THE PRINCIPLE OF AUTONOMOUS INTERPRETATION AND LIMITS OF MEMBER STATES' COURTS IN INTERPRETING EU LAW

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Abstract

As EU law has become richer in terms of quantity and quality, the number of disputes which fall within the jurisdiction of the Member States' courts has increased, as has the complexity of the issues raised by the parties to these disputes, in which provisions of Union law apply. Thus, the application of the provisions of EU law by national courts raises certain important issues, in particular with regard to the jurisdiction on interpreting EU law, which is a prerequisite for its application.

Under art. 267 TFEU, the CJEU has jurisdiction to render a preliminary ruling concerning the interpretation of the Treaties and of legal acts of the institutions, bodies, offices or agencies of the Union.

The aim of this study is to discover whether this article gives the CJEU exclusive jurisdiction to interpret Union law, or whether national courts also have such jurisdiction, in which cases they may interpret and apply Union law without resorting to the preliminary ruling mechanism. In the latter situation, we will identify the limits of this jurisdiction in relation to the principle of autonomous interpretation of Union law. The study can be a very useful instrument both for Romanian and Member States' courts and other practitioners.

Keywords: *interpretation of union law, the principle of autonomous interpretation, criteria, jurisdiction, limits.*

1. Introductory considerations

Referral to the CJEU for a preliminary ruling on the interpretation of a provision of EU law has the effect of prolonging the duration of the proceedings before the national courts for a considerable period of time, since the proceedings are suspended pending the ruling on the preliminary reference.

According to the Annual Activity Reports of the CJEU for the years 2019-2021[1], the average duration of preliminary rulings was 15.5 months for 2019, 15.8 months for 2020, and for 2021 only the average duration of all cases was mentioned as 16.6 months.

This issue, in the overall economy of the trial, may affect the parties' right to a fair trial from the perspective of the reasonable trial duration. Some of the litigant parties do not have an interest in finalizing the proceedings, thus resorting to various artifices to delay the trial, including the «new „El Dorado" of adjournment» represented by the application submitted to the national court to request the CJEU to deliver a preliminary judgment[2].

The aim of this paper is therefore to answer the question whether Member States' courts have jurisdiction on the matter of interpreting EU law and, in this case, if they can directly apply the principle of autonomous interpretation of EU law when they are called upon to settle a dispute to which provisions of EU law are applicable, without resorting to the preliminary ruling mechanism.

Furthermore, our objective is to identify the specific situations in which this principle can be applied and the limits of the Member States' courts in their interpretation of the provisions of EU law.

If national courts could apply directly the principle of autonomous interpretation of EU law, together with all the interpretation criteria laid down by the CJEU in its case-law, without having to refer the matter to the Court for a preliminary ruling, this would have the effect of shortning the duration of the proceedings before the national courts and relieving the CJEU of a significant number of preliminary ruling requests.

To answer the research hypothesis, we will first analyse some conceptual references, the origin of the principle of autonomous interpretation of EU law and historical references and, afterwards, we will pursue to examine the application of the principle of autonomous interpretation by national courts and the limits of such

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[1] The CJEU Annual Activity Reports for the years 2019-2021, available online at *https://curia.europa.eu/jcms/jcms/Jo2_11035/rapports-annuels*, last accessed on 24.02.2023.

[2] M. Şandru, M. Banu, D. Călin, *Procedura trimiterii preliminare*, C.H. Beck Publishing House, Bucharest, 2013, p. 610.

courts in interpreting EU law considering the delimitation of jurisdiction on interpretation of EU law between the CJEU and the Member States' courts. In the latter situation we will take into account the legal framework, the specialized doctrine and the case-law of the CJEU.

In the final part of the paper, we will conduct a case study regarding the practical application of the principle of autonomous interpretation of EU law by Romanian courts and draw the necessary findings.

2. Legal framework

Art. 19 para. (3) letter b) TEU states that the CJEU shall, in accordance with the Treaties, render preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions.

Under art. 267 TFEU, the CJEU „shall have jurisdiction to deliver preliminary judgments concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may request the Court to deliver a preliminary ruling, if it considers that a decision on the question is necessary to enable it to render a judgment.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose judgments there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay."

Art. 344 TFEU provides that Member States may not submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for in those Treaties.

Other provisions on the interpretation of EU law are to be found in art. 23 *et seq.* of Protocol no. 3 on the Statute of the CJEU, part of the Treaties, and in art. 93 to 118 of the Rules of Procedure of the CJEU, but these provisions focus in particular on procedural matters before the CJEU.

