TOWARDS AN AUTOPSY OF THE INTERPRETATION OF EUROPEAN UNION LAW THROUGH THE CJEU

RUMO À AUTOPSIA DA INTERPRETAÇÃO DA LEI DA UNIÃO EUROPEIA ATRAVÉS DO TJEU

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Abstract: The purpose of the present work is to focus and analyze the profiles of the interpretation of EU law through the role and the position carried out ab initio until today CJEU, playing its role not only interpretative, expansive but also creative. Interpretation in a community sense includes the development of law and the activity of the Court is fundamentally legal production through the interpretation and development of law. The interpretative strategy developed through CJEU takes into account the sui generis character of EU system and its right by adopting interpretative choices functional to the development of integration process as a fundamental objective of the treaty.

Keywords: interpretation of EU law, CJEU, EU law, legal certainty.

Resumo: *O obejtivo do presente trabalho é analisar os perfis da interpretação do direito da UE por intermédio do papel e da posição exercida ab initio até hoje pelo TJUE, ao desempenhar não apenas seu papel interpretativo e expansivo, mas, também criativo. A interpretação no sentido comunitário inclui o desenvolvimento do direito, e, a atividade do Tribunal é a produção legal por meio da interpretação e desenvolvimento do direito. A estratégia interpretativa desenvolvida pelo TJUE leva em consideração o caráter sui generis do sistema da UE e seu direito, ao adotar escolhas interpretativas e funcionais em prol do desenvolvimento do processo de integração como objetivo fundamental do tratado.*

Palavras-chave: *interpretação do direito da UE, TJUE, direito da UE, segurança jurídica.*

cal interpretation in the first decades of European integration. 4. The importance in EU law of interpretation rules applicable to international treaties. Concluding remarks.

Introduction

Identification and affirmation of treaties interpretative rules has accelerated especially after the establishment of the European community, today EU when the passage from international law's coexistence to cooperation has led to multiplication of international agreements, making more pressing the problem concerning their legal regulation including that of their interpretation. For interpretation it is necessary to use the natural and ordinary meaning of treaty terms considered in their context according to good faith to and in the light of international law principles. The natural and ordinary meaning of a term can be set aside if it is established that the same must be interpreted differently through subsidiary means of interpretation with a simplifying list of preparatory works, the practice followed, in our thing by means of the Court of Justice of the European Union (CJEU) in the effective application of the treaty and the purpose of the latter. A first interpretative strategy is known as an objective method of interpretation (textual or literal) which gives prevalent emphasis to the text of the treaty, which is deemed to correspond to the will expressed by the contracting parties. In this regard, it is believed that these are bound by the treaty as they have, as a rule and according to the ordinary treaty formation process, participated in its negotiation and have authenticated the text by signing it and have decided to oblige themselves to comply with the ratification (GAGARDINER, 2015; FITZMAURICE, 2017).

Another strategy is known as a subjective (historical) method, which is aimed at seeking the effective will of contracting parties, which could also be different from that expressed in the text of the treaty. The application of this method may allow the differences in the interests of the aforementioned parties to be re-interpreted, as well as between national rules and practices in terms of interpretation. And given that the treaties are by their nature a compromise between distinct positions, the method in question can allow the contractors themselves to take an interpretative part, a part of what they have granted through negotiation, formalized in the text of the treaty.

Another interpretative strategy is known as a functional (teleological) method that enhances the purpose for which the treaty is concluded, interpreting the text in function, precisely of it. This method is inherently neutral since the result it leads to depends on the content of the specific standard to be inter-

preted. When the aims of a treaty are broad and indeterminate, its application is likely to produce an extensive interpretation of it with the consequence of limiting the sovereignty and autonomy of the contractors to a greater extent. The teleological method is not only a glare of one of the other two depending on whether the text or the will of the parties is enhanced, in our case the participating states. It is the manifestation of an interpretative strategy that, more than the others, shifts attention from the legislator to the interpreter who has the task of seeking the rational end pursued by the norm. It is a dynamic method, since it can adapt the treaty to the changed context of the international community, a rectius of the participating states speaking for the Union treaties. This is a more creative method.

Such strategies are susceptible to a more or less "pure" application and the methods attributable to them can also be ordered differently. This depends as mentioned by the approach that characterizes the interpreter as well as the type of treaty and the context considered from time to time. The positive conception favors objective interpretation because otherwise through the teleological interpretation the interpreter could transform the norm while remaining firm that the subdivision of the interpretation of treaties into the various strategies indicated seems more convincing and corresponding to the Union practice.

1. The Absence in the Treaties Establishing Provisions Relating to Interpretation: the role of the court of justice of the European Union

In EU legal order there are no written rules that determine how it should be interpreted. CJEU[1] has made up for this lack that unites both primacy law including the Charter of the Fundamental Rights of the European Union (CFREU) and derivative law, which in its jurisprudence has identified and applied some methods of interpretation of EU law (POIARES MADURO, 2007; RITLING , 2016), qualified as unwritten general principles of EU law.

CJEU has recognized these methods of interpretation taking into account those used by the judicial organs of member states in order to interpret the respective internal legal systems (KUTSCHER, 1976; MERTENS DE WILMARS, 1985; VAN RAEPENBURSCH, 2016), as well as the interpretative methods applicable to international treaties. However, faced with the need to interpret the rules

[1] "(...) the sacred task, indeed the core function, of the judge in both the EU and the United States is the interpretation of law" (LENAERTS, 2007). See also:. «Le juge n'existe qu'e fonction de son indèpendance et cette indèpendance concerne en premier lieu la dèfinition des sources du droit et le mèthode d'interpètation (...)» (PESCATORE, 1994).

of an unusual and peculiar legal system such as EU, which does not include only a set of reciprocal rules created by treaties connected to each other, CJEU has developed its own interpretative strategy and its own system of juridical argumentation (BEHR, 1958-1959; KOOPMANS, 1991; EVERLING, 1994; FENNELLY, 1997; SCHIEMANN, 2005; FAHEN, 2016), affirming its role not only as a judge of the rights and obligations of member states but also of individuals. In this perspective CJEU has also played its creative role. Interpretation in the community sense includes the development of law and "the activity of the Court is fundamentally legal production through the interpretation and development of the law"[2]. This is not unusual for courts and in the present case is the current art. 19, par. 1 TEU to assign exclusively to CJEU the task (LENAERTS; GUTIÉRREZ-FONS, 2013) of ensuring compliance with the law "in the interpretation" of treaties[3], while art. 267 TFEU commissioned to interpret the entire legal system of EU law through the mechanism of preliminary reference.

In some celebrated judgments it has stated that EU is "a new legal order in the field of international law" (CJEU, 1963)[4] (note that the final sentence referring to international law is eliminated in subsequent rulings that take up this statement) (CJEU, 1968)[5], that the treaty is the "constitutional charter" of a law

[2] "(...) il est indèniable que devant les tergiversations du monde politique, elle (la Corte) a ainsi rèussi à faire prèvaloir sa conception de la construction europèenne (...)" (SCHOCKWEILER, 1995). See also: BAILLEUX, H. A. DUMONT. *Droit institutionnel de l'Union europèenne*. Le pacte consitutionnel europèeen en contexte. Bruzelles : Bruylant, 2015.

[3] "(...) the overarching principle guiding the court of justice's interpretative approach" (LENAERTS, 2007) see also: who believes that art. 19 should not be interpreted as "a balk check-provision" as it binds the court and the court to ensure compliance with the "within their own jurisdiction" right (DE WAELE, 2010).

[4] The fundamental characteristics of the Community legal order are in particular its pre-eminence over the rights of the Member States and the direct effect of a whole series of rules which apply to the citizens of those States, as well as to the States themselves. For an analysis on the fundamental principles of EU law (CJEU, 1963).

[5] Opinion in case 1/91 of 14 December 1991, ECLI: EU:C:1991:490, I-06079, parr. 39-40; In Opinion 1/91, on the first EEA agreement, the CJEU proclaimed the constitutional character of the EU, asserting that this constitutional nature distinguished it from international law. In Opinion 1/00 the Court stated more specifically: "(...) preservation of the autonomy of the Union legal order requires therefore, first, that the essential character of the powers of the (Union) and its institutions as conceived in the Treaty remain unaltered (...) it requires that the procedures for ensuring uniform interpretation of the rules of the (...) Agreement and for resolving disputes will not have the effect of binding the (Union) and its institutions, in the exercise of their internal powers, to a particular interpretation of the rules of (Union) law referred to in that agreement (...)". See also the Opinion 1/00, Opinion pursuant to Article 300(6) EC-Proposed agreement between the European Community and non-Member States on the establishment of a European Common Aviation Area) of 18 April 2002, ECLI:EU:C:2002:231, I-03493, par. 12-13, to which par. 12 states that: "Ensuring the autonomy of the Community legal order therefore presupposes, on the one hand, that the competences of the Community and its institutions, as conceived in the Treaty, are not distorted: "(...) since the draft agreement substantially establishes a new jurisdictional structure, it is necessary

community (CJEU, 1986)[6] and that the transfer of powers from states to the community (today EU) involves a "definitive limitation of their sovereign powers" (CJEU, 1964)[7]. These are all very significant statements that show a tendency of CJERU to bring EU closer to a state subject (MERTENS DE WILMARS, 1985)[8],

