JOGI FÓRUM PUBLIKÁCIÓ

www.jogiforum.hu

Iura novit curia? The aim of the preliminary ruling procedure and its achievement from a civil law perspective

Hegyi Áron

Malta, 20.08.2016

Introduction

The first part of the title of this thesis (iura novit curia) is a roman legal maxim means 'the court knows the law'. This maxim expresses the principle that the court is responsible to determine the applicable law for the facts provided by the parties. A more tangible maxim which describes this theory as well is 'da mihi factum, dabo tibi ius' (give me the facts and I shall give you the law). The maxim also means the parties cannot limit the court's authority to determine the applicable law.[1] These maxims have been considered to apply only in civil law legal systems and have been precluded in the common law legal systems although as Advocate General Jacobs thoroughly explains in his opinion, which is in short: 'The contrast as expressed above suggests that courts in the continental systems may, or even must, raise of their own motion a point of law not relied upon by the parties, while in the common law systems the courts will not do so. The reality is otherwise.'[2]

Nevertheless, for example, in the Hungarian civil procedure[3], the court is only bound by the facts and requests presented by the parties not by the legal basis or even the title of the claim.[4]. Therefore, the duty to find the applicable law relies exclusively upon the court.

It may seem too obvious almost trivial, however for the logical order it has to be laid down, that the process of applying a rule assumes the knowing of the particular law. This statement is also true for the interpretation of a provision for the mere fact that the interpretation is prior to the application of the law.

As follows from the foregoing a civil law judge before deciding a domestic case is obliged to know at first, the domestic law[5] which may be applicable for the case. At the second stage, the directly effective community acts have to be known, moreover the judge has to be familiar with the original community legislation which has been or will be transposed by the Member State to comply with the principle of indirect effect.[6]

The problem arising from the preliminary ruling procedure is twofold: first it presumes that national judges are experienced in the Community law although cases involving Community law occur

[1] van Rhee, C. H. (2005). European traditions in civil procedure. Ius commune europaeum 54. Intersentia nv. p. 303. ISBN 978-90-5095-491-4.
[2] Opinion of Advocate General Jacobs in the European Court of Justice cases C-430/93 and C-431/93, Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen v Stichting Pensioenfonds voor Fysiotherapeuten 33-35 paragraph
[3] Hungarian legal system can be considered as an almost clear civil law system hence a proper instance
[4] Hungarian Act of Civil Procedure paragraph 3.
[5] The domestic law in this context refers to the national law which is made or transposed by the national authorities and the directly applicable community acts are excluded.
[6] indirect effect discussed later.

exceptionally[7]; secondly, not exclusively in civil law legal systems, the preliminary reference procedure is alien to the very nature of a national court since in cases involving Community law the domestic court is deprived from its essential function namely the interpretation of the law.

Hence the court, personally the judge, has to apply extraordinary rules regarding the substantive and the procedural rules with which he or she may be not familiar.

This thesis discusses the first issue whether the built-in faith in the national judges in the preliminary ruling procedure is appropriate.

The structure of the thesis is as follows: The first chapter, after the introduction, briefly introduces the preliminary reference procedure and its aim, and also presents theories of scholars concerning the inefficiencies of the preliminary ruling procedures moreover, the statistics of the references made by Member States are analysed. Chapter II defines the author's hypothesis, namely that national judges, especially from "new" Member States with civil law legal system, cannot be as familiar with the provisions and particularly the case law of Court of Justice on the preliminary ruling procedure as judges from "old" Member States; and preliminary rulings of the Court of Justice are analysed which have had a major impact on the preliminary reference procedure itself. The analysis is carried out from the aspect whether the Court's rulings which broadened the limits of applicability or the effect of the procedure, helped to achieve the aims of 267 TFEU especially in Member states with civil law legal system. Chapter III describes the methodology of a survey carried out amongst Hungarian judges to verify or disaffirm the hypothesis and also deals with the results of the survey. In the conclusion the summary of the thesis and an exposition of different solutions to the inefficiency of the preliminary ruling procedure are presented.

Chapter I. The rationale of Article 267 TFEU

1.1 The articulated purpose of the preliminary ruling procedure

The importance of the preliminary reference procedure cannot be over-emphasized in the development of the EU legal order through direct effect, supremacy, state liability…etc. As Takis

[7] provided that the numbers of references are proper indicators of the occurrence of community law matters at national level

Tridimas stated[8]: "In the process towards European constitutional rediscovery, set in motion by the Treaty of Rome, Article 243 (ex 177)[9] has been by far the most important instrument of change."
The wording of the provision is as follows:

Article 267

(ex Article 234 TEC)

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings 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, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions 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.

Without further analysis, which is not the subject of this paper, it can be seen that the provision limits the observable law for Community acts, the references can be made only by courts or tribunals, and there is a distinction between courts or tribunals against whose decision there is or there is no judicial remedy under national law, regarding the latter court the reference is mandatory whereas in other cases the court or tribunal has the discretion to do so. The Court of Justice - through its jurisprudence - has broadened the scope almost all of the aforementioned elements of the provision.[10]

[8] Takis Tridimas, 'Knocking on Heaven's Door: Fragmentation, Efficiency and Defiance in the Preliminary Reference Procedure' (2003) 40 Common Market Law Review, Issue 1, pp. 9–50
[9] now 267 TFEU
[10] discussed in details in chapter II.

The purpose of Article 267 TFEU as articulated in the treaty and several judgments and can be concisely summarized: since the EU law is supreme across the Member States, it must have a uniform meaning and effect in all Member States[11] in addition it has the key role to facilitate direct cooperation between the Court of Justice and national courts.[12]

1.2 Theories of inefficiencies

Efficiency of the preliminary reference procedure must be observed in the context of its main aim, namely that the supreme EU law has to be a uniform meaning and effect in all Member States. Although it looks simple because if EU law has uniform meaning in all Member States the preliminary ruling procedure is effective and *vica versa*, it is extremely difficult to measure efficiency. Furthermore, the efficiency of the preliminary ruling procedure has several dimensions which raises its own questions: firstly, whether all the questions of interpretation or validity of EU law occurred at national courts are referred to the Court of Justice; secondly, whether the Court of Justice gives its ruling within a reasonable time and the rulings maintain the quality and consistency of the case law; finally, whether the interpretation given in the rulings are adopted by national courts and how can it be enforced. This thesis mainly deals with the first aspect and in the next section the statistics of the Court of Justice are analysed in order to test the efficiency of the preliminary ruling procedure with regard to the aspect stressed above.

1.2.1 Statistics regarding the preliminary reference procedure

The table below shows the new references for preliminary ruling by Member States per year from 2003 until 2015[13]. The largest single expansion of the European Union took place in 2004, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia joined the Union. Although there are data from 1961, when the first reference was made[14] for the purpose of this essay just the period noted above is observed since it depicts the trends of the references made by newly accessed Member States from the early years. These results can be compared to the numbers of the "old" Member States. It can be clearly seen from the figures that

[11] Elsphet Berry, Matthew J. Homewood & Barbara Bogusz EU Law Text, Cases, and Materials second edition Oxford University Press 2015 p-187.a
[12] Paul Craig and Grainne de Búrca EU LAW test, cases, and materials Oxford University Press fifth edition p.443
[13] source: Court of Justice of the European Union, Annual Report 2015 Judicial Activity, : http://www.curia.europa.eu
[14] Case 13/61, Bosch v. Van Rijn, [1962] ECR 45

there is not a strict interdependence between the numbers of initiated preliminary rulings and the population of a certain Member State, for example Netherland with a population of 16 900 726 and Belgium with 11 258 434 made more than twice as many references as Spain with a population of 46 449 565[15] in 2005 and 2009. Therefore, there should be other reasons behind the different numbers of references, however the data regarding references made by Malta and Cyprus, 2 and 7, respectively indicate that some correlation can be found between the references submitted and the population. Nevertheless, observing particular Member State's figures show the same pattern. In the first 2-3 years of the accession "new" Member States do not initiate any preliminary ruling procedure or just a couple made by them. Between 2004 and 2006 7 references were made by the "new" Member states whereas overall 470 preliminary reference procedure started in this period which means that the 40 percent of the Member States launched the 1.5 percent of the preliminary ruling procedures. A significant change can be seen from 2009-2010 because "new" Member States started to catch up with the "old" Member States, however in 2015 overall 436 references were submitted and the 13 (with Bulgaria, Romania and Croatia) "new" Member States launched 94 references, hence 46 percent of the Member States instituted the 22 percent of the preliminary reference procedures. In summary it can be stated that after the "silence" of the early years, new Member States have begun to use the preliminary reference procedure, however the numbers of references are well behind the references made by "old" Member States.

