and implement it in the Moldovan legal system, which could truly catapult the evolution of our State far ahead of that of our neighbors.

So, it was obvious that any debate takes place in concrete examples, so it was necessary to analyze all the conclusions previously established on the basis of *in concreto* cases, each case having its own differences. However, the jurisdictional reasoning does not change. The principles of the Fundamental Treaties are applied more broadly or more succinctly depending on each concrete situation.

We analyzed the origin of the term *ultra vires*. We found that it originated in the Anglo-American *Case Law* system. Thus, for example in England, every act of parliament is an expression of sovereign and, in principle, fundamentally unlimited legislative power. This means that every act can only be repealed or amended by the principle of "*lex posterior derogat legi priori*" and that legislative acts are incontestable by the courts, because they can only apply the law, not question their constitutional conformity.[8] If a court deems a law to be "inequitable" or questionable, or even doubtful as a matter of legal policy, it may, in the absence of administrative jurisdiction, adapt it by interpretation in case law and thus exercise a control over the exercise of executive public authority in the framework of judicial review. The result of this power of review is that the English courts exercise the given power of expounding on the conformity of the act of delegation in areas where administrative institutions are transferred public powers by an enactment. This equally includes deciding whether an action of an administrative institution has exceeded the limits of the statutory power conferred by the parliamentary act and is therefore *ultra vires*.[9]

Although this term refers, in principle, to similar legal institutions in different countries, its meaning may vary from one country to another. In the German and Austrian legal systems, the doctrine of *ultra vires* is understood to mean the delimitation of competences of institutions, which is subject to verification in the formal legality of a legal act. In other words, the delimitation of competences of institutions is the legal attribution of competences to a respective authority, which usually takes place through legal empowerment by the legislator.

With this empowerment, the legislator defines the scope of action and powers of the administrative authority in accordance with the constitutional division of powers and thus assigns them institutional powers. This legal division of tasks, as a rule of delimitation of

[8] Becker F. Die Bedeutung der *ultra vires*-Lehre als Maßstab richterlicher Kontrolle öffentlicher Gewalt in England, in: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht. Baden-Baden, 2001, pag. 87.

[9] Ibidem.

powers, is necessary to ensure the functionality of administrative institutions in a system of different and delimitable administrative authorities.

With the founding of the European Community and the partial relinquishment by Member States of their sovereignty through the transfer of competences to the European Union, which previously had been the responsibility and obligation of Member States, we have analyzed to what extent the exceeding of the delimitation of established competences can result in illegal and thus internationally invalid acts. In this respect, the term '*act of infringement*' or '*wrongful legal act*' implies all acts of the authorities of an international or supranational entity which have been adopted in violation to a substantive or formal procedure for the adoption of the respective act. Thus, all acts of the authorities which are legally outside the authority's competence or the competence of one of its organs (which in turn could be based on a procedural error) must be qualified as infringing or erroneous legal acts.

With the help of several cases and by analyzing the dialogue between the CJEU and the constitutional courts, we have analyzed the importance of constitutional identification, as well as the cooperation of the judiciaries. Thus, it was possible to investigate once again, from a different perspective, the jurisdictional reasoning that ultimately has its influence in a given case, only with different methods. Sometimes a specific approach is imposed on the Member State by overruling certain domestic regulations, and sometimes by warning against actions that may act to the detriment of EU principles and the fundamental Treaties. Sometimes the Court may even warn a Member State by giving a ruling against another Member State. The investigation of high conflict cases is of such importance that it requires very detailed study by the judiciary.

We have analyzed the *ultra vires* act of the CJEU in the case underlying the European Central Bank's *Public Sector Purchase Programme* (PSPP).

The case concerning the European Central Bank (ECB) program originated in 2014 with respect to an earlier program. In January of that year, the Constitutional Court of the Federal Republic of Germany (CC of the FRG) postponed a case to ask the Luxembourg Court questions on the interpretation of EU law.[10] The questions concerned criteria used to clarify whether the ECB's Outright Monetary Transaction Programme (OMTP) was within the limits of the Fundamental Treaties and the ECB Statute. The programme was intended to protect the risk premia on government bonds from speculative attacks by financial markets.