to recall, in the first place, the fundamental elements of the legal system and the judicial system of the Union, as conceived by the founding Treaties and developed by the jurisprudence of the Court in order to assess the compatibility with those elements of the TB institution (...)". In Opinion 1/00 the Court stated more specifically: "(...) preservation of the autonomy of the Union legal order requires therefore, first, that the essential character of the powers of the (Union) and its institutions as conceived in the Treaty remain unaltered (...) it requires that the procedures for ensuring uniform interpretation of the rules of the (...) Agreement and for resolving disputes will not have the effect of binding the (Union) and its institutions, in the exercise of their internal powers, to a particular interpretation of the rules of (Union) law referred to in that agreement (...)". from the perspective of the autonomy of EU law, it is not clear at all that the principle of mutual trust, as a "specific characteristic" of EU law, trumps the protection of fundamental rights. It is true that the principle is a cornerstone of the Area of Freedom Security and Justice, and that the relevant TFEU provisions make several references to mutual recognition. But the protection of fundamental rights is a foundational EU value, and the TFEU's opening provision on the AFSJ predicates the area on respect for fundamental rights-such respect is also a "specific characteristic" of EU law. According to our opinion arbitral tribunals have no obligation to keep up to date and take account of the CJEU's case law when the disputing parties invoke EU law arguments. Tribunals can of course do so either on their own initiative or by hearing the parties and expert witnesses, but the essential question is whether the general ability of arbitral tribunals to interpret and apply EU law, to be discussed further below, constitutes a problem in light of Opinions 1/91 and 1/00. Situations where the CJEU's rulings are open to different interpretations, or where the Court has not clarified the meaning of specific EU law provisions may arise, and this will compel the tribunals to interpret the relevant rulings and provisions in one or another way. See for details: B. DE WITTE, EU law: How autonomous is its order?, in Zeitschrift für Öffentliches Recht, 65, 2010, pp. 162ss. P. JAN KUIJPER, J. WOUFERS, F. HOFFMEISTER, The law of EU external relations: Cases, materials and commentary on the EU as an international legal actor, Oxford University Press, Oxford, 2018, pp. 520ss. M. DERLÉN, J. LINDOLM, The Court of Justice of the EU: Multidisciplinary perspectives, Oxford University Press, Oxford, 2018. F. CASTILLO DE LA TORRE, Opinion 1/00, Proposed agreement on the establishment of a European Common Aviation Area, in Common Market Law Review, 39 (6), 2002, pp. 1373-1393 pp. 1392ss.

[6] In the same spirit see: C-2/88, IMM, Zwartveld of 13 July 1990, ECLI:EU:C:1990:440 I-04405. C-314/91, Beate Weber v. European Parliament of 23 March 1993, ECLI:EU:C:1993109: I-01093. C-15/00, Commission v. EIB of 10 July 2003, ECLI:EU:C:2003:396 I-07281. CJEU, joined cases: C-415/05 P, Kadi & Al Barakaat Int'l Foundation v. Council of 8 November 2008, ECLI:EU:C:2008:461, I-6351. For details see, R. UERPMANN-WITTZACK, Rechtsfragen und Rechtsfolgendes Beitritts der Europäischen Union zur EMRK, in Europarecht, 2012, pp. 167ss. C. NOWAK, Europarecht nach Lissabon, ed. Nomos, Baden-Baden, 2011. D. CHALMERS, G. DAVIES, G. MONTI, EU law, Cambridge University Press, Cambridge, 2014. J. TILLOTSON, N. FOSTER, Text, cases and materials on EU law, Gavedish Publishing, New York, 2013. M. HORSPOOL, M. HUMPHREYS, EU law, Oxford University Press, Oxford, 2012, pp. 552ss. SATZGER, International and European criminal law, Hart Publishing, Oxford & Oregon, Portland, 2017. T. OPPERMANN, C.D. CLASSEN, M. NETTESHEIM, Europarecht, C.H. Beck, München, 2016.

[7] par. 114. From this it follows that, if we accept the theory of control, that if the Member States does not respect the obligations imposed by the Union, the latter can be held responsible.In the sape spirit of orientation see the case: C-48/71, *Commission of the European Communities v. Italy of* 13 July 1972, ECLI:EU:C:1972:65, not published.

[8] "*la cour a progressivement situè son système d'interpretation dans un contexte normatif et institu-*

applying to it and its legal system some notions of domestic law (MERTENS DE WILMARS, 1985)[9], especially the constitutional one[10].

Since the early years of its operation, the quality and of some of its judges and advocates general have contributed to the progressive definition of CJEU's interpretative strategy[11]. As was also noted:

> (...) all ECJ judges came from civil law countries and thus may have been predisposed toward the french approach. Be that as it may, by using the deductive conclusory french style, ECJ was able to communicate to member states that the treaties they had entered into compelled the "constitutional" results reached by the court (...) (ROSENFELD, 2006, p. 642).

This is even more true considering that while CJEU expresses its opinions through jurisprudence at the same time its members often intervene in the scientific debate related and consequent to it[12]. From this point of view, the opinions expressed by its members reinforce the persuasive relevance recognized to the doctrine that especially in the first years of activity of CJERU, it has reconstructed the interpretative approach and directed action[13].

The interpretative strategy developed by it takes into account the sui generis character of EU system and its right by adopting interpretative choices functional to the development of the integration process as a fundamental objective of the treaty. The reference to the law was understood by CJEU in a very broad sense not limiting itself to the letter of treaties or secondary law but considering EU as an autonomous legal order with the consequence of referring to the object and purpose of the treaties, also to fill the gaps (POLLICINO, 2004)[14]. Since their aims

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tionnel de nature constitutionnelle" (MERTENS DE WILMARS, 1985. p. 8).

[9] "*le droit communataire est le droit interne des Communautès europèennes (...) qu'il prèsente pas pour autant les mêmes caractèristiques qu'un droit interne national (...)*" (MERTENS DE WILMARS, 1985. p. 8).

[10] "(...) the court in the context of the specificity of the legal ordering process whose law acquires the constitutional validity (in a material sense) of the legal system whose law acquires effectiveness because it is legitimized by the respect of the rules attributing jurisdiction and reinforced by a set of founding elements and values or structural that it itself reconstructs (...)" (POIARES MADURO, 2007).

[11] "*(...) ce qui ressemble à de l'hèroïsme exerce une attraction puissance sur un certain type de tempèrament parmi les juges et peut fournir à la cour une excuse à son dèsir d'adopter une attitude spectaculaire spècialement si le coût semble aussi minime* (...)" (HAMSON, 1976, p. 20-). See also: RASMUSSEN, H. *On law and policy in the European Court of Justice. Dordrecht: Springer, 1986.*

[12] "(...) many worked for one of the community institutions (...) and shared the spirit of edcitement geenrated by the new venture (...)" (ARNULL, 2013, p. 212).

[13] "(...) the authors of much of the early literature on community law did indeed seem to see their main task as being merely to explain the new system to the uninitiated (...)" (ARNULL, 2013, p. 212-).

[14] "(...) it is precisely in connection with such silences or insufficiencies that we see appearing for the first time the desire of the court (...) to free itself form the straight-jacket of the jurisdictional

are generic and oriented towards progressive integration, CJEU has been able to use an interpretative strategy aimed at this[15].

2. EU's law interpretation methods

In CJEU jurisprudence we find according to the most famous classification the following interpretative methods: literal, historical, comparative, systematic and teleological (MERTENS DE WILMARS , 1985; KUTSCHER, 1978; ALBORS LLORENS, 1999; BROBERG; FENGER, 2014). Under a different visual angle, considering the effects following from the application of different interpretative methods, they could be traced back to the macro-division between static and dynamic or evolutionary interpretation methods (BENGOETXEA, 1993; DUMON, 1978).

Literal interpretation according to which the terms of a provision are interpreted in their usual meaning, even if used[16], may present some drawbacks (WIJCKERHELD, 1965)[17]: sometimes it leads to absurd results, because contrary to the object of the discipline (MERTENS DE WILMARS , 1985); moreover, even the simplest term can have margins of ambiguity and therefore makes its interpretation necessary. There is also the issue of multilingualism to be considered (DICKSHAT, 1968; VAN CALSTER, 1997; SHARPSTON, 2009-2010; LIPSTEIN, 1974-1975; PAUNIO, 2016; DICKSON; ELEFTHERIADIS, 2012; FOLLESDAL *et al,* 2018), where the different versions of treaties and derived law are equally authentic (article 55, paragraph 1 TEU) and it is necessary to find an interpretation capable of overcoming this obstacle (MERTENS DE WILMARS, 1985).

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powers conferred upon it (...)" (CHEVALLEIR, 1965, p. 25). "(...) in doing so, the ECJ is in a similar position to a law-making constitutional court (...)" (CONSTANTINESCO, 2000, p. 76). See also: TRIDIMAS, T. The Court of justice and judicial activism. European Law Review, n. 2, 1996, p. 206-.

[15] "(...) particulièrement appropriée aux caractèristiques propres des traitès instituant le commmunautès (...)" (PESCATORE, 19--, p. 328). See also: LIPSTEIN, K. Some practical comparative law: the interpretation of multi-lingual with special regard to the EEC treaties. Tulane Law Review, 1974, p. 910-.

[16]CJEU, C-10/61, Commission v. Italy of 27 February 1962, ECLI:EU:C:1962:2 I-00001. C-43/69, B.A. Bilger of 18 March 1970, ECLI:EU:C:1970:20 I-00127. C-57/72, Westzucher GmbH v. Einfur-un Vorratstelle für Zucker of 14 March 1973, ECLI:EU:C:1973:20 I-00321. C-149/73, Witt v. Hauptzollamt Hamburg-Ericus of 12 December 1973, ECLI:EU:C:1973:160 I-01587. C-19/81, Burton v. British Railways Board of 16 February 1982, ECLI:EU:C:1982:58, I-00554, par. 9. C-152/84, Marshall v. Southampton and South-West Hampshire Area Health Authority of 26 February 1986, ECLI:EU:C:1986:84, I-00723, par. 35. C-91/92, Faccini Dori v. Recreb Srl of 14 July 1994, ECLI:EU:C:1994:292, I-03325, par. 14.

[17] "*(...) lorsque la norme en question est claire exclut la nècessitè d s'en rèfèrer au contexte* (...)" (MONACO, 1965, p. 178-).

Finally, there is the question of the generic nature of some EU provisions, especially those of the founding treaties, which need to be interpreted (ALBORS LLORENS, 1999). The literal method as the main interpretative method was employed by CJEU in the very first years of its operation even if almost immediately it was flanked by other methods because as observed in the doctrine, in interpreting EU law it must be recognized that the letter of the text it does not exhaust all the interpretation but serves only as a base (MERTENS DE WILMARS, 1985)[18].