[15] source of population data: https://europa.eu/european-union/about-eu/countries/member-countries_hu

table 1. stats of preliminary references made by Member States

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	total
BE	18	24	21	17	22	24	35	37	34	28	26	23	32	341
BG	0	0	0	0	1	0	8	9	22	15	10	13	5	83
CZ	0	0	1	3	2	1	5	3	5	7	7	6	8	48
DK	3	4	4	3	5	6	3	10	6	8	6	10	7	75
DE	43	50	51	77	59	71	59	71	83	68	97	87	79	967
EE	0	0	0	0	2	2	2	0	1	5	3	0	2	17
IE	2	1	2	1	2	1	0	4	7	6	4	5	8	85
EL	4	18	11	14	8	9	11	6	9	1	5	4	2	102
ES	8	8	10	17	14	17	11	22	27	16	26	41	36	253
FR	9	21	17	24	26	12	28	33	31	15	24	20	25	285
HR	0	0	0	0	0	0	0	0	0	0	0	1	5	6
IT	45	48	18	34	42	39	29	49	44	65	62	52	47	574
CY	0	0	0	0	0	1	1	0	0	0	3	2	0	7
LV	0	0	0	0	0	3	4	3	10	5	5	7	9	46
LT	0	0	0	1	1	3	3	2	1	2	10	6	8	37
LU	4	1	2	1	0	4	0	9	2	8	0	0	7	38
HU	0	2	3	4	2	6	10	6	13	18	20	23	14	121
MT	0	0	0	0	0	0	1	0	0	1	0	0	0	2
NL	28	28	35	20	19	34	24	24	22	44	46	30	40	394
AT	15	12	15	12	20	25	15	15	24	23	19	18	23	236
PL	0	0	1	2	7	4	10	8	11	6	11	14	15	89
PT	1	1	2	3	3	1	3	10	11	14	14	8	8	79
RO	0	0	0	0	1	0	1	17	14	13	17	28	18	109
SI	0	0	0	0	0	0	2	1	1	0	1	4	5	14
SK	0	0	0	1	1	0	1	5	3	9	4	3	5	32
FI	4	4	4	5	5	4	2	6	12	3	4	8	4	65
SE	4	5	11	2	6	7	5	6	4	8	12	3	7	80
UK	22	22	12	10	16	14	28	29	26	16	14	12	16	237

others	0	0	0	0	0	0	1[16]	0	0	0	0	0	1[17]	2
total	210	249	221	251	265	288	302	385	423	404	450	428	436	4424

In the followings different scholars' different explanations are presented regarding the inefficiencies of the preliminary reference procedure.

1.2.2 Fear of rejection

As Bobek asked[18]: "*Does the fact that there have been no reference from Slovenia mean that European Law is not being applied at all in Slovenia? Or does it mean, on the contrary, that Slovenian courts mastered European law in such a way that no assistance of the ECJ was required?*" and he answers promptly as well that because of the difficulties of measuring it is almost impossible to draw an exact conclusion whether the numbers of references are too high or too low or simply proper, however some aspects can be described which influences the national courts' decision regarding the initiation of a reference. He represents two factors which determined the national courts, particularly in the early years of the accession. Firstly, the rejection of a request on the grounds that the reference is manifestly inadmissible. The two examples for this factor are the Vajnai[19] and Kovaľský[20] cases. In the former the case concerned that Mr Vajnai, who was a vice-president of the Hungarian Worker's Party, during a demonstration wore a small red star badge on his suit. According to the Hungarian law he was prosecuted and condemned for the offence of using totalitarian symbol in public. The Hungarian court at second instance referred to the Court of Justice the question whether the Hungarian provisions were compatible with Article 6 TEU and Community law principles of non-discrimination, freedom of expression and political conviction, particularly in the light of the fact that these symbols can be worn in some Member States, for instance in Italy. The reference was rejected as manifestly inadmissible by an order of the Court of Justice with the reasoning below:

[16] Case C-196/09 Miles and Others (Complaints Board of the European Schools).
[17] Case C-169/15 Montis Design (Cour de justice Benelux/Benelux Gerechtshof).
[18] M. Bobek, 'Learning to talk: preliminary rulings, the courts of the new member states and the Court of Justice', 45 CML Rev 1640., 2008
[19] Case C-328/04. Criminal proceedings against Attila Vajnai [2005] ECR I-8577
[20] Case C-302/06 František Kovaľský proti Mestu Prešov, [2007] ECR I-11

"*The Court has no such jurisdiction with regard to national provisions outside the scope of Community law and when the subject-matter of the dispute is not connected in any way with any of the situations contemplated by the Treaties.*"

In the latter case Mr Kovaľský bought a land on which two large cases were installed. In the cases electrical devices were kept which were the property of the public transportation company of the town. Due to the Slovakian law companies in the energy sector could place any necessary instruments and pillars on any private property without the obligation of compensating the owner. The Slovakian court referred to the Court of Justice. The questions concerned the interpretation of Article 1 of the first protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms. Unsurprisingly, the Court of Justice rejected the reference with the same reasoning as in the previous case.

As Bobek pointed out there are similarities between the cases noted above, in both cases the deciding court had submitted (more than once) the cases to the national constitutional court and after the not sufficient answer from the national constitutional court (from the referring courts' point of view) they tried to find a Community dimension, hence to circumvent the constitutional courts.

The other factor which affected the judges and hence the numbers of references according to Bobek the findings of the Court of Justice in the Ynos Case[21]. The case concerned a contract between a real property owner, Mr Varga and an estate agency Ynos Kft.. They entered into the contract in 2002. Despite that shortly after that date, the agency found a suitable buyer, the real property was sold to a third person. In their contract they stipulated that if the agent found a suitable buyer the agent was deemed to be successful, even if the contract is not concluded between the owner and the suitable buyer. The Hungarian court referred to the Court of Justice the question whether Council Directive 93/13/EEC is applicable for the case in the light that the main dispute arose before the accession of the Republic of Hungary to the European Union, but after the adaptation of its domestic law to the Directive and the reference contained questions regarding the interpretation of the Directive. The Court in its findings stated: "In circumstances such as those of the dispute in the main proceedings, the facts of which occurred prior to the accession of a State to the European Union, the Court of Justice does not have jurisdiction to answer the first and second

[21] Case C-302/04 Ynos kft v János Varga [2006] ECR I-371

questions."[22] This approach is problematic in two aspects. The rejection of cases concerning facts prior to the accession is against the earlier case law of the Court of Justice[23] and the Directive was already transposed to the Hungarian legal system by virtue of the Act of Accession[24] and Association Agreement[25] hence Community law regulated the field, however not on the same basis. The case had a serious deterring effect which manifested in a decision of the Czech Supreme Court in a case where the facts of a resolution of the company's general meeting dated back to 2002. According to the pre-accession obligations, de facto the Second Company Directive had to be interpreted. The Supreme Court in its reasoning stated that the verification of its interpretation concerning the Community law by the Court of Justice is not possible by virtue of the ruling of Ynos case, hence it did not make a reference.

All the cases represented above are contrary to the trend noted by Tridimas[26] begun in the 1990s with the Dodzi case[27] in which the Court of Justice "extended its jurisdiction by responding to requests from national courts to interpret provisions of Community law applicable by virtue of national law." All in all, scholars agree that the rejection dropped back the willingness and courage of national judges to refer moreover it destroyed the expectations of a "more sympathetic" superior court.

1.2.3 Length of the procedure

In the last ten years the average length of a preliminary ruling procedure fluctuated between 19.3 and 15 months, from 2008 it shows a better picture and in 2015 the figure was 15.3[28] nevertheless if the national court decide to refer it has to stay the proceedings for more than a year. The European Court of Human Right in the decision concerning the length of the civil procedure in Patifis v. Greece[29] excluded the duration of the preliminary reference procedure from the overall length of the procedure because taking into account "*would adversely affect the system instituted*

[22] the first and second question concerned the interpretation of the Directive
[23] Bobek represents the cases below as examples: Case C-43/95 Data Delecta Aktiebolag and Ronny Forsberg v MSL Dynamics Ltd. [1996] ECR I-4661 and Case C- Case C-122/96 Stephen Austin Saladanha and MTS Securities Corporation v Hiross Holding AG [1997] ECR I-5325
[24] Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded
[25] Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part
[26] Takis Tridimas, 'Knocking on Heaven's Door: Fragmentation, Efficiency and Defiance in the Preliminary Reference Procedure' (2003) 40 Common Market Law Review, Issue 1, pp. 9–50
[27] Joined Case C-297/88 &197/89) [1990] ECR I-3763 discussed in details in chapter II
[28] source of data: http://curia.europa.eu/jcms/jcms/Jo2_11035/rapports-annuels
[29] judgement of the ECtHR 26 Feb. 1998

by Article 177 of the EEC Treaty and work against the aim pursued in substance in the Article"[30]. However, Koen Leanerts, the current president of the Court of Justice, after the detailed evaluation of the statistics regarding the length of the preliminary reference procedure reached the conclusion that national courts will grant or decide to refer when they expect the utility of the answer to outweight the cost in terms of money and time. It allows them to be involved in decision making and to influence European public policy.[31] Takis Tridimas articulated almost the same statement: "there is evidence to suggest that national courts increasingly view the length of proceedings in Luxemburg as an argument against making a reference."[32] He put forward the examples of English and Danish courts and refers to the judgment of the French Conseil d'Etat in 20 may 1998 in which the reasoning contains that in order to avoid the delay in the procedure the request for a preliminary ruling should not to be submitted, although the interpretation of the community law would be necessary. After these arguments it is sufficient to say that the length of the preliminary ruling procedure sometimes hinders the efficiency thereof.

1.2.3 Transnational economic activity, public support for integration, monist or dualist tradition, judicial review, and the public's political awareness

A particularly interesting research was carried out by Clifford J. Carrubba and Lacey Murrah.[33] The comprehensive study tested 5 elements which are considered to influence the use of preliminary ruling procedure. Hypotheses were set according to the most common arguments, amongst scholars, regarding the key factors which affect the utilization of the preliminary reference procedure.