In connection with the subject-matter of the paper, the Recommendations of the CJEU to national courts and tribunals in relation to the initiation of preliminary ruling proceedings[3] are also important, but, as the very name of this document suggests, the recommendations are only guidelines (*soft law*).

3. Conceptual references

The application of a legal provision to a factual situation by a court necessarily implies a minimal interpretation of that provision. The national judge does not automatically apply a legal text without first understanding it and concluding that it corresponds to the factual situation in the pending dispute. Therefore, a national judge is an interpreter of legal provisions, including those of the EU. It remains to discover what are the limits of this interpretative power – jurisdiction on interpretation.

The principle of autonomous interpretation is a fundamental element of the interpretation of EU law and consists in interpreting a concept or provision of EU law autonomously, without reference to the national law of the Member States.

In this paper we chose to use the term „*principle*" of autonomous interpretation of EU law, taking into account the fact that all the methods of interpretation used by the CJEU relate to it, being a relationship of part - whole. The principle is characterised by its general application and is intended to guide the methods and rules of interpretation towards a single purpose - that the provisions under consideration should be interpreted autonomously, according to the specific nature of EU law.

We didn't use the concept of „*standard*", because it only implies the establishment of minimum requirements to be met, which is not the case when referring to the notion of principle.

Nor does the term „*rule"* fully describe the concept of „autonomous interpretation", as it requires a subject to comply with a certain conduct, being the equivalent of a rule.

In order for EU law to be applied uniformly, it must be interpreted autonomously (independently of concepts and terms in the national law of the Member States).

[3] Document published in OJ no. 380/01, from 08.11.2019.

In his paper *The principle of autonomous interpretation in European private international law: effects on the qualification of legal acts*[4], the author Sergiu Popovici has held that the principle of autonomous interpretation, in private international law, is the principle according to which „the interpretation of terms in European regulations of private international law [...] must be made uniformly and completely, independently of the meanings that the national legal systems of the Member States give to similar terms."

Our view on the matter at hand is that this principle is not restricted to the provisions of private international law regulated by the EU. It is applicable to the entire EU law, as it is clear from the case-law of the CJEU, cited in this paper. The CJEU has jurisdiction to interpret all legal acts issued by the institutions, bodies, offices or agencies of the EU, without exception[5].

In applying this principle, the CJEU has used, in its case-law, several methods of interpretation, such as the grammatical and logical interpretation, the systematic interpretation and the historical interpretation, but the most important one is the teleological interpretation (based on the aims and objectives of the interpreted act).

The methods of interpretation listed are not new, but have been taken over from the national legal systems of the Member States, given that the judges of the CJEU come from the Member States, but the way in which they have been used by the CJEU in the exercise of its power of interpretation is an innovation, leading to the creation of the principle of autonomous interpretation.

The CJEU is composed of the following courts: The Court of Justice, the General Court and specialised courts[6]. Under art. 256 para. 3 TFEU, the General Court has, in theory, jurisdiction over the preliminary ruling procedure in specific areas laid down by its Statute, but this jurisdiction has not been exercised so far by the General Court because there has been no transfer of jurisdiction in those certain areas from the jurisdiction of the CJEU[7].

We will therefore continue to use the term CJEU when referring to the court with jurisdiction to render a preliminary ruling under art. 267 TFEU.

4. The origin of the principle of autonomous interpretation of EU law. Historical references

The first form of the preliminary ruling procedure was provided for in art. 41 of the Treaty establishing the European Coal and Steel Community, whereby the signatory States gave the CJEU jurisdiction to deliver preliminary rulings only on the validity of acts adopted by the High Authority and the Council in a dispute pending before a national court[8].

Subsequently, art. 177 TEEC and art. 150 EURATOM extended the jurisdiction of the CJEU to the interpretation of the Treaties and to the validity and interpretation of all acts adopted by the Community institutions, while stating that national courts have the choice/obligation (depending on whether or not their judgments are subjected to appeal under national law) to request the CJEU to deliver a preliminary ruling if they consider that a ruling to that effect is necessary for the pending dispute.

In applying this preliminary procedure, by interpreting the Treaties teleologically (on the basis of their aims and objectives), the CJEU has developed a consistent body of case-law which has gradually determined the nature of the Community legal order[9].

In the Case *Costa v. Enel*[10], the CJEU held that Community law takes precedence, that the Member States have created a new legal order under international law, and that individuals may rely directly before national courts on rights conferred by that new legal order.

The purpose of the CJEU, under art. 177 TEEC, to ensure the uniform interpretation of the Treaty by national courts, was highlighted in the *Case van Gend & Loos*[11].