The historical method has two variants, both little used by CJEU for the purposes of interpreting EU law. The first enhances legislator's intention by interpreting the rule according to the objective will expressed by its authors, but in EU law the use of preparatory works that do not exist for the original founding treaties is of little use, while they have sometimes been used for subsequent ones and for secondary law[19]. The second variant considers the function that the provision to be interpreted had at the time it was approved. Also unlike the interpretation in a historical-evolutionary sense[20] to which CJEU referred in C-283/81, CILFIT sentence of 6 October 1982[21] does not appear useful for the purposes of EU law

[18] "(...) even if the wording used seems to be cliar, it is still necessary to refer to the spirit, general scheme, and cotnext of the provision (...)" (BENGOETXEA, 1995).

[19] Mertens de Wilmar (1985, p. 15) which is declared that: «(...) la cour n'a aucune espèce de prèvention contre cette mèthode d'interprètation (...)». CJEU, C-336/03, easyCar of 10 March 2005, ECLI:EU:C:2005:105, I-01947, par. 20. C-62/14, Gauweiler and others of 16 June 2015, ECLI:EU:C:2015:400, published in the electronic Reports of the cases, par. 100, and is referred in the treaty of Maastricht. In the same orientation see: C-292/89, Antonissen of 26 February 1991, ECLI:EU:C:1991:80, I-00745. joined cases C-283, 291 and 292/94, Denkavit of 17 October 1996, ECLI:EU:C:1996:387, I-05063, par. 29, in which the CJEU does not, for the purposes of legal certainty, emphasize whether they have been included in the EU law. See for further details and analysis: SCHØNBERG, S.; FRICK, F. Finishing, refining, polishing. On the use of travaux preparatoires as an aid to the interpretation of community legislation. *European Law Review*, 2003. Also, for more details: LENAERTS, K.; GUTIÉRREZ-FONS, J. A. *To say what the law of the EU is:* methods of interpretation and the European Court of Justice, EUI *working paper,* 2013.

[20]CJEU, C-58/17, INEOS of 18 January 2018, ECLI:EU:C:2018:19. C-540/16, Spika and others of 12 July 2016, ECLI:EU:C:2016:565. C-291/16, Scheppers of 9 March 2017, ECLI:EU:C:3017:950. C-398/15, Manni of 9 March 2017, ECLI:EU:C:2017:197. C-534/13, Fipa Groupad and others of 4 March 2015, ECLI:EU:C:2015:140, all the cited cases was published in the electronic Reports of the cases.

[21]As was envisaged by the interpretative pronouncement of the Cilfit judgment (C-283/81, Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health of 06 October 1981, ECLI:EU:C:1981:335, I-03415) where the CJEU has stated "(...) any provision of Community law must be relied on its own context and interpreted in the light of all the provisions of that right, its aims and its evolution stage at the time when the application of the provision in question is adopted (…) of the terms of a provision of European Union law which does not contain any express reference to the law of the Member States for the purpose of determining its meaning and its scope must normally be an autonomous and uniform interpretation throughout the European Union,taking into account the context of the provision and the purpose pursued by the legislation in question (...)". See in argument: (AZOULAI, 2010; BECK, 2012; LENAERTS; GUTIÉRREZ-FONS, 2013; LÜTTRINGHAUS, 2013).

interpretation, considered which is governed by a legal order which by its nature has a dynamic character (ALBORS LLORENS, 1999; KUTSCHER, 1976).

With regard to the comparative method[22], CJEU has resorted more to it in the conclusions of the Advocate General and in the processing phase of sentences, than of the text of the same (PESCATORE, 1980; LENAERTS, 2003; ALMEIDA, 2014; LENAERTS; GUTMAN, 2016; ANDENAS; FAIRGRIEVE, 2015; MOORHEAD, 2014; DERLÉN; LINDHOLM, 2018) also because, as has been acutely observed, this method is opposed to the idea itself of autonomy of EU legal system that also includes autonomy of its concepts and its technical language[23].

The systematic method (also called contextual) according to which the rule must be interpreted by referring to other EU regulations or even more extended to the order of its whole is frequently used by CJEU[24] as well as the teleological method that states that interpret a provision in light of the aims pursued by the order to which it belongs[25] in its jurisprudence CJEU refers to one or more methods of interpretation among those just mentioned, depending on the norm and question that are from time to time the subject of its judgment (MONACO, 1965) while the cases in which CJEU has stated in general terms and principle its own criteria of interpretation or its own interpretative strategy, preferring to highlight the result rather than the path that produced it[26].

A sentence in which CJEU presented its interpretative strategy is the well-known and already mentioned CILFIT sentence of 1982 in which, after having

[22] CJEU, C-421/14, Banco Primus of 26 January 2017, ECLI:EU:C:2017:60, published in the electronic Reports of the cases.

[23] Bengoetxea (2016, 1993, p. 216) has affirmed that: "(...) it does not seem possible to demonstrate the existence of a principle or a norm that are not explicitly foreseen by the Treaty of Union in virtue of which the practice of an organ would have efficiency modification or relevance of authentic interpretation towards of all the Member States (...) the situation is clearly different and the juridical reconstruction of the phenomenon must be a completely different one where a formal jurisdiction of interpretation is attributed to not determined organ of an international organization... view of the Vienna Convention it seems clear that the cases of this gender are covered by the reservation of any rule relevant to the organization (art. 5 of the Convention) (...)". In jurisprudence see: CJEU, C-30/59, De Gezamenlijke Steenkolenmijnen of 23 February 1961, ECLI:EU:C:1961:2 I-00001. C-188/00, Kurz of 19 November 2002, ECLI:EU:C:2002:694, I-10691. joined cases C-187 to 190/05, Agorastoudis of 7 September 2006, ECLI:EU:C:2006:535, I-07775, par. 28. For frurhs analysis see: (KACZOROWSKA-IRELAND, 2016; CARBELLI, 2014; SÁNCHEZ GRAELLS, 2015).

[24] CJEU, C-14/59, Sociètè des fonderies de Pont-à-Mousson of 17 December 1959, ECLI. EU:C.1959:31, I-00215. C-15/60, Simon of 1st June 1961, ECLI:EU:C:1961:11 I-00220.

[25] CJEU, C-8/55, Fèdèration Charbonnière de Belgique v. High Athority of 16 July 1956, ECLI:EU:C:1956:7 I-00245. C-8/57, Groupement des hauts fourneaux et acièries belges of 21 June 1958, ECLI:EU:C:1958:9, I-00225. For further details see: (SCHEINGOLD, 2013; MANN, 2013).

[26] "(...) it focuses attention on outcomes, rather than process (...)" (CONWAY, 2012, p. 26). In argument see also: (SHAW, 2018; HORSLEY, 2018).

enunciated the theory of the clear act, it focused on the particular difficulties presented by EU law interpretation: multilingualism, the autonomy of its terms compared to the identical ones present in the various national rights; the fact that every provision of EU law (literal interpretation) must be relocated in its own context and interpreted in the light of all the provisions of the aforementioned law (systematic interpretation)[27], of its aims (teleological interpretation) [28] as well as its stage of evolution to moment in which the provision in question must be applied. In the slightly later C-292/82, Merck sentence of 17 November 1983 states that: "(...) as the court has emphasized in its jurisprudence for the purposes of interpreting a rule of EU law it must be taken account not only of the letter of the same but also of its context and the aims pursued by the legislation of which it is part (...)" (CJEU, 1999). Over time, a concise formula has been consolidated in CJEU jurisprudence according to which the interpretation of EU provision takes into account at the same time the letter, context and its purpose (...)[29], to the point that for take up the words of Fennelly:

> (...) the court now repeats in a stereotypical form that for the purpose of interpreting a rule of EU law one must take into account not only its letter but also its context and aims pursued from the legislation of which it is part (...) the refrain has become a customary repetition of a formula that flattens all the sources into a single interpretative perspective (...) (FENNELLY, 1997, p. 664)30.

[27] CJEU, C-415/17, Mniero of 11 September 2018, ECLI:EU:C:2018:912. C-89/17, Banger of 12 July 2018, ECLI:EU:C:2018:570. C-647/16, Hassan of 31 May 2018, ECLI:EU:C:2018:368. C-165/16, Lounes of 14 November 2017, ECLI:EU:C:2017:862. C-617/15, Hummel Holding of 18 May 2017, ECLI:EU:C:2017:390. C-19/15, Veband sozialer Wettbeverb of 14 July 2016, ECLI:EU:C:2016:563. C-276/14, Gmina Wroclaw of 29 September 2015, ECLI:EU:C:2015:635, all the cited cases was published in the electronic Reports of the cases.

[28] CJEU, C-292/83, Merck v. Hauptzollamt Hamburg-Jonas of 15 December 1999, ECLI:EU:C:1999:326, I-03663.

[29] CJEU, C-162/91, Tenutl Bosco of 15 October 1992, ECLI:EU:C:1992:392, I-05279. C-83/94, Leifer and others of 17 October 1995, ECLI:EU:C:1995:329, I-03231, par. 22. C-301/98, KVS International of 18 May 2000, ECLI:EU:C:2000:269, I-03583, par. 21. C-315/00, Maierhofer of 16 January 2003, ECLI:EU:C:2003:23 I-00563, par. 27. C-321/02, Harbs of 15 July 2004, ECLI:EU:C:2004:447, I-07101, par. 24. C-298/07, Bundesverband der Verbraucherzentralen und Verbraucherverbände of 16 October 2008, ECLI:EU:C:2008:572, I-07841, par. 15. C-403/09 PPU, Detiček of 23 December 2009, ECLI:EU:C.2009:810, I-12193, par. 33. C-433/08, Yaesu Europe of 3 December 2009, ECLI:EU:C:2009:750, I-11487, par. 24. C-533/08, TNT Express Nederland of 4 May 2010, ECLI:EU:C:2010:243, I-04107, par. 44. C-112/11, ebookers.com Deutschland of 19 July 2012, ECLI:EU:C:2012:487, published in the electronic Reports of the cases, par. 12. C-219/11, Brain Products of 22 November 2012, ECLI:EU:C:2012:742, published in the electronic Reports of the cases, par. 13. For further details and analysis see: (EDWARD, 2013; ACOSTA ARCARAZO; MURPHY, 2014; PEERS, 2016).

[30] The standard of teleological method "(...) to consider not only its wording, but also the context in which it occurs and the objects of the rules of which it is a part (...)" (FENNELLY, 1997, p. 664).

