The European Court of Justice: a catalyst for European integration

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Abstract

The European Court of Justice (ECJ) is often regarded as a pro-integrative institution. The Court, in fact, has played an important role in binding the Member States (MS) together through its laws. This article investigates in which way the ECJ has served "in the process of European integration" (Alter, 1998: 123). Firstly, the preliminary ruling procedure will be analyzed as it fostered cooperation among national courts and the Common law, creating a reactive legal community bar and possibly, according to Weatherill (1995), a more federal Europe. Important to the enforcement mechanisms are also the principles of supremacy and direct effect, necessary for the creation of a multi-level system that integrates private and public actors. The Court, in fact, created opportunities providing personal incentives for individuals to participate in the construction of the community legal system. The ECJ was able to influence European integration so much because of the lack of obstacles from the Member States. Burley and Mattli (1993) asserted that the ECJ did not face impediments because of its non political nature, or as Weiler (1981) said, owing to its ‘neutral’ role. Alter (1998), on the other hand, developed the thesis of a ‘time horizon difference’ that drives politicians and judges’ distinct aims. Lastly, the so called ‘spill-over’ effect, a neofunctional concept, together with the significance of the ECJ within the context of EU integration process.
A great majority of theorists acknowledge that the European Court of Justice is nowadays different from Member States’ first project. It was, in fact, established with the mere role of interpreting and controlling legislations while still respecting Member States’ status as sovereign nations (Lenaerts, 1990).

**Preliminary ruling procedure**

One of the most relevant ECJ tools to pursue European integration is the preliminary ruling procedure. Established to challenge only the acts of the Community law, it then expanded into challenging national laws (Alter, 2001). The Court of Justice not only acquired the power to give preliminary ruling on interpretations concerning the Treaty, but its ruling also became binding on national courts. Supported by Article 177, this procedure brought to the Community legal structure a pattern that is very close to a federal system of law (Weatherill, 1995). Within the context of integration, this appears to be particularly relevant because as stated in the ‘Schwarze Case’¹ (Schwarze vs. Einfuhr, 1965), it establishes a special field of judicial cooperation used by national courts to strengthen their role in the national legal hierarchy (Kelemen and Schmidt, 2012). It is duty of the Member State courts to determine, in accordance with their discretion, whether a question of Community law needs to be answered in order to reach a decision (Lenz, 1994). This situation worked as an incentive to the national lower courts to refer cases to the ECJ through the preliminary ruling system (Alter, 2001). The law establishment in the EU institutions has the same effect in all circumstances in all Member States and therefore it ensures that integration will not only last, but also be developed.

¹ In the Schwarze case France argued that the Court could not rule on validity when the problem concerned interpretation. The Court held that: “[such strict formal requirement] would be inappropriate to the special field of judicial cooperation under article 177 which requires the national court and the Court of Justice, […], to make direct and complementary contributions to the working out of a decision.” (Schwarze vs. Einfuhr, 1965: 1081).

Another important role of the procedure is that it provides links between the Court and subnational actors, such as private litigants and national courts (Burley and Mattli, 1993). Consequently, the legal community in this way has flourished; since then groups of private practitioners have been visiting the Court and attending educational seminars as they get further encouragement and support from private association such as the International Federation for the European law. Lastly, as governments find it harder to disobey their own courts, compared to international courts, the preliminary procedure ensures that Community law remains uniform in all Member States (Weiler, 1999). Preliminary procedure therefore challenges national law strengthening national courts and enhancing cooperation between nations and the Court and fosters the legal community.

**Supremacy and direct effect**

Of substantial importance for further European integration have been the two basic legal doctrines of the European Court of Justice: supremacy and direct effect. Together with the preliminary ruling procedure, these doctrines are products of the ‘Case-law’, which resulted in the creation of an autonomous legal order that maintained the conditions for integration through an enforcement mechanism (Weatherill, 1995). This has been the case since privates started to have the right to challenge not only EU policies, but also the national law. The principle of supremacy, described as a cornerstone in the European constitutionalization, implies that every Community provisions and directives are superior to the provision of national law in case of a conflict between Community law and national law (Alter, 2001). One of the cases that highlighted EU law supremacy was ‘Factortame I’² (Regina. vs. Factortame Ltd., 1990). This case is seen as a turning point in the history of the British Parliamentary Sovereignty as Lord Bridge

² Regina. vs. Factortame Ltd. questioned the validity of a United Kingdom legislation on the basis that it contravened provisions of the EEC Treaty by depriving the applicants of their Community rights to fish in European waters.
recognised that it is duty of the UK Court to override any rule of national law found to be in conflict with any direct enforceable rule of the Community law (Craig and De Búrca, 2008). What is more, the ‘Simmenthal SpA Case’ 3 (Amministrazione delle Finanze dello Stato v. Simmenthal SpA, 1978) made EU law retroactive as it reads that national courts have the obligation to apply Community law and must accordingly set aside any provision of national law which may conflict with it.