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[4] S. Popovici, *Principiul interpretării autonome în dreptul internaţional privat european: efecte asupra calificării actelor juridice*, in Romanian Journal of Private Law no. 1/2019, p. 225.

[5] CJEU Judgment from 13.12.1989, *Salvatore Grimaldi v. Fonds des maladies professionnelles*, C-322/88, EU:C:1989:646, para. 8.

[6] See art. 19 para. 1 TEU.

[7] According to the Report drawn up pursuant to art. 3 para. (2) of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16.12.2015 amending Protocol no. 3 on the Statute of the CJEU, para. 3, available online at *https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/ro_2018-01-12_08-43-52_600.pdf*, last accessed on 25.02.2023.

[8] I.-M. Larion, *Competența Curții de Justiție a Uniunii Europene de a se pronunța cu titlu preliminar*, doctoral thesis, „Nicolae Titulescu" University, Bucharest, 2021, p. 70.

[9] C. Lescot, *Institutions Européennes. Manuel*, Paradigme Publishing House, Orléans, 2011, p. 133.

[10] CJEU Judgment from 15.07.1964, *Flaminio Costa v. ENEL*, 6/64, EU:C:1964:66.

[11] CJEU Judgment from 05.02.1963, *N.V. Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Nederlandse Administratie der Belastingen* (the Dutch tax administration), 26/62, EU:C:1963:1.

Hence, the principle of autonomous interpretation of European Union law was created by the CJEU in its interpretative activity in the context of the preliminary rulings procedure, under art. 177 TEEC and under art. 150 EURATOM, from the need for uniform application of Community/European law.

After the *van Gend & Loos* judgment, the CJEU has consistently upheld this principle, albeit indirectly by using equivalent phrases: „terms and provisions of Community law which do not refer to the law of the Member States for the purpose of determining their meaning and scope must normally be given *an autonomous and uniform interpretation throughout the Community"*[12]*;* „in order to ensure equality and uniformity of the rights and obligations laid down in the Convention [...] the nature of the connection *must be determined autonomously"*[13] , „[...] the provisions of Union law *must be interpreted and applied uniformly* in the light of the versions existing in all the languages of the Union" [14].

In the Opinion no. 2/2013[15], the CJEU also clarified that the purpose of the preliminary reference procedure is to ensure the unity of interpretation of EU law, therefore making it possible to ensure its coherence, its full effect and its autonomy and, ultimately, the proper character established by the Treaties.

In view of this development of the concept of autonomous interpretation of EU law in the case-law of the CJEU, we can conclude that it has now acquired the status of a „principle".

5. The application of the principle of autonomous interpretation by national courts and the limits of such courts in interpreting EU law

5.1. Delimitation of jurisdiction on interpretation of EU law between the CJEU and the Member States' courts

5.1.1. Depending on the legal framework

In order to be able to distinguish the jurisdiction on interpretation in the manner proposed in this section, the first step is to retain the application of the principle of conferral of competences[16], whereby the CJEU acts within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them.

Next, under art. 267 TFEU, the CJEU has jurisdiction over the preliminary ruling procedure on the basis of which delivers judgments on interpretation of Union law, the national courts of the Member States having the right, if they consider that a decision on the matter is necessary for them to render a judgment, to request the Court to deliver such a ruling thereon.

This article also contains an obligation for national courts, whose judgments are not subjected to an appeal under national law, to refer questions to the CJEU for a preliminary ruling if EU law is applicable to the pending dispute.

Therfore, depending on the legal framework, both the CJEU and the national courts of the Member States have jurisdiction to interpret EU law, sharing this jurisdiction through the preliminary referral procedure.

5.1.2. Views of the specialized literature on the subject

In the specialized literature[17], it has been considered that the EU's courts exercise an assigned jurisdiction under the conditions and within the limits imposed by the Treaties, whereas the common (regular) law judges of the Community/European law are the national judges.

The opinion of the former President of the Court of Justice of the European Communities from 1994 to 2003, Mr. Gil Carlos Rodríguez Iglesias, is that the Union court „is not at the heart of the European judicial space,

[12] CJEU Judgment from 18.01.1984, *Ekro BV Vee-en Vleeshandek v. Produktschap Voor Vee-en Vlees*, 327/82, EU:C:1984:11, para. 11.

[13] CJEU Judgment from 27.09.1988, *Athanasios Kalfelis v. Bankhaus Schröder, Münchmeyer, Hengst and Co. and others*, 327/82, EU:C:1988:459, para. 10.

