

*Radmila Dragišić, Ma**

Government of the Republika Srpska, Bosnia and Herzegovina

ORCID: 0009-0007-4492-2722

THE BASIC PRINCIPLE OF SINCERE COOPERATION IN THE LAW OF THE EUROPEAN UNION^{**}

ABSTRACT: Although it is somewhat wider in scope by its character than the other basic principles that regulate the relationship between the law of the European Union and the domestic law of Member States, the principle of loyal or, according to the Lisbon solutions, “sincere” cooperation represents one of central definitive and developmental building elements on which the legal order of this European organization rests. Thus, the focus of this article is the notion and definition of this principle, its genesis, as well as the scope of its application in relation to directives as formal sources of EU law; the positions held by the Court of Justice of the European Union contributed the most to this analysis. The research utilized analytical and synthetical methods, with content analysis and historical-comparative analysis taking the centre stage. The article ends with concluding remarks, where the most interesting ones are those that contribute to the argument that the principle of sincere cooperation belongs to the category of tools via which national difference could be lessened in order to achieve the goals of the European or-

* email: Strbacr73@gmail.com, Deputy Director of the Republican Secretariat for Legislation in the Government of the Republika Srpska, Ph.D. Student at the Faculty of Law, University of Banja Luka, Republika Srpska, Bosnia and Herzegovina.

** The paper was received on June 10, 2022, and the paper was accepted for publication on December 7, 2022.

The translation of the original article into English is provided by the *Glasnik of the Bar Association of Vojvodina*.

ganization and that the presupposition for this to happen is, among other factors, to remove the malformations that exist in the relationship between the principle of sincere cooperation and the directive as a source of secondary law of the European Union.

Keywords: European Union law, domestic law of Member States, basic legal principles, the basic legal principle of sincere cooperation, case law of the Court of Justice of the European Union

INTRODUCTION

The basic legal principles on which the European Union (hereinafter: the EU) rests are fundamentally linked to sincere cooperation, an open market economy with free competition, the primacy of law of the European organization in relation to the law of Member States, its autonomy, direct application and effect, etc.¹ They can be differentiated based on whether they are incorporated into the founding acts (the principle of sincere cooperation, the principle of conferral of competences, the principle of an open market economy with free competition, direct applicability) or not (the principle of autonomy, the principle of direct effect, the principle of indirect effect). Their common characteristic is that they maintain the essence of the legal order of the European Union, and they are not utilized to fill legal voids but have a, primarily, operative nature.²

The Member States (the legislators, executive and judicial bodies) are obligated to follow the basic principle of sincere cooperation. They are obligated to do so even regarding the competences which are not conferred to that regional international organization, which implies that the principle of sincere cooperation, at the level of the EU, uses a “backdoor” to transcend the principle of conferral of competences which is a part of every international

¹ Dworkin, R. (1972). Social Rules and Legal Theory. *The Yale Law Journal*, 81:5, 876; Dworkin, R. (1978). *Taking Rights Seriously*. Cambridge: Harvard Univ. Press, 2nd edn.

² The basic legal principles should not be equated with the general legal principles which are the most general and abstract legal norms that do not determine specific rights and obligations of the subjects of law, but represent a guide for the normative-legal process, telling how those rights and obligations should be determined. They can also be divided into those incorporated into the founding acts (the principle of mutual recognition, the principle of solidarity) and those that are not (the principle of mutual trust). The general legal principles should also not be equated with the general principles which are characteristic for each specific area that is regulated by EU law (e.g., within the framework on the sources of law regarding the protection of the environment, the precautionary principle, the solidarity principle for protecting the environment, the environmental integration principle, etc.).

organization, including the EU. It is undeniable that Member States are obligated to cooperate sincerely, both between themselves (on the horizontal plain) and with the organization (the vertical plain), and that they should refrain from undertaking any actions that could endanger achieving the goals set forth in the Treaty on European Union. Considering the facts that will be presented in this paper, it will be demonstrated that the stated is not easy to achieve, given that the Member States of the EU, as the subjects of international law, are continually faced with the issue of loyalty towards the national, regional, and international legal orders.

THE DEFINITION OF THE CONTENT

The basic principle of sincere cooperation entails the agreement-based obligation and decision of the Member States to act in order to efficiently fulfil their duties that stem from the law of the European Union, taking into account all the means at their disposal, as well as to refrain from undertaking actions that could jeopardize achieving the goals of the European organization. Not fulfilling the contractual obligations would represent, as the Court of Justice of the European Union (hereinafter: CJEU) noted at the beginning of the 1970s in the *Commission v. Italian Republic* case³, a failure in the duty of solidarity by the Member States and thereby strikes at the fundamental basis of the Community legal order.

