Guidelines for litigation before THE COURT OF JUSTICE OF THE EUROPEAN UNION

The case of NORTH MACEDONIA

Kingdom of the Netherlands

ЦЕНТАР ЗА ПРАВНИ ИСТРАЖУВАЊА И АНАЛИЗИ
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GUIDELINES FOR LITIGATION BEFORE THE COURT OF JUSTICE OF THE EUROPEAN UNION

FOR THE NEW EU MEMBER STATES

THE CASE OF NORTH MACEDONIA

AS A CANDIDATE COUNTRY

Skopje, May 2025

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Introduction

The process of integrating new Member States into the European Union inevitably necessitates a clarification of the role, function, and access to the Court of Justice of the European Union (CJEU). In this context, this document aims to provide practical and analytical guidance regarding litigation before the CJEU, focusing on the procedural and institutional aspects relevant to the new Member States, primarily addressing national judges. Beyond the Court's pivotal role in furthering the legal order of the Union, it also serves as a bridge for dialogue between supranational and national law, particularly through the preliminary ruling procedure under Article 267 of the Treaty on the Functioning of the European Union.

European integration represents a strategic objective for North Macedonia and the other Western Balkan countries, not only as a political and economic priority, but also as an instrument for strengthening the rule of law and democratic institutions. The "Copenhagen Plus" criteria, which pertain to sensitive issues affecting good neighbourly relations, shifts the focus of the accession process and absorbs the energy of what is termed the "Europeanisation" of the system. Accordingly, this public policy document aims to redirect attention to legal integration as an aspect of the European integration process, relevant both prior to and following accession to the Union.

In light of the complexity of the legal systems in the new Member States and the challenges arising from their transition, this document identifies the structural and substantive barriers that impede the effective application of EU law. The analysis covers the principal types of proceedings before the CJEU, with a specific focus on their utilization within the context of the new Member States, as well as on the institutional reforms transforming the Union's judicial system. Furthermore, it examines the methods of interpretation and the role of national judges as "judges of the European Union," thereby underscoring the necessity of bolstering their capacity for the interpretation and application of the Union's *acquis*.

Through a systematized comparative analysis, the document offers recommendations pertaining to the enhancement of institutional preparedness, the improvement of legal culture, and the development of a functional judicial dialogue between national courts and the judges in Luxembourg. In this manner, it facilitates not only the preparedness for a

more effective inclusion of judges from the new Member States into the Union's legal order but also the strengthening of the rule of law as a core value of European integration.

Methodology

The preparation of this document was based on a systematic approach that combined diverse methodological concepts to ensure a comprehensive and objective analysis of the relevant subject matter. The methodology applied incorporates a review of available literature, a comparative analysis with other jurisdictions, and the synthesis of the obtained findings towards the development of concrete recommendations.

Through the review of available literature, the research question was defined and the fundamental contours of the subject of research were established. This overview included an analysis of legal sources and specialized literature, which led to the formulation of a hypothesis concerning the key external and internal factors influencing the subject area.

The core expert contribution of this public policy document consists of the findings obtained through a comparative analysis of the situation in EU Member States that acceded during the latest rounds of enlargement. The legal culture and the nature of the legal systems were the subjects of analysis, in order to identify the main challenges, as well as suitable practices that can be applied or adapted within the domestic context, and cases that serve as a warning regarding potential risks and weaknesses.

As a final phase, all findings were structured and summarized, after which recommendations were formulated, addressing the specific challenges identified in the research. During their elaboration, various options and their practical feasibility were considered, with the aim of ensuring applicability and a realistic basis for potential policies or legal interventions

Overview of Proceedings before the CJEU

The Court of Justice of the European Union (CJEU), through its creative and extensive interpretation of the founding Treaties, has established itself as a pivotal catalyst in the process of European integration. The role of the Court of Justice of the EU is frequently defined as "integration through law," specifically by providing a substantive interpretation of the provisions of primary law aimed at increasing the efficacy of the Union's legal order (*Union communautaire*) and it's embedding within the legal systems of the Member States (Craig and De Búrca, 2020, p. 65). Consequently, the history of the Court of Justice of the EU is considered to reflect the history of the European Union itself and is simultaneously closely linked to the political processes in Europe (Tamm, 2012, p. 9).

In the framework of its judicial activism, the European Court of Justice established the principle of direct effect and the supremacy of Union law, through which the EU was constituted as a distinct legal order. Based on the principle of direct effect of Union law within the internal legal orders of the Member States, private parties acquired the capacity to seek protection of individual rights derived from that law before the national courts of the Member States (Case C-26/62, *Van Gend en Loos*). The principle of supremacy (or primacy) of EU law entails that in the event of a conflict between a provision of domestic law and Union law, national courts are obligated not to apply/to set aside the domestic provision - whether antecedent or subsequent - and to apply EU law, even when it is in contradiction with national law.

Prior to the Lisbon Treaty[1], the Union's judicial system consisted of the Court of Justice (also known as the European Court of Justice), the Court of First Instance, and judicial panels. The Lisbon Treaty introduced a change in nomenclature, adopting the term "Court of Justice of the European Union" (CJEU), which encompasses the Court of Justice, the General Court (as the successor to the Court of First Instance), and the specialised courts, which is the new designation for the former judicial

[1] With the entry into force of the Lisbon Treaty on 1 December 2009, the EU acquired legal personality and assumed the competences previously conferred upon the European Community. As a result, Community law (*acquis communautaire*) became the law of the European Union (*Union communautaire*), such that the term Community law, if used, refers to the case law of the Court of Justice prior to the entry into force of the Lisbon Treaty.

panels. The principle of the two-tier system is secured by judgments and other decisions of the General Court being subject to appeal before the Court of Justice.

Accordingly, Article 19(1) of the Treaty on European Union (TEU) provides:

"The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed".

The Court of Justice of the European Union is composed of 27 Judges - equivalent to the number of Member States, meaning one Judge from each Member State - and 11 Advocates General who assist the work of the Court. The Judges and Advocates General are selected from persons whose independence is beyond doubt/unquestionable and who possess the qualifications and meet the conditions required for appointment to the highest judicial offices in their respective countries, or are jurists of recognised competence. They are appointed by common accord of the governments of the Member States, after consultation with a panel responsible for giving an opinion on the suitability of candidates to perform the duties concerned, for a term of six years, with the possibility of re-appointment. The Judges elect a President and Vice-President from among their number, for a term of three years, with the possibility of re-election. The Advocates General assist the Court, that is to say, they help the Judges in their adjudication by being responsible for delivering opinions in assigned cases, with complete impartiality and independence.