[14] CJEU Judgment from 08.10.1920, *Allmänna ombudet hos Tullverket v. Combinova AB*, C-476/19, EU:C:2020:802, para. 31.

[15] CJEU Opinion no. 2/13 from 18.12.2014, EU:C:2014:2454, para. 176.

[16] See art. 5 para. (1) and art. 13 para. (2) TEU.

[17] C. Lescot, *op. cit.*, p. 135.

since this area primarily concerns national courts and tribunals through cooperation and mutual recognition of judgments"[18].

The CJEU has an extremely important role in ensuring that Community/Union law is interpreted and applied in accordance with the Treaties, so that the judgment delivered by the Court is the only one valid and binding on all the institutions of the EU, the Member States and their nationals[19]. Other authors[20] have noted that uniformity of interpretation and application of the law could be the very reason of existence of the CJEU, being inherent in the nature of this European institution.

It has also been pointed out in the relevant doctrine[21] that the preliminary reference mechanism is „an example of shared jurisdiction between the Court of Justice and the national courts, which depends on mutual cooperation in order to ensure the success of the procedure", since the Court only provides an interpretation of Union law and cannot advise the national courts on its application[22].

According to the author Thomas von Danwitz[23], the exclusive jurisdiction of the CJEU, laid down in art. 344 TFEU, to deliver a binding interpretation of EU law as a last resort, in particular in the context of preliminary ruling proceedings in dialogue with the courts of the Member States, is the main legal and historical argument, both for the requirements of uniformity of interpretation of EU law and for opening up the plurality of ways of complying with EU law.

We note from these clarifications, in addition to the conclusions stated in point (a) above, that the national courts are the common law courts in the application and interpretation of EU law to specific cases, with the obligation to interpret national law in accordance with EU law (the conformity principle), and that the CJEU has exclusive jurisdiction to render a binding judgment interpreting EU law that is uniformly applicable in all Member States.

We also observe that the provisions of the Treaties do not establish a hierarchy of courts in the Union's judicial system, except with regard to the configuration of the CJEU (as noted in the section „Conceptual references").

On the use of the preliminary reference proceedings, the author Jan Komárek, in his work „*In the Court(s) We Trust? On the need for hierarchy and differentiation in the preliminary ruling procedure*"[24], highlighted the need to respect the hierarchy of national judicial systems and proposed, in this respect, that the use of this procedure should be limited to the courts of last instance as a rule and that, as an exception, lower courts should be able to refer a preliminary ruling request to the CJEU only when the validity of a Union act is in question.

The author's reasoning behind this proposal was, in principle, that the preliminary ruling procedure can never adequately serve the objective of uniformity and undermines national judicial hierarchies when it allows any court to enter into dialogue with the EU court. He also proposed that national courts should be given greater confidence so that they can be true parts of the EU judicial system.

We cannot agree with this point of view because, first of all, the preliminary ruling mechanism was designed as a form of direct cooperation (dialogue) between the CJEU and all national courts, which together exercise the function of interpreting EU law with the scope of ensuring uniform application throughout the EU. Under this mechanism, the Court's judgment establishing a particular interpretation of a EU provision is binding erga omnes, but the task of applying that interpretation to a specific factual situation falls to the national courts. The preliminary reference procedure is not an appeal available to the parties to a particular dispute and the CJEU is not a court hierarchically superior to the national court that used this procedure.

When a national court, whose judgment is subject to a remedy under national law, refers a question to the CJEU for a preliminary ruling, the domestic remedy against the judgment of that court is not abolished. The higher

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[18] Point of view mentioned in the book written by the authors P. Rancé and O. de Baynast, *L'Europe judiciaire. Enjeux et perspectives*, Dalloz Publishing House, Paris, 2001, p. 19.

[19] M.A. Dumitrașcu, *Dreptul Uniunii Europene I. Curs universitar*, Universul Juridic Publishing House, Bucharest, 2021, p. 22.

[20] M. Şandru, M. Banu, D. Călin, *op. cit.*, p. 1.

[21] M. Horspool, M. Humphreys, M. Wells-Greco, *European Union Law*, 9th ed., Oxford University Press Publishing House, Oxford, 2016, pp. 76 și 77.

[22] Also see CJEU Judgment from 30.06.1966, *G. Vaassen-Göbbels v. Management of the Beambtenfonds voor het Mijnbedrijf*, 61-65, EU:C:1966:39.

[23] Th. von Danwitz, *Uniform interpretation and primacy of Union Law in the dialogue of the Courts*, VerfBlog, 04.11.2022, available online at *https://verfassungsblog.de/uniform-interpretation-and-primacy-of-union-law-in-the-dialogue-of-the-courts/*, last accessed on 25.02.2023.