In jurisprudence, there is an on-going debate on whether the principle of sincere cooperation is a unique principle or a collection of multiple basic principles, general legal principles, and principles unique to specific areas, as well as basic positions of the CJEU.⁴ It is generally believed that the praxis of the CJEU will provide a final answer in the future, whereby the basis of that answer will be the historical cases of *Van Gend en Loos*⁵ and *Costa v. ENEL*⁶ which defined the laws of the Community as an autonomous legal system within which individual subjects are guaranteed rights, but not only those rights that are explicitly stated in the founding act but also those rights which are granted to these subjects based on the obligations that the law of the

³ Judgement of 7 February 1973, *Commission v. Italian Republic*, C –39/72, ECLI:EU:C:1973:13, para. 25.

⁴ Van Iersel, D., Ramaglia Mota, C. G. (2022). Federalising tendencies of the Principle of Sincere Cooperation in the area of Common Foreign and Security Policy. *Warwick Undergraduate Law Journal*.

⁵ Judgement of 5 February 1963, *Van Gend & Loos*, C – 26/62, ECLI:EU:C:1963:1.

⁶ Judgement of 15 July 1964, *Costa v. E.N.E.L.*, C-6/64, ECLI:EU:C:1964:66.

organization imposes on other individual subjects, Member States, and institution of the Community. The judgment in the *Frankovich* case⁷ is of equal importance, wherein, among other conclusions, it was stated that the full efficacy of Community rules would be impaired and the protection of the rights of individual subjects would be significantly weakened if individuals were unable to obtain redress when their rights are infringed by a breach of Community law for which a Member State can be held responsible. The binding element between everything stated until now is the principle of sincere cooperation in the context of the realization of contractual goals, which stems from the definition of its content and the function it has in the law of the EU.

It is certain that the principle of sincere cooperation is most closely related to the principle of the autonomy of law of the EU and that, in terms of the importance for developing the legal system of this European organisation as well as the fact that it borders the sphere of state interests and political life, it belongs to the basic principles of the constitutional order of this organization.⁸ However, it should not be disregarded that the principle of sincere cooperation enables the existence of certain other principles, like the principle of efficiency⁹, as can be observed in the *Rewe* case¹⁰, and that it relies on the preliminary ruling procedure that is conducted before the CJEU.¹¹

GENESIS VIA THE PROVISION OF THE FOUNDING ACTS

The duty of loyal cooperation was established early, during the time of the European Coal and Steel Community¹² (hereinafter: ECSC). Consequently, it should not be doubted that the principle of loyal cooperation is important for

⁷ Judgement of 19 November 1991, *Frankovich*, C-6/90 and C-9/90, ECLI:EU:C:1991:428, para. 33.

⁸ Lukić Radović, M. (2018). Lojalnost unutar Evropske unije – pravna ili samo politička obaveza. *Annals of the Faculty of Law in Belgrade*, 66 (3), 235–249.

⁹ Klamert, M. (2014). *The Principle of Loyalty in EU Law*. Oxford University Press, para. 252.

¹⁰ Judgement of 16 December 1976, *Rewe-Zentralfinanz*, C – 33/76, ECLI:EU:C:1976:188.

¹¹ Glavina, M. (2020). To Refer or Not to Refer, That Is the (Preliminary) Question: Exploring Factors which Influence the Participation of National Judges in the Preliminary Ruling Procedure. *Croatian Yearbook of European Law and Policy*, 16, 25–59.

¹² The ECSC was an integration of the coal and steel industries of Western Europe; it had six members: Belgium, Germany, Luxembourg, France, Italy, and the Netherlands.

strengthening the legal system of the European organization.¹³ The principle of loyal (sincere) cooperation could be found in almost all founding agreements and their revisions. However, there are exceptions. Namely, provisions on loyal cooperation were not contained in the Treaty on European Union and for a time that issue was an open question.¹⁴ It was uncertain whether because of the absence of such provisions, modelled on the solutions from Arts. 5 and 10 of the European Economic Community Treaty (hereinafter: the EEC Treaty), the argument which supports the positions that the principle of primacy of the European organization could not be expanded to the third pillar of the Union, that is, Title VI of its founding act, was strengthened.¹⁵

Even Arts. I – V of the unsuccessful Constitutional Treaty of the EU contained the principle of loyal, that is, sincere cooperation, pursuant to which the member states were obligated to act in order to realize the goals of the organization and refrain from acting in a manner that could endanger or bring into questions those goals. As can be observed, provisions of Arts. I – V defined the mutual guarantees of the European Union and its member states, which, on one hand, had the purpose of protecting the national identity and differences of the member states and, on the other, had the purpose of securing the efficient operation of the organization.