The first hypothesis: *Member states with higher levels of transnational activity are more likely to make preliminary references to the ECJ.*

[30] Ibid., para 90.
[31] K. Lenaerts, 'The rule of law and the coherence of the judicial system of the European Union',CML Rev., 2007, p 1645
[32] Takis Tridimas, 'Knocking on Heaven's Door: Fragmentation, Efficiency and Defiance in the Preliminary Reference Procedure' (2003) 40 Common Market Law Review, Issue 1, pp.17
[33] Carruba and L. Murrah, 'Legal integration and the use of preliminary ruling process in the European Union',The MIT press, vol. 59, n° 2, 2005, p. 404

The reasoning of this theory as Stone Sweet puts forward[34] is that with the "creation" of supremacy and direct effect the Court of Justice opened the possibility for private litigants who have interests in the transnational activities to challenge national laws which were incompatible with the Community law, particularly with the idea of common market. The successful challenges make these actors more powerful hence forced the governments to pass more Community law in favour of them. More EU legislation means more opportunity to challenge the national law on the grounds of inconsistency therefore a "virtuous circle" has evolved.

The next theory which can be found in the literature regarding the willingness of judges to initiate preliminary ruling procedure is the legal culture of the Member States. Scholars argue[35] that before a judge refers to the Court of Justice s/he has to adopt the concept that the national law is reviewed by a judicial body with regard to the community law. Therefore, in Member States where according to the legal system the law is reviewable by a judicial body judges tend to refer more frequently. Thus the second hypothesis is: *Member states with judicial review should be more likely to make preliminary references to the ECJ than member states without judicial review.*

The third hypothesis which was composed is as follows: *Monist member states should be more likely to make references than dualist member states.*

There are arguments[36] according which the legal tradition of the Member States concerning monist or dualist system significantly determine the willingness of the national judge to refer to the Court of Justice. Monists states are states in which international treaties are directly applicable, hence it is easier for the national judges to understand and accept the notion of direct effect. By contrast, in dualist states, in which legislative action is needed for the international treaties to have effect, there would be reluctance from the judges to refer to the Court of Justice.

Moreover, after the Marleasing case, the difference is more conspicuous since judges from monist states "digest" the theory of indirect effect and refer questions regarding directives more easily.[37]

---

[34] Sweet, Alec Stone and James A. Caporaso. 1998. "From Free Trade to Supranational Polity: The European Court and Integration." European Integration and Supranational Governance, eds. Wayne Sandholtz and Alec Stone Sweet., Sweet, Alec Stone and Thomas L. Brunell. 1998. "The European Court and the national courts: a statistical analysis of preliminary references, 1961-95." Journal of European Public Policy 5: 66-97. and Sweet, Alec Stone and Thomas L. Brunell, "Constructing a Supranational Constitution: Dispute Resolution and governance in the European Community." American Political Science Review 92.1: 63-81

[35] Alter, Karen J. 1996. "The European Court's Political Power." West European Politics 19.3: 458-487. and Mattli, Walter and Anne-Marie Slaughter 1998. "Revisiting the European Court of Justice." International Organization 52.1: 177-209.

[36] Mattli, Walter and Anne-Marie Slaughter 1998. "Revisiting the European Court of Justice." International Organization 52.1: 177-209.

[37] indirect effect and the Merleasing case disscussed later.

The forth factor which was observed is the variation in public support for integration. Authors claim[38] that there is a legitimacy constraint on the decision of the national court since if a decision of the court is against the opinion of the public it questions the legitimacy of the court hence there is the pressure of the public on the judges. Due to these arguments the next hypothesis is that:
The less popular integration is among a nation's public, the less likely courts from that country are to make preliminary references.

The last factor relates to the fact, that litigants can convince the court to submit a request for preliminary reference as well, however the statement discussed in the introduction is also true for the parties, to apply or exploit a law or a right individuals have to know the existence of that particular law or right. Therefore, the last hypothesis is that:

The more politically informed a nation's public is, the more likely individuals are to bring preliminary references.

After the research the results are as follows:
The stats confirmed the first hypothesis since "*trade levels are positively and significantly related to use of the preliminary ruling system*"[39] to put the point in another way, more intense the level of transnational trade is, the more preliminary reference is made. The figures contradict the second hypothesis, court in Member States where judicial review is available do not submit more requests than courts in Member States without judicial review. Surprisingly the numbers do not verify the third hypothesis since Member States with monist legal system make fewer references than dualist Member States and no significant difference can be found after the publication of the Marleasing case. Regarding the fourth hypothesis evidence can be found that legitimacy constrain exists, from Member States where the public support for integration is higher more references are made. Most importantly, with regard to the topic of this paper, statistics verify that there is a positive and significant relation between the political awareness of citizens and the use of the preliminary ruling system.

[38] Mishler, William and Reginald S. Sheehan. 1993. "The Supreme Court As A Countermajoritarian Institution: The Impact of Public Opinion on Supreme Court Decisions, „American Political Science Review 87.1: 87-101.
and 1996. "Public Opinion, the Attitudinal Model and Supreme Court Decision-making: A Micro-Analytic Perspective," Journal of Politics 58.1: 169-200.
[39] Carruba and L. Murrah, 'Legal integration and the use of preliminary ruling process in the European Union',The MIT press, vol. 59, n° 2, 2005, p. 404

As a conclusion Carrubba & Murrah explain that "*no single, mono-causal argument is sufficient for explaining the development of European legal integration*"[40] moreover "*these results demonstrate that legal integration is not a simple process. Trade, litigant behaviour, and judicial behaviour all condition the use of the preliminary ruling system*"[41]

Chapter II. Alternative theory of inefficiency

As it can be seen in the previous chapters there is a rich literature concerning the efficiency, more accurately the inefficiency of the preliminary ruling procedure. However, the majority of analyses consider the prolonged average duration of the preliminary reference procedure which stems from the high numbers of new references as the main problem which must be solved.[42] Studies presented in chapter I deal with mainly the reasons of inefficiencies which occur at the initiation stage of the preliminary reference procedure and try to find the determining factors behind the fluctuating numbers of references made by different Member States. This thesis discusses in details another aspect which has not been emphasized in these studies. One of the most important factor which determines the initiation of a preliminary ruling procedure is the judge's proper knowledge of either the procedural and the substantive community law, since according to Article 267 TFEU the Court before which the procedure is pending have the autonomous right, sometimes the obligation, to refer. The more detailed examination of the Cartesio judgement takes place below, here suffice it to quote just a part of the reasoning without further analysis: "*In accordance with Article 234 EC, the assessment of the relevance and necessity of the question referred for a preliminary ruling is, in principle, the responsibility of the referring court alone, subject to the limited verification made by the Court in accordance with the case-law*".[43] Hence the judge has to decide whether to

[40] Ibid.
[41] Ibid
[42] for example J. Komarek, 'In the court(s) we trust? On the need of hierarchy and differentiation in the preliminary reference procedure',EL Rev., 2007, The future of the Judicial System of the European Union (Proposals and Reflections) (May 1999),Report by the Working Party on the Future of the European Communities' Court System (jan 2000) which are discussed later
[43] Case C-210/06. Caresio oktató és szolgáltató bt. [2008] ECR I-9641 at paragraph 96, emphasis added, Article 234 EC now Article 267 TFEU

refer or not and not in just the cases where the reference is discretionary but also in cases where to submit a request is mandatory.[44]

After the test of Carrubba & Murrah explained in the previous section, three verified influencing factor can be listed, the amount of transnational trade, the public opinion or with other words the legitimacy constraint and the political awareness of citizens. More than 10 years after the test and the largest accession of the EU the amount of transnational trade supposedly has slightly altered, whereas the pressure of the public opinion might have escalated due to the phenomenon in which national political parties campaign against the European Union in my point of view for mere vote maximization purposes, recent examples can be observed in Hungary, Poland and as the most significant in UK with the Brexit.

For the object of this study the third influencing factor is the most important. The results confirmed that in Member States where the citizens are more informed more references are made. It is just a logical step to go a little further and to refer the question whether the level how much the judges are informed influences the numbers of initiated references.

As follows from the foregoing, if the judges the only persons who has the autonomous right (or obligation) to make a reference and indeed the level of knowledge of the parties who can just suggest the court to refer affects the numbers of submitted requests, the answer for the previous question is yes. Therefore, without further evidence it can be stated that the knowledge of the judges concerning community law influences the amount of references made by them. Furthermore, statistics show that significantly lower numbers of requests are submitted by "new" Member States. These arguments raise further questions. In an EU dimension since the wording of Article 267 TFEU is equally applicable and effective in all Member States whether it means that the judges in all Member States are equally trained in community law? Is it possible to call into question the knowledge of the judges of a particular Member State? This is an extremely sensitive area, and to put the point another way why does the society especially in civil law states expect that *iura novit curia*?

At the Member State level, the prompt answer can be the legal tradition and right after there is another possible reply the education. The next subsection observes the educational background on which the trust is presumably based.

[44] the difference between the two scenarios see above.

2.1 Education

For the sake of the argument, given a Hungarian judge who graduated in 2003, just one year before the Hungarian accession and became a judge in 2009, long after that Hungary joined the European Union.[45] During his study at the university one EU related course was compulsory which took one semester from the overall duration of five years and it was called Law of the European Union. At the end of the tuition at the university a final exam was held which did not cover the course concerning European Union's law. The graduated law student chosen the traditional way to become a judge and after graduation he applied and was selected to be a clerk of the court which took three years with a one-week training in the Law of the European Union. After the compulsory three years' traineeship it was possible to take the bar exam where there were three sections: Criminal procedural and substantive Law and law of the related fields; Civil procedural and substantive Law and law of the related fields; Constitutional Law, Administrative Law, Labour Law, Law of the Social Security and the Law of the European Union.

Obviously, the exam questions were composed with regard to the duration of the previous education.

After the Bar Exam a minimum one-year training was mandatory as a trainee judge during which no compulsory course concerning EU law was required.