We concluded that, although the cases concerning the ECB's OMT and PSPP programs (in particular the PSPP program) culminated in a judgment from the CJEU with manifest

[10] Dec. of the Constitutional Court of the Federal Republic of Germany din 14.01.2014, nr. 2 BvR 2728/13.

weaknesses, which led to a conflict with the CC of the FRG, albeit unintentionally, due to a misunderstanding. The given weaknesses caused an *ultima ratio* review, in which an *ultra vires* act was discussed and partly established. In turn the judgment in question was an impulsive one. In the first place, the whole conflict could have been removed by a resumption of the dialog, which is required by the reasoning of the Fundamental Treaties. Secondly, even without the reasoning given, it cannot escape the fact that the analysis carried out by the Constitutional Court likewise omitted certain subjects which, like the CJEU, caused the conflict to deepen.

Finally, we come back to the linguistic issue and the different perspective of interpretation of the courts in question, each one drawing on the language used, the Luxembourg Court always with one eye on the fundamental Treaties and the sovereignty offered by the conferral of competences, and the Karlsruhe Court with one eye on the Constitution and the sovereignty preserved. Each judicial review has interpreted the competences laid down in the Fundamental Treaties from its own perspective, although the exclusive authority to interpret the Fundamental Treaties lies with the CJEU. The national constitutional courts reserve the right to have the last word where, in their view, arbitrary action has taken place outside any established limits. Concrete examples are the legal institutions developed by the CC of FRG being the *ultra vires* review, or that developed by the Italian Constitutional Court being the *contro limiti* review.

The constitutional institutions and, in particular, the legislator are trying to prevent such conflicts, because at the moment (still) the desire to maintain and develop the European Union entity persists. The problem, however, remains a current one - conflicts are predestined when two powers (although on the same side, pursuing the same ideal of respect for the law) try to have the last word in determining the absolute truth.

In a democratic state, due to the division of power in the state, these problems do not even arise, because there cannot hypothetically be a guardian of the civil code, which would have only part of the existing powers and the constitutional court the other part of the powers.

Finally, we applied the obtained conclusions in the legal and social reality of the Republic of Moldova, after direct and indirect research of the depth of the influence of jurisdictional reasoning on the process of lawmaking. The influence of the direct jurisdictional reasoning could be complicated, but also clear, because the legislator resorts to invoking international jurisprudence, in particular that of Luxembourg. Indirect influencing takes place through national judiciaries through the mentioning of those principles either by the Constitutional Court of the Republic of Moldova or by the Supreme Court of Justice of the Republic of Moldova.

From the reality of the finalized accession of Romania to the EU, we establish a hope in the simplification of the transition of the national legislation of the Republic of Moldova,

provided that the accession of our state would be realistic. In this case, the Moldovan State is already advantaged by the implementation of the Romanian language in the European institutions, when it comes to the translation of the decisions of the CJEU into Romanian. Also, the geographical proximity with Romania leads to legal similarities in the national legal systems, although in the last decade the Republic of Moldova has taken as an example the German legal system, but not in the depth of its principles. Although the Romanian system of law is more similar to the French than to the German, both systems of law have retained their origin developed by great local personalities.

We have noted that while the CJEU reiterates in other judgments the case law from dialogues with Germany or Italy, for example, it seems to be much more direct and harsher in its judgment on the Romanian Constitutional Court. One of the reasons could be the clarity shown by the Luxembourg magistrates, unlike the Romanian courts, which are still a Member State that has only recently acceded to the objectives and principles developed in the European Union over the years.

A similar difficulty can also be found in the Republic of Moldova. In the current period of transition in the hope of EU accession the conflicts seem distant. However, harmonization of a legislation, which is already in the process of indirectly taking over most of the legal reasoning from the fundamental Treaties seems to inspire hope. The Moldovan Parliament shows positive tendencies to use both CJEU case law and secondary law to adapt and reform national legislation. However, the law-making process is subject to a risk when legislative reforms take place through the prompt adoption of rules from third states. A much more effective and legally harmonious approach in the long run would be first to understand the rationale of the rules taken over, to analyze in detail the case law on the rules taken over and only then to take over the rules in question only if they are really able to form a symbiosis with the rest of the national rules. We determined that, otherwise, the implementation of rules from foreign legal systems into the national legal system without a pedantic consideration will cause uncertainty and, subsequently, chaos both for the magistrates of national courts, including Moldovan lawyers, and for other citizens of Moldovan society.