[24] J. Komárek, *In the Court(s) We Trust? On the Need for Hierarchy and Differentiation in the Preliminary Ruling Procedure*, in European Law Review, Forthcoming, available online at *https://ssrn.com/abstract=982529*, last accessed on 26.02.2023.

national court hearing the appeal retains the power to verify the legality and the merits of the judgment passed by the first court and also how the interpretation of the Union's provision (delivered in the preliminary reference procedure) has been applied to the specific factual situation. If the higher national court still has doubts regarding that interpretation, it may refer the matter to the CJEU for another preliminary ruling.

In conclusion, the preliminary ruling mechanism does not interfere with the hierarchy of national judicial systems.

Secondly, it is precisely by preserving the possibility for all the courts of the Member States to have recourse to the preliminary ruling procedure that great confidence is placed in them, and the constant dialogue between the courts and the CJEU is essential to achieving the objective of uniformity.

The need not to overburden the CJEU with references for preliminary rulings cannot be satisfied by eliminating a significant part of the cooperation mechanism referred to above, since there are other effective ways, such as training programmes for national judges aimed at a thorough understanding of the preliminary procedure.

In support of our arguments, we also quote the opinion of the author Bruno Lasserre in the study *„Les juges nationaux et la construction européenne: unis dans la diversité"*[25], according to which the courts of the Member States, when resorting to the preliminary ruling procedure, are now adopting a partnership approach rather than a hierarchical one, in which their status as common law judges of EU law is fully affirmed.

5.1.3. According to the case-law of the CJEU

In order to clarify the specific way in which the Court shares the jurisdiction on interpreting EU law with national courts and to identify the situations in which the principle in question can be applied, as well as the limits of national courts in interpreting EU law, it is necessary to analyse the relevant CJEU case law.

In Opinion no. 1/09[26], the Court held that, together with the courts of the Member States, it ensures respect for the legal order and the judicial system of the EU and that it is for the Member States, in particular by virtue of the principle of cooperation in good faith, to ensure that EU law is applied and complied with in their territory. Thus, the national courts, in cooperation with the EU court, perform the function which is assigned to them jointly in order to ensure that the law is observed in the application and interpretation of the Treaties.

The answer to the second research hypothesis is to be found in the judgment of the CJEU in the *Cilfit case*[27].

In this case, the Supreme Court of Cassation of the Italian State requested the CJEU to deliver a preliminary ruling on the interpretation of the third paragraph of art. 177 TEEC [now art. 267 para. (3) TFEU], namely whether that paragraph provides „that where any question of the same kind as those listed in the first paragraph of that article is raised in a case pending before a national court or tribunal, against whose decisions there is no judicial remedy under national law, that court or tribunal must bring the matter before the Court of Justice, lay down an obligation so to submit the case which precludes the national court from determining whether the question raised is justified or does it, and if so within what limits, make that obligation conditional on the prior finding of a reasonable interpretative doubt?".

In the dispute pending before the Supreme Court of Cassation concerning the legality of the payment of a fixed fee laid down by Italian law for the veterinary inspection of wool imported from countries which are not members of the Community, the applicants submitted that the fee in discussion infringes Regulation (EEC) no. 827/68 of 28 June 1968.

The Italian Ministry of Health's opinion was that the interpretation of the Regulation in question is so self-evident that it removes the possibility of considering a doubt as to the interpretation and there is no need for a preliminary reference. The applicant companies stated that the Supreme Court could not evade its obligation to refer the matter to the CJEU.

The CJEU held that the obligation to refer a question using the preliminary ruling proceedings is part of the cooperation, established in order to ensure the proper application and uniform interpretation of Community law

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[25] B. Lasserre, *Les juges nationaux et la construction européenne: unis dans la diversité*, in Revue Européenne du Droit no. 3, available online at *https://geopolitique.eu/articles/les-juges-nationaux-et-la-construction-europeenne-unis-dans-la-diversite/*, last accessed on 26.02.2023.

[26] CJEU Opinion no. 1/09 (Plenary session) from 08.03.2011, issued according to art. 218 para. (11) TFEU – Draft Agreement - Establishment of a unified patent litigation system - European and Community Patent Court - Compatibility with the Treaties, EU:C:2011:123, para. 66-69.

[27] CJEU Judgment from 06.10.1982, *Srl CILFIT e Lanificio di Gavardo Spa v. Ministero della sanità*, 283/81, EU:C:1982:335.

in all the Member States, between national courts and the CJEU (para. 7, *Cilfit case*), and the courts referred to in the third paragraph of art. 177 TEEC have the same discretion as all other national courts to ascertain whether a decision on a question of Community law is necessary to pass a judgment (para. 10).