In the execution of this mission, the CJEU:

- verifies the legality of acts adopted by the EU institutions;
- ensures the compliance of Member States with the obligations arising from the Treaties; and
- interprets EU law at the request of national courts and tribunals.

Thus, the Court of Justice of the EU constitutes the judicial authority of the Union and, in cooperation with the courts and tribunals of the Member States, ensures the uniform application and interpretation of EU law. To be able to adequately fulfil its function, the Court has been assigned a precisely defined jurisdiction, which it exercises through references for a

preliminary ruling and other types of proceedings, which are explained below.

The jurisdiction of the CJEU and the proceedings before the Court of Justice and the General Court are presented in accordance with the latest amendments to the Statute of the Court of Justice of the European Union[2], which entered into force on 1 September 2024 and represent a significant institutional reform within the Union's judicial system. Initiated by the Court of Justice itself in 2022, the reform aims to reduce the increasing workload of the Court of Justice (ECJ) through a redistribution of certain judicial competences, primarily by granting the General Court jurisdiction over specific requests for a preliminary ruling -for the first time in the Court's history. This structural change not only addresses the need for efficiency but simultaneously indicates an increasingly clear functional demarcation between the two courts - the Court of Justice is more and more positioned as the constitutional court of the Union, focusing on the interpretation and protection of primary EU law, while the General Court is profiled as a type of supreme court (Woude, 2021). Furthermore, the reform includes an explicit legislative commitment to enhance transparency in the preliminary ruling procedure. The subsequent amendments to the Rules of Procedure of the Court of Justice and the General Court operationalised the new judicial configuration.

Preliminary Ruling Procedure Initiated by Courts of the Member States (Article 267 TFEU)

In order to ensure the effective and uniform application of EU law and to prevent divergent interpretations, national courts may, and sometimes must, refer questions to the Court of Justice for clarification regarding the interpretation of EU law, in order to determine whether national legislation is consistent with EU law (preliminary reference procedure).

The Court's response is not merely an opinion, but takes the form of a judgment or a reasoned order, and the national court is bound by the interpretation rendered by the Court of Justice of the EU when deciding the case. Furthermore, the decision of the Court is binding on other national

[2] Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, *OJ L, 2024/2019,* 12.8.2024.

courts confronted with the same question. In this manner, every citizen of the Union can indirectly initiate a clarification of the Union's legal norms that concern them. Although only national courts may submit such a request, all parties to the domestic proceedings, as well as the Member States and the EU institutions, may participate in the proceedings before the Court.

Within the framework of the CJEU, the Court of Justice shares this jurisdiction with the General Court, but the Court of Justice retains jurisdiction for cases, particularly if they relate to the interpretation of primary law, including the Charter of Fundamental Rights of the EU; public international law; and, general principles of Union law. Requests for a preliminary ruling transferred by the Court of Justice relate exclusively to one or more of the following six specific areas: the common system of value added tax (VAT); excise duties; customs code; tariff classification of goods under the Combined Nomenclature; compensation and assistance for passengers in the event of denied boarding, delay or cancellation of transport services; the greenhouse gas emission allowance trading system. All requests are initially submitted to the Court of Justice, which decides whether the conditions for transferring jurisdiction to the General Court are met.

Infringement Procedure against a Member State for Failure to Fulfil Obligations under EU Law (Articles 258-259 TFEU)

These proceedings (infringement actions) concern whether a Member State has (not) fulfilled its obligations under EU law, such as the transposition of Directives, specifically for an alleged breach of a particular obligation under the Treaties.

The action is most frequently brought by the European Commission, following a preliminary procedure in which the Member State is given the opportunity to respond to the objections (administrative phase), if the infringement is not remedied, the Commission or another Member State may bring an action (judicial phase). If the Court establishes an infringement, the Member State is obliged to immediately rectify it. Should this not occur, in the event of a subsequent action being brought, the Court may impose a lump sum fine or a periodic penalty payment.

Furthermore, a Member State that considers another Member State to have failed to fulfil its obligations under the Treaties may bring the matter before the Court of Justice of the European Union.

Procedure for an action for annulment of the acts of the Union (Article 263 TFEU)

The Court of Justice of the EU reviews the legality of legislative acts, acts of the Council, the Commission, and the European Central Bank, other than recommendations and opinions, and acts of the European Parliament and the European Council which are intended to produce legal effects vis-à-vis third parties. It also reviews the legality of acts of bodies, offices, or agencies of the Union which are intended to produce legal effects vis-à-vis third parties.

For that purpose, the Court has jurisdiction in proceedings instituted by a Member State, the European Parliament, the Council, or the Commission on grounds of lack of competence, infringement of essential procedural requirements, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers. In addition to these institutions as "privileged" applicants, any natural or legal person may also be an applicant. The authorisation to bring an action against an act implies proving that the applicant is personally and directly concerned by the act, which is why natural and legal persons are considered "non-privileged applicants."

With an action for annulment, the applicant seeks the annulment of an act (for example, a regulation, a directive, or a decision) adopted by an EU institution, body, office, or agency. The Court of Justice has exclusive jurisdiction over actions brought by a Member State against the European Parliament and/or the Council, or between the EU institutions. All other such proceedings (including those submitted by natural or legal persons) are reviewed by the General Court.

Procedure for an action for failure to act by the institutions of the Union (Article 265 TFEU)

Should the European Parliament, the European Council, the Council, the Commission, or the European Central Bank fail to act in a case of infringement of the Treaties, Member States and the other Institutions of the Union may submit an application before the Court of Justice of the European Union to have such infringement established. This Article shall apply, under the same conditions, to bodies, offices, and agencies of the Union which fail to act.

The application shall be admissible only if the institution, body, office, or agency concerned has first been called upon to act. If, within two months of being so called upon, the institution, body, office, or agency concerned has not defined its position, proceedings may be instituted within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, bring a complaint before the Court if an institution, body, office, or agency of the Union has failed to address to that person any act other than a recommendation or an opinion.