At the moment of his appointment the judge was expected to know the EU law. Was this expectation well founded? To find the answer to this question some current course structure of universities is reviewed. For example at the University of Malta the Bachelor of Laws (Honours) (LL.B.(Hons)(Melit.)) programme contains two compulsory courses which take one semester each: Introduction to European Union Law, EU Internal Market Law and one compulsory course with the duration of 2 semesters: European Union Law, moreover for the master's degree Master of Advocacy (M.Adv.(Melit.)) an additional one semester course has to be taken: Advanced EU Law of Procedure.[46] Another instance is one of the most prestigious university in Hungary the Eötvös Loránd University. The students of the Juris Doctor Programme (an undivided programme offers a master's degree (the bachelor's and master's training united into a single programme) are obliged to take

[45] the example describes the author's experiences which can be verified with the documents issued by the designated institutions

[46] data from the website of the University of Malta 2016, http://www.um.edu.mt/laws/programme/UBLAWHFT-2016-7-O and http://www.um.edu.mt/laws/programme/PMADVFTT6-2016-7-O

two courses through two semesters each: Public law of the European Union and the Commercial Law of the European Union.[47]

This comparison shows that things have changed, the previous compulsory 1 semester of EU law has increased to at least 4 mandatory semesters, furthermore the Hungarian Bar Exam contains comprehensive questions on the Law of the European Union[48]. Does it mean that students graduated under the former study structure were smarter and could easier absorb the EU Law or the structure has been developed to catch up with the need of reality. In my opinion the latter statement is true and it is not difficult to acknowledge that 1 semester is hardly enough to gain a thorough knowledge indeed in the nature and structure of the European Union as the instances above shows – just the Introduction to European Union Law course takes 1 semester in Malta and the Public Law of the European Union unit stretches to two semesters in Hungary.

Therefore, according to the arguments put forward above, my hypothesis is that one significant factor which determines the lower numbers of references from "new" Member States is the judges' lack of familiarity with the Law of the European Union. This – and it cannot be overemphasized - is not the fault of the judiciary, this is a systematic problem, which stems from the very nature of the European Union, the pluralism and from the procedure of the accession, namely that in one day the Community law is not applicable[49] (or more precisely just the body of Community law is applicable which is transposed according to the prior agreements[50]) and the next day the whole community law with the enormous numbers of legal instruments are directly applicable, moreover, many of them are directly effective. All system would struggle with the adaptation to situation described above and judiciary is usually not considered to be one amongst the most flexible organizations.[51]

2.2 Legal tradition

The legal tradition – as the first answer for the question referred above - in this context the determining factor according to which a distinction can be made between Member States with civil law and Member States with common law (or precedent law) legal system. These definitions[52] ,for

[47] data from the website of the Eötvös Lóránd University 2016, http://www.ajk.elte.hu/file/Jogasz_oszt_MA_nap_UJ.pdf
[48] http://igazsagugyiinformaciok.kormany.hu/download/7/fe/71000/C2%20-%20sz%C3%B3beli%20t%C3%A9telsor%20-%20v%C3%A9gleges%20-%200727.pdf
[49] see Ynos case above
[50] for example: Act of Accession and Association Agreement, see in details in chapter 4
[51] in my personal opinion a certain level of rigidity is indispensable to fulfil one of the judiciary's most important task to maintain legal certainty, however, this debate is beyond the scope of this paper.
[52] The Regents of the University of California, The Robbins Religious and Civil Law Collection, School of Law (Boalt Hall), University of California at Berkeley. https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html

the purpose of this essay, sufficiently describe the two endpoints of a scale: "*common law is generally uncodified. This means that there is no comprehensive compilation of legal rules and statutes. It is largely based on precedent, meaning the judicial decisions that have already been made in similar cases. These precedents are maintained over time through the records of the courts as well as historically documented in collections of case law known as yearbooks and reports. Civil law, in contrast, is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. The judge's decision is consequently less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes.*"

There is no (Member) State with a clear civil law or common law legal system[53]. MacCormick and Summers[54] composed six factors which determine the location of a legal system in the scale between civil law and common law. According to these criteria it can be stated that the legal regime of the European Union is somewhere halfway in that scale and uniquely the Court of Justice has had a major influence on its position.[55] The case law of the Court of Justice has introduced the role of precedent in the legal system of the European Union. This phenomenon rises another question: how a civil law lawyer, particularly a judge, can deal with the notion of precedent. The next section deals with the case law of the Court of Justice concerning the preliminary ruling procedure itself. This case law is considered to broaden the applicability of the preliminary reference procedure since more aspects of EU Law are subject to a uniform interpretation hence the Court of Justice has promoted the fulfilment of the aim of the procedure. Is this statement entirely true with regard to the aforementioned very nature of the European Union: the pluralism in every dimension? Whether indeed the interpretation of the preliminary ruling procedure is uniform in all Member States? How these questions relate to the legal tradition of the Member States? The cases discussed below can be found in almost all text books on EU Law[56], particularly in chapters dealing with the preliminary reference procedure, however, at this time the analysis is made from

[53] dr. Kovács Virág: Precedens jog az Európai Bíróság gyakorlatában, http://jesz.ajk.elte.hu/kovacs4.html
[54] D. Neil MacCormick - Robert S. Summers: Furhter General Reflections and Conclusions In: MacCormick- Summers: Interpreting Precedents. A Comprative Study. Dartmouth, 1997.
[55] dr. Kovács Virág: Precedens jog az Európai Bíróság gyakorlatában, http://jesz.ajk.elte.hu/kovacs4.html
[56] for instance: Elsphet Berry, Matthew J. Homewood & Barbara Bogusz EU Law Text, Cases, and Materials second edition Oxford University Press 2015, Paul Craig and Grainne de Búrca EU LAW test, cases, and materials Oxford University Press fifth edition

another aspect with regard to the legal tradition of the Member States and how this background may influence the achievement of the aim of the preliminary ruling procedure.

2.2.1 Evolution of precedent law

The cornerstone in the development of precedent in the legal regime, particularly in the preliminary reference procedure, of the European Union is the Da Costa case.[57]

Da Costa en Schaake N.V. imported goods from the Federal Republic of Germany and was required to pay an increased custom according to the national law. The appellant urged that, in view of the prohibition imposed by Article 12 of the EEC Treaty cannot lead to the imposition on the products in dispute of an import duty higher than that which was applied on 1 January 1958, the amount of which was zero. The Nederlandse Belastingadministratie replied that Article 12 of the EEC Treaty does not have direct application to nationals of the Member States. As it can be clearly seen the facts in the case were materially identical to the famous Case 26/62 Van Gend en Loos.

The Court of Justice in its finding expressed that the judgment had binding effect on interpretation and validity, not only on the referring court and the national courts outside the particular dispute but also concerning the other courts of the Union before which the same point of law arises. In spite of the fact that the written provision of article 267 TFEU is prima face clear- the national court may or have to ask the question concerning the interpretation of EU law, then the question is answered and the national judge deliver a judgment regarding the ruling - the reality is not as simple. It follows from the reasoning explained above that the judgement of the Court of Justice on the interpretation of European law has 'erga omnes' effects, hence the bilateral relationship between the referring national court and the Court of Justice has altered to a multilateral one.[58]

According to the developed principle of precedent in the preliminary reference procedure the national judge is expected, first, to accept the concept of precedent although it is not laid down in the Treaties. In July 2000 the Rules of Procedure of the Court of Justice[59] has been amended as follows:

---

[57] Joint Cases 28 to 30-62, Case Da Costa en Schaake NV, Jacob Meijer NV, Hoechst-Holland v. Netherlands Inland Revenue Administration, ECR 1963

[58] Paul Craig and Grainne de Búrca EU LAW test, cases, and materials Oxford University Press fifth edition, pp 456.

[59] http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-10/rp_en.pdf

Article 99

Where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

as Tridimas expressed[60] "*article 104(3)*[61] *is the procedural expression of the precedent value of the Court's ruling*", however, this provision just offer an option for the Court of Justice to rule according to a faster and simpler procedure and it does not impose an obligation on national judges to follow the precedents of the Court of Justice (the concept of stare decisis), hence it is not the proper articulation of the concept which fundamentally transformed the legal regime laid down in Article 267 TFEU;

Secondly, national judges are expected to know not just the provisions of the primary and secondary legislation but the precedent of the Court of Justice. It raises additional questions to a civil law judge: where can be the law or in this case the proper interpretation of Community law (which eventually in cases discussed below, become the law) found, and how to discover the ratio decidendi? It is not difficult to acknowledge that after at least ten years of learning and practicing law in a civil law legal system in which these concepts are rarely if ever used, national judges cannot be expected to be familiar with the notion of precedent. Furthermore, the concept of precedent has been introduced and institutionalized by a precedent which makes the acceptance much more difficult for a civil law judge.

In addition, the national judge cannot rely on the parties because the judge is who exclusively determine the applicable law indeed if it is contradictory to the statements of the parties or merely because the parties do not know the law since it is not their duty in that legal system due to the legal tradition.

In the next sections cases concerning the interpretation of the elements of the preliminary ruling procedure are discussed which may make more complicated for national judges to be familiar with the law of the European Union, especially with the preliminary ruling procedure.