The three methods most used are the literal, systematic and teleological with the last two being frequently considered together[31], giving life to what Kolb defines an extended teleological method, since it does not refer to a specific arrangement, but uses a whole treaty (KOLB, 2006). Furthermore, as reported by Arnull, the teleological and systematic approach "(...) is more frequently employed with the court is with questions of a constitutional nature (...)" (ARNULL, 2013, p. 621).

The three methods in question are not on the same level. The frequency with which CJEU uses it in its jurisprudence as well as the importance attributed to them allow the identification of the interpretative strategy developed and followed by it within which there is a solid prevalence for teleological and systematic interpretation (KUTSCHER, 1946; MONACO, 1965)[32]. On some occasions, as in C-14/81, Alpha Steel sentence of 3 March 1981[33], CJEU rejected one of the arguments advanced by the applicant, stating that admitting it would have meant not interpreting, but modifying a clear and unambiguous text[34]. And in other cases it was CJEU itself, recalling reasons of certainty of the right not to accept teleological and extensive interpretations in some of its pronunciations[35]. On other occasions, CJEU has not taken into account the clear literal data of the provision that was called to evaluate and made the teleological interpretation prevail over the literal[36], using for this purpose also the systematic method and transforming EU objectives into principles of interpretation of the treaties (SOREL, 2011)[37].

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[31] "(...) the teleological and contextual method (...)" (BENGOETXEA, 1993, p. 250). "(...) the teleological and contextual approaches (...)" (POIARES MADURO, 2007, p. 140; KUTSCHER, 1976; ARNULL, 2013).

[32] Bredimas (1978, p. 80) has declared that: "(...) the functonal method (...) is the method for interpretation of community law (...)". Mertens de Wilmars (1985, p. 16) affirmed that: "*(...) la place reconnue à l'interpètation systèmatique at tèlèologique correspond donc à la fois aux particularitès lègistiques des traitès et au caractère dynamique et finalisè de la construction communautaire (...)*".

[33] CJEU, C-14/81, Alpha Steel Ltd v. Commission of the European Communities of 3 March 1982, ECLI:EU:C:1982:76, I-00749.

[34] CJEU, C-14/81, Alpha Steel Ltd v. Commission of the European Communities of 3 March 1982, op. cit., par. 32

[35] CJEU, C-506/06, Glaxosmithkline services and others v. Commission and others of 6 October 2009, ECLI:EU:C:2009:610, I-09291. C-528/08 P, Marcuccio v. Commission of 9 December 2009, ECLI:EU:C:2009:761, I-00212, according the CJEU refers to previous judgments such as the case: C-48/07, Les Vergers du Vieux Tauves of 22 December 2008, ECLI:EU:C:2008:758, I-10627, par. 44., which is affirmed that: "(...) we cannot proceed by ignoring the clear and precise formulation of a provision (of a directive) to an interpretation aimed at correcting that provision while expanding the obligations of Member States to it relative (...)".

[36] In jurisprudence see: CJEU, C-36/74, Walrave of 12 December 1974, ECLI:EU:C:1974:140, I-01405, parr. 23-25. C-43/75, Defrenne of 8 April 1976, ECLI:EU:C:1976:56, I-00455, par. 27. C-314/85, Foto-Frost of 22 October 1987, ECLI:EU:C:1987:452, I-04199, par. 17. For further details see: (EXNER, 2019).

[37] "(...) it thus appears that the ECJ has turned the objectives of community treaties into real principles of interpretation for those treaties (...)" (FITZMAURICE; MERKOURIS, 2010; NOUTE, 2013;

Ultimately, while sharing the assertion that the interpretation is a child of the system to which it refers, it must be acknowledged that with reference to EU law the text (literal method)[38] must be considered in its context (systematic method) and analyzed with reference to the purposes of the system to which it

BJORGE, 2014; CORTEN; KLEIN, 2011; DÖRR, 2012; SAMSO, 2011; SOREL; BORÉ EVENO, 2011; GARDINER, 2008; NOUTE, 2013). «(...) cette mèthode a permis une èvolution au-delà de la signification littèrale des textes dans un sens dunamique en considèration des finalitès poursuivies par le traitè dans son ensemble et de son contexte (...)» (SCHOCKWEILER, 1995, p. 74) (ARNULL, 1998).

[38] CJEU, C-393/18 PPU, VD of 17 October 2018, ECLI:EU:C:2018:835. C-149/18, Da Silva Martins of 31 January 2019, ECLI:EU:C:2019:84. C-514/17, Sut of 13 December 2018, ECLI:EU:C:2018:1016, C-493/17, Weiss and others of 11 December 2018, ECLI:EU:C:2018:1000. C-349/17, Eesti Pagar of 5 March 2019, ECLI:EU:C:2019:172. C-332/17, Starman of 13 September 2018, ECLI.EU:C:2018:721. C-229/17, Evonik Degussa of 17 May 2018, ECLI:EU:C:2018:323. C-220/17, Planta Tavak of 31 January of 2019, ECLI:EU:C:2019:76. C-127/17, Vossalph Laeis of 24 October 2018, ECLI:EU:C:2018:855. C-122/17, Smith of 7 August 2018, ECLI:EU:C:2018:631. C-105/17, Kamaenova of 4 October 2018, ECLI:EU:C:2018:808. C-51/17, OTP Bank of 20 September 2018, ECLI:EU:C:2018:750. C-49/17, Koppers Denmark of 6 June 2018, ECLI:EU:C:2018:395. C-31/17, Cristal Union of 7 March 2018, ECLI:EU:C:2018:168. C-20/17, Oberle of 21 June 2018, ECLI:EU:C:2018:485. C-506/16, Neto de Sousa of 7 Septemebr 2017, ECLI:EU:C:2017:642. C-439/16 PPU, Milev of 27 October 2016, ECLI:EU:C:2016:818. C-395/16, DOCERAM of 8 March 2018, ECLI:EU:C:2018:172. C-256/16, Deichmann of 15 March 2018, ECLI:EU:C:2018:187. C-201/16, Shiri of 25 October 2017, ECLI:EU:C:2017:805. C-76/16, INGSTEEL and Metrostav of 8 February 2017, ECLI:EU:C:2017:549. C-678/15, Khorassani of 8 February 2017, ECLI:EU:C:2017:100. C-600/15, Lemins Lighting of 8 December 2016, ECLI:EU:C:2016:937. C-529/15, Folk of 10 January 2017, ECLI:EU:C:2017:1. C-441/15, Madaus of 9 February 2017, ECLI:EU:C:2017:103. C-233/15, Oniors Bio of 28 April 2016, ECLI:EU:C:2016:305. C-141/15, Doux of 9 March 2017, ECLI:EU:C:2017:188. C-84/15, Sonos Europe of 17 March 2016, ECLI:EU:C:2016:184. C-44/15, Duval of 26 November 2015, ECLI:EU:C:2015:783. C-558/14, Khachab o 21 April 2016, ECLI:EU:C:2016:285. C-494/14, Axa Belgium of 15 October 2015, ECLI:EU:C.2015:692. C-477/14, Pillbox 38 of 4 May 2016, ECLI:EU:C:2016: 324. C-408/14, Wojciechowski of 10 September 2015, ECLI:EU:C:2015:591. C-402/14, Viamar of 17 December 2015, ECLI:EU:C:2015:625. C-387/14, Esaprojekt of 4 May 2017, ECLI:EU:C:2017:338. C-371/14, APEX of 17 December 2015, ECLI:EU:C:2015:828. C-331/14, Trgovina Prizma of 9 July 2015, ECLI:EU:C:2015:456. C-297/14, Hobohum of 23 December 2015, ECLI:EU:C:2015:844. C-241/142, Bukovansky of 19 November 2015, ECLI:EU:C:2015:766. C-216/14, Covaci of 15 October 2015, ECLI:EU:C:2015:686. C-655/13, Metens of 5 February 2015, ECLI.EU.C.2015:62. C-628/13, Lafonta of 11 March 2015, ECLI:EU:C:2015:16. C-570/13, Gruber of 16 April 2015, ECLI:EU:C:2015:231. C-482/13, Unicaja Banco of 21 January 2015, ECLI:EU:C:2015:21. C-481/13, Quarbani of 17 July 2014, ECLI.EU:C:2014:2101, all the cited cases was published in the electronic Reports of the cases. From the judgments just quoted we can conclude that the CJEU presents itself as a judge of recognition of the autonomy of the Union order which presupposes and fosters mutual trust in that transfer of legality which according to a neo-functional understanding of the Union is in itself a factor of integration. The process is not automatic but requires the conscious assumption of an ethical-political responsibility on the part of the judges who effectively construct the establishment of a Union legal order as a sign and expression of a new historical solidarity complementary to national solidarity. CJEU decisions must be solicited by national judgments. Their duty is serious if judges of last resort to uphold the execution of the law of the Union as a juridical obligation that involves every sentence without doubts as the effect of the moral authority that the judge of the Union has quickly acquired and which has not ceased to acquire. This is a matter of trust that the community institutions must inspire for their own functioning. The CJEU must be a moral authority that inspires confidence even before requesting the fulfillment and execution of its own decisions, the CJEU calls for recognition of its institutional role just as the Community doctrine requires adherence to the federalist project and the prospect of integration legal.

belongs (teleological method) which brings out a hierarchy among the interpretative methods used by CJEU.

3. The reasons for the prevalence of teleological interpretation in the first decades of european integration

CJEU has developed a resolutely teleological jurisprudence that tends to emancipate itself from the intentions of the editors (CORTEN, 2011) and through which it carries out as acutely pointed out in doctrine, the role of guardian and at the same time promoter of the European order[39]. In this regard, the opinion according to which the teleological interpretation method would not in any case favor the increase EU competences but could also limit the application of EU law (LENAERTS; GUTIÉRREZ-FONS, 2013)[40] does not appear to be founded.

The reason for the prevalence of the aforementioned method, especially in the early decades of European integration lies in the fact that the institutional treaties were intrinsically suited to teleology[41], as they were structured around functional lines, which left spaces that political institutions and CJEU were called to fill in (LENAERTS, 2007)[42]. It is a method that can be defined as teleological only in a very particular sense qualified first of all by the fact that in addition to the purpose of each rule considered in itself and in the specific context in which it is placed, it pays attention to the purpose of the entire system (hence the combination of teleological and systematic method) and taking into account the structural data that individuals and companies are subjects of EU order and that in the latter operate fundamental principles.