Therefore, these proceedings serve to challenge the unlawful failure to act by the institutions, bodies, or agencies of the EU. Such an action may be brought only after a formal prior request for action has been addressed to the competent institution. If the Court finds that the failure to act is unlawful, the institution must take the necessary measures. Jurisdiction is distributed between the Court of Justice and the General Court according to the same criteria as for actions for annulment.

Procedure for an action for damages caused by the Union (Article 268 TFEU)

The basis for jurisdiction in proceedings concerning the non-contractual liability of the Union (or its institutions) is contained in Article 268 TFEU, which refers to Article 340 TFEU. This provides that, in the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of

their duties. Such non-contractual liability is also stipulated in respect of damage caused by the European Central Bank and/or its servants.

Furthermore, the Court, through its case law, has established conditions for the existence of non-contractual liability of the Union, namely: an unlawful act or omission by the Union, damage sustained by the applicant, and a causal link between such act and the damage caused (Case 4-69 *Lutticke v. Commission*).

Additionally, a distinction is drawn between the liability of the Union for damage caused by acts where there was no discretion in the adoption of the act, i.e., those relating to the application of general norms in individual cases where the institution/responsible person is obliged to act within the limits of the specified competences and conditions pursuant to the general act, and, the liability of the Union for damage caused by legislative (discretionary) acts. In the latter case, the possibility of choosing between multiple solutions is challenged, given the objectives the act is intended to fulfil, whereby the discretion exercised in performing the legislative function for the adoption of general acts that create rights for individuals is assessed. The difference relates to the criteria for establishing liability - for the former acts, the existence of unlawfulness of the act is sufficient to establish the Union's liability for damage, whereas, for the latter, due to the connection of the act with the performance of the Union's legislative function, the establishment of liability is governed by stricter criteria developed through the Court's case law (Georgievski and Cenevska, 2024, p. 391).

Essential Procedural Remarks

Irrespective of the type of case, the proceedings always consist of a written stage and, if necessary, an oral stage which is public. However, a distinction must be drawn between requests for a preliminary ruling, on the one hand, and the other proceedings (direct actions and appeals), on the other.

In the preliminary ruling procedure, the national court refers a question to the Court of Justice concerning the interpretation or validity of a provision of Union law, usually in the form of a judicial decision in accordance with national procedural rules. The Court of Justice determines whether the questions fall exclusively within one or more of the specialised areas for which jurisdiction has been transferred to the General Court and, accordingly, establishes jurisdiction.

Once the request has been translated into all official languages of the EU by the Court's translation service, the Registry forwards it to the parties in the main proceedings, as well as to all Member States and the Institutions of the Union, and a short notice is also published in the Official Journal of the EU. The parties, the Member States, and the institutions have a period of two months to submit written observations.

Proceedings concerning direct actions and appeals are initiated by the submission of an application addressed to the Court's Registry, which subsequently publishes a notice in the Official Journal of the EU, setting out the claims and arguments of the applicant. The application is served on the other party, which has a period of two months to submit a defence. If appropriate, the applicant may submit a reply, and the defendant a rejoinder. These time limits are mandatory. In both types of proceedings, a Judge-Rapporteur and an Advocate General are appointed to monitor the procedure.

Upon completion of the written phase, the parties may, within three weeks, request the holding of a public hearing with a reasoned justification for such a request. The Court, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decides whether preparatory inquiries are necessary, which formation of the Court will hear the case, and whether a public hearing will be held, for which the President sets the date.

If it is decided that an oral hearing will be held, the case is examined at a public sitting before the formation of the Court and the Advocate General. The Judges and the Advocate General may put questions to the parties. Subsequently, the Advocate General delivers their Opinion before the Court, again at a public sitting, analysing the legal aspects and proposing how the Court should proceed and rule. The oral stage concludes therewith.

The Judges deliberate on the basis of a draft judgment prepared by the Judge-Rapporteur. Every Judge may propose amendments, and decisions are taken by a majority, with the Court not publishing dissenting opinions. Judgments are delivered publicly, together with the Opinions of the Advocate General, and are made available on the website on the day of delivery, and are subsequently published in the *European Court Reports* (or: *E.C.R.* / *Reports of Cases before the Court of Justice*).

In certain cases, applications for interim measures may be submitted for the suspension of the operation of certain acts or for the adoption of an urgent measure with the aim of preventing serious and irreparable harm.

Proceedings before the Court of Justice do not entail court fees. Costs for legal representation are not covered by the Court, however, parties lacking sufficient means may request legal aid.

With regard to linguistic rules, in direct actions, the language of the application becomes the language of the case, while in appeals, it is the language of the decision being appealed. In requests for a preliminary ruling, the official language is the language of the national court. Oral hearings are simultaneously interpreted into the necessary official languages. The Judges, however, deliberate in a "common language," which is traditionally French.

In respect of the proceedings outlined above, it should be borne in mind that when referring to the Court of Justice of the EU, this encompasses both the Court of Justice and the General Court. Thus, some of the listed proceedings fall within the jurisdiction of the General Court, such as: actions brought by natural or legal persons against acts of the institutions, bodies, offices, or agencies of the EU, as well as against regulatory acts, or against their failure to act; actions brought by Member States against the Council, related to acts adopted in the field of State aid, trade defence measures (anti-dumping), as well as acts by which the Council exercises

implementing powers; actions seeking compensation for damage caused by the institutions or bodies, offices, or agencies of the EU or their staff; actions based on contracts concluded by the EU which expressly confer jurisdiction on the General Court; cases related to intellectual property brought against the European Union Intellectual Property Office (EUIPO) and against the Community Plant Variety Office (CPVO); disputes between the EU institutions and their staff concerning employment relationships and the social security system. Decisions of the General Court may, within a period of two months, be the subject of an appeal to the Court of Justice, but such appeal is limited to points of law only.

From the foregoing, it can be concluded that the Court of Justice of the European Union also fulfils the role of a constitutional court, but it differs from the customary concept of constitutional judicature in the Member States, which at times entails the application of innovative judicial techniques and a distinct approach to interpretation, and even a different conception of the law from that of the national courts of the Member States. Thus, the case law of the CJEU cannot be fully understood without delving into its approach to the interpretation of law, which is generally described as purposive or teleological, but not in the sense of establishing the specific intention of the law's creators (Craig and De Búrca, 2020, p. 64). The teleological approach of the CJEU is not limited exclusively to the historical context, on the contrary, the Court analyzes the broader context in which a specific legal norm is situated and provides an interpretation that, in its conviction, contributes most to the achievement of the objective that the norm is intended to evolve towards.