---

[60] Takis Tridimas, 'Knocking on Heaven's Door: Fragmentation, Efficiency and Defiance in the Preliminary Reference Procedure' (2003) 40 Common Market Law Review, Issue 1, pp.18

[61] now Article 99

2.3 Acte clair doctrine

The CILFIT case[62] concerned Italian textile firms sued the Ministry of Health alleging that the they were obliged to pay health inspection levy due to Italian law, however the law in effect was in contravention of Community law. During the national procedure the Italian ministry of health tried to convince the national court not to refer the matter to the Court of Justice, since the answer to the question was obvious. The Italian court submitted the request for a ruling whether is it possible for a court - against whose decision was no judicial remedy - to refrain from making a reference on the grounds that the interpretation of the EU law is obvious.
The Court of Justice stated in its judgment that the national court may decide not to refer in case the interpretation is "so obvious as to leave no scope for any reasonable doubt"[63], however it set out three conditions which must be met in order to qualify a case as acte clair.

"Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.

Even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.

Finally, every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied."

The Court of Justice with this ruling intended to loosen the prescribed strict criteria of mandatory references for courts against whose decision is no judicial remedy, however in reality indeed the first condition cannot be satisfied since according to this interpretation. A national judge has to

[62]Case 283/81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health. [1982] ECR I-3415
[63] Case 283/81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health. [1982] ECR I-3415 para 16

consider all the official language versions of the European Union which presumes that the national judge familiar with all the official languages of the Union which is nonsense, not just for civil law judges from a "new" Member State but for any judges from the European Union.

2.4 Consideration of validity

In the Firma Foto-Forst[64] case the plaintiff imported binoculars into Germany and it was a subject of a duty. If certain condition was met transactions were exempt from that duty, however in this instance there was a Decision of the Commission that the exemption was not applicable in relation of the plaintiff. Firma Foto-Forst submitted an application to the national court to declare the Decision of the Commission invalid. The German court referred several questions to the Court of Justice. There were questions concerning the review of the Decision, namely whether the national court can review the validity of the Decision of the Commission. The Court of Justice ruled that national courts against whose decision there is judicial remedy have competence only to reject the application for the annulment of a Community act in case it is not founded sufficiently, whereas only the Court of Justice of the European Union have the power to declare any legal instrument of a European institution invalid because any other interpretation would jeopardize the uniform interpretation and application of the law of the European Union.

As Arnull stated[65]: "*The Court's decision in Foto-Frost undoubtedly makes a significant contribution to the proper functioning of the Community legal order*."

However, the Court of Justice in its ruling gave a *contra legem* interpretation since the wording of Article 267 TFEU is straightforward, the reference concerning both the interpretation and the validity of the EU law is mandatory just for the national courts against whose decision there is no judicial remedy.

Once more, in the light of the legal tradition, from a civil law legal system it is, at least, problematic to adopt an interpretation which is absolutely against the written provision of law.

The Court of Justice might have been aware of this discrepancy therefore issued its Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings[66] in which it declares:

[64] Case 314/85 Foto-Frost v Hauptzollamt Lübeck-Ost. [1987] ECR I-4199
[65] Anthony Arnull, Does the Court of Justice have inherent jurisdiction? (1997) 27 Common Market Law Review, pp. 638-708
[66] OJ 2012/C 338/01 http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2012:338:FULL&from=EN

"Although the courts and tribunals of the Member States may reject pleas raised before them challenging the validity of acts of an institution, body, office or agency of the Union, the Court of Justice has exclusive jurisdiction to declare such an act invalid.
All national courts or tribunals must therefore submit a request for a preliminary ruling to the Court when they have doubts about the validity of such an act, stating the reasons for which they consider that the act may be invalid."[67]

The Recommendation slightly resembles to a written statue hence may help to civil law judges to absorb the contra legem interpretation, as in paragraph 6 it is stated:

"While in no way binding, these recommendations are intended to supplement Title III of the Rules of Procedure of the Court of Justice (Articles 93 to 118) and to provide guidance to the courts and tribunals of the Member States as to whether it is appropriate to make a reference for a preliminary ruling, as well as practical information concerning the form and effect of such a reference."

2.5 Concept of indirect effect

2.5.1 Von Colson case[68]

Two women, the plaintiffs alleged that they were refused to employ as social workers in a prison because of sex discrimination which was contrary to Community law, particularly to Directive 76/207 The Equal Treatment Directive. The applicants applied for a remedy consisting an appointment for the position or a compensation on the grounds of the directly effective Equal Treatment Directive. According to the German law the only available remedy was the recovery of travel expenses.
The Court of Justice in the preliminary reference procedure ruled that although the Equal Treatment Directive does not satisfy the criteria (clarity, precision, unconditionally) to be directly effective, the national law has to be interpreted with regard to the provisions thereof, especially

[67] Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, OJ 2012/C 338/01 para 15 and 16
[68] Case 14/83 Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen. [1984] ECR I-1891

when the national law is intended to implement a certain Directive. The Directive was not directly effective and the German implementation was inadequate, hence the Court of Justice developed the principle of harmonious interpretation, and imposed an obligation on the national judiciary:

"However, the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts."[69]

2.5.2 The Marleasing[70] *case*

The case concerned a nullity of a Spanish company La Comercial. The Plaintiff alleged that the creation of the defendant company was for the sole purpose for defrauding creditors, hence according to the Spanish law the article of association is void on the ground of lack of cause. The defendant argued that in spite of the fact that the First Company Law Directive[71] had not been implemented the Directive exhaustively listed the grounds on which the nullity of a company can be declared and the lack of cause was not set out therein. The Court of Justice accepted the arguments put forward by the defendant and ruled that despite the Directive did not have horizontal direct effect the Spanish Law had to be interpreted "*whether the provisions in question were adopted before or after the directive…as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter and thereby comply with the third paragraph of Article 189 of the Treaty."*[72]

2.5.3 Concluding remarks

Both cases had crucial role in the development of the concept of indirect effect which as the Court of Justice expressed was fundamental to achieve the envisaged results of directives. On the other hand, this concept put a tremendous burden on national judges because they are expected to learn all directives which are not directly effective even if the directives have not been implemented yet

[69] Ibid.,para 26.
[70] Case 106/89 Marleasing SA v La Comercial Internacional de Alimentacion SA. [1990] ECR I-4135
[71] First Council Directive 68/151/EEC of 9 March
[72] Case 106/89 Marleasing SA v La Comercial Internacional de Alimentacion SA. [1990] ECR I-4135 para 8

or have been implemented but inadequately. Furthermore, national judges are obliged to interpret national law "in the light of the wording and purpose of the directive" just "as far as possible", however in the instance represented above concerned a harmonious interpretation of the national law and the directive where the result was absolutely contradictory to the provisions of national law.

An interesting example can be found in Hungary how the Supreme Court (now called Kúria) tried to mitigate the aforementioned burden. In 2011, at the beginning of the flood of actions against banks to declare the loan agreements void on the grounds of unfair terms in consumer contracts, the Hungarian Supreme Court issued an opinion[73] - which is not binding on anybody - how to interpret the Hungarian implementation[74] of the Council Directive 93/13/EEC with regard to the original directive and the case law of the Court of Justice. This opinion was born in a crucial period of time since the enormous number of action just had been submitted, however, the duty is (and was)[75] on national judges for harmonious interpretation in every single case in which the interpretation of an implementing act is necessary. Apparently, it does not sustainable that the Supreme Court issues an opinion with regard to all implementing acts according to its scarce resources. Moreover, the last sentence of the cited implementing act states that the aim of this Decree is to comply with Council Directive 93/13/EEC[76] which also makes much difficult to accept, for the sake of the argument, a contra legem interpretation of the Court of Justice for a national judge since the result of the domestic legislation is opposed to the interpretation of the Court of Justice regarding a directive without direct effect.

In this point the aspect has to be taken into consideration, which was examined by Carrubba & Murrah C,[77] namely the variation of legal doctrines

It was supposed that in Monist states would have been higher numbers of preliminary references than in Dualist Member State by virtue of the fact that in dualist states legislative action is needed for the international treaties to have effect, moreover after the development of the concept of direct effect the difference should have been more conspicuous.

[73] 2/2011. (XII. 12.) PK vélemény a fogyasztói szerződés érvényességével kapcsolatos egyes kérdésekről http://www.lb.hu/hu/kollvel/22011-xii-12-pk-velemeny-fogyasztoi-szerzodes-ervenyessegevel-kapcsolatos-egyes-kerdesekrol

[74] 18/1999. (II. 5.) Korm. rendelet a fogyasztóval kötött szerződésben tisztességtelennek minősülő feltételekről, http://www.akontroll.hu/jogtar.php?ssz=20

[75] since the interpretation of the Court of Justice has ex tunc effect which also raises problems but it is much more related to the res judicata effect of a decision, hence the discussion thereof is beyond the scope of this paper

[76] 18/1999. (II. 5.) Korm. rendelet a fogyasztóval kötött szerződésben tisztességtelennek minősülő feltételekről, paragraph 3.§(2)

[77] see in details in section 1.2.3

The results reinforce the argument that disputes over the applicability of EU law arise more frequently in dualist systems than in monist systems, while it does not verify the argument that judges in Monist states are more likely to make references than judges in Dualist states and the concept of harmonious interpretation has not affected the trend at all.

However, the study cannot provide information (as another plausible explanation) regarding the cases in Dualist states where neither the court nor the parties were aware the need of interpretation of the Court of Justice by virtue of the transposition of the EU law.

After the development of the concept of indirect effect and acte claire doctrine suppose a situation where a national judge has to apply a national legal instrument in a national procedure. Is it realistic that s/he recognises that the national legal act is an implementing act, researches the original directive and after a comparison ends up that a reference should be made for a preliminary ruling because the implementation may be not adequate, there is a potential contradiction between the directive and the implementing act, however after taking into consideration all the official versions of the original directive s/he decides that the reference is not necessary since the case is acte claire. In my opinion it is more idealistic than realistic.