Hence, *the first criterion* is the usefulness of the decision of the CJEU on a provision of Community/EU law for the proper settlement of a dispute before the national court.

In para. 13 and 14 of the *Cilfit case*, the CJEU mentioned the *second criterion* which is such as to deprive the obligation for a national court, whose judgments are not subject to a judicial remedy, to have recourse to the preliminary reference procedure: the existence of case-law of the Court which has settled the point of law in question (the theory of the „*acte éclairé*"[28]).

Under this criterion there are two situations: either the question referred is identical to a question which has already been the subject of a preliminary ruling in a similar case, or the answer to the question referred derives from established case-law of the Court which has settled the point of law in question, irrespective of the nature of the proceedings which led to that case-law and even in the absence of strict identity of the questions at issue.

The case-law of the CJEU is a source of EU law, and its place in the hierarchy of sources of Union law is different, depending on the provision it interprets, since the interpretation and the legal provision or document interpreted form a whole[29].

Therefore, national courts must also carry out a minimum interpretation of the case law of the CJEU in order to assess the need to use the preliminary reference procedure.

The third criterion is that the correct application of Community/EU law is so obvious as to leave no reasonable doubt as to the manner in which the question raised is to be resolved (para. 16, *Clifit case*; the theory of the clear act – „*acte clair*"). The Court added that, as a matter of priority, the national court must be convinced that this is equally obvious to the national courts or tribunals of the other Member States and to the CJEU.

The existence of such a possibility must also be assessed in the light of the characteristics of Community law and the specific difficulties involved in its interpretation (para. 17, *Cilfit case*), namely the fact that Community law texts are drafted in several authentic language versions, so that an interpretation of a provision of Community law involves a comparison of the language versions (para. 18, *Cilfit case*). Community law uses its own terminology, even when there is full concordance between the language versions, and legal concepts do not necessarily have the same meaning in Community law and in the national law of the various Member States (para. 19, *Cilfit case*).

In para. 20 of the same judgment, the CJEU stated that the national courts must use the systematic, teleological and historical interpretation, in the sense that each provision of Community/EU law must be placed in its context and interpreted in the light of the provisions of that law as a whole, its objectives and the state of its development at the time when it is to be applied.

In developing the interpretative guidance concerning the comparison of language versions, the Court has stated that a purely literal interpretation of a legal provision based on the text of one or more language versions to the exclusion of others cannot prevail[30], since the provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all the languages of the EU[31].

It has been stated in the specialized doctrine[32], in relation to the requirement in para. 16 of the *Cilfit case*, that „the task of the national courts is so impossible as to amount to an obligation of reference in most cases", since that requirement implies mastery of a legal vocabulary in several official languages other than those involving the judgment, mastery of terminology specific to EU law and knowledge of Union law, in general, sufficient to assess the legal provision applicable to the dispute pending.

All these interpretative criteria provided by the CJEU are in line with the principle of autonomous interpretation of EU law.

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[28] Theory initially mentioned in CJEU Judgment from 27.03.1963, *Da Costa en Schaake NV, Jacob Meijer NV, Hoechst-Holland NV v. Administration Fiscale Néerlandaise*, 28-30/1962, EU:C:1963:6.

[29] M.A. Dumitrașcu, *op. cit.*, p. 286.

[30] CJEU Judgment from 24.03.2021, *A. with the participation of Patentti - ja rekisterihallituksen tilintarkastuslautakunta*, C-950/19, EU:C:2021:230, para. 37.

[31] CJEU Judgment from 08.10.2020, *Allmänna ombudet hos Tullverket v. Combinova AB*, C-476/19, EU:C:2020:802, para. 31.

[32] B. Andreşan-Grigoriu, *Procedura hotărârilor preliminare*, Hamangiu Publishing House, Bucharest, 2010, p. 236.

As regards the jurisdiction to apply the principle of autonomous interpretation of EU law, the CJEU does not distinguish between national courts according to the criterion of the existence of a legal remedy under national law against their judgment.

Consequently, national courts do not interpret EU law when the CJEU's decision on a point of EU law is not useful/necessary for the resolution of the dispute before it, but they are obliged to interpret EU law in the other two cases analysed above in *Cilfit judgement* in order to decide whether or not to have recourse to the preliminary reference procedure, in which case they are obliged to apply the principle of autonomous interpretation and the interpretative criteria listed by the Court.