The Lisbon solutions, more precisely Art. 4 (2) (3) of the Treaty of Lisbon¹⁶, prescribed that pursuant to sincere cooperation and full mutual respect, the EU and its Members States shall assist each other in carrying out the tasks stemming from the Treaty. The Member States shall take any appropriate measure, general or particular, to ensure the fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives. The content of the listed provisions was not very different from the provisions of Art. 10 of the EEC Treaty, that is, they were almost identical.

¹³ Klamert, M. (2014). *The Principle of Loyalty in EU Law*, edited by Paul Craig and Gráinne de Búrca. Oxford University Press, 9–20.

¹⁴ Opinion of Advocate General Kokott in C-105/03 *Pupino*, ECLI:EU:C:2005:386, 21–22.

¹⁵ Lorenzmeier, S. (2006). The Legal Effect of Framework Decisions – A Case-Note on the Pupino Decision¹ of the European Court of Justice. *Zeitschrift für Internationale Strafrechtsdogmatik*, 12/2006, 583–588. Available at: https://www.zis-online.com/dat/artikel/2006_12_97.pdf

¹⁶ Consolidated version of the Treaty on European Union [2012] OJ C 326/13, Art. 4 (3).

Art. 4 (3) of the Treaty of Lisbon (i.e., the prior Arts. 5 and 10 of the EEC Treaty) was formulated in a rather extensive manner, which contributes to the existence of a wide range of possible assessments regarding the behaviours of Member States. Consequently, it would be worthwhile to augment this provision in order to more precisely define the obligations of Member States. Namely, the Court of Justice in the *Schlüter* case¹⁷ and in the other cases from 1973¹⁸, abrogated the acknowledgement of the direct effect of the provisions of Art. 5, even though that effect could have been acknowledged given the fact that that provision had a link with provisions of Art. 107 of the Treaty. Namely, general advocate *VerLoren van Themaat* expressed the opinion in the *Leclerc* case¹⁹ that Art. 5 represents more than a simple framework that is relevant exclusively in regards to determining other provisions of the Treaty.²⁰ This position of the advocate general is completely logical given that, as he himself states, Art. 5 contains two general duties and one proscription, whose existence is dependent on the duties and proscriptions prescribed by other provisions and measures adopted by the Community's institutions.

GENESIS VIA SELECTED CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

The Court of Justice of the European Union continually referred to the principle of loyal or sincere cooperation between Member States and the EU and the doctrine *'l effet utile*, that is, the useful effects and the efficacy of the law of the organization. The positions of the Court of Justice were and are related to the multilateral and "conflicting" sincere cooperation of Member States because they are the subjects of European Union law and the subjects of international law. The CJEU viewed the relationship between the law of the EU and national law from the aspect of the relationship between the principle of sincere cooperation, on one hand, and the protection of the constitutional identity of Member States as it relates to the principle of primacy of EU law, on the other.

¹⁷ Judgement of 24 October 1974, *Schlüter*, C-9/73, ECLI:EU:C:1973:110. Also see: Judgement of 15 January 1986, C-44/84, *Hurd*, ECLI:EU:C:1986:2, p. 47–48.

¹⁸ Judgement of 24 October 1973, *Rewe Zentral*, C-10/73, ECLI:EU:C:1973:111; Judgement of 30 April 1974, *Sacchi*, C-155/73, ECLI:EU:C:1974:40.

¹⁹ Judgement of 29 January 1985, *Leclerc*, C-231/83, ECLI:EU:C:1985:29.

²⁰ Lang, J. T. (1986). Article 5 of the EEC Treaty: The Emergence of Constitutional Principles in the Case Law of the Court of Justice. *Fordham International Law Journal*, 10 (3), 505. Available at: <http://ir.lawnet.fordham.edu/ilj>

The principle of sincere cooperation is determined as the most important principle in the law of the EU, as the CJEU confirmed in the *Brasserie du Pêcheur* case, where this principle was qualified as inherent to the Community legal order,²¹ but also in the *Commission of the European Communities v Portuguese Republic* case, wherein the CJEU determined that the principle of sincere cooperation is the basis of Art. 5 of the EEC Treaty.²²

This is a type of principle that typically allows Member States a certain degree of discretionary power regarding the methods that will be utilized to achieve the contractual obligation. However, this discretionary leeway was not tolerated in certain cases, as in, for example, the *Thieffry* case²³, while in the *Commission of the European Communities v Federal Republic of Germany* case²⁴, it was determined that Member States and the Union must cooperate in order to remove potential difficulties.