The choice of the court of Luxembourg to privilege the teleological interpretative method often in combination with the systematic one is due to the evident will especially in the first three decades of its jurisprudence to affirm the importance and autonomy of EU order as a system (MERTENS DE WILMARS, 1985; SCHOCKWEILER, 1995) thus overcoming its sectoriality[43] and consolidating the harmonization of its rules.

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[39] "(...) convient le mieux au dynamisme de l'intègration europèenne (...)" (WIJCKERHELD, 1965, p. 192).

[40] See also the case: C-189/87, Kalfelis of 27 September 1988, ECLI:EU:C:1988:459, I-05565.

[41] "(...) the treaties are imbued by teleology. No persuasive argument has so far been made why, in exercising its interpretative function, it would not be legitimate for he court to seek guidance from the spirit and the scheme of the treaties and to seek for further integration (...)" (TRIDIMAS, 1996, p. 205).

[42] "*(...) les traitès instituant les communautès sont entièrement pètris de tèlèologie (...) derrière cet objectif cocnret d'ordre èconomique, financier et techniques se profile una finalitè plus lontaine, celle de l'unitè politique (...)"* (PESCATORE, 19--, p. 327).

[43] The low degree of systematicity that a sectoral order presents and forces the judge to reconstruct his principles and general characteristics by deriving them in part from the objectives to which the order in question and general characteristics derive, partly deriving from the comparison with other orders (comparative method) partly still from the logical foundations of law (systematic method).

In the early years CJEU used this interpretative approach in order to build the community legal order and to assert the prevalence (BECK, 2016), favoring the transformation of an international organization into a community of law (FENNELLY, 1997; SCHOCKWEILER, 1995).

CJEU has used the teleological method on numerous occasions for example in order to overcome member states resistence[44], to fill gaps with C-101/63, Wagner sentence of 12 May 1964[45] where it states that the treated kings must also be interpreted jointly whether the Treaty of European Coal and Steel Community (ECSC) did not contain, unlike the other two rules of ritual for referral to the Court to prevent state violations of EU law obligations[46] or to promote and protect EU legal order as in the very well-known judgments van Gend & Loos of 1963[47], Costa v. ENEL of 1964[48] and Foto-Frost of 1987[49]. Coming to the conclusion that by emphasizing the aims pursued by the law the teleological method could not be limited to making explicit a legal norm implicit in a text. The teleo-

[44] CJEU, C-43/75, Defrenne of 8 April 1976, op. cit., parr. 7-15, "(...) the question of the direct effectiveness of Article 119 must be examined in the light of the nature of the principle of equal pay for the aim pursued by that provision and its placement in the system of the treaty. a double purpose (...) from this double economic and social purpose derives that the principle of equal distribution is one of the fundamental principles of the community. This consideration explains why the treaty wanted this principle to be entirely applied sn from the first stage of the transitional period. In interpreting this provision, no argument can be drawn from the delay and resistance which the effective application of the said essential principle (...) has delayed in certain Member States (...)".

[45] CJEU, C-101/63, Wagner v. Fohrmann and others of 12 May 1964, ECLI:EU:C:1964:28, I-00381.

[46] CJEU, joined cases C-6 and 9/90 Francovich of 19 November 1991, ECLI:EU:C:1991:428, I-05357, par. 37: "(...) Community law imposes the principle according to which the member states are obliged to compensate the damage caused to individuals by violations of Community law attributable to them (...)". See also in argument: STRAND, M. *The pressing on problem in damages and restitution under EU law*, Cheltenham: Edward Elgar Publishers, 2017.

[47] In this sentence the CJEU affirmed that: "(...) according to the spirit, the structure and the tenor of the treaty, art. 12 (in the matter of customs union) has a preceptive value and attributes to the individuals objective rights which the national judges are required to protect (...)".

[48] According to the court: "(...) the integration into the law of each member state of laws emanating from community sources, and more generally the spirit and terms of the treaty have as a corollary the impossibility for states to give precedence against a legal order from they accepted on condition of reciprocity, a further unilateral provision which therefore could not be opposed to the common order. If the effectiveness of the Community law varied from one State to another according to the later internal laws this would endanger the implementation of the aims of the treaty (...) from the set of the aforementioned elements it follows that arising from an autonomous source, the right born of the treaty would not be able precisely to find a limit in any internal provision without losing the priority community and precisely without the juridical foundation of the community itself being shaken (...)".

[49] The court speaks of "(...) necessary coherence of the jurisdictional protection system established by the treaty" (par. 16) which makes that the judges cannot declare invalid the EU law acts, since the existence of divergences between the Judges of the Member States on the validity of Community acts could compromise the very unity of the Community legal order and undermine the formal need for legal certainty (...) ", paragraph 15.

logical method also makes it possible to state explicitly a juridical norm which is sunk in the system and which is capable of satisfying the aims pursued by different provisions. The use of such a method is all the more justified in EU law (POIARES MADURO, 2007)[50].

CJEU pursues the objective of advancing the integration process that permeates an order with an essentially finalistic character (PESCATORE, 19--), of which the judicial institution itself constitutes a fundamental piece (GUTIÉRREZ POSSE, 1972). When the interpretation is entrusted to CJEU its interpretation gives a role also in the development of this right[51]. The statement according to our opinion, which was the consistent exercise of its mission by EU judge, is fully understandable. CJEU is not an observer to that process but operates within it and the legal-institutional system that supports it.

The use of an evolutionary and dynamic interpretative strategy by CJEU is a further confirmation of the approach followed by the international judicial bodies called to interpret treaties establishing international organizations, whose jurisprudential practice is generally oriented to reach the object and the purpose provided for them (KOLB, 2006)[52]. In this regard it should be noted that just as European treaties are not entirely similar to other international treaties, including those establishing international organizations, EU is only partly attributable to the ordinary model of international organization, not even CJEU can be considered as a simple international court (BEHR, 1958-1959). The amount of its jurisprudence is far greater than that of international courts with the sole exception perhaps of the European Court of Human Rights. And in terms of quality, Luxembourg court depending on circumstances and cases submitted to it, performs functions similar to those of an administrative, civil, constitutional, international labor court, etc (BEHR, 1958-1959; EDWARD, 1996-1997; KOOPMANS, 2000; KUTSCHER, 1976). And in its operation it has traits reminiscent of a civil law court, others that seem closer to a common law judge (ROSENFELD, 2006; LENAERTS, 2013; CONSTANTINESCO, 2000).

With specific reference to the subject, the difference in the interpretation of a treaty establishing an international organization and that of a supranational (or integration) organization that also has the character of establishing the organiza-

[50] "(...) the teleological method of interpretation is perfectly consistent with the dynamic and evolving nature of the european community (...)" (POLLICINO, 2004, p. 289). contra: BECK, 2016.

[51] "(...) the seemingly stable and entrenched nature of effectiveness can compensate or camouflage the novelty of the development which it is no reason why effectiveness should always operate to enlarge the reach or penetration of EC intervention (...)" (ROSS, 2006, p. 482).

[52] «(...) ètant une juridiction supranationale (...) prèfère l'interprètation extensive (...) ce qui n'est pas permis aux juridictions internationales normales (...)» (DEGAN, 1963, p. 212).

tion (KUTSCHER, 1976)[53] has long been highlighted. Treaties' interpretation and of those instituting international organizations is of contracting states responsibility and any divergences are resolved with the means provided for this purpose by international law, the contracting states of EU treaties that have intended to attribute exclusively to an EU institution the task of interpreting the treaties[54].

According to a reconstruction based on the consolidated CJEU jurisprudence which affirmed the constitutional nature of the founding treaties[55] the idea that CJEU should be considered as an internal jurisdiction[56], rather than an international one, is widely accepted (BECK, 2016). The position of those who recognize the autonomous character of CJEU with respect to both international and internal courts[57] appears more balanced, and its role in EU goes beyond that of a state jurisdictional body and its jurisprudence has a special importance because as for recognized time the interpretation provided by EU judge succeeds in influencing directly and uniformly the decisions of member states organs, because directly and uniformly the binding value of EU order is recognized in the same area of those states.

CJEU's teleological interpretative strategy has led to changes in the growth of EU competences and powers (FENNELLY, 1997; BENGOETXEA; MACCORMICK; MORAL SORIANO, 2001; TEMPLE LANG, 2011)[58]. It must be recognized that institutions and member states have on several occasions taken up evolutionary statements pres-

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53-"*(...) le droit communautaire est pour une part un droit interne (...)*" (REUTER, 1964, p. 279).

54 "(...) si les Etats avaient voulu instituer simplement entre eux une large coopèration (...) ils pouvaient aisèment se passer des services d'une Cour de justice (...)"(REUTER, 1964, p. 280.

55CJEU, C-294/83, Les Verts of 23 April 1986, op. cit., par. 8. C-314/91, Weber v. European Parliament of 23 March 1993, op. cit.,

56 "(...) neither its status as a transnational court nor its operating in a treaty-based rather than a constitution-based environment seems to prevent any serious impedimenti to its functioning as a court that engages in constitutional adjudication (...)" (ROSENFELD, 2006, p. 622). "(...) *cette cour ressemble à une juridicion constitutionnelle interne qui est appelèe seulement à interprèter la constitution d'un Etat* (...)" (DEGAN, 1996, p. 198). "(...) in the community system the Court of justice fulfils among its general mission functions similar to those of national constitutional courts (...)" (EVERLING, 2000, p. 33). "(...) the treaty can essentially be considered the constitution of the European community in a substantive, functional sense (...)" (ALTER, 2009; DE VISSCHER, 1958, p. 178; LENAERTS, 2007, p. 1018). "(...) the masterpiece of the European court has been the constitutionalisation of the treaties (...)" (MANCINI, 1989, p. 597; BENGOETXEA; MACCORMICK; MORAL SORIANO, 2001, p. 65; POLLICINO, 2004, p. 284). "(...) the Court has turned itself into a constitutional Court of the Union, which does not shy away from combining different Union norms to reach a preferred outcome (...)" (WESSEL, 2009, p. 142).