3. GENERAL CONCLUSIONS AND RECOMMENDATIONS

Membership of the European Union legally obliges Member States to harmonize with EU law. This harmonization entails the adoption of EU law through national laws and, correspondingly, its implementation, with EU law taking precedence over national law. It has been analyzed that the definition of supremacy has to be understood differently from its typical everyday meaning. EU law does indeed take precedence in the event of a conflict with national regulation. Consequently, national law will not be considered null and void, because only a constitutional court can declare a national law null and void. However, because of the powers conferred on the European Union, the CJEU determines how the Fundamental Treaties are applied and interpreted. Therefore, when a national law contravenes an EU legislative act, the question arises whether the EU legislative act is within the limits attributed to the Union. In this case, it must be decided whether the powers conferred on the EU are infringed. In the end, the CJEU determines how and to what extent the competences conferred on the European Union by the Fundamental Treaties are to be understood by reference to the Fundamental Treaties. The constitutional courts, in turn, determine the amount of sovereignty left and the margin of action of the Member State, thus determining its constitutional independence. The complexity of the interpretations in question is evident when we realize that to the European Union are not assigned areas of law, but areas of politics. Thus, a confrontation between these legal giants is predestined. However, this situation should not be seen as a negative moment, but rather as a permanent catalyst in the development of jurisprudence and the nature of European law, including constitutional law, at Member State level.

This study has analyzed the development of legislation in the EU Member States and their immediate vicinity in the light of the case law of the CJEU and has shown how the Court exerts a significant influence on national legal systems through its judgments. It was thus shown that the case law of the CJEU not only contributes to the harmonization of legislation within the European Union but also has a significant impact on legal certainty and the lawmaking process, directly reflecting also on the societies concerned. Analysis of the case studies shows that the CJEU often acts as a catalyst for the reform and adaptation of national legislation, in particular in areas such as environmental protection, employment law and consumer protection in the digital domain. The Court's rulings help to ensure compliance with EU law in the Member States and to promote integration and cooperation within the EU.

Therefore, in the principles developed and the interpretation of the Fundamental Treaties by the CJEU we find the deep ideas shared by all Member States. For this reason, states in the

EU's immediate vicinity are turning to the case law of the Court and taking it on board. The Court's interpretations demonstrate that they have at the basis of their reasoning not just simple ideas, but the spirit that returns again and again from the idea of peace and prosperity of European society, the foundations of which are the spiral laid down by the founders of the European Union.

This factor is demonstrated by the recommendation of the Court of Justice of the Republic of Moldova and the inspiration of the Moldovan legislation from the judgments of the Court of Justice of the European Union. The reasoning of the Court is thus reflected both in the process of law making and in the daily life of Moldovan citizens. In the light of the general conclusions drawn, we consider it appropriate, in the context of this research, to propose the following ***recommendations***, which in our opinion would better prepare the Republic of Moldova for a desirable integration into the EU, also by applying the principles developed by the CJEU:

1. It is necessary to use the definition of jurisdictional reasoning with a multidimensional meaning based on a cumulation of factors, which arise both from society and from the subjective values attributed in the jurisdictional process.

2. We recommend the adoption of a legislative act, in which certain periods can be determined a presenting to the government and parliament of the provisional results on the need to adapt national legislation to certain European policies.

3. We reiterate the importance of a study on the *ultra vires* acts of the EU institutions, but the results of this study and the applicability of *ultra vires* administrative acts should be determined by the Government of the Republic of Moldova through a respective decision, which will serve as an initial orientation to the executive until the profound evolution of national jurisprudence.

4. We recommend a process of identification and continuous adaptation of the fundamental rights in the EU Fundamental Treaties *in concreto*, the results of which should be added in a legislative act proposed in point two.