Typical examples of violations of laws of the organization through the violation of the principle of sincere cooperation can be identified in the case law of the CJEU. One of those examples is the case of *Commission v Greece*²⁵ from the second half of the 1980s, which dealt with a situation where Greece, after it joined the EU on January 1, 1981, did not honour the basic principle of sincere cooperation in its relationship with the Commission as an institution of the Community. More precisely, this country did not respond to the request of the Commission of European Communities to deliver specific information, so the Commission, pursuant to Art. 169 of the EEC Treaty, initiated proceedings before the CJEU due to a violation of Art. 5 of the Treaty. In the judgement, the Court noted:

“The Greek Government’s refusal to cooperate with the Commission prevented the latter from obtaining information about an administrative practice and from determining whether it gave rise to barriers to trade in olive oil. That lack of cooperation was particularly serious because it persisted before the Court. The Court cannot accomplish the task entrusted to it by Article 164 of the Treaty, namely ensuring that in the interpretation and application of the Treaty the law is observed, where a government does not comply with

²¹ Judgement of 5 March 1996, *Brasserie du Pêcheur*, C-46/93 and C-48/93, ECLI:EU:C:1996:79, para. 39.

²² Judgement of 27 June 2000, *Commission v Portuguese Republic*, C-404/97, ECLI:EU:C:2000:345, para. 40.

²³ Judgement of 24 April 1977, *Thieffry*, C-71/76, ECLI:EU:C:1977:65.

²⁴ Judgement of 2 February 1989, *Commission v Germany*, C-94/87, ECLI:EU:C:1989:46.

²⁵ Judgement of 22 September 1988, *Commission v Hellenic Republic*, C-272/86, ECLI:EU:C:1988:4335, para. 31.

its requests. The conduct of the Greek Government has therefore constituted in the present case a serious impediment to the administration of justice.”²⁶

In the same time period, via another *Commission v Greece* case²⁷, the CJEU noted that a violation of the principle of sincere cooperation would occur even if Member States failed to punish those that violated Community law, implying that the punishment should be equal to that which subjects that violate national law receive.²⁸

During the 1990s, the basic principle of sincere cooperation was examined from the perspective of its relationship with the principle of discretion of national courts, as the basis for their examinational and developmental actions. The House of Lords of the United Kingdom of Great Britain and Northern Ireland also explored this issue, whereby the role of national courts in regards to securing the principle of sincere cooperation and its protection was made clear. In particular, it was determined that the discretion of national law must be honoured up until it begins to negatively impact the efficacy of the law of the European organization, that is, sincere cooperation should be strengthened for mutual benefit. The CJEU was on the same track when it made judgements in the *Emmott*²⁹ and *Océano*³⁰ cases.

More recent case law of the CJEU also relates the principle of sincere cooperation with the concept of the rule of law, which contains some of the most important general legal principles that were identified by the CJEU, such as the principle of legal security, which exists in many legal systems and has several manifestation – the prohibition on retroactivity, acquired rights, the right to an efficient legal remedy, an independent judiciary, and the doctrine of legitimate expectations. As early as the *Les Verts* judgement³¹, the CJEU noted that the European Community is “a community based on the rule of law.” Namely, the key issue of the right to an effective legal remedy is still being raised, as was done in the historical *CILFIT* case³². In the *CILFIT* case, the CJEU determined that Art. 177 (3) of the EEC Treaty should be interpreted

²⁶ Judgement of 22 September 1988, *Commission v Hellenic Republic*, C-272/86, ECLI:EU:C:1988:4335, para. 31.

²⁷ *Ibid.*, 24.

²⁸ Judgement of 21 September 1989, *Commission v Hellenic Republic*, C-68/88, ECLI:EU:C:1989:339, para. 24.

²⁹ Judgement of 25 July 1991, C-208/90 *Theresa Emmott*, ECLI:EU:C:1991:333.

³⁰ Judgement of 27 June 2000, C-240/98 to C-244/98 *Grupo Editorial*, ECLI:EU:C:2000:346.

³¹ Judgement of 23 April 1986, C-294/83 “*Les Verts*”, ECLI:EU:C:1986:166, para. 23.

³² Judgement 6 October 1982, C-283/81 *CILFIT* EU:C:1982:335, para. 21.

so as to mean that a national court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the CJEU, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be interpreted in light of the specific characteristics of Community law, the particular difficulties of its interpretation, and the risk of the differences of court decisions within the Community. In more recent times, the issue of the right to an efficient legal remedy was raised in the *A.B. and Others v Krajowa Rada Sądownictwa and Others* case³³, where the Court of Justice decided, and by doing so remaining consistent with its prior decisions, that an infringement of this right creates an obligation for national courts, in this example Polish courts, to bring an application before the Court of Justice for a preliminary ruling.³⁴

In the context of contributing to the understanding of the relationship between the concept of the rule of law and the basic principle of sincere cooperation, it should be noted that the conflict between Poland and the European Union in the area of the rule of law has been on-going since 2015 and that institutions of the European organization have and are attempting to act in favour of the independence of the judiciary in that country by utilizing different political, financial, and legal instruments. The conflict acquired a clear constitutional dimension when the Polish Constitutional Tribunal took part in the *European Commission v Republic of Poland* case³⁵; it examined the question of the relationship between national and “European” law and the reach of the application of the basic principles on which the legal order of the EU rests, like the principle of primacy (supremacy) or the unilateral application of law of the EU in its Member States. The Constitutional Tribunal noted that it is the exclusive jurisdiction of the Member States to decide on the organization of their judicial apparatuses, that the attempts of the EU to impose duties regarding this issue are not legal, and that the principle of sincere cooperation from Art. 4 (3) of the Treaty on European Union and in relation to Art.