57"(...) la cour, vue dans sa juste perspective n'est ni un juge international. Ni un juge de droit interne (...)" (MONACO, 1965, p. 181).

58 "(...) one explaination is a lack of awareness of the court's role choice as regards among politicians (...) never made a truly voluntary choice as regards the policy to be pursued (...)" (DE WAELE, 2010, p. 17).

ent in its jurisprudence and have used them in the context of amendments to the founding treaties or in order to broaden and intensify the process of European integration (STONE SWEET, 2016). If this had not happened it does not seem to us that the teleological CJEU jurisprudence could have on its own alone, to consolidate and reinforce this process[59]. On the other hand, not all the evolutionary affirmations of CJEU have found a follow-up in the European legislation demonstrating the non-automatic transformation of the systematic and teleological interpretation of CJEU into European law norms. It is also undoubted that in the European legal system, if member states wanted to oppose an evolutionary teleological interpretation of CJEU they should in the most relevant cases for example in order to modify the European treaties, unanimously deliberate (HARTLEY, 1996; DE WAELE, 2010; BECK, 2016;)[60].

It is a trivial observation that EU member states as a result of becoming a member of a voluntary choice limited their sovereignty in favor of the same union, giving it powers and competences. In fact, whenever a state concludes a supranational agreement, it limits, to a greater or lesser extent, its sovereignty, meaning to simplify the exercise of the power of government towards its own territorial community. Moreover, this limitation will last as long as the contractual obligation will be binding for the state that may eventually withdraw from a treaty following the occurrence of a cause for extinction thereof.

These observations seem to us to be confirmed also within EU whose existence derives from the will of member states expressed through international treaties, negotiated and stipulated and modified several times, in the case of decades. The fact that this is a very particular organization, because it is endowed with a very complex institutional apparatus, with extensive competences and can be very penetrating towards the member states and those who find themselves in them, does not seem sufficient for us to come minus the basic fate consisting in the fact that the Union still remains the fruit of choices made by the states that are part of it, who have decided to limit their sovereignty in favor of this, which preserves its root in the dimension international.

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[59] For example, consider what is the current Protocol n. 33 of European treaties relating to art. 157 TFEU which was introduced with the treaty of Maastricht following the extensive interpretation of remuneration rendered by the CJEU with the sentence in case C-262/88, Barber Guardian Royal Exchange Assurance Group of 17 May 1990, ECLI:EU:C:1990:209, I-01889. See also in argument: DE CARVALHO MOITINHO DE ALMEIDA, J. C. L'interprètation par la Cour de justice de l'Union du droit europèen de procèdure civile. In: BRADLEY, K. *et al*. (Eds.). *Of courts and constitutions. Liber amicorum in honour of Nial Fennelly*. Oxford: Oxford University Press, 2014, p. 14-.

[60] Stone Sweet (2010) has affirmed that: "(...) in the EU, the constitutionalization of the treaty of Rome was able to proceed, in part because the decision-rule in place for treaty-revision-the unanimous vote of the member States-effectively insulates the court's constitutional law-making from reversal. In such contexts, dialogue exists, but it is the EC that typically has the "last word" not the member States (...)".

The pretoria origin, creative rectius interpretative EU law methods does not make it easy to identify, in an objective manner, the limits that CJEU meets in the exercise of its interpretative function[61] so that some have criticized activism[62] and qualified its approach as political rather than juridical (WEILER, 1987; CONWAY, 2012)[63], also considering that the same CJEU is required to comply with the principle of loyalty principle established by TEU[64].

Furthermore, it has been pointed out that the teleological method, linked as it is to the purpose to be pursued, is more difficult to use than the others and can lead to the danger of causing excessive distancing from the text. The reference to the aims may be too indeterminate and risks colliding with one of the fundamental principles of European law, that of legal certainty (NICOLAIDES; GEILMANN, 2012), as well as that of attribution powers. In this regard, it was noted that in the presence of a clear and precise EU regulation, its teleological or systematic interpretation should not put it into question, because this would be contrary to legal certainty and the duty of sincere cooperation between the institutions[65].

CJEU has not explicitly replied to these criticisms through its jurisprudence, but it is significant that on several occasions CJEU members themselves, through their publications, have diffused the work and interpretative strategy, emphasizing that if it is true that it has having made the political choices regarding the

[61] "(...) l'impatience de la cour peut être justifiès: mais elle ne devrait pas la conduire à alleur au-delà de ses compètences et à tenter d'ètablir de sa propre autoritè ce qui conformèment aux dispositions du traitè devait être ètaibli par un processus tout à fair different (...)" (TOADER, 2013, p. 425).

[62] "(...) reduced scholarly support of EU law-making (...) away, legal writing is critical of EU law-making and judicial interpretation as comparable national legal scholarship and la doctrine, taken as a whole, is more reluctant to throw its weight behind plans for "more Europe" (...)" (MUIR; DAWSON; DE WITTE, 2013, p. 2). For further details see: DE WITTE, B. European union law: a unified academic discipline? In: VAUCHEZ, A.; DE WITTE, B. (eds.). *Lawyering Europe:* European law as a transnational social field. Oxford: Oxford University Press, Oxford, 2013.

[63] "(...) paradoxically, the decision making of the CJEU is not subject than those of other courts. They are certain, however, not because its approach is governed by a high degree of methodological rigour, but because the court's pro-union predisposition is so settled (...)" (BECK, 2016, p. 512) for the difference between legal interpretations and a judicial activism see: "(...) the former is considered a legitimate expression of judicial function and the latter its degeneration, involving a judge's arbitrary intrusion into the political arena by giving priority to values other than legal ones (...)" (POLLICINO, 2004, p. 286).

[64] "(...) the role of the ECJ is indeed neither to anticipate nor to pre-empt choices that fall within the purview of the EU legislator (...)" (LENAERTS; GUTIÉRREZ-FONS, 2013; LENAERTS, 2013, p. 1323), contra: "(...) the court of justice (...) will be aware that lake of judicial interference may very well mean that nothing will happen at all (...)" (KOOPMANS, 2000, p. 58).

[65] According to the cited authors creative methods of interpretation are particularly unsuitable with reference to judicial cooperation in criminal matters. Another area in which there is little room for the application of the teleological method is that of technical, specific or detailed disciplinated regulations (LENAERTS; GUTIÉRREZ-FONS, 2013).

aims and foundation of EU law[66], its work has not diverged from what is generally done by the supreme internal jurisdictions and has in any case respected the competences of the other institutions and member states political will (PESCATORE, 1994; SCHOCKWEILER, 1995)[67].

These criticisms derive from a selective approach in examining CJEU jurisprudence which leads to generalizations on the way in which it interprets EU law, which do not take into account the fact that in most cases, CJEU follows a cautious interpretative approach (TRIDIMAS, 1996; ALBORS LLORENS, 1999)[68]. Although reasonable this position is not convincing since it is easy to understand how even if numerically more limited the cases of extensive interpretation are those that attract attention and sometimes criticism because they are placed to some extent as more limiting than state sovereignty (DE WAELE, 2010). This concerns above all the judgments concerning those that have been defined as constitutional issues (CONWAY, 2012) that once resolved in favor of integration are the ones that succeeded in consolidating themselves through the careful use that CJEU made the jurisprudential precedent[69].

With regard to this discussion, it appears to be founded the opinion of Edward which has affirmed that: "(...) to say that a court is activist tells us only about the speaker's view of the nature of the law and judges role (...)" (EDWARD, 1996, p. 32). Weatherill also notes the difficulty of identifying a parameter against which to evaluate CJEU attitude as an activist (WEATHERILL, 2003) and indicates how it should be placed in relation with its ability to convince internal judges and member states of the validity of its arguments, becoming a question of persuasion rather than legitimacy (MUIR; DAWSON; DE WITTE, 2013; TRIDIMAS, 1996; ARNULL, 2013; LENAERTS, 2013; EVERLING, 1994). In final analysis it is necessary to separate the profile of choices opportunity made by CJEU, which in certain circumstances may be debatable (ARNULL, 2006) from that of their legitimacy which is instead unquestionable (MERTENS DE WILMARS, 1985; EDWARD, 1996; TRIDIMAS, 1996; TEMPLE LANG, 2011)[70]. It was observed that: "(...) the

[66] "(...) judges cannot avoid taking "political" decisions if by that you mean that they have to take decisions which have political consequences. But htat does not mean that the judges themselves are acting as politicians or deciding cases for political reasons (...)" (EDWARD, 1996-1997, p. 69).

[67] *"(...) il doit leur donner tout leur sens et faire porter à leurs dispositions toutes les consèquences utiles, explicites ou implicites que la lettre et l'esprit commandent (...)"* (LECOURT, 1976, p. 238).

[68] "(...) in the majority of cases, the decision will be to the detriment of member states trying to preserve certain sovereign rights or interests (...)" (DE WAELE, 2010, p. 15).

[69] "(...) a proper use of a "precedent-oriented" approach is only meaningful if it is coupled with a teleological and meta-teleological legal reasoning (...)" (POIARES MADURO, 2007, p. 146).

[70] "(...) a superior principle in the light of which the case has to be resolved (...)" (CONSTANTINESCO, 2000, p. 80).

question is neither whether the Court uses policy arguments nor whether it goes beyond the literal meaning of legal provisions. The question is rather whether and by what considerations its decision are justified or at very least, rationally justifiable (...)" (BENGOETXEA; MACCORMICK; MORAL SORIANO, 2001, p. 45).

Weatherill reports appropriately how the argumentative approach followed by CJERU was different in the early decades of European integration - up until the first treaty reform with the Single European Act of 1986 - how it laid the solid foundation of EU legal order[71], and the subsequent period in which member states took of defining their contours and limits more precisely and its role was less active (LENAERTS, 2013). From the point of view of the dynamic boost in favor of the consolidation of this legal order produced by CJEU through the teleological interpretation of EU law, it has attenuated at the moment in which it was consolidated and member states started to modify the original founding treaties, summarizing greater control over the integration process as a rule, accepting the evolutionary solutions contained in CJEU jurisprudence, but in some way "irrigating" it in written provisions and reducing the room for maneuver that the original founding treaties gave it.