5. To research and identify *ultra vires* acts at national level and to complement the results of that research in the proposed government decision.

6. Analyzing the jurisdictional practice of other states in the EU's immediate vicinity, such as Norway or Iceland, and complementing the results in the proposed legislation.

7. We recommend that EU law harmonization policies should be oriented towards the interpretation and application of jurisdictional reasoning rather than express incorporation of the texts of EU directives. In this way, a legally and socially correct result can be achieved.

8. Finally, we recommend that the analysis and implementation of coherent legal language and norms, as well as the definition of fundamental European legal principles (and not only the legal order in the multi-layered legal system) be carried out at least in a legislative act on the integration of the Republic of Moldova into the European single market. This will facilitate the legislative certainty of the economic integration of the Republic of Moldova into the EU, so that political and social integration will be possible.

4. SELECTIVE BIBLIOGRAPHY

1. Argyris, John, Faus, Gunter, Haase, Maria. Die Erforschung des Chaos. Eine Einführung für Naturwissenschaftler und Ingenieure. Braunschweig/Wiesbaden: Vieweg, 1994. ISBN: 978-3322904423.

2. Balan, Prof. dr. hab. Oleg, Dorul, conf. univ. dr. Olga ș.a. Drept internațional public: manual. Third Ed. (revised and complemented). Chișinău: Tip. Elena VI, 2009. ISBN: 978-9975-106-43-6.

3. Bârsan, Corneliu, in: Convenția europeană a drepturilor omului – comentariu pe articole, vol. I. Drepturi și libertăți, Editura C.H. Beck, București, 2005. ISBN: 973-655-663-8.

4. Becker, Florian. Die Bedeutung der ultra vires-Lehre als Maßstab richterlicher Kontrolle öffentlicher Gewalt in England, în: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht. Baden-Baden: Nomos, 2001.

5. Calliess, Prof. Dr. Christian, Prof. Dr. Ruffert, Matthias. EUV • AEUV. Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtcharta. München: C.H. Beck, Ediția a 6-a, 2022. ISBN: 978-3-406-76985-6.

6. Cardozo, Benjamin Nathan. The Nature of The Judicial Process. Yale: Kessinger Publishing, 1921. ISBN: 978-1-1642-5088-3.

7. Collier, Paul. Die unterste Milliarde – Warum die ärmsten Länder scheitern und was man dagegen tun kann. München: Pantheon, 2017. ISBN: 978-3570553466.

8. Crețu, Vasile. Drept internațional public. București: Editura Fundației „Romania de mâine", 1999. ISBN: 973-582-118-4.

9. Decock, Wim. Theologians and Contract Law, The Moral Transformation of the Ius Commune (ca. 1500 - 1650). Leiden: M. Nijhoff Publishers, 2013.

10. Dicey, Albert Venn. A Digest of the Law of England with Reference to the Conflict of Laws. Londra: Legare Street Press, Londra 1924.

11. Dobbins, Michael, Drüner, Dietrich, Schneider, Gerald. Kopenhagener Konsequenzen: Gesetzgebung in der EU vor und nach der Erweiterung, în: Zeitschrift Für Parlamentsfragen. Baden-Baden: Nomos, 2004.

12. Dorr Oliver. Shmalenbach K. Vienna Convention on the law of treaties. A commentary. Berlin/Heidelberg: Springer, 2012. ISBN: 978-3662572245.

13. Eckert, Stefan, Trautnitz, Georg. Umsetzung von EU-Richtlinien in den Beitrittsländern als Herausforderung des Europäischen Manage-ments, în: Internationales

Management und die Grundlagen des globalisierten Kapitalismus. Wiesbaden: Springer Gabler, 2016. ISBN: 978-3-658-09598-7.

14. Forteau, Mathias, Daillier, Patrick, Pellet, Allain. Droit international public. 8e edition. Paris: L.G.D.J., 2009. ISBN: 978-2275023908.