The Role of National Judges in the (New) EU Member States

Bearing in mind the nature of the Union's legal order, the role conferred upon national judges is exceptionally responsible and complex, given that it is precisely national judges who have the pivotal task in the enforcement and application of EU law. The Court of Justice of the EU, as explained above, has a clearly established and defined jurisdiction, whereas all other disputes relating to the application of Union law that do not fall within its jurisdiction are resolved before the national courts. Such broad jurisdiction and the role of national courts are not explicitly provided for in the primary law of the EU.

The principle of sincere cooperation, laid down in Article 4(3) TEU, prescribes an obligation for Member States to take all appropriate general or specific measures to ensure the fulfilment of the obligations arising from the Treaties or resulting from acts of the Union institutions. Furthermore, Member States shall facilitate the achievement of the Union's tasks and shall refrain from any measure which could jeopardise the attainment of the Union's objectives. The fulfilment of this obligation is reinforced by the principle of the primacy of EU law over national law, as well as the principle of direct effect of EU law, which enables individuals to directly invoke a specific provision of EU law before national courts, to challenge national acts on the grounds of non-compliance with EU law, and to seek protection of rights guaranteed by the provisions of EU law. In this way, the application and control of the observance of EU law by the Member States take place on two levels: at the Union level through the CJEU, and at the national level through national judges. This also implies that when protecting individual rights deriving from Union law, national courts are obligated to respect certain fundamental principles of EU law, which confer powers and obligations upon these courts that are not always provided for in (and are sometimes even contrary to) the internal legal systems within which they operate (Capeta, 2005, p. 25).

To this end, Article 19(2) TEU provides that Member States shall establish the remedies necessary to ensure effective judicial protection in the fields covered by Union law. On the basis of this provision, the Court of Justice of the EU has built comprehensive case law on the requirement for independence of judicial bodies in the context of the rule of law as a Union-level concept, starting precisely from the specificity that the obligation to apply EU law is primarily conferred upon national judges (see Ognjanoska

Stavrovska, 2024). In that sense, a national judge must first determine whether EU law is applicable in the specific case, then identify the relevant EU legal norm, interpret that norm in accordance with European principles, assess whether the provision of EU law has direct effect or whether a consistent interpretation of national law is sufficient, decide on the necessity of applying EU law *ex officio*, and on the manner of applying national law in light of the EU law requirements for equivalence and effectiveness, as well as whether it is necessary to refer a question to the ECJ for a preliminary ruling (Nowak & Monika Glavina, 2021, p. 741). The relationship between the Court of Justice of the European Union and national courts is founded on the principle of cooperation, not on a hierarchical structure.

The role of national judges in the EU legal order also encourages a specific form of judicial activism that transcends the traditional role of a judge within a continental legal order. Thus, through the application of EU law and participation in the preliminary ruling procedure, lower courts have the opportunity to circumvent national rules with which they disagree, thereby acquiring discretionary power and strengthening their position vis-à-vis higher national courts and national legislative bodies through EU law (Burley and Mattli 1993, pp. 62–65). In this manner, judges also contribute to the improvement of the level of alignment of national law with EU law, namely the very application of Union law within national frameworks, by performing a distinct form of judicial review.

Given the different normative and political discourse concerning the sovereignty of the Member States within the context of the EU's integrative logic, four models of judicial behaviour by national courts are identified (Nowak & Monika Glavina, 2021) based on the typology of judicial adaptation developed by Kagan (1978):

1. **Judicial Balancing**
   This approach involves the weighing and combining of national law and EU law in the decision-making process, while accepting certain rulings of the ECJ. The national judge strives to find an interpretative compromise that allows for coherence between the national and the Union legal order. It is characterised by legal pluralism and an openness to multi-level reasoning within the hierarchy of law.

2. **Judicial Nationalism**
   This model is characterised by the priority application of national law and a tendency to marginalise or disregard EU law. The national judge affirms their role as the guardian of the national legal order, often invoking national identity, constitutional sovereignty, and the limited scope of supranational powers.
3. **Judicial Europeanism**
   EU law is paramount and is applied even when this necessitates derogation from national rules or legal traditions, consistently applying the principle of supremacy of EU law established by the ECJ. The national judge positions themselves as a decentralised judge of EU law, fully engaged in the process of Europeanisation of the national legal system, frequently making references for a preliminary ruling to the CJEU and consistently applying its judgments and decisions.
4. **Judicial Retreatism**
   This represents a refusal to take an active judicial role. The national judge refrains from applying any legal norm (be it national or European) and avoids issuing decisions by citing procedural or formal obstacles. This is a strategy of legal inertia or institutional self-protection.

The prevalence of one model of judicial behaviour over another depends on multiple factors - both objective and subjective. The objective factors are due to the role of the judiciary and the societal circumstances in which it operates, namely the independence of the judiciary vis-à-vis the other two branches, especially the executive. In this regard, the legal culture and the degree of Europeanisation are particularly important, which implies a gradual liberation from the authoritative discourse in terms of subordination and insufficient/incorrect understanding of the judges' power of control (Georgievski, 2019, pp. 52-58). The term "legal culture" is understood to mean the prevailing societal understanding of the purpose of law and the role of various institutions within the legal order, as well as the manner in which legal norms are interpreted - specifically "a particular way in which values, practices, and concepts are embedded in the functioning of legal institutions and the interpretation of legal texts" (Bell, 1995, p. 70).

The application of EU law necessitates the capacity of judges to penetrate the context of the law and offer a suitable interpretation that transcends the restrictive and literalistic understanding of the letter of the law, extending to what is termed the "spirit of the law", in accordance with the general principles of law. To this end, judges must be capable of directly applying acts of EU law and other sources of law, such as those in the form of international treaties, even before EU membership itself. Thus, the role of judges must shift from merely applying laws and the will of the legislature to "resolving disputes in the service of citizens' rights and the rule of law" (Georgievski, 2019, pp. 52-58). The objective factors are complemented by subjective factors, which relate to the quality of legal and, more narrowly, judicial education, career advancement prospects, as well as the number of assigned cases and the available resources for work.

Considering the proceedings before the CJEU, the role of the national judge is most pronounced in the preliminary ruling procedure, which serves as a unique channel for discussion between national judges and the ECJ. This procedure allows the national judge to contribute directly to the process of developing EU law through the consistent and uniform interpretation of the provisions of EU law that are the subject of such a request, thereby serving to ensure the full effect and autonomy of the EU legal order, and ultimately, the special nature of the law established by the Treaties.