³³ Judgement of 2 March 2021, *Krajowa Rada*, C-824/18, ECLI:EU:C:2021:153, pp. 39, 57, 58(2), 93 and 94.

³⁴ V. and other case law of the Court of Justice: Judgement of 16 January 1974, *Rheinmullen*, C-166/73, ECLI:EU:C:1974:3, para. 4; Judgement of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, ECLI:EU:C:2010:363, para. 42; Judgement of 5 April 2016, *Puligienica*, C-689/13, ECLI:EU:C:2016:199, para. 39.

³⁵ Judgement of 15 July 2021, *Commission v Republic of Poland*, C-791/19, ECLI:EU:C:2021:596.

279 of the Treaty on the Functioning of the European Union that defines the general competence of the CJEU to impose temporary measures, cannot be applied to the decisions of the CJEU that are *ultra vires*. More precisely, the Constitutional Tribunal determined that such actions of the CJEU are not in harmony with Arts. 2³⁶, 7³⁷, 8.1³⁸, and 90.1³⁹ and in relation to Art. 4.1⁴⁰ of the Polish Constitution⁴¹, and thus, as a result of the principles of primacy and direct application from paras. 1 – 3, Art. 9 of the Constitution, they cannot be applied in that specific case.⁴² In a similar manner to the Czech Constitutional Court in the *Landtová* case⁴³, the Polish Constitutional Tribunal renounced the doctrinal concept of the CJEU on the absolute primacy of EU law, stressing that the Constitution is the highest legal act in the Polish legal system and that the relationship between national and “European” law is defined exclusively by it, which includes the question of the validity of EU law within the Polish legal system.

Shifting away from the unstable ground where the vertical conflict between the national courts of Poland and the Court of Justice of the European Union regarding the rule of law is taking place, we can point to the *Achmea*⁴⁴ case, wherein the CJEU concluded that it is up to the Member States to secure the application and following of EU laws based on the principle of cooperation within its territories, and to undertake all measures that would secure the fulfillment of the obligations that stem from the Treaty. Additionally, it is important that doctrine also took part in protecting the basic principles on which the EU rests, including the principle of sincere cooperation, when it was

³⁶ Art. 2: The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice.

³⁷ Art. 7: The organs of public authority shall function on the basis of, and within the limits of, the law.

³⁸ Art. 8.1: The Constitution shall be the supreme law of the Republic of Poland.

³⁹ Art. 90.1: The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.

⁴⁰ Art. 4.1: Supreme power in the Republic of Poland shall be vested in the Nation.

⁴¹ The Constitution of the Republic of Poland, Journal of the Laws of the Republic of Poland, No. 78, Item 483, 1997. Available at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.html>

⁴² Judgement in the name of the Republic of Poland of 7 October 2021, Case Ref. No. K 3/21, sentence of the judgement. Available at: <https://trybunal.gov.pl/en/hearings/judgments/art/11662-ocena-zgodnosci-z-konstytucja-rp-wybranych-przepisow-traktatu-ounii-europejskiej>

⁴³ Judgement of 22 June 2011, *Landtová*, C-399/09, ECLI:EU:C:2011:415.

⁴⁴ Judgement of 6 March 2018, *Achmea*, C-284/16, ECLI:EU:C:2018:158.

determined that those principles would not be infringed on by the provisions of the Energy Charter Treaty.⁴⁵

Transitioning to the area of strictly international law⁴⁶, we should examine the *COTIF* case⁴⁷, wherein the Federal Republic of Germany, among other conclusions, noted that there was a violation of the principle of conferred competence from Art. 5 (2) of the Treaty on European Union, a breach of the obligation to state reason under Art. 296 of the Treaty of the Functioning of the European Union, and a violation of the principle of sincere cooperation from Art. 4 (3) of the Treaty on European Union, in conjunction with the principle of effective judicial protection. Germany reiterated that the principle of sincere cooperation not only binds Member States to undertake all actions necessary to ensure the application and effectiveness of EU law, but also prescribes for EU institution reciprocal duties of sincere cooperation with the Member States. The decision of the Council, the repeal of which was sought by Germany in a specific area, was in relation to an international agreement of mixed character; via that agreement, the EU and its Member States realize their rights as members of an international organization. This was the reason that Germany believed that when there is disagreement between a Member State and the EU regarding the delineation of competence, the institution of the EU should cooperate in good faith in order to clarify the situation and overcome the existing obstacles. Consequently, according to the position that Germany took, the EU's institutions infringed on the principle of sincere cooperation when they organized the proceedings that preceded the challenged decision of the Council and did not provide sufficient time to challenge it before the Court, before the effects the decision has are irreversible. In such a manner, according to Germany's estimate, the principle of effective judicial protection was also violated.