15. Hakenberg Waltraud. Europarecht. München: Editura Franz Vahlen, 2012. ISBN: 978-3800642830.

16. Ludwigs, Markus, Schmahl, Stefanie. Die EU zwischen Niedergang und Neugründung. Baden-Baden: Nomos, 2020. ISBN: 978-3-8487-5977-4.

17. MacCormick, Sir, Neil. Rhetoric and The Rule of Law: A Theory of Legal Reasoning (Law, State, and Practical Reason). New York: Oxford University Press, 2005. ISBN: 978-0-1982-6878-9.

18. Medak, Vladimir, Vehar, Primoz. Armonizarea legislației ca element cheie pentru succesul procesului de integrare a Republicii Moldova în Uniunea Europeană. Chișinău: Editura ARC, 2022. ISBN: 978-9975-0-0654-5.

19. Nettesheim, Prof. Dr. Martin, Prof. em. Hilf, Meinhard. Das Recht der Europäischen Union. München: C.H. Beck, 2023. ISBN: 978-3-406-81258-3.

20. Potacs, von Michael. Effet utile als Auslegungsgrundsatz, în: Europarecht (EuR). Baden-Baden: Nomos, 2009. ISSN 0531-2485.

21. Preda-Mătăsaru, Aurel. Tratat de drept internațional public. București: Lumina Lex, 2002. ISBN: 978-973-758-003-0.

22. Raschauer, Bernhard. Allgemeines Verwaltungsrecht. Viena: Verlag Österreich, 2021. ISBN: 978-3704688330.

23. Schwarze, Jürgen, Becker, Ulrich, Hatjer, Armin, Schoo, Johann. EU-Kommentar. Baden-Baden: Nomos, 2019. ISBN: 978-3-8487-3498-6.

24. Sunstein, Cass R. Legal Reasoning and Political Conflict. Oxford, New York: Oxford University Press, 2018. ISBN: 9780190864446.

25. van Raepenbusch, Sean. Drept Instituțional al Uniunii Europene. București: Rosetti, 2014. ISBN: 978-973-8270-16-9.

26. Weber, Patrick, Vögele, Adrian. Die Europäische Politische Gemeinschaft - Der Versuch einer politischen Integration der sechs EGKS-Staaten. Norderstedt: GRIN GmbH, 2008. ISBN: 978-3-638-92424-5.

27. Лукашук, Игорь Иванович. Современное право международных договоров. Том I. Заключение международных договоров. Москва: Волтерс Клувер, 2004. ISBN: 5-466-00036-1.

5. LIST OF THE AUTHOR'S PUBLICATIONS ON THE THESIS TOPIC

Articles in journals listed in the National Register of Journals:

1. POALELUNGI M. Aspecte definitorii ale denumirii tratatelor în dreptul internațional contemporan. Published in: *Revista Institutului Național al Justiției*, nr. 2 (45), 2018 (publicație științifică de tipul B) p. 32-36.

2. POALELUNGI M., SCOBIOALĂ D. Provocarea organizată în contextul jurisprudenței Curții Europene a Drepturilor Omului. Published in: *Revista Institutului Național al Justiției*, nr. 3 (46), 2018 (publicație științifică de tipul B) p. 44-50.

3. POALELUNGI M., POALELUNGI M. Abordare istorico-juridică a transformării comunităților europene, predecesoarele Uniunii Europene, într-un model instituțional din regiune. Published in: *Revista Institutului Național al Justiției*, nr. 3 (58), 2021 (publicație științifică de tipul B) p. 19-23.

4. POALELUNGI M. Aspecte teoretico-practice privind modalitatea depunerii cererii la Curtea de Justiție a UE. Published in: *Revista "Studii Juridice Universitare"*, nr. 1 (XV), 2022 (publicație științifică de tipul B) p. 150-160.

5. POALELUNGI M. Originea Uniunii Europene și obiectivele atinse. Published in: *Revista "Studii Juridice Universitare"*, nr. 1 (XVI), 2023 (publicație științifică de tipul B) p. 126-132.

6. POALELUNGI M. Analiza raționamentului jurisdicțional în ordinea juridică în contextul reflecțiilor doctrinare. Published in: *Revista "Studii Juridice Universitare"*, nr. 2 (XVI), 2023 (publicație științifică de tipul B) p. 186-193.