2.6. The question of observable law

2.6.1 Dzodzi v Belgian State case

The next case is Dzodzi v Belgian State[78].A Belgian National deceased and his widow who was Togolese national claimed residency in Belgium arguing that the Belgian law treats all foreign spouses of Belgian nationals as EU nationals for the purposes of residency rights. The Belgian State argued that to resolve the dispute the national court had to apply national law and not EU law therefore a reference to the Court of Justice on interpretation of EU law on the free movement of persons was unnecessary. The Court of Justice ruled, surprisingly, that it had jurisdiction where national law makes explicit reference to European law, whether it transposes European law or when it follows the same aim as a European provision.

[78] Joined Cases C-297/88 &197/89 Dzodzi v Belgian State [1990] ECR I-3763

This finding on 267 TFEU prima facie broadened the jurisdiction of the Court of Justice and enhanced the uniform interpretation of EU law. On the other hand, according to this ruling, the national judge is expected to learn not just the national law and in case of a transposition the origin of the particular provision but even all the legal instruments of the EU which do not have direct or indirect effect.

It is plausible that the more components which have to be taken into consideration to decide whether to refer or not, the more miss may occur.

The abovementioned intervention of the Court of Justice has been strongly criticised by Advocate General Jacob. The Advocate General argued that the possible discrepancies of interpretation are not avoided by the Court of Justice intervention. Furthermore, the Court interpreted outside the boundaries of its competence, as it ruled upon national law and the Court of Justice also gave a preliminary ruling on the interpretation of a European provision according to the European context, which might be different than the national context in which the provision was used[79]

2.7. The question of court or tribunal

2.7.1. The Criminal Proceedings against Lyckeshog[80]

Mr. Lyskeskog was prosecuted for importing 500 kg rice to Sweden without paying custom duties. He expressed that the rice is for personal use. He appealed against the prosecution, to the Swedish Court of Appeal, arguing that this is in accordance with the relevant EU directive. The decision of the Court of Appeal could be appealed to the Swedish Supreme Court. The Court of Appeal referred the question whether Article 267(3) was applicable if the appeal was not permitted in the particular case.

The Court of Justice ruled that a decision of a national court which could be challenged by the parties before a superior court could not constitute a decision against which there was no judicial remedy even if such a challenge was conditional upon granting of leave to appeal by a superior court.

[79] Advocate General Jacob's opinion in the case A. Leur-Bloem v. Inspecteur der Belastingendienst/Ondernemingen Amsterdam 2, Case 28/95, ECR 1997.
[80] Case C-99/00 Criminal Proceedings against Lyckeshog [2002] ECR I-4839

In Hungary an extraordinary judicial remedy[81] is available against the decision (which has res judicata effect and for this reason the appeal does not have suspensory effect) of the appellate court to the Supreme Court. Statistics show that only 3 percent of the cases reach the level of the Supreme Court against whose decisions there is no judicial remedy[82] in the sense of the ruling. It follows from the foregoing that in the 97 percent of the cases (or due to the judgement of Firma Foto-Frost[83] more precisely in the 97 percent of the cases considering the interpretation of the EU law) there is no obligation on the court to refer to the Court of Justice and even if the interpretation of EU law has a crucial impact on the final decision of the national court, the case cannot reach the level where the reference is mandatory.

2.7.2. Cartesio Oktató és Szolgáltató Bt.[84]

Cartesio, a company founded under Hungarian law, wished to transfer its seat to Italy. However, Hungarian law did not allow a company incorporated in Hungary to transfer its seat abroad while continuing to be subject to Hungarian law. The case raised another question, beside whether this is in the scope of the freedom of establishment, related to the distinction between the courts which 'may' or 'shall' refer. In this case the existing judicial remedy did not have suspensory effect on the challenged judgment. The Court of Justice expressed in its ruling, that the lack of suspensory effect did not deprive the parties of their right to appeal that decision.

A short comment has to be added that the lack of suspensory effect was according to the extraordinary nature of this type of judicial remedy in Hungarian civil procedure, hence there are strict conditions which have to be satisfied to use this right, therefore, the same statistics are applicable which were cited above.

Another aspect of the preliminary reference procedure was discussed in this case. The national court referred the question to the Court of Justice whether a higher court can prevent the lower court to submit request for a ruling to the Court of Justice with regard to the fact that according to the then state of Hungarian civil procedure the decision of a lower court regarding the initiation of the preliminary ruling procedure can be subject of appeal.

The Court of Justice ruled that

[81] Hungarian Act of Civil Procedure paragraph 270
[82] http://birosag.hu/kozerdeku-informaciok/statisztikai-adatok/ugyforgalmi-adatok
[83] see in details in section 2.4
[84] Case C-210/06 Cartesio Oktató és Szolgáltató Bt [2008] ECR I-9641

"Where rules of national law apply which relate to the right of appeal against a decision making a reference for a preliminary ruling, and under those rules the main proceedings remain pending before the referring court in their entirety, the order for reference alone being the subject of a limited appeal, the autonomous jurisdiction which Article 234 EC confers on the referring court to make a reference to the Court would be called into question, if - by varying the order for reference, by setting it aside and by ordering the referring court to resume the proceedings - the appellate court could prevent the referring court from exercising the right, conferred on it by the EC Treaty, to make a reference to the Court."[85]

The example below exposes the difficulties to comply with the rulings of the Court of Justice:
The instance concerns the - easily understandable - dilemma of the author when a case in which a preliminary reference procedure was pending[86] was assigned to him (because the previous judge[87] of the case was appointed to the Supreme Court as an expert of EU law) at the time of his appointment as a judge in 1 January 2009. The author faced the fact that although amongst the documents of the case was a decision of the appellate court which set aside the original decision of the court of first instance - in which the procedure was stayed and the preliminary ruling procedure was initiated - and ordered to resume the proceedings, the procedure was stayed and the reference was made.
However, the Court of Justice delivered its Cartesio judgment in 16 December 2008. the Hungarian Law on civil procedure was straightforward: "*An appeal may be brought against a decision to make a reference for a preliminary ruling. An appeal cannot be brought against a decision dismissing a request for a reference for a preliminary ruling.*"[88]
Subsequently, this provision of the Hungarian law on civil procedure has been amended to comply with the ruling of the Court of Justice, though that time the obligation due to the Hungarian law on the newly appointed judge was clear: resume the proceedings according to the order of the appellate court. Eventually, the procedure was stayed until the Court of Justice gave its ruling and the parties did not object against the "omission" of the court.

[85] Ibid., para 95
[86] Case C-137/08 VB Pénzügyi Lízing Zrt. v Ferenc Schneider.[2010] ECR I-10847
[87] Dr. habil. András Osztovits
[88] Hungarian Act of Civil Procedure paragraph 155/A§ (3)

2.7.3. Broekmeulen v Huisarts Registratie Commissie[89]

In Netherland a body was responsible for registering those who wished to practice medicine in the country. Against the decisions of this body there was a right to appeal to the Appeals Committee for General Medicine. Both bodies were established within the framework of a private association and the Committee was not a court or tribunal under Dutch law. Without registration it was not possible to practice in Netherland. Broekmeulen was a Dutch national who graduated in Belgium. His application was refused. The question that had to be answered was whether the Committee was a tribunal or a court. The Dutch government argued that the refused would have the right to appeal against the decisions of both bodies to the ordinary court, however, it provided that till that time any decisions of the bodies have never been challenged. The Court ruled that in the absence, in practice, of any right of appeal to the ordinary courts the Appeals committee, must, in a matter involving the application of community law, be considered as a court or tribunal of a Member State within the meaning of article 267 TFEU.

Consequently, a body consisting lay judges in particular cases has to refer to the Court of Justice, therefore there is an assumption that this body is absolutely familiar with the EU law and the institution of the preliminary ruling procedure.

2.7.4. Concluding remarks

In these rulings the court broadened the possibility to refer to the Court of Justice from one aspect, namely involving bodies which are not considered to be court or tribunal according to the national law, however limited the scope of court or tribunals which are obliged to refer. In my opinion any limitation on the mandatory reference weakens the achievement of the articulated aim of Article 267 TFEU due to the very nature of human beings, namely when something is not compulsory people tend to ignore it easier. As Lenearts expressed :*"National courts will grant or decide to refer when they expect the utility of the answer to outweight the cost in terms of money and time. It allows them to be involved in decision making and to influence European public policy."*[90]

[89] Case 246/80. Broekmeulen v Huisarts Registratie Commissie [1981] ECR 2311
[90] K. Lenaerts, 'The rule of law and the coherence of the judicial system of the European Union',CML Rev., 2007, p 1645

Another problem may arise from the limitation of the scope of the compulsory reference in relation to the enforceability of Article 267 TFEU. The most common answer to the question whether the reference is enforceable is the Köbler Judgment.[91] Mr Köbler alleged that the Austrian Verwaltungsgerichtshof infringed directly applicable EU law when dismissed his claim concerning special length of service increment which was granted for university professors who has already completed 15 years of service. Mr. Köbler stated that he had completed the prescribed period although not exclusively in Austria and not taken into account his previous service in other EU Member State is an indirect discrimination unjustified under Community law. Therefore, he brought an action against Austria for remedy. The Court of Justice ruled:

"the Member States are liable to afford reparation of damage caused to individuals as a result of infringements of Community law for which they are responsible is also applicable where the alleged infringement stems from a decision of a court adjudicating at last instance."[92]

Does the court adjudicate at last instance the same as the court against whose decisions there is no judicial remedy? The answer to this question fundamentally determines the effective enforceability of Article 267 TFEU. The judgment concerned not just the failure of mandatory reference but any other breach of EU law:

"In any event, an infringement of Community law will be sufficiently serious where the decision concerned was made in manifest breach of the case-law of the Court in the matter."[93]

If the reply is affirmative for the previous question does the above discussed restrictive interpretation concerning courts for last instance is applicable? Because if the second answer is also affirmative it means that, for example, in Hungary, de facto in the 97 percent of the cases considering the interpretation of the EU law the courts can breach the EU law without the developed concept of state liability.