We should remind ourselves that the decade before the *COTIF* judgement was characterised by positive and negative marks of sincere cooperation,

⁴⁵ Odermatt, J. (2021). Is EU law international? – Case C-741/19 Republic of Moldova v Komstroy LLC and the autonomy of EU order, *Insight – European Papers*, 6 (3), 1255–1268.

⁴⁶ Certain authors, like Ramses Wessel, propose that the law of the European Union could be a unique branch of international law that is characterized by a detailed development of the link with national legal systems and where Member States express a higher degree of willingness to transfer their competences to this international organization. See: Wessel, R. (2018). *Studyng International and European Law: Confronting Perspectives and Combining Interests*, published in S. Garben and I. Govaere (eds.). *The Interface between International and EU Law*. Oxford: Hart Publishers, 2018.

⁴⁷ Judgement of 5 December 2017, *Germany v Council*, C-600/14, ECLI:EU:C:2017:935, para. 94.

as it concerns international agreements, that were revealed in the judgments of the Court of Justice from 2005. Representatives are the cases *Commission v Germany (Inland Waterways)*⁴⁸ and *Commission v Luxembourg (Inland Waterways)*.⁴⁹ Countries, through the application of the principle of sincere cooperation, enabled the EU to realize its competences and thus became international “representatives” of the interests of the organization,⁵⁰ while the misunderstandings between the Member States and the Commission deepened.

THE SCOPE OF APPLICATION IN RELATION TO DIRECTIVES

Since the *Van Duyn*⁵¹ и *Ratti*⁵² cases, the CJEU noted the need for Member States to timely and in a disciplined manner fulfil their obligations contained in directives, as well as that they would not be able to refer to national regulations which are in opposition to this secondary source of law if this is not the case. The Declaration on the Implementation of Community Law, annexed to the Treaty on European Union, testifies to the importance of the timely transposition of directives in the process of European creation. Namely, it is the right of every Member State to select the means by which it will achieve the goals and results from a directive. This, however, does not exclude the right of an individual (a private or legal entity) to realize their rights before a court of a Member State when the content of those rights is clear and undoubtedly founded in the provisions of that formal source of law. Additionally, the position of the CJEU in the *Ratti* case, that the expiration of the prescribed period for the implementation of a directive is a condition for relying on its provisions, should be kept in mind. Moreover, when organizing their relationships with other subjects, states cannot rely on their own failures, such as the failure to implement a directive in a proper and encompassing way within the prescribed period. In the *Adeneler* case,⁵³ it was determined that

⁴⁸ Judgement of 14 July 2005, *Commission v Germany (Inland Waterways)*, C-433/03, ECLI:EU:C:2005:462, para. 66.

⁴⁹ Judgement of 2 June 2005, *Commission v Luxembourg (Inland Waterways)*, C-266/03, ECLI:EU: C:2005:341, para. 60.

⁵⁰ Larik, J. (2017). *Sincere Cooperation in the Common Commercial Policy: Lisbon, a “Joined-Up” Union, and “Brexit”*, M. Bungenberg et al. (eds.). *European Yearbook of International Economic Law* 8, 90–91. DOI 10.1007/978-3-319-58832-2_4.

⁵¹ Judgement of 4 December 1974, *Van Duyn*, C-41/74, ECLI:EU:C:1974:133.

⁵² Judgement of 5 April 1979, *Ratti*, C-148/78, ECLI:EU:C:1979:110.

⁵³ Judgement of 4 July 2006, *Adeneler*, C-212/04, ECLI:EU:C:2006:443, para. 123.

from the date upon which a directive has entered into force, the courts of a Member State must refrain as far as possible from interpreting domestic law in a manner which might seriously compromise, after the period for transposition has expired, attainment of the objective pursued by that directive. Regarding the national level, it should be noted that during the time period that the CJEU was deciding on the *Adeneler* case, the Constitutional Council of France took the position that the transposition of directives into the legal system of France is a “constitutional requirement”.