In accordance with Article 267 TFEU, the Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; and, (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. The answer given in the judgment of the ECJ is binding not only on the individual national court that requested it, but contains an authoritative interpretation of EU law that is binding on all Member States and their authorities. Furthermore, the ECJ does not have jurisdiction to directly assess the validity of national law, but through the interpretation of provisions of Union law, it can indirectly point to a lack of conformity

of a national legal act with Union law. This, subsequently, given the principle of the supremacy of EU law, affects the national court's treatment of the contested internal act (Georgievski and Cenevska, 2024, p. 310).

Some of the most notable decisions of the CJEU that have strongly influenced the development of the Union as a distinct legal order and established key constitutional principles (for example, the interpretation of the principles of direct application and supremacy of EU law) are precisely the result of requests for a preliminary ruling submitted by national judges. Decisions in the preliminary ruling procedure tend to provide a decentralised response to a problem that is widespread throughout the Union and goes beyond the process of judicial cooperation (Bard, 2021, p. 195). The preliminary ruling procedure has served as a mechanism for the protection of the rule of law in the EU, through which national courts/judges can challenge the independence of their colleagues from other EU Member States in situations where the Union's legal order is jeopardised, and also to initiate proceedings that will indirectly ensure the protection of the independence of national judges (Ognjanoska Stavrovska, 2024, p. 211).

National Judges in the (New) Member States: Challenges from Experience

The issue of the capacity of the courts of potential/new Member States to participate in the shaping of the Union's legal order is one of the key criteria by which preparedness for accession is assessed. Documents from the pre-accession process, particularly during the negotiation phase, refer to European standards regarding judicial independence and impartiality, accountability and transparency, quality of justice, and efficiency, but they do not contain an explicit assessment of the capacity of national judges to act in the capacity of European judges.

The core objectives and functions of the judicial power in the Republic of North Macedonia are:[3]

- the impartial application of the law, irrespective of the position and status of the parties;
- the protection, observance, and advancement of human rights and freedoms;
- the securing of equality, equal standing, and non-discrimination on any grounds;
- the ensuring of legal certainty based on the rule of law.

The Macedonian legal system, as well as the legal systems in Central and Eastern Europe, including South-East Europe, do not have the function of reviewing the validity of the legal acts on the basis of which they proceed. As European judges, however, national judges must be capable of participating in the European constitutional discourse. As can be concluded through the example of Croatia, the long tradition of strict formalism and legal positivism in Central and Eastern Europe affects the (un)preparedness of judges to perform such a constitution-shaping role (Capeta, 2005) and necessitates the investment of additional time and effort, despite the overall adaptation of the legal system during the accession process.

[3] According to the explanation of the Supreme Court: http://www.vsrm.mk/wps/portal/central/sud/sudski-sistem/sudstvo/!ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zizdxNTAwsvA18_A3cLAwcfb3MfEMMTIwNgkz1C7IdFQE0yJG6/.

The very process of aligning national law with EU law faces substantive challenges. As pointed out in the example of Poland, legislative bodies most often opt for the simplest approach, reducing harmonisation to a literal and insufficiently precise translation of directives (Czapliński, 2001, p. 54). Such an approach leads to the introduction of legal terms and concepts that are inconsistent with or unknown within the national legal system. Furthermore, the various options provided within the directives themselves are often neglected, even in cases where Union law explicitly requires a choice between alternative solutions (Czapliński, 2001, p. 54).

The comparative analysis of the challenges and legal problems specific to the legal systems and judicial procedures of the Member States that acceded based on the enlargement policy introduced in 1993, for the purpose of alignment and identification of differences with the processes of the ECJ, indicates that the most prominent challenges relate to the role of judges and the overall legal culture. More specifically, these can be observed through the **sources of law** characteristic of legal traditions and **the manner of interpretation and application** of law (Capeta, 2005; Bobek, 2008; Kühn, 2019; Bobek, 2014).

Within the Union itself, a certain tension exists between different legal traditions. Thus, given the specific nature of the Union regarding sovereignty and statehood, the prevalence of the Anglo-American approach to the rule of law, reflected primarily through the role and powers of the Court of Justice of the EU, is more easily understood, despite the fact that the continental legal tradition is dominant in the Member States (Ognjanoska Stavrovska, 2024). Specifically, the Anglo-Saxon conception does not postulate the state as a prerequisite for the legal system, whereby the separation of powers is less pronounced and the connection to the rule of law is realised from the perspective of the powers of the judiciary. However, it should be borne in mind that such an institutional architecture is contrary to the legal traditions of the Member States, which can lead to the risk of unbalanced power prevailing (Ognjanoska Stavrovska, 2024). The balancing, in this regard, occurs through the technique of legal interpretation in order to ensure expediency and coherence.

The systematisation of the valid sources of law in the legal systems of the more "experienced" Member States versus the "newer" ones does not differ significantly, with constitutional norms being at the top of the hierarchy, followed by laws and subsidiary legislation. International law, however,

depending on the character of the legal system - monist or dualist, is foreseen as a separate source of law or is integrated into the hierarchy of legal sources. Thus, pursuant to Article 98 of the Constitution of the Republic of North Macedonia, "The courts shall decide on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution." Although this provision does not differ drastically from other constitutional provisions that stipulate the relevant sources of law in a legal system, differences are nevertheless observed in practice regarding the utilisation of sources of law in judicial decision-making.

From the perspective of the time period of accession, regional affiliation, and the characteristics of the system, the experience of Croatia is the most suitable for a comparative analysis of the conduct of national judges regarding proceedings before the CJEU. It should be noted that, at the time of accession, the Croatian Courts Act stipulated that "Courts shall decide on the basis of the Constitution, international treaties, laws, and other valid sources of law"[4]. However, the main sources that national judges in Croatia used/use in practice (even after accession) are the laws and the subsidiary legislation adopted for their implementation, and the courts almost never refer to the Constitution nor to international treaties (Capeta, 2005). In 2018, the Act was amended to include the *acquis* of the Union (the *acquis* of the European Union) in the sources of law.[5] In this manner, the legal order of the Union is an official source of law in Croatia as a Member State of the Union, immediately following the Constitution.