Another question which is raised by the judgment is the factors which has to be taken into consideration to decide on the claim. The Court of Justice tried to lay down the conditions:

---

[91] Case 224/01 Gerhard Köbler v Republik Österreich. [2003] ECR I-10239
[92] Ibid., para 50
[93] Ibid.,para 56

"Those factors include, in particular, the degree of clarity and precision of the rule infringed, whether the infringement was intentional, whether the error of law was excusable or inexcusable, the position taken, where applicable, by a Community institution and non-compliance by the court in question with its obligation to make a reference for a preliminary ruling under the third paragraph of Article 234 EC."[94]

However, the question is still open: if the infringement was not intentional since the national court did not know the law to apply the claim has to be dismissed? If the reply is yes, it does not urge the national judiciary to be familiar with EU law.

After the mere logical approach discussed in the previous chapters the next chapter is an attempt to gain empirical evidence to verify or disprove the hypothesis expressed in chapter II. In order to test the hypothesis a survey has been carried out amongst Hungarian judges and the next chapter concerns the methodology and the results of the survey.

Chapter III. The survey

3.1 Methodology

The first and most important issue regarding a survey is the selection of the sample.[95] In this survey the sample was chosen from the courts which adjudicate at first instance because in one hand - as it was discussed - just 3 percent of the cases reach the court against whose decisions there is no judicial remedy, on the other hand the statistics of the Court of Justice[96] showed that twenty references were made by the Hungarian Supreme Court (now Kúria) and eight by different Courts of Appeal from the overall 121 initiated procedure therefore these are not the courts which made the majority of references. Three courts have been selected from Budapest by virtue of the location which provided an easier access for the author. Amongst the selected courts there are two district courts and a regional court: Budapest District Court for the II. and III. Districts; Budapest District Court for the XVIII. and XIX. Districts and Budapest-Capital Regional Court. The authorized numbers

[94] Ibid., para 55
[95] Rudas Tamás, Közvélemény-kutatás - Értelmezés és kritika Corvina Kiadó, 2006
[96] source: Court of Justice of the European Union, Annual Report 2015 Juducial Activity, : http://www.curia.europa.eu

of judges were (to criminal, civil, administrative and labour matters) 2890 in 2014[97]in Hungary from which roughly the two thirds of places are assigned for civil judges (circa 1920 capita).[98] The three selected courts represent approximately 230 civil judges which is 12 percent of the overall number. The survey was carried out amongst civil judges because criminal law is generally stricter with regard to the judges' right for interpretation and discretion, since the same principles rules the criminal procedure all over the EU, namely nulla poena sine lege, nullum crimen sine lege.
The format of the survey was an anonym questionnaire. The questions were as follows:

1. How long have you been a judge? 1-6 years □, 7-13 years □, more than 13 years □
2. Have you ever had any compulsory tuition on EU Law (including the university)? yes □ no□
If the answer is yes, how long did it take? 1-2 days □, 1 week □, more than 1 week □, semester at the university □, full year □,
If the answer is yes when did the last tuition take place 1 year ago □, 1-3 years ago □, 3-5 years ago □, more than 5 years ago □
3. Have you ever referred to the Court of Justice? yes □ no□
4. Do you know/apply the theory of indirect effect? yes□ no□

The first two questions relate to the educational background of the respondent. At the first question the answer categories were composed according to the date of accession hence from the second category (7-13 years) the judge must have been graduated before Hungary has joined the European Union. This fact has a substantial importance as Péter Darák the president of the Kúria[99] expressed "A good part of the current judiciary could not learn the Law of the European Union by virtue of their age."[100]
The last two questions are intended to explore the judges' willingness for references and knowledge of EU Law, particularly the concept of indirect effect which was developed by the case law of the Court of Justice. The importance and development of the concept is discussed above,[101] hence it is considered to be a proper indicator of the deep EU law knowledge. Furthermore, the answers for

[97] source of data: http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/283_0.pdf
[98] It is impossible to refer to exact numbers since the figures are changing dynamically due to the different leaves (maternity, unpaid) and resignations.
[99] the Hungarian Supreme Court,
[100] 3000 európai bíró dolgozik Magyarországon – Interjú Darák Péterrel 1. rész, http://www.arsboni.hu/3000-europai-biro-dolgozik-magyarorszagon-interju-darak-peterrel-1-resz.html
[101] in section 2.5

the questions may reveal whether there is a correlation between the knowledge of indirect effect and the initiation of preliminary ruling procedure.

3.2 Results

For the analysis of the results the data of the two district courts are treated together by virtue of their size, however they are separate institution with separate venue.

The results are displayed according to the categories regarding the time elapsed from the appointment of the judges as set out at the questionnaire.

3.2.1 District Courts

All the judges from the two courts filled the questionnaire except who are on a permanent leave (like maternity or unpaid leave).

table 2. result amongst judges with 1-6 years' experience

judge	1	2	3	4	5	6	7	8	9	10
duration	no	1year	1year	1year	1year	1year	1year	1year	1year	1year
when	0	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years
preliminary ruling	no	no	no	no	no	no	no	no	no	no
know/apply	yes	yes	no	no	no	yes	yes	yes	no	yes

table 3. result amongst judges with 7-13 years' experience

judge	1	2	3	4	5	6	7	8	9
duration	1year	1year	1year	1year	1-2days	1year	1year	no	no
when	more	more	more	1-	more	more	more	0	0

	than 5years	than 5years	than 5years	3years	than 5years	than 5years	than 5years		
preliminary ruling	no	no	no	no	no	no	no	no	no
know/apply	no	no	no	yes	no	no	yes	no	no

table 4. result amongst judges with more than 13 years' experience

judge	1	2	3	4	5	6	7	8	9
duration	1-2days	1week	1week	1week	1week	1year	1-2days	more than 1week	1-2days
when	3-5years	3-5years	3-5years	more than 5years	more than 5years	more than 5years	1-3years	more than 5years	more than 5years
Preliminary ruling	no	no	no	no	no	no	no	no	no
know/apply	no	no	yes	yes	no	yes	no	yes	no

judge	10	11	12	13	14	15	16	17	18	19
duration	1week	1week	1week	more than 1week	1week	1week	1-2days	1week	more than 1week	1week
when	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years
preliminary ruling	no	no	no	no	no	no	no	no	no	no
know/apply	no	no	no	no	yes	no	no	yes	no	no

The first and most upfront result that just 14 judges know/apply the concept of indirect effect which is 37 percent of the overall 38 judges. Unsurprisingly, in the 1-6 years' experience category this percent is the highest with 60%, however, the lowest percent (22%) can be found amongst judges with 7-13 years' experience which proportion is slightly against the expectation considering that judges with longer service background has received less training in EU law. Interestingly, while the duration of the training fluctuating in the last category, and the majority of judges with little or medium service years had at least 1 academic year tuition on EU law, a significant difference can be seen regarding the proportion of deep knowledge of judges between the latter two categories, just 22 percent of the 7-13 years' category and 37 percent of the more than 13 years' category answered that s/he knows/applies the concept of indirect effect. Unfortunately, this survey does not provide explanation for this phenomenon.

3.2.2 Regional court

The participation in the survey was lower at the observed regional court than at the district courts. Only 54 judges filled the questionnaire which number made up approximately 40 percent of the overall figure. The absence of the 1-6 years' experience category stems from the fact that although judges at this level adjudicate at firs instance as well, the scope of the regional court is different from the district courts, hence usually judges with longer experienced are appointed for those courts.

table 5. result amongst judges with 7-13 years' experience

judge	1	2	3	4	5	6	7	8	9
duration	1year	1year	1year	1year	no	no	1-2days	1year	1-2days
when	more than 5years	more than 5years	more than 5years	1-3years	no	no	more than 5years	more than 5years	3-5years
prel.r.	no	no	no	no	no	no	no	no	no
know/apply	no	no	yes	yes	yes	yes	no	no	yes

judge	10	11	12	13	14	15	16
duration	1year	more than 1week	1-2days	1year	no	1year	1-2days
when	1year	more than 5years	1-3years	more than 5years	no	more than 5years	more than 5years
prel.r.	no	no	no	no	no	no	no
know/apply	yes	no	yes	yes	no	yes	no

table 6. result amongst judges with more than 13 years' experience

judge	1	2	3	4	5	6	7	8	9
duration	1-2days	no	1week	1week	1week	1week	more than 1week	more than 1week	1year
when	3-5years	no	more than 5years	more than 5years	more than 5years	more than 5years	1-3years	more than 5years	more than 5years
Preliminary ruling	no	no	no	no	no	no	no	no	no
know/apply	no	no	yes	no	no	no	no	no	no

judge	10	11	12	13	14	15	16	17	18	19
duration	more than 1week	1week	1week	1year	more than 1week	more than 1week	1-2days	no	1week	more than 1week

when	more than 5years	more than 5years	more than 5years	3-5years	3-5years	more than 5years	1year	no	more than 5years	3-5years
preliminary ruling	no	no	no	no	no	no	yes	no	no	no
know/apply	yes	yes	no	yes	no	no	yes	yes	no	no

judge	20	21	22	23	24	25	26	27	28
duration	1week	1week	1week	1-2days	1year	1-2days	1-2days	no	no
when	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	no	no
Preliminary ruling	no	no	no	no	no	no	no	no	no
know/apply	no	no	no	no	yes	yes	no	no	no

judge	29	30	31	32	33	34	35	36	37
duration	1year	more than 1week	1week	1week	1week	1week	more than 1week	more than 1week	1year
when	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years	more than 5years
Preliminary ruling	no	no	no	no	no	no	no	yes	no
know/apply	yes	yes	yes	yes	yes	no	yes	no	yes

The results are slightly different from the outcome of the district courts since 45 percent of the sample group (24 judges) answered that s/he knows/applies the concept of indirect effect, although it is less than the half of the adjudicating judges. In contrast with the results of the district courts, in this sample the proportion of deep knowledge is the highest in the 7-13 years' experience group with 56 percent and it can be clearly seen that the duration of the tuition is longer in this category as well.