In more recent times, member states have also introduced in the treaties certain rules that envisage developments that are different from those long envisioned in court's evolutionary jurisprudence. One of the fundamental choices made with the Treaty of Lisbon concerns precisely the question of competences with a repeated reference, sometimes even redundant, to the principle of attribution and to the circumstance for which the competences not attributed to EU belong to member states (think of articles 1, letters 1, 4, paragraphs 1 and 5, paragraph 1 and 2 TEU). We also refer to the provisions that expressly provide that in matters of concurrent competence, states may act to the extent that the union does not do so and that they "again exercise their competence to the extent that the union has decided to cease one's exercise"[72] also art. 28, par. 2 TEU provides that future treaty revision projects may be aimed at increasing or reducing EU powers[73].

More generally, it seems to me that with the Treaty of Lisbon an increased sensitivity of member states towards the configuration of EU has emerged as an entity which, although autonomous, has ample but not unlimited competences.

[71] "(...) the court is aware of the changing institutional and constitutional environment and it is responding to it (...)" (WEATHERILL, 2003, p. 256).

[72] Art. 2, par. 2 TFEU. For further details see: HATJE, A.; TERHECHTE, J. P.; MÜLLER-GRAFF, P. C. Europarechtswissenschaft. In: NOMOS, B. B.; SCHWARZE, J.; BECKER, V.; HATJE, A.; SCHOO, J. EU-Kommentar. Baden-Baden: Nomos, 2019.

[73] See declaration n. 19 attached to the treaties concerning the delimitation of competence.

It is possible that this also constitutes a manifestation of a ventilation system of member states with respect to the sometimes excessive use of teleological interpretation, almost a defensive reflex of closure protecting its own sovereignty. This is accompanied by the transformation of the national dimension relative to the application of the principle of subsidiarity and to the control over the respect of the same, entrusted to member states parliaments[74].

The fact that there is no legal obligation for member states to continue to be part of the Union indefinitely is also significant. In this regard, the withdrawal clause introduced by art. 50 of the Treaty of Lisbon confirms the internationalist base of EU by writing down a previously legitimate possibility, even in the absence of an express provision in this regard, and determining the procedures relating to such withdrawal. They are known to have been activated by the United Kingdom in March of 2017.

The principle of loyal cooperation has been redefined in Lisbon, precisely on the basis of CJEU's jurisprudence in the sense that EU and member states respect each other and assist one another (art. 4, par. 3 TEU), while originally it was referring only to the attitude that member states should have held in connection with EU. And it seems to me that even the reference to respect for national identity, inserted with the Treaty of Maastriht and later reiterated and extended with the Treaty of Lisbon (art. 4, par. 2 TEU), shows a clear position of states members in defense of their sovereign prerogatives, as confirmed by the jurisprudence of several of their constitutional courts.

The possibility of starting an enhanced cooperation with the Treaty of Amsterdam and confirmed in the subsequent reform treaties appears to be a limit to the use of the teleological interpretation of EU law. It seems to me that art. 20, par. 1 TEU, where it states that this mechanism is aimed at promoting the achievement of the objectives of the union only among some member states which precludes the possibility for CJEU to recall those objectives also with regard to states not participating in the enhanced cooperation. If a state chooses to stay out of enhanced cooperation, it would appear that it chose to remain outside a strengthened cooperation, in fact it would be incongruous for the objective pursued by it to appear to him as a consequence of a teleological jurisprudential interpretation.

According to our opinion CJEU has made extensive use of its prerogatives in order to strengthen the right of the union and expand EU competences, in this

[74] Art. 5, par. 2 TEU, and Protocol n. 2. For further details see: MARTUCCI, F. *Droit de l'Union européenne.* Paris: LGDG, 2017. Also: POIARES MADURO, M.; WIND, M. *The transformation of Europe*: Twenty-five years on. Cambridge: Cambridge University Press, 2017, p. 321. And: MANGAS MARTÍN, A. *Tratado de la Uniòn Europea, Tratado de Funcionamiento*. Madrid: Marcial Pons, 2018.

confirmed by the choices of member states and European institutions to follow up some of its statements, amending the treaties established or approving acts of secondary law. In its jurisprudence it has used different interpretative methods with a particular preference for the teleological one. I believe that while this way of proceeding could be understandable in the first decades of operation of the European community, since it also constituted a necessary element in order to affirm the relevance and autonomy of the Community legal order compared to those of the member states in the context of a strongly sectorial system, it in the present moment in which EU has very significant powers, is less practicable. In this regard it is noted that harmonization is a widely acquired datum and is no longer an objective to be achieved and the same can be said for the primacy of European law over those of member states and for many other principles taken in the past by CJEU. The signaled choice made with the Treaty of Lisbon, to make a repeated reference to the limit that the union derives from the powers attributed, also concerns the teleological method in the interpretation of EU law. It seems to me that even in this respect the spaces for a further spontaneous development of European law have been reduced, perhaps started and supported by an extensive or dynamic interpretation of CJEU. In the current phase of the integration process the need for the union to assert itself and find its space (DE WAELE, 2010)[75], is less felt, also through a wide recourse to the teleological method[76], referred to its original form (TEMPLE LANG, 2011).

4. The importance in EU law of interpretation rules applicable to international treaties

CJEU in some judgments dating back to the early years of the integration process, also referred to rules provided by international law for the purpose of interpreting the (then) community treaties (KUIJPER , 2011), with particular reference to a literal interpretation[77]. But it is indisputable that already in the years immediately following, it declared that it did not consider itself in any way

[75] "(...) since 1990 the European court has begun to appear less willing to give judgments of the legislative kind (...) this probably represents prudence in the face of increasing criticism, rather than a change of the heart. In a different climate the court might well resume its old ways (...)" (HARTLEY, 1996, p. 29).

[76] "*(...) sera ètabli et assurè, je crois qu'il èprouvera moins le besoin de justifier son existence ou de se justifier lui-même par des gestes spectaculaires et qu'il acceptera, parce qu'il sera acceptè, de jouer son propre rôle d'une façon plus tranquille et à voix moins haute (...)*" (HAMSON, 1976, p. 29).

[77] CJEU, C-1/54, France v. High Authority of 21 December 1954, ECLI:EU:C:1954:7, I-00001. C-2/54, Italy v. High Authority of 21 December 1954, ECLI:EU:C:1954:8, I-00037. C-3/54, ASSIDER of 11 February 1955, ECLI:EU:C:1955:2, I-00063. C-4/54, ISA of 11 February 1955, ECLI:EU:C:1955:3, I-00091. See for further analysis: DERLÉN, M.; LINDHOLM, J. *The Court of Justice of the EU*: Multidisciplinary pespectives. Oxford; Oregon: Hart Publishing, 2018.

bound by the interpretative methods mainly used for international treaties and it developed its own interpretative strategy which attributes greater importance to the systematic method and above all to the teleological method (WEATHERILL, 2003)[78]. CJEU has not used an interpretation system with reference to instituting treaties (through the criteria of international law) and secondary law (through those of domestic law) (LENAERTS, 2007), with respect to which no interpretation could have the interpretative rules provided by the Vienna Convention on Law of Treaties (VCLT) and CJEU has since its first rulings rejected the ordinary meaning of a term, in favor of its community meaning[79].

The validity of the approach followed by CJEU also derives from art. 5 of the same VCLT on the basis of which it is applied in relation to treaties establishing international organizations, unless otherwise provided for by the pertinent rules of the organization (BECK, 2016). This justifies the legitimacy of use of specific interpretative methods in the context of these, including EU.

The opinion of CJEU clearly emerges from the thought of one of its members, judge Kutscher, according to whom the peculiar character of the Union implies that the interpretative rules of international treaties cannot generally be applied to the interpretation of EU treaties (PESCATORE, 19--)[80]. Even when CJEU used the interpretative rules of VCLT it did not do so by virtue of a legal obligation, but for a choice of opportunities assessed case by case (KUIJPER, 1988).

And some of his judgments have been expressly different from art. 31 VCLT. For example in C-327/91, France v. Commission sentence of 9 August 1994[81] acknowledged that "a simple practice cannot prevail over the rules of treaty"[82] and in Opinion 1/94 of 15 November 1994 reiterated that "according to the constant jurisprudence of the court, a mere practice of the Council cannot derogate according to treaty rules and cannot therefore create a precedent that binds EU institutions as regards the determination of the correct legal basis (...)"[83] and that the conclusions reached by it "cannot be modified based

[78]"(...) EC law's supposed divergence frm orthodox public international law is m ore a question of words than substance (...)" (EDWARD, 1996-1997, p. 70).

[79] CJEU, C-30/59, De Gezamenlijke Steenkolenmijnen of 23 February 1961. Degan (1963) affirmed that "(...) par cette pratique, la cour de Luxembourg s'est plutôt rapporchèe d'une juridiction interne que d'un tribunal proprement international (...)».

[80]"(...) forme contraste avec les mèthodes traditionnelles du droit international, marquèes d'un indèniable statisme (...)" (KUTSCHER, 1976, p. 31).

[81]CJEU, C-327/91, France v. Commission of 9 August 1994, ECLI:EU: C: 1994: 305, I-03641.

[82]CJEU, C-327/91, France v. Commission of 9 August 1994, op. cit., par. 36

[83] Par. 52, which the CJEU has referred to the precedent case: C-68/86, United Kingdom v. Council of 23 February 1988, ECLI:EU:C:1961:85, I-00855.

on an institutional practice consisting of autonomous measures or external agreements (...)"[84].

In a different profile, with reference to provisions interpretation belonging to treaties concluded by the Community/Union with other international subjects, in some cases CJEU has also declared how much they use identical terms to those of a provision of European law, in line with as it has long held concerning the autonomy of the meaning of the terms used in EC legal system, different methods must be used for the purposes of their interpretation (SOREL; BORÉ EVENO, 2011). For example in C-270/80, Polydor case of 9 February 1982[85] CJEU faced with provisions of an agreement between ECCs and Portugal, drafted in terms similar to those of ECC treaty, found that for interpretative purposes:

> this textual analogy does not is a sufficient reason to transpose to the system of the agreement CJEU jurisprudence which determines, within the community, the relationship between the protection of industrial and commercial property rights and rules on the free movement of goods (...) aims through the establishment of a common market and gradual approximation of member states economic policies, the fusion of national markets into a single market with the characteristics of an internal market (...) (CJEU, 1982).