In its activities, the Court of Justice counted on the support of EU citizens and the support of national courts. It expected to receive support from EU citizens as the purpose of a directive as a source of secondary law is to protect legal subjects from oversights in national regulations, while it is natural for courts to influence, through their activities, legislative and executive authorities in order to protect the subjective rights of legal subjects found in directives and that should be transpositioned into national legislation. Specifically, national courts have the right and duty to interpret national law and by doing so honour the principle of sincere cooperation, in order to fulfil the purpose of EU regulations during the interpretation.

Here, it would be worthwhile to mention the Directive on services in the internal market⁵⁴ as an interesting example that relates to the new Lisbon mechanism for imposing pecuniary fines due to an untimely transposition of this formal source of law. Further, the transposition and implementation of the Directive was the subject of 20 bilateral meetings between Member States and nine meetings of an expert group.⁵⁵

All of the above implies that regarding timely transposition, achieving the goals from a directive, and its legal nature, since the time of the *Van Duyn* and *Ratti* cases, through the Treaty on European Union, the Draft Constitutional Treaty of the EU, the Directive on services in the internal market, up until today, the principle of sincere cooperation was not sufficiently utilized, which would indicate certain malformations in the relation of this principle and directives as sources of secondary law.

⁵⁴ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, *OJ L* 376, 27. 12. 2006, 36–68.

⁵⁵ Report from the Commission 27th Annual Report on Monitoring the Application of the EU Law, COM(2010) 538 final, Brussels, 1. 10. 2010, 5.

CONCLUSION

The basic principle of sincere cooperation belongs to the category of basic principles that are incorporated into the founding treaties of the European Union. It began to take form during the time of the European Coal and Steel Community, when the duty of loyal (sincere) cooperation was proclaimed. It acquired its content in the EEC Treaty, and that content was not significantly changed with revisions to the founding treaties or the Lisbon solutions.

In its essence, the basic principle of sincere cooperation entails the contract-based duty and decision by states to, taking into account all available means, act in such a way as to efficiently realize their duties that stem from EU law, as well as to refrain from undertaking activities that could jeopardize the goals of the European organization.

It can be concluded that the contractual provisions that define the principle of sincere cooperation are formulated in a rather non-specific manner; consequently, it would be beneficial to supplement them in order for the provisions to more precisely define the obligations of Member States and to lessen national differences, all with the purpose of realizing the goals of EU regulations, that is, in order for this principle to truly acquire a supranational dimension. This argument is supported by the identified typical examples of violations of EU regulations by Member States through the infringement of the principle of sincere cooperation – a lack of a vertical level of cooperation, issues relating to the discretionary assessments of national courts, the link between this principle and not honouring the concept of the rule of law by certain members, negative trends that exist during the conclusion of mixed international agreements, and the malformation between this principle and the directive as a source of formal EU law.

BIBLIOGRAPHY

- Dworkin, R. (1978). *Taking Rights Seriously*. Cambridge: Harvard Univ. Press, 2nd edn.
- Klamert, M. (2014). *The Principle of Loyalty in EU Law*. Oxford University Press.
- Larik, J. (2017). Sincere Cooperation in the Common Commercial Policy: Lisbon, a “Joined-Up” Union, and “Brexit”, M. Bungenberg et al. (eds.). *European Yearbook of International Economic Law*, 2017, 83–110.
- Wessel, R. (2018). Studying International and European Law: Confronting Perspectives and Combining Interests, published in S. Garben and I. Govaere (Eds.). *The Interface between International and EU Law*. Oxford: Hart Publishers.

Articles

- Dworkin, R. (1972). Social Rules and Legal Theory. *The Yale Law Journal*, 81 (5).
- Glavina, M. (2020). To Refer or Not to Refer, That Is the (Preliminary) Question: Exploring Factors which Influence the Participation of National Judges in the Preliminary Ruling Procedure. *Croatian Yearbook of European Law and Policy*, 16. DOI: 10.3935/cyelp.16.2020.366
- Lang, J. T. (1986). Article 5 of the EEC Treaty: The Emergence of Constitutional Principles in the Case Law of the Court of Justice. *Fordham International Law Journal*, 10 (3). Available at: <http://ir.lawnet.fordham.edu/ilj>
- Lorenzmeier, S. (2006). The Legal Effect of Framework Decisions – A Case-Note on the Pupino Decision¹ of the European Court of Justice. *Zeitschrift für Internationale Strafrechtsdogmatik*, 12/2006. Available at: https://www.zisonline.com/dat/artikel/2006_12_97.pdf
- Lukić Radović, M. (2018). Lojalnost unutar Evropske unije – pravna ili samo politička obaveza. *Annals of the Faculty of Law in Belgrade*, 66 (3).
- Odermatt J. (2021). Is EU law international? – Case C-741/19 Republic of Moldova v Komstroy LLC and the autonomy of EU order. *Insight – European Papers*, 6(3). DOI: 10.15166/2499-8249/522.
- Van Iersel, D., Ramaglia Mota, C. G. (2022). Federalising tendencies of the Principle of Sincere Cooperation in the area of Common Foreign and Security Policy. *Warwick Undergraduate Law Journal*.