Since just two references were made to the Court of Justice by the questioned judges, the correlation between the deep knowledge of EU law and the initiation of preliminary ruling procedure cannot be examined, however it is plausible that without a deep knowledge of the law of the European Union the system of Article 267 TFEU cannot work, after all "*the system of references for a preliminary ruling is based on a dialogue between one court and another,*'[102]

Conclusion

In my opinion, in spite of the fact that the sample was small, the carried out survey verified the hypothesis (at least regarding Hungarian local courts) set out in chapter II. according to which one significant factor which determines the lower numbers of references from "new" Member States is the judges' lack of familiarity with the Law of the European Union. However, it has to be emphasized - as it is already stated in previous chapters – that it is not the fault of the judges or the judiciary.[103] Moreover the instance Member State through which the phenomenon is presented is Hungary by virtue of the personal experience and relation of the author. In fact, Hungary initiated the most preliminary reference procedures from the "new" Member States hence, in the light of the foregoing, it may be stated that the Hungarian judiciary has one of the deepest knowledge of European Law. However, for a generally true statement regarding the exceptionally sensitive nature of this topic, all the factors presented above must be taken into consideration and tested with regard to the specialities of the Member States.

[102] Case C-210/06. Caresio oktató és szolgáltató bt. [2008] ECR I-9641 para 91
[103] see in detail insection 3.5

5.1 Resolving the inefficiency of the procedure

Inefficiency in the preliminary ruling procedure - as it was discussed in the previous chapters - is widely accepted by scholars as an existing problem.

Komarek,[104] one from the many authors dealing with this issue, set out alternative mechanisms. The institutions of the EU also recognized the need for the reform of the preliminary ruling system, therefore two papers were composed, the Courts' paper[105] and the Due Report.[106] The cited works mostly concentrate on the workload of the Court of Justice and there are suggested reforms concerning a filtering mechanism[107] to reduce the number of references or restructure the system toward an appellate system, [108]

Komarek suggests limiting the possibility to refer only to last instance courts with two exceptions. The lower court must stay proceedings and refer to the ECJ when is considers that one or more arguments for invalidity are well founded and give a right for the Council to decide which European law measures can be subject to preliminary references from lower courts. He argues that the first instance courts have complete different tasks than the higher courts. The former is for establishing the facts, hear the plaintiff and defendant, and therefore much closer to the parties. The Supreme Court doesn't have to deal with facts and can surpass the specific case to see it in a broader light taking into account the effects that the ruling will have on society. In both papers there are solid objections against this solution because the ability of any national court to refer to the Court of Justice has been central to the development of EU law in practical and conceptual terms.[109]

These suggested measures aim to resolve the problem of the increased workload of the Court of Justice, however in my opinion the efficiency and the aims of article 267 TFEU are sometimes impeded by the mere fact that the extraordinary legal institutions, the complexity, and the novelty of the EU law is not sufficiently learned by the national judges. The obvious solution for this inefficiency is the education. The further description of the proper design of the education is beyond the scope of this thesis. However, it can be stated in the light of Article 267 TFEU that this education has to be centralized furthermore as close to the Court of Justice as possible.

---

[104] J. Komarek, 'In the court(s) we trust? On the need of hierarchy and differentiation in the preliminary reference procedure',EL Rev., 2007, p. 467-491.
[105] The future of the Judicial System of the European Union (Proposals and Reflections) (May 1999)
[106] Report by the Working Party on the Future of the European Communities' Court System (jan 2000)
[107] Ibid.,page.14-15
[108] The future of the Judicial System of the European Union (Proposals and Reflections) (May 1999) p.26
[109] Paul Craig and Grainne de Búrca EU LAW test, cases, and materials Oxford University Press fifth edition p.478

On the other hand, solving the inefficiency discussed in this thesis means that more reference will be made since as statistics show the lack of deep knowledge of EU law is an efficient filtering mechanism in the preliminary reference procedure hence inefficiencies in relation with the workload of the Court of Justice will deepen for which new solution has to be developed.

Bibliography

Books

Elsphet Berry, Matthew J. Homewood & Barbara Bogusz EU Law Text, Cases, and Materials second edition Oxford University Press 2015

Paul Craig and Grainne de Búrca EU LAW test, cases, and materials Oxford University Press fifth edition

D. Neil MacCormick - Robert S. Summers: Furhter General Reflections and Conclusions In: MacCormick- Summers: Interpreting Precedents. A Comprative Study. Dartmouth, 1997.

Rudas Tamás, Közvélemény-kutatás - Értelmezés és kritika Corvina Kiadó, 2006

Periodicals

Sweet, Alec Stone and James A. Caporaso. 1998. “From Free Trade to Supranational Polity: The European Court and Integration.” European Integration and Supranational Governance, eds. Wayne Sandholtz and Alec Stone Sweet.,

Sweet, Alec Stone and Thomas L. Brunell. 1998. “The European Court and the national courts: a statistical analysis of preliminary references, 1961-95.” Journal of European Public Policy 5: 66-97.

Sweet, Alec Stone and Thomas L. Brunell, “Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community.” American Political Science Review 92.1: 63-81

Alter, Karen J. 1996. “The European Court’s Political Power.” West European Politics 19.3: 458-487.

Mattli, Walter and Anne-Marie Slaughter 1998. “Revisiting the European Court of Justice.” International Organization 52.1: 177-209.

Van Rhee, C. H. (2005). European traditions in civil procedure. Ius commune europaeum 54. Intersentia nv.

Takis Tridimas, 'Knocking on Heaven's Door: Fragmentation, Efficiency and Defiance in the Preliminary Reference Procedure' (2003) 40 Common Market Law Review, Issue 1, pp. 9–50

Carruba and L. Murrah, ‘Legal integration and the use of preliminary ruling process in the European Union’,The MIT press, vol. 59, n° 2, 2005

M. Bobek, ‘Learning to talk: preliminary rulings, the courts of the new member states and the Court of Justice’, 45 CML Rev 1640., 2008

Anthony Arnull, Does the Court of Justice have inherent jurisdiction? (1997) 27 Common Market Law Review, pp. 638-708

K. Lenaerts, ‘The rule of law and the coherence of the judicial system of the European Union’,CML Rev., 2007

J. Komarek, ‘In the court(s) we trust? On the need of hierarchy and differentiation in the preliminary reference procedure’,EL Rev., 2007

Mishler, William and Reginald S. Sheehan. 1993. “The Supreme Court As A Countermajoritarian Institution: The Impact of Public Opinion on Supreme Court Decisions,”American Political Science Review 87.1: 87-101.

Mishler, William and Reginald S. Sheehan. 1996. “Public Opinion, the Attitudinal Model and Supreme Court Decision-making: A Micro-Analytic Perspective,” Journal of Politics 58.1: 169-200.

dr. Kovács Virág: Precedens jog az Európai Bíróság gyakorlatában

Working papers

The future of the Judicial System of the European Union (Proposals and Reflections) (May 1999)

Report by the Working Party on the Future of the European Communities' Court System (jan 2000)

Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, OJ 2012/C 338/01

Court of Justice of the European Union, Annual Report 2015 Judicial Activity,

Websites

http://www.curia.europa.eu

https://europa.eu/european-union/about-eu/countries/member-countries_hu

http://curia.europa.eu/jcms/jcms/Jo2_11035/rapports-annuels

http://www.um.edu.mt/laws/programme/UBLAWHFT-2016-7-O

http://www.um.edu.mt/laws/programme/PMADVFTT6-2016-7-O

http://www.ajk.elte.hu/file/Jogasz_oszt_MA_nap_UJ.pdf

http://igazsagugyiinformaciok.kormany.hu/download/7/fe/71000/C2%20-%20sz%C3%B3beli%20t%C3%A9telsor%20-%20v%C3%A9gleges%20-%200727.pdf

https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html

http://jesz.ajk.elte.hu/kovacs4.html

http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-10/rp_en.pdf

http://www.lb.hu/hu/kollvel/22011-xii-12-pk-velemeny-fogyasztoi-szerzodes-ervenyessegevel-kapcsolatos-egyes-kerdesekrol

http://www.akontroll.hu/jogtar.php?ssz=20

http://birosag.hu/kozerdeku-informaciok/statisztikai-adatok/ugyforgalmi-adatok

http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/283_0.pdf

http://www.arsboni.hu/3000-europai-biro-dolgozik-magyarorszagon-interju-darak-peterrel-1-resz.html

http://curia.europa.eu/en/actu/communiques