Further, in 1963 the Court first stated that some EU provisions could have direct effect and this conferred rights on individuals rather than simply imposing duties on governments (Garrett, Kelemen and Schulz, 1998). Through direct effect the Court created a pro-community constituency of private individuals by giving them a “direct stake in promulgation and implementation of community law” (Burley and Mattli, 1993: 60). Stein (2000) analyzed two types of direct effect: ‘vertical’, which implies obligations towards member states’ governments, and ‘horizontal’, i.e. the obligation of an individual against the other. The power of Case-law is evincible from cases such as ‘Defrenne II’4 (Defrenne vs. Sabena, 1976) in which the ECJ declared that Article 119 had, for example, direct horizontal effect and therefore enforceable not merely between individuals

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3 Simmenthal S.p.A had imported a shipment of beef for human consumption from France. Doing so, Simmenthal S.p.A was charged a fee of 581,480 Italian Lire for the health and veterinary inspections of the imported meat. Simmenthal S.p.A considered such inspections and charges to be in discord with Community regulations as they hindered the free movement of goods among Community members.

4 Gabrielle Defrenne was a flight attendant for Sabena, Belgian national airline. Under Belgian law, female flight attendants, unlike their male counterparts, were obliged to retire at the age of 40. Because Defrenne had been forced to retire in 1968, she complained that the lower pension violated her right to equal treatment on grounds of gender under article 119 of the Treaty of the European Community (now Article 157 of the TFEU).
and the government, but also between private parties. Direct effect highlighted how individuals are the best means of binding member states to their obligations. Citizens who stand to gain have a constant incentive to “push their governments to live up to paper commitments” (Burley and Mattli, 1993: 62). Integration, therefore, advances as the multilevel system offers an alternative structure for changes to national private and public actors (Kelemen and Schmidt, 2012: 4). Supremacy and direct effect boosted integration to the extent that it was then possible for the ECJ to challenge national law. Also, direct effect created a situation in which private parties had incentives to make legal claims based on their economic rights and other individual rights under European law.

‘Time horizon difference’
The metamorphosis through Case-law, as seen, was particularly important for the encouragement of EU integration. The discussion, then, seems to focus on how the ECJ switched its role “from agent to principal” (Josselin and Marciano, 2007: 9) and how it is now able to interpret “existing EC laws in ways that member states had not intended” (Alter, 1998: 123). Burley and Mattli (1993) argued that the main reason behind the ever-increasing power gained by the ECJ was due to the non-political nature of their decisions. “Law functions as both a mask and a shield” (Burley and Mattli, 1993: 72) as it disguises the promotion of one particular set of political objectives against contending objectives in the purely political sphere. In the same way, Weiler (1999) believes that the ‘neutral’ role of the Court prevented it from political attacks. On the other hand, Alter (1998, 2001) brought about an interesting point of view that focuses on the idea of “different time horizons of courts and politicians” (Alter, 1998: 130). This difference of interests among politicians and judges became one of the main reasons for further integration as it left the ECJ free to expand. Politicians, who normally focus only on their mandate’s time span, have shorter time goals. Member states are, in fact, mainly concerned with protecting national interests during the process of integration, while avoiding “serious conflicts that could derail the common market effort” (Alter, 1998: 130). What is more, as Weiler (1999) pointed out, the advances in EU legal integration happened in a period of time in which the member states were actually worried about the supranational pretentions of the Treaty of Rome. When in the 1970s the governments were trying to obstacle the increasing common market the ECJ was already working too closely with the national legal systems. The ECJ changed the EU legal system, fundamentally undermining Member States’ control over the Court. The non-political nature of the Court’s decisions, together with the ‘different time horizons’ of politicians and judges, has helped pursuing European integration (Alter, 1998).

All these aforementioned enforcement tools give the idea of a pro-integrative European Court of Justice. Accordingly, neo-functionalist literature considers the ECJ as highly instrumental to the progress of European integration. Another neuralgic point in the integration process is that, as the neofunctionalists explain how an initial decision made by governments concerning a certain sector can positively affect the authority of institutions into neighbouring areas of policy. For instance as Shaw wrote, an act dealing with coal and steel could lead to “a general Treaty covering all economic sectors […]” (1996: 12). This process is know as the ‘spill-over effect’. For this reason, the ECJ is not only the backbone of the juridical integration but also played an important role in the development of political and economic unification. “If politics is power, will and authority, then law is an expression of these features in particular form” (Green, 1969: 19). According to Green (1969), political integration can only take place in connection and within the framework of law as political integration really means legal integration. But the neofunctional point of view also gives importance to the fact that Member States conceived the ECJ as a supranational body that could have led their project further. It was with this premise only that the Court was able to then transform and gain more power through Case-law.
European integration has been driven in the last decades by several factors. Nonetheless, the central role of the ECJ in this process cannot be denied. The preliminary ruling procedure supported integration by ensuring cooperation among national courts and the ECJ. This meant a more federal system that challenged national laws and worked towards a more integrated legal community bar. Case-law has represented a turning point for the development of supremacy and direct effect. Through them, the Court supports individual participation in the system in a way that advances community goals; they created a pro-community constituency of private individuals by giving them a direct stake in promulgation and implementation of community law (Alter, 2001). What is more, its ‘legal character’ and its ‘neutral’ identity have allowed the ECJ to gain such an important catalyst role. Member States, at the same time, underestimated the power the Court had been acquiring, a power far greater than the one conferred to it by the Treaties themselves. All these factors have allowed the ECJ to foster European integration.

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