Such a formulation is intended to strengthen the role of national judges as "Judges of the European Union" at which level EU law is primarily applied, and to encourage such application. The hierarchical structure of legal sources is characteristic of the Kelsenian model, which aligns with the positivist application of law; however, the nature of the Union's legal order does not correspond to the indicated relationship between EU law and national constitutions, and insisting on a strict hierarchy can even impede the functioning of the legal order.The application of EU law, especially secondary sources like directives, implies their harmonisation within the domestic legal order, such that EU law should not be treated as

[4] Article 5 of the Courts Act of the Republic of Croatia, *Zakon o sudovima* (Official Gazette *Narodne Novine* 28/2013), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2013_03_28_473.html.
[5] The Act on Amendments and Supplements to the Courts Act, *Narodne Novine* 67/2018, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2018_07_67_1362.html.

a separate legal order distinct from the national one. Furthermore, considering the principle of supremacy of Union law, in the event of a conflict between a provision of Union law and a provision of domestic law, the court is obliged to "set aside" the domestic provision, i.e., to apply EU law - even where constitutional provisions are concerned. Such an obligation points not only to the procedural side of the doctrine of the primacy of EU law over national law but should also be understood as a "complex web of reflexive cooperation between national courts and the Court of Justice of the EU" (Rodin, 2011, p. 93).

Another challenge for national judges is deciding on the validity of national acts and EU law. Even setting aside the Union's legal order with all its complexity, national courts, when applying the law, do not review the constitutionality of legal provisions. Within the Croatian constitutional order, judges do not have the authority to independently exclude from application a law they deem unconstitutional; that is, if they consider that a law should not be applied, they have recourse to the instrument of a preliminary constitutional review, meaning they can submit an initiative to the Constitutional Court (Capeta, 2005). In this way, constitutional review is centralised and left to the constitutional courts, but it still allows ordinary judges to challenge the validity of a law, even if they cannot decide on that issue themselves. This procedure largely resembles the preliminary ruling procedure before the ECJ. However, practice shows that ordinary judges almost never use this possibility (Capeta, 2005), which suggests a limited capacity to utilise the preliminary ruling procedure.

The likelihood of national judges correctly and appropriately applying European law increases if they have had some experience applying international law, i.e., with a legal system different from the national one (Kühn, 2019). In this regard, the application of the European Convention on Human Rights, which includes the case law of the Strasbourg Court (the European Court of Human Rights), is comparable. In the case of Central and Eastern European countries, the process of joining the Council of Europe took place during the European integration accession process, so national judges had more limited experience applying ECtHR case law at the time of accession. In the case of North Macedonia and other countries in the region, the European Convention on Human Rights has been a source of law for a longer period, but practice reveals that national judges are still not adequately trained for its proper application, and only

exceptionally can a reference to ECtHR case law be observed in domestic judgments.

In order to predict the application of Union law in new Member States, the practice of application during the pre-accession period and the stance taken by national judges is also indicative. Specifically, certain agreements concluded between a candidate country for membership and the EU have the character of international treaties and are thus sources of law in the domestic order even before the formal moment of membership. Such an agreement is the Stabilisation and Association Agreement (SAA) between our country and the EU, concluded in 2001, which entered into force on 1 April 2004, following its ratification by all signatories. Other sources of EU law, such as regulations and directives, become part of the domestic legal order through the harmonisation process. This means that when applying these provisions as provisions of domestic law, their meaning in the Union's legal order should be taken into account and, if necessary, the case law of the Court of Justice and the decisions of the Commission should be considered. However, domestic courts do not provide an interpretation consistent with EU law and do not refer to such (non) binding sources of law in the period prior to official membership in the Union. A review of the available case law databases of the Macedonian courts did not find a single instance of reference to the SAA, not only as a basis for resolving a specific legal dispute but also as an ancillary instrument in the interpretation of the law..[6]

The practice of Central and Eastern European countries reveals different trends. Some courts took the view that "although EU law has no binding force before membership, the obligation to align legislation (primarily borne by the parliament) also implies an obligation to interpret existing legislation in a manner that will ensure the highest possible degree of such alignment" (Kühn, 2019, p. 566). Others, however, held that only "valid" sources of law, applicable and binding at the time of the decision, should be assessed, and "the question of aligning domestic legal practice with the legal practice of the [then] EC is gaining increasing importance, but this cannot change anything in the outcome of the specific case" (Kühn, 2019, p. 569). Moreover, such differences were not due to an explicit formulation

[6] The review of domestic practice was done selectively, suggesting certain areas of law that are compatible with the scope of the SAA, so the analysis does not claim to have reviewed all decisions of domestic courts since 2004; however, the analyzed sample provided such a conclusion.

in the acts of positive law, but to the general approach to the application of law and the overall legal culture, and in certain cases, to the "enthusiasm" of individual judges in terms of a lesser or greater openness of the legal order to external influences.

One of the challenges that arises when analysing the application of EU law by national judges relates to the fact that "the accurate and faithful application of EC substantive law by the national courts is too often assumed without sufficient verification of whether this is actually the case in practice" (Jarvis, 1998). It should be borne in mind that the *acquis* of the Union encompasses a wider range of legal sources such as the general principles of law, the case law of the Court of Justice of the EU, declarations, and other acts of soft law, best practices, and standards. In this sense, the application of Union law upon accession to the EU implies the ability to apply these sources of law and to incorporate the case law of the Court of Justice of the EU into domestic adjudication (see Lenaerts & Gutiérrez-Fons, 2013). The use of different sources of law is closely linked to the judges' ability to reason their decisions.

The real problem for national judges generally, it seems, is not open opposition to or disregard of their new obligations, but rather a lack of knowledge and capacity. Thus, the ECJ points out that Union law has an "open texture" and calls on national judges to apply this characteristic of the law when implementing it in the national legal system (Kühn, 2019, p. 579). In the legal systems of the more experienced EU Member States, as well as in the Union's legal order itself, the aforementioned principles, as well as other acts in the form of "soft law," are used as sources of law in case law and play a significant role in decision-making. Furthermore, case law is taken into account - not only domestic but also comparative, especially when applying Union law - thereby constructing an entire legal doctrine for which, for example, Germany is renowned.