The limits of these courts in interpreting the provisions of EU law are precisely the three interpretative criteria analysed in the *Cilfit case*.

5.2. Case study regarding the practical application of the principle of autonomous interpretation of EU law by Romanian courts

a) By civil judgment no. 16180/02.11.2022[33], the Court of Buftea admitted the plea of lack of legal standing of the defendant C. SA and dismissed the claim brought by the plaintiff A. Inc., as being brought against a person without legal standing.

In this dispute, the plaintiff A. Inc. sued the defendant C. SA, requiring from him to pay the sum of 400 EUR by way of compensation under art. 7 para. (1) of Regulation (EC) no. 261/2004 of the European Parliament and of the Council of 11 February 2004[34], plus penalty interest. The applicant added that passenger A.P. had purchased an air ticket for flight X on 02.01.2022 and that the flight had been delayed for more than 3 hours.

The defendant C. SA argued that he is not an „operating air carrier" within the meaning of art. 2, para. (1) letter (b) of the Regulation, since he leased to A.C.H., as a user, an aircraft with crew capable of carrying out charter flights. He therefore refered the court the plea of lack of legal standing.

The national court, in examining the plea, held that the concept of „operating an air carrier" was clarified in the CJEU judgment of 4 July 2018, *Case Wolfgang Wirth and others v. Thomson Airways Ltd.*[35], according to which a carrier is to be regarded as operating an air carrier if, in the course of its passenger transport activity, it takes the decision to operate a specific flight, including the decision to determine its own itinerary and thus to create an offer of air transport to interested parties. The adoption of such a decision implies that the carrier bears responsibility for the operation of that flight, including, *inter alia*, for its possible cancellation or long delay on arrival.

The concept does not cover an air carrier which, like the one at issue in the main proceedings, leases an aircraft with crew to another air carrier under a wet lease, but does not bear operational responsibility for flights, even where the confirmation of reservation of a seat on a particular flight issued to passengers states that the flight is operated by that first carrier.

The Court of Buftea found that the factual situation in the dispute before it was similar to that in the case in which the CJEU had ruled in the judgment referred to it, so the court did not refer a question to the CJEU using the preliminary ruling procedure.

This case is a simple example of a Romanian court applying the principle of autonomous interpretation of EU law and finding that it was in the hypothesis of the theory of the clarified act (even if it did not expressly mention this), which is why the court proceeded to settle the dispute without resorting to the preliminary reference mechanism.

b) On 29.12.2022[36], the Tribunal of Constanța rejected as inadmissible the prosecutor's request for a preliminary ruling from the CJEU on four questions concerning the interpretation of EU law.

The Tribunal of Constanța listed the general conditions of the preliminary reference proceedings and, in analysing the condition of usefulness, it stated that it is not necessary for the court itself to share the doubts or not, it is sufficient that a party of the dispute presents serious doubts.

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[33] Judgement delivered by Buftea's Court in the case no. 12189/94/2022, unpublished.

[34] Regulation (EC) no. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) no. 295/91 (OJ no. L 46, 17.02.2004, pp. 1-8).

[35] CJEU Judgment from 04.07.2018, *Wolfgang Wirth and others v. Thomson Airways Ltd*, C-532/17, EU:C:2018:527, para. 20 and 26.

[36] Judgment of 29.12.2022 delivered by the Tribunal of Constanța in case no. 6707/118/2018, unpublished.

It also stated that the national court, whose judgment is no longer subject to an appeal, will not interpret the EU legal provision, but will only verify whether the text of the provision is clear in itself and the correct application of that provision arises from the ordinary and natural meaning of the terms used. The Tribunal added that such a situation exists where the correct application of EU law is so obvious that there can be no room for any reasonable doubt. If it concludes that there is serious doubt as to the meaning of the legal provision, the court is obliged to refer the matter to the CJEU under art. 267 TFEU.

Finally, the Tribunal found that the question which may be referred by the national court relates exclusively to questions of interpretation, validity or application of Community law, and not to questions of national law or particular elements of the case before it, is not useful and relevant and there is no doubt as to the application or interpretation of a Community provision.

Reading the manner in which the Constanța's Tribunal reasoned its decision to reject as inadmissible the request to refer the four preliminary questions to the CJEU, we see, first of all, that the national court confused the requirement of usefulness with the third criterion on the basis of which a court could refrain from referring a case to the CJEU, as held in the *Cilfit case* (the theory of the clear act).