7. POALELUNGI M. The european single market and the impact of the jurisdictional reasoning of the Court of Justice of the European Union. Published in: *Revista "Studii Juridice Universitare"*, nr. 1 (XVII), 2024 (publicație științifică de tipul B) p. 181-191.

Articles in conferences and other scientific events:

8. POALELUNGI M. The attempt of the European Union to harmonised rules on artificial intelligence (Artificial Intelligence Act). Published in: Proceedings of the 2nd International Scientific and Practical Conference "Modern Scientific Trends and Standards". Nr. 98 February, 2022. P. 282-285.

9. POALELUNGI M. EU – U.S. privacy data relationship and the ongoing impact of "Schrems II". Published in: Proceedings of the 2nd International and Practical Conference "Recent Advances in Scientific World". Nr. 119 August 2022. P. 59-62.

10. POALELUNGI M. The ruling against Meta Platforms and the impact on the diversification of an entitled person according to Art. 263 TFEU (ex-Article 230 TEC). Published in: Proceedings of the 1st International Scientific and Practical Conference ”Diversity and Inclusion in Scientific Area”. Nr. 122 August, 2022. P. 183-186.

11. POALELUNGI M., BALAN O. Incidența raționamentului jurisdicțional a Curții de Justiție a Uniunii Europene asupra statelor membre a Uniunii Europene înainte și după aderare la Uniunea Europeană. Published in: Conferință științifică internațională aniversară „Realități și Perspective ale învățământului juridic național. 65 de ani în serviciul jurisprudenței naționale. Facultatea de drept, USM. 3-4 octombrie 2024.

12. POALELUNGI M. Actele ultra vires și depășirea competențelor Curții de Justiție a Uniunii Europene în lumina spețelor Junk vs. Kühnel și Mangol vs. Helm. Published in: Conferință științifico-practică internațională ”Consolidarea Rezilienței Sociale prin Valorificarea Capitalului Uman în Contextul Aderării Republicii Moldova și a Ucrainei la Uniunea Europeană”. Facultatea de drept, USM. 17-18 octombrie, 2024.

6. ANNOTATION

Poalelungi Mihai, "The impact of the jurisdictional reasoning of the Court of Justice of the EU on the process of normative creation in the Member States and in the close vicinity", PhD Thesis in Law. Specialization 552.08 – International and European Public Law. Moldova State University, Chisinau, 2025

Structure of the thesis: list of abbreviations and acronyms, introduction, three chapters, general conclusions and recommendations, bibliography, information on the assumption of responsibility, author's autobiography, seven publications on the topic of the thesis.

Keywords: European Union, European Union law, *ultra vires*, jurisdictional reasoning, EU Fundamental Treaties, EFTA Court, ECHR, ECtHR, constitutional identification, *effet utile*, principle of loyal cooperation.

Aim of the thesis: The aim of the thesis is to examine in depth the case-law of the CJEU and to analyse the background to these judgments, in particular to study both doctrinal and normative approaches to the jurisdictional reasoning found in CJEU judgments. Thus, a number of principles of European Union law will be analysed in order to be able to interpret the reasoning of the Fundamental Treaties, the application and interpretation of which is the exclusive competence of the CJEU.

Research objectives: The objective of the research is first to determine what underlies the reasoning of the case-law of the Court of Justice of the European Union. Subsequently, to show what impact the rulings of the CJEU have both within and outside the EU. Finally, to show the influence of the reasoning of CJEU judgments on the law-making process in the EU Member States, but also in the vicinity, including the Republic of Moldova.

Scientific novelty and originality: The study identified theoretical and methodological aspects of the reasoning of CJEU judgments; these have been analysed by identifying the reasoning of CJEU judgments; identifying the reasoning of the Fundamental Treaties; assessing the competences and conflicts of the CJEU with the constitutional courts of the EU Member States; investigating the influence of the judgments beyond the territorial and legal borders of the EU.