The restrictive positivist approach is observed not only in the application of the sources of law and their reasoning, but also in the **interpretation of the law**. Comparative analysis indicates that the transposition of directives is carried out by transcribing the text of the provisions (European Parliament, 2018), and thus, the national application of directives subsequently involves only a strict implementation of the text, without room for teleological or purposive interpretation. The very nature of directives as legal acts of the Union implies that the objective serves as the

starting point for their implementation. Such a methodological approach in the interpretation of Union law is most pronounced in the application of directives. The court is expected, when interpreting national law, regardless of whether it was adopted before or after the relevant directive, to do so in light of the directive's wording and purpose, in order to ensure its effective implementation (Case C-106/89 *Marleasing SA v La Commercial Internacional de Alimentation SA*, 1990). Furthermore, the law should also be interpreted in light of certain principles characteristic of the Union *acquis*, such as the principle of proportionality, which requires a serious methodological approach.

Moreover, the Court of Justice of the European Union also developed the doctrine of indirect effect (Case 14/83 *Von Colson v Land Nordrhein-Westfalen*, 1984), which requires national courts, as far as possible, to interpret national law in conformity with the provisions of EU law. Essentially, this means that the national judge is obliged to interpret national law in light of the aims and wording of the norms of EU law, even when such provisions do not meet the conditions for direct effect established in the *Van Gend en Loos* formula (i.e., they are not sufficiently clear, precise, and unconditional) and therefore cannot have direct application. The arguments for this obligation on national authorities are also based on the principle of sincere cooperation, laid down in Article 4 TEU, which prescribes an obligation for Member States to take all appropriate general or specific measures to ensure the fulfilment of the obligations arising from the Treaties or resulting from the acts of the Union institutions.

Thus, a change in the legal culture of interpreting provisions is also necessary. In the more experienced Member States, teleological interpretation has been adopted, which assesses the norm in a broader social context, whereas in the newer Member States, strict linguistic interpretation and a formalistic approach, oriented exclusively towards the text, prevail. Ambiguity in the formulation of certain norms often leads to their non-application, while interpretation in light of specific social objectives is met with reference to the limited influence of the courts before the "will of the legislature," which is often not fully clarified. In fact, the skill of penetrating such a "will of the legislature" in light of social objectives is the main determinant of the quality and capacity of the holders of judicial power (and lawyers in general) and what distinguishes them from the "ordinary citizen" who has access to the text of the law and can

act as a "reader," but lacks adequate professional training in the domain of legal concepts and principles that would enable the appropriate application of legal norms.

Challenges for National Judges in the Context of Proceedings before the Court of Justice of the EU

Considering the proceedings before the Court of Justice of the EU, the challenges indicated by the experience of the newer Member States would have the strongest impact in relation to the preliminary ruling procedure before the Court. As explained above, this procedure serves to maintain a dialogue between national judges and the CJEU with the aim of consistent and uniform interpretation of the provisions of EU law during their application in the domestic judicial context. However, the procedure can only be activated following a request referred by national judges, and the CJEU has no mechanism to intervene in situations where such a referral is not submitted.The indicated challenges concerning sources of law, reasoning, and interpretation would be reflected in a way that national judges would first have to recognise and identify the norms from the Union *acquis* that are applicable in the specific case, considering the distinct nature of this legal order and the principles of application; then, in accordance with their constitution-shaping role (which is uncharacteristic of the domestic legal system), refer a request for a preliminary ruling to the CJEU; and finally, be able to appropriately apply the CJEU's decision through teleological interpretation, while that national decision must also offer adequate reasoning.

The primary role of the Court should be the articulation or precise formulation of the normative, legal *premissa maior* stemming from EU law, which national courts should then apply, while the subsumption of the facts of the specific case, the premissa minor, and the conclusion on how to apply EU law in that specific context, is precisely the task of the national courts (*Case C-923/19, Van Ameyde España*, Opinion of AG Bobek, para. 56). The entire system of the Union depends on the *bona fide* conduct of all judicial actors who participate in it (Petrić, 2023). The reform of the Union's judicial system with the latest procedural changes, particularly in the part concerning the preliminary ruling procedure, enables the specialisation of the General Court in certain legal fields, which may have a positive long-term impact on the procedure by strengthening expertise, as well as efficiency - the long waiting time has always been one of the

main reasons why some national courts avoided referring questions for a preliminary ruling.

National judges are assigned new tasks, particularly the obligation to interpret national law in light of the Union's *acquis*, while also observing the national margin of appreciation. Such competences expand the role of national judges from passive appliers of law to active actors in the Union's legal order, participants in a Union-level judicial dialogue, and active judicial oversight of constitutionality at the national level, even when the constitutional rules of national law limit that competence exclusively to constitutional courts (*Case 106/77 Simmenthal*, 1978). Through these processes, a new balance is created between national judicial autonomy and the obligations arising from EU law.

The experience of the countries that acceded in the 2004/2007 enlargement rounds reveals several trends. The annual report of the Court of Justice for 2013 lists the following figures for requests for a preliminary ruling submitted by each of the new Member States for the period from 1 May 2004 to 31 December 2013 (Bobek, 2014):

Estonia	15
Cyprus	5
Latvia	30
Lithuania	23
Malta	2
Poland	60
Slovakia	25
Slovenia	5
Hungary	84
Czechia	34

For the period from 1 January 2007 to 31 December 2013, the figures for Bulgaria and Romania are as follows:

Bulgaria	65
Romania	63

The analysis of the figures, while also considering other factors, indicates several trends (Bobek, 2014). From the perspective of the institutional origin of the preliminary references, the majority of requests originate from a few courts or even from the same judges, which suggests a limited, selective application of EU law concentrated among "known referrers," thereby calling into question the degree of penetration into the broader judicial practice. For instance, in Bulgaria, these come mainly from the administrative courts in Sofia and Varna, in Slovakia from the courts in Prešov (often in consumer protection cases), and more than half of the Czech references originate from the Supreme Administrative Court. Furthermore, while references from supreme courts dominate in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, and Poland, in Bulgaria, Romania, and Hungary, they mainly originate from lower instances. This can be interpreted as either a reflection of the influence of judicial hierarchy or as a response to the assumption that lower courts are the most called upon for the development and application of EU law. A generational dimension is also highlighted. Younger judges, educated after accession to the EU, with better knowledge of foreign languages and exposure to European academic contexts, often use EU law as a means of professional emancipation and innovation within traditional judicial structures.