Regulations

- The Constitution of the Republic of Poland, *Journal of the Laws of the Republic of Poland*, No. 78, Item 483, 1997.
- Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, *OJ L 376*, 27., 12., 2006, 36–68.
- Consolidated version of the Treaty on European Union [2012] OJ C 326/13, Art. 4(3).

Case law

- Judgement of 5 February 1963, *Van Gend & Loos*, C-26/62, ECLI:EU:C:1963:1.
- Judgement of 15 July 1964, *Flaminio Costa v E.N.E.L.*, C-6/64, ECLI:EU:C:1964:66.
- Judgement of 7 February 1974, *Commission v Italian Republic*, C-39/72, ECLI:EU:C:1973:13.
- Judgement of 24 October 1974, *Schlüter*, C-9/73, ECLI:EU:C:1973:110.
- Judgement of 24 October 1973, *Rewe Zentral*, C-10/73, ECLI:EU:C:1973:111.
- Judgement of 30 April 1974, *Sacchi*, C-155/73, ECLI:EU:C:1974:40.
- Judgement of 16 January 1974, *Rheinmullen*, C-166/73, ECLI:EU:C:1974:3.
- Judgement of 4 December 1974, *Van Duyn*, C-41/74, ECLI:EU:C:1974:133.
- Judgement of 16 December 1976, *Rewe-Zentralfinanz*, C-33/76, ECLI:EU:C:1976:188.
- Judgement of 24 April 1977, *Thieffry*, C-71/76, ECLI:EU:C:1977:65.
- Judgement of 5 April 1979, *Ratti*, C-148/78, ECLI:EU:C:1979:110.

- Judgement of 6 October 1982, *CILFIT*, C-283/81, EU:C:1982:335.
Judgement of 29 January 1985, *Leclerc*, C-231/83, ECLI:EU:C:1985:29.
Judgement of 23 April 1986, “*Les Verts*”, C-294/83, ECLI:EU:C:1986:166.
Judgement of 15 January 1986, *Hurd v Kenneth*, C-44/84, ECLI:EU:C:1986:2.
Judgement of 22 September 1988, *Commission v Hellenic Republic*, C-272/86, ECLI:EU:C:1988:433.
Judgement of 2 February 1989, *Commission v Germany*, C-94/87, ECLI:EU:C:1989:46.
Judgement of 21 September 1989, *Commission v Hellenic Republic*, C-68/88, ECLI:EU:C:1989:339.
Judgement of 19 November 1991, *Frankovich*, C-6/90 and C-9/90 ECLI:EU:C:1991:428.
Judgement of 25 July 1991, *Emmott*, C – 208/90, ECLI:EU:C:1991:333.
Judgement of 5 March 1996, C-46/93 and C-48/93, *Brasserie du Pêcheur*, ECLI:EU:C:1996:79.
Judgement of 27 June 2000, *Commission v Portuguese Republic*, C-404/97, ECLI:EU:C:2000:345.
Judgement of 27 June 2000, *Grupo Editorial*, C-240/98 to C-244/98, ECLI:EU:C:2000:346.
Judgement of 14 July 2005, *Commission v Germany (Inland Waterways)*, C-433/03, ECLI:EU:C:2005:462.
Judgement of 2 June 2005, *Commission v Luxembourg (Inland Waterways)*, C-266/03, ECLI:EU: C:2005:341.
Judgement of 4 July 2006, *Adeneler*, C-212/04, ECLI:EU:C:2006:443.
Judgement of 22 June 2011, *Landtová*, C-399/09, ECLI:EU:C:2011:415.
Judgement of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, ECLI:EU:C:2010:363.
Judgement of 5 April 2016, *Puligienica*, C-689/13, ECLI:EU:C:2016:199.
Judgement of 5 December 2017, *Germany v Council*, C-600/14, ECLI:EU:C:2017:935.
Judgement of 6 March 2018, *Slowakische Republik v Achmea BV*, C-284/16, ECLI:EU:C:2018:158.
Judgement of 2 March 2021, *Krajowa Rada*, C-824/18, ECLI:EU:C:2021:153.
Judgement of 15 July 2021, *European Commission v Poland*, C-791/19, ECLI:EU:C:2021:596.
Opinion of Advocate General Kokott, *Pupino*, C-105/03, ECLI:EU:C:2005:386.

Other documents

- Report from the Commission 27th Annual Report on Monitoring the Application of the EU Law, COM(2010) 538 final, Brussels, 1. 10. 2010.