The results obtained that contribute to the solution of an important scientific problem: Determining the reasoning of the Fundamental Treaties has contributed to the understanding of *ultra vires* acts and the perception of the conflicts of the CJEU with the constitutional courts from EU. Determining the reasoning of CJEU judgments identifies the problem of taking over European case law and applying it in national law.

Theoretical significance: The definition of the fundamental principles of European law provides legal tools for interpreting the rulings of the CJEU and therefore for interpreting national law.

Application value: The importance of perceiving the reasoning of CJEU judgments is decisive for understanding the influence of the CJEU jurisprudence on the law-making process.

Implementation of the scientific results: Identifying and defining the reasoning of the European case-law provides legal tools for interpreting national legislation and helping the national legislator in its objectives of developing the national legal system.

АННОТАЦИЯ

Поалелунжь Михай, "Влияние юрисдикционной аргументации Суда Европейского Союза на законотворческий процесс в государствах-членах и в непосредственной близости", Диссертация на соискание степени кандидата юридических наук. Специальность 552.08 – Международное и европейское публичное право. Государственный университет Молдовы, Кишинев, 2025 г.

Структура диссертации: список сокращений, введение, 3 главы, общие выводы и рекомендации, библиография, сведения о принятии на себя ответственности, автобиография автора, 7 публикаций по теме диссертации.

Ключевые слова: Европейский союз, право Сообщества, право Европейского Союза, *ultra vires*, юрисдикционная аргументация, Основные договоры ЕС, Суд ЕАСТ, ЕСПЧ, ЕКПЧ, конституционная идентификация, *effet utile*, принцип лояльного сотрудничества.

Цель исследования: Целью диссертации является углубленное изучение судебной практики Суда Европейского Союза (СЕС) и анализ всего, на чем основываются его решения, в частности изучение доктринальных и нормативных подходов к обоснованию юрисдикции в решениях СЕС. Таким образом, будет проанализирован ряд принципов права Европейского Союза, чтобы иметь возможность интерпретировать обоснование Основных договоров, применение и толкование которых относится к исключительной компетенции СЕС.

Задачи исследования: Цель исследования состоит в том, чтобы определить, что лежит в основе аргументации в судебной практике СЕС. Затем показать, какое влияние оказывают решения СЕС как внутри ЕС, так и за пределами данной территории. И наконец, показать влияние аргументации решений СЕС на законотворческий процесс в странах-членах ЕС и в соседних странах, включая Республику Молдовы.

Новизна и научная оригинальность: исследование охватило теоретические и методологические аспекты аргументации решений СЕС; установление основополагающих аспектов обоснования решений СЕС; установление основополагающих аспектов обоснования основных Договоров; оценку компетенции и конфликтов СЕС с конституционными судами государств-членов ЕС; исследование влияния решений СЕС за пределами территориальных и правовых границ ЕС.

Полученные результаты, которые способствуют решению важной научной проблемы: определение основ обоснования основных Договоров внесло вклад в понимание актов *ultra vires* и восприятие конфликтов СЕС с конституционными судами ЕС. Определение основ мотивировки решений СЕС выявляет проблему заимствования судебной практики СЕС и ее применение в национальном праве.

Теоретическое значение: Определение основополагающих принципов европейского права предоставляет юридические инструменты для толкования решений СЕС и, следовательно, для толкования национального законодательства.

Практическая значимость исследования: Важность восприятия аргументации решений СЕС имеет решающее значение для понимания влияния судебной практики СЕС на законотворческий процесс.

Имплементация научных результатов: Выявление и определение основополагающих аспектов обоснования европейской судебной практики предоставляет юридические инструменты для толкования национального законодательства и вооружает национального законодателя в его задачах по развитию национальной правовой системы.

ADNOTARE

Poalelungi Mihai, „Incidența raționamentului jurisdicțional al Curții de Justiție a UE asupra procesului de creație normativă în statele membre și din proximă vecinătate", Teza de doctor în drept. Specialitatea 552.08 – Drept internațional și european public. Universitatea de Stat din Moldova, Chișinău, 2025

Structura tezei: lista abrevierilor și acronimelor, introducere, trei capitole, concluzii generale și recomandări, bibliografie, informații privind asumarea răspunderii, autobiografia autorului, șapte publicații la tema tezei.