Secondly, the national court wrongly held that it was not necessary to share doubts as to the interpretation of the legal provision of Union law. The holder of the preliminary reference to the CJEU is the national court, as it is the only one in a position to apply the principle of autonomous interpretation of EU law and to determine whether the conditions of the theory of the clear act which allows abstention from recourse to the preliminary reference procedure are fulfilled. It is irrelevant in this procedure whether or not a party to the proceedings has doubts as to the interpretation of the provisions of EU law.

Thus, the national court must interpret the provision of Union law applicable to the dispute, using the principle of autonomous interpretation with its methods and the three criteria from the *Cilfit case*, and if it concludes that its interpretation is equally obvious to the national courts or tribunals of the other Member States and to the CJEU, only then are the conditions of the clear act theory fulfilled. Nor can we agree with the argument of the Constanța Tribunal that it must only verify whether the text of the rule is „clear" in itself, because it is contrary to para. 16-20 of the *Cilfit case* [discussed *supra*, section 5.1./5.1.3.].

Thirdly, the national court did not undertake an effective interpretation of the relevant provisions of EU law in order to ascertain whether the four questions referred are related to the pending litigation and whether they are clear and leave no room for reasonable doubt as to their resolution.

This case confirms the conclusions of the Research Note[37] drawn up in 2020 at the request of the CJEU, according to which the case-law developed in Romania on the obligation to refer a preliminary question to the Court does not appear to be uniform. In general, Romanian courts consider themselves competent to interpret EU law by simply finding that a certain interpretation resulting from an act of EU law appears to be self-evident. In this respect, in most cases, especially in cases where they refer to the clear act theory, these courts do not adequately explain why the solution they adopt is in line with the objectives of the provisions of EU law. Moreover, they do not always refer to the exceptions to the obligation to refer a question for a preliminary ruling, in particular to the criteria set out in the *Cilfit case*.

6. Conclusions

In this study we discovered that a national judge is an interpreter of legal provisions, including those of the EU.

The national judges are the common (regular) law judges of the EU law; therefore, they have the common law jurisdiction on interpretation of EU law.

The exclusive CJEU jurisdiction to deliver judgements on the uniform interpretation of Union law represents an exception from the rule stated above. In its activity as EU law interpreter, the CJEU stated the principle of autonomous interpretation with the methods of interpretation listed in *Cilfit case* (the grammatical and logical interpretation, the systematic interpretation and the historical interpretation, the teleological interpretation based on the aims and objectives of the interpreted act, the comparison of language versions) and three essential criteria to be used by national courts to assess whether to refer a preliminary question to the CJEU.

[37] Note de Recherche, *Application de la jurisprudence Cilfit par les juridictions nationales dont les décisions ne sont pas susceptibles d'un recours juridictionnel de droit interne*, available on the CJEU website at *https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-01/ndr-cilfit-fr.pdf*, p. 228, para. 32, last accessed on 26.02.2023.

Further on, the national courts have jurisdiction to interpret a legal EU provision by applying the principle of autonomous interpretation, together with the interpretative criteria set out in the *Cilfit case*, and if they still have doubts on the correct interpretation, they may resort to the preliminary reference mechanism (the „keystone" of the Union's judicial system[38]), with the courts of last instance being obliged to do so.

The application of the principle of autonomous interpretation is a *sine qua non* requirement and not an option for national courts, which cannot interpret EU law by reference to concepts or provisions of national law, but must comply with the interpretative criteria listed in the *Cilfit case* in the two cases analysed: the theory of the clarified act and the clear act theory.

A further conclusion is that the application of this principle by the courts of the Member States does not mean that the CJEU's exclusive jurisdiction on uniform interpretation has been infringed, since the Court, in the very grounds of the *Cilfit case*, has ruled that the national courts may interpret EU law and has provided the necessary criteria for interpretation so that they are able to make proper use of the preliminary reference procedure.

Moreover, the interpretation given by the national courts is binding only on the parties to the dispute, unlike the interpretation given by the CJEU which together with the provision interpreted form a whole and it is binding *erga omnes*.

We can conclude that the jurisdiction of national courts in the interpretation of EU law stops when they have a doubt over the correct interpretation of the EU provision, after applying the principle of autonomous interpretation and the Cilfit interpretative criteria. This is when the jurisdiction of the CJEU on interpretation begins, precisely in order to ensure a uniform interpretation throughout the EU and to avoid contradictory judgements delivered to similar situations due to different interpretations of the same legal EU text done by different national courts.

The limit of the jurisdiction of the national court in the interpretation of EU law is represented by the doubt in its own interpretation.

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[38] Expression used by the CJEU in Opinion no. 2/13 (Accession of the Union to the ECHR) of 18.12.2014, EU:C:2014:2454, para. 176.

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