In C-17/81, Pabst case of 29 April 1982[86], concerning the interpretation of some rules of the EEC treaty and the association agreement between the then EEC and Greece. CJEU interpreted the provision of the association agreement, formulated in terms similar to that of the treaty, in the same way, attributing it also the direct effect. In this regard, however, the circumstance highlighted by CJEU that the association agreement was inserted "in a set of provisions that have the purpose of preparing the entry of Greece into the community (...)" (CJEU, 1982)[87].

In the aforementioned opinion 1/91 of 14 December 1991, CJEU has expressly acknowledged: "(...) the identical literal tenor of provisions of the agreement and

[84] CJEU, C-68/86, United Kingdom v. Council of 23 February 1988, op. cit., par. 61

[85] CJEU, C-270/80, Polydor and others of 9 February 1982, ECLI:EU:C:1982:43, I-00329.

[86] CJEU, C-17/81, Pabst & Richard KG v. Hauptzollamt Oldenburg of 29 April 1982, ECLI:EU:C:1982:129, I-01331.

[87] Also the case: T-115/94, Opel Austria of 22 January 1997, ECLI:EU:T:1997:3, II-00039, concerning the free trade agreement between the EC and the agreement on the European economic area, which states that it results from the jurisprudence that in order to establish whether the interpretation of an EEC regulation can be extended to an identical standard of an agreement like the EEA agreement, it must be analyzed in the light of both the object and purpose of the agreement itself, and its context (...) (par. 106). See also case: C-163/90, Legros of 16 July 1992, ECLI:EU:C:1992:326, I-04625. For further details: TATHAM, A. F. *Central european constitutional courts in the face of EU memberships*. The Hague: Martinus Nijhoff Publishers, 2013, p. 196.

the corresponding Community provisions does not imply that both must necessarily be interpreted in the same way (...)". The reason is that they are placed in different contexts, the one creates rights and obligations between the contracting parties, the others are part of an order in which member states transfer a part of their sovereignty; objectives (teleological method) and the context (systematic method) of an international treaty and European treaties are different.

Consequently CJEU denies that these international agreements produce the same consequences that it attributes to EU treaties[88]. In opinion 1/91, however, it explicitly referred to rules on the interpretation of art. 31 VCLT which he had already implicitly used in the Polydor sentence of 1982[89] placing emphasis on the object and purpose of a treaty. In this judgment CJEU used ordinary rules of interpretation of a treaty in order to obtain the exceptional character of EU law and its legal system.

CJEU uses the nature and structure of an international treaty including those of which the Community/Union is a part, sometimes for the purpose of assessing whether the international agreement can produce direct effects through joined cases C-21 to 24/72, International Fruit sentence of 12 December 1972[90] for interpretative purposes only[91]. In this respect CJEU has in its applied jurisprudence the discipline set by VCLT including its rules of interpretation, confirming its customary nature. As a rule, it is used in relation to international agreements applicable in European law (such as the WTO agreements or the Montego Bay

[88] CJEU, C-149/96, Portugal v. Council of 23 November 1999, ECLI:EU:C:1999:574, I-08395.

[89] See opinion 2/00 of 6 December 2001. C-312/91, Metalsa of 1st July 1993, ECLI:EU:C:1993:273, I-03751, par. 12. In case C-416/96, El-Yassini of 2 March 1999, ECLI:EU:C:1999:107, I-01209, said that: "(...) in accordance with a constant jurisprudence an international treaty must be interpreted not only in the same way as the terms in which it is drafted, but also in light of its objectives Article 31 VCLT in this respect states that a treaty must be interpreted in good faith, according to the common sense to be attributed to its terms in their context , and in the light of its object and its purpose (...)" (CJEU, 1999). In the same spirit of orientation see: C-268/99, Janys and others of 20 November 2001, ECLI: EU: C: 2001:616, I-08615. For further analysis see: CHALMERS, D.; DAVIES, G.; MONTI, G. European Union law. Cambridge: Cambridge University Press, 2014.

[90] CJEU, joined cases C-21 to 24/72, International Fruit of 12 December 1972, ECLI:EU:C:1972:115, I-01219, parr. 26-28 and the case: C-12/86, Demirel of 30 September 1987, ECLI:EU:C:1987:400, I-03719. For further analysis see: CONANT, L. J.*; Justice contained law and politic in the EU*. Ithaca: Cornell University Press, 2018. HARTKAMP, A.; SIBURGH, C.; DEVROE, W. *Cases, materials and text on European Union law and private law.* Oxford; Oregon; Portland: Hart Publishing, 2017. CONWAY, G. *European Union law*. London; New York: Routledge, 2015. NICOLA, F.; DAVIES, B. *European Union law stories*. Cambridge: Cambridge University Press, 2017.

[91] CJEU, C-308/06, Intertanko and others of 3 June 2008, ECLI: EU: C: 2008: 312, I-04057. For further details see: CREMONA, M.; THIES, A. *The European Court of Justice and external relations law*. Oxford; Oregon; Portland: Hart Publishing. 2014. CREMONA, M.; MICKLITZ, H. W. *Private law in the external relations of the European Union.* Oxford: Oxford University Press, 2016. PATTERSON, D.; SÖDERSTEN, A. *A companion to European Union and international law.* New York: Wiley & Sons, 2016.

Convention on the Law of the Sea), interpretative methods that are more restrictive than those used for EU law provisions, as corresponding to VCLT. Later he stated in C-162/96, Racke sentence of 16 June 1998[92] (concerning the interpretation of a cooperation agreement between EEC and Yugoslavia), that the Community/Union "is obliged to respect the norms of customary international law"[93] in C-386/08, Brita case of 25 February 2010[94] relating to EU-Israel association agreement, CJEU stated that it is governed by international law and that with respect to its interpretation, the law of treaties codified by VCLT applies to the extent the treaty law codified by VCLT to the extent that it constitutes the expression of customary international law[95]. It added that "(...) although not binding for the convention of Vienna, they reflect the norms of customary international law which, as such, bind the institutions of the community and form part of the Community legal order (...)"[96]; among these CJEU expressly referred to art. 31 of the Convention[97].

In its jurisprudence CJEU has applied the rules of interpretation of the treaties not only to those concluded between EU and third states, but also to the right derived from them. The most important example concerns the decisions of the council established by the association agreements (KUIJPER, 1988).

In finis, CJEU has sometimes interpreted an international agreement of which the Community/Union is not a contracting party simply in order to understand if European law could be interpreted in conformity with it[98]. The circumstance that the interpretative rules of VCLT are also used in CJEU jurisprudence today no longer with reference to EU treaties but to the agreements concluded between EU and other international subjects, it confirms the customary character. A recurrent element in the interpretation of international treaties as it has been reported includes those establishing international organizations is the ref-

[92] CJEU, C-162/96, Racke v. Hauptzollamt Mainz of 16 July 1998, ECLI:EU:C:1998:293, I-03655

[93] CJEU, C-162/96, Racke v. Hauptzollamt Mainz of 16 July 1998, op. cit., par. 45.

[94] C-386/08, Brita of 25 February 2010, ECLI:EU:C:2010:91, I-01289.

[95] C-386/08, Brita of 25 February 2010, op. cit., par. 39-41. See also KUIJPER, 1988.

[96] The CJEU has referred the case: El-Yassini of 2 March 1999.

[97] C-386/08, Brita of 25 February 2010, op. cit., par. 42-43. also in the same orientation the case: C-104/16, Council v. Polisario Front of 21 December 2016, ECLI:EU:C:2016:973, published in the electronic Reports of the cases, in which the CJEU reiterates that in the interpretation of an international agreement of which the EC is a part (in speciem, the liberalization agreement with Morocco) " the court was required to respect "the rules set by art. 31 VCLT (...) "(par. 86). For further details see: LYONS, T. *EU customs law. Oxford:* Oxford University Press, 2018. CZUCZAI, J.; NAERTS, F. *The European Union as a global actor. Bridging legal theory and practice:* Liber amicorum in honour of Ricardo Gosalbo Bono. The Hague: Brill, 2017.

[98] CJEU, C-344/04, IATA and ELFAA of 10 January 2006, ECLI:EU:C:2006:10, I-00403. See also: D.A.O. EDWARD, R. LANE, Edward and Lane on European Union law, op. cit.,

erence to the useful effect of rules to be interpreted. It is interesting to consider the importance that the useful effect has in this context, in order to understand how CJEU used it, in the light of the examination just carried out, of the interpretative methods of the Community/EU law.

Concluding Remarks

According to the author opinion the differences regarding the acknowledgment recognized in every type of interpretation referring to EU order does not follow the notion of useful effect (which is not part of our analysis research) which is indeed sufficiently broad to include its various meanings. These are differences concerning the privileged interpretative strategy. What changes is the way it is used by the interpreter to pursue a more or less broad interpretation. And this also notes in relation to the examined traceability to the notions of efficacy and effectiveness, present both in the interpretation of international treaties, including those instituting international organizations and in the interpretation of Union treaties and more generally of the European legal system.

To this end, reference has been made to the principle of legal certainty as well as to the objectives of law itself as limits to interpretation but it is well understood that these are completely general concepts and perhaps not very effective, especially when compared with a peculiar order like that of the Union.

It seems to me that greater importance should be given to the position that seeks to identify the limits to the use of various principles alongside the interpretation of Union law, in particular that of attribution powers and that of loyal cooperation. There are no strict criteria, but honestly, in the light of the analysis conducted, we do not believe that at least the current state of CJEU's jurisprudence is possible to identify other precise limits in the face of such a flexible and rather extensive notion.

In the light of the brief research conducted, it seems to us that in the current phase of the process of European integration the spaces have been reduced for a further "spontaneous" development of the Union legal order, perhaps initiated and supported by an extensive or dynamic interpretation of CJEU. In the last few years, it has been using the current state of affairs in a conservative way.

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