Cuvintele-cheie: Uniunea Europeană, dreptul Uniunii Europene, *ultra vires*, raționamentul jurisdicțional, Tratatele fundamentale ale UE, Curtea AELS, CEDO, CtEDO, identificare constituțională, *effet utile*, principiul cooperării loiale.

Scopul lucrării: Scopul tezei este de a examina în profunzime jurisprudența CJUE și de a analiza raționamentele care stau la baza acestor hotărâri, îndeosebi de a studia abordările atât doctrinare cât și normative ale raționamentului jurisdicțional din hotărârile CJUE. Astfel, vor fi analizate un șir de principii ale dreptului Uniunii Europene pentru a fi posibilă interpretarea raționamentului Tratatelor fundamentale, aplicarea și interpretarea cărora constituie competența exclusivă a CJUE.

Obiectivele cercetării: Determinarea inițială a conceptelor care stau la baza raționamentului jurisprudenței Curții de Justiție a Uniunii Europene; demonstrarea impactului hotărârilor CJUE atât în interiorul UE cât și în afara teritoriilor statelor membre ale UE; precum și, în cele din urmă, expunerea influenței asupra raționamentului hotărârilor CJUE în procesul de creație normativă în statele membre ale UE, dar și în cele din proxima vecinătate, inclusiv în Republica Moldova.

Noutatea și originalitatea științifică rezidă în modul în care au fost analizate aspecte teoretice și metodologice ale pronunțării hotărârilor CJUE prin identificarea raționamentului acestora; identificarea raționamentului Tratatelor fundamentale; evaluarea competențelor și conflictelor CJUE cu instanțele constituționale ale statelor membre din UE; cercetarea influenței hotărârilor dincolo de frontierele teritoriale și juridice ale UE.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante: Determinarea raționamentului Tratatelor fundamentale va permite înțelegerea actelor *ultra vires* și analiza conflictelor de competență a CJUE cu cea a instanțelor constituționale din statele membre ale UE. Determinarea raționamentului hotărârilor CJUE identifică problema invocării jurisprudenței europene și aplicării ei în legislația națională.

Semnificația teoretică a prezentului demers științific rezultă din faptul că doctrina autohtonă cu privire la tema tezei de doctorat ar putea să nu fie foarte consistentă. Prezenta lucrare vine să suplinească literatura de specialitate la cursurile universitare Dreptul Uniunii Europene și Drept instituțional al Uniunii Europene. Definirea principiilor fundamentale ale dreptului Uniunii Europene permite interpretarea coerentă a hotărârilor CJUE.

Valoarea aplicativă: Importanța perceperii raționamentului hotărârilor CJUE este decisivă pentru înțelegerea influenței jurisprudenței CJUE asupra procesului de creație normativă în cadrul statelor membre, și uneori în statele candidate în vederea aderării la Uniunea Europeană.

Implementarea rezultatelor științifice: Identificarea și definirea raționamentului jurisprudenței europene permite identificarea instrumentelor juridice oportune pentru interpretarea legislației naționale și capacitarea legiuitorului național în obiectivele sale de dezvoltare a sistemului de drept național.

UNIVERSITATEA DE STAT DIN MOLDOVA

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POALELUNGI MIHAI

INCIDENȚA RAȚIONAMENTULUI JURISDICȚIONAL AL CURȚII DE JUSTIȚIE A UE ASUPRA PROCESULUI DE CREAȚIE NORMATIVĂ ÎN STATELE MEMBRE ȘI DIN PROXIMĂ VECINĂTATE

552.08. DREPT INTERNAȚIONAL ȘI EUROPEAN PUBLIC

Rezumatul tezei de doctor în drept

CHIȘINĂU, 2025

POALELUNGI MIHAI

THE IMPACT OF THE EU COURT OF JUSTICE'S JURISDICTIONAL REASONING ON THE LAWMAKING PROCESS IN THE MEMBER STATES AND IN THE NEAR VICINITY

552.08. PUBLIC EUROPEAN AND INTERNATIONAL LAW

Abstract of the PhD thesis in law

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