However, such aggregate data do not provide a sufficient picture of the quality of the questions submitted, i.e., whether the new Member States are using the preliminary ruling mechanism in a productive and strategic manner, given the need to ensure the coordinated development of the EU legal order, or whether it is being reduced to an instrument for resolving local and marginal disputes.

In addressing this question, the conduct of the Court of Justice should also be considered. Thus, with the ruling in the case *Ynos Kft. v János Varga* (Case C-302/04, 2006), the Court established a restrictive approach and explained in only a few paragraphs that it lacked jurisdiction to rule because the facts of the case predated Hungary's accession to the EU. This decision indicated a temporal limitation on the Court's jurisdiction over requests for a preliminary ruling, but it also created a certain deterrent effect on national judges. For instance, the Czech Supreme Court, as a court of last instance, explicitly cited *Ynos* as a reason for not referring a question to the Court of Justice (Bobek, 2008, p. 1616). The legal and practical problematic nature of *Ynos* stems from the fact that the Court did not provide a clear explanation for establishing such an approach and

limiting jurisdiction on a temporal basis, contrary to previously established extensive practice. Furthermore, it did not take into account the normative specificity of the new Member States regarding the fact that the transposition of Union law into the domestic order largely takes place before official accession, using mechanisms such as the Europe Agreements in the case of CEECs (Central and Eastern European Countries).[7]. Hence, despite the fact that the factual situation dated from 1997, the directive in dispute had already been transposed into Hungarian law, and thus the legal substance of the dispute remained the same both before and after accession - the change related only to the formal legal basis (Bobek, 2008).

This judgment, along with the doctrine in the *CILFIT* case (C-283/81, 1982), which established criteria allowing for exceptions from the obligation to make a reference for a preliminary ruling even in cases before courts of last instance - that is: a court of last instance is not obliged to refer a preliminary question when the answer to the question of EU law can in no way affect the outcome of the proceedings, regardless of what the answer would be; there is no obligation to refer when the question raised is "substantially identical" (*acte éclairé*) to a question on which a preliminary ruling has already been given or when the question is resolved through established case law, regardless of whether the cases are formally the same; a reference is not necessary when the correct application of EU law is so obvious as to leave no scope for any reasonable doubt (*acte clair*) - created a practice whereby supreme courts and constitutional courts use certain techniques of interpretation and application of EU law, all with the aim of avoiding engagement with the Court of Justice. Other actors who should be taken into account and who can stimulate a more active role for national judges, and even a proactive approach in using EU law, are the other subjects in the proceedings, particularly the claimants, who, most often in accordance with domestic procedural law, have the opportunity to submit a request for a preliminary reference to be made. Just as the logic of the judicial system itself provides for a different role for the subjects of the proceedings to ensure coherence in the administration of justice, the Union's judicial system all the more requires the cooperation of all actors in the process, not only national judges and the judges in Luxembourg, but also all other subjects.

[7] In relation to the Western Balkan countries, such mechanisms are the Stabilization and Association Agreements.

Membership in the Union inevitably contributes to the transformation of legal culture. The experience of Croatia indicates that the higher national courts in Croatia have accepted that the obligation for interpretation in conformity with EU law binds all national courts, regardless of their place in the judicial hierarchy; simultaneously, lower courts show a high level of compliance with this obligation and actively apply it in their adjudication; in contrast, the Constitutional Court still faces difficulties in formulating a clear and consistent position regarding the obligation for Europeanised interpretation, which reflects its ambivalent role in the system of applying EU law (Ivančan and Petrić, 2019). Thus, statistics reveal that for a period of 10 years of membership (from 2013 to 2023), Croatian judges referred 41 requests for a preliminary ruling to the Court, with lower instance courts showing a greater tendency to initiate this procedure, unlike the highest courts, bearing in mind that the Supreme Court has submitted only two, and the Constitutional Court only one preliminary question - and that only in 2023 (Petrašević & Mišević, 2023, p. 196).

Constitutional judges are a special category that should be the subject of a separate analysis for the application of EU law in a national context, given the limited research focus of this document. Considering the complex character of EU law that must be applied within a legal order founded on the primacy of EU law and direct effect, constitutional courts adopt different standpoints regarding the application of these legal principles versus the principle of constitutionality.Thus, the Polish Constitutional Tribunal indicated in 2004 that "in the interpretation of the applicable legislation, the constitutional principle of favourable disposition towards the process of European integration and cooperation between states should be taken into account" (Decision K 15/04 of 31 May 2004, according to Kühn, 2019, p. 574). The Constitutional Tribunal of Poland expressed a clear readiness for dialogue with the Court of Justice of the EU and affirmed the principle that EU law takes precedence over domestic legislation in cases of conflict, so long as it does not violate the constitutional identity of the state.In contrast, other constitutional courts from the CEEC (Central and Eastern European Countries) showed reservation and even resistance to the primacy of EU law. However, the perseverance of constitutional courts in their proclaimed standpoints regarding the application of EU law -as the example of Poland showed - depends on the overall situation regarding the rule of law, and particularly judicial independence as an element in the EU-level concept.

The comparative analysis also points to the provisions of the Constitution of the Republic of Croatia regarding the application of the Union *acquis*[8], which are not merely ordinary conflict-of-law rules but a constitutional declaration of the fundamental principles on which EU law is based (Rodin, 2011, p. 89). To overcome the "tension" between the principle of constitutionality and the principle of the primacy of Union law, the constitutional identity of the Union is defined as a concept that reflects the constitutional values common to all Member States (Ognjanoska Stavrovska, 2024). Croatian legal scholarship assessed this constitutional provision as declarative, not constitutive, in nature, as the essence of its content is crystallised through the dialogue between national courts and the Court of Justice of the EU, with the main function of this provision being the creation of constitutional prerequisites for the inclusion of Croatian judges and the Constitutional Court in the legal discourse of the Union (Sokanović, 2023, p. 296).

Regarding the preliminary ruling procedure, the Court of Justice of the EU has never yet rejected a request to initiate this procedure referred by a national constitutional court, which indicates an openness to dialogue despite the specific competence of constitutional courts to control the constitutionality of laws and not to resolve individual disputes. Given that constitutional courts are often the final instance, their exclusion from the possibility of referring preliminary questions would pose an obstacle to effective judicial dialogue and to the uniform interpretation of Union law. Furthermore, the competence of constitutional courts to rule on requests for constitutional protection of human rights and freedoms should also be taken into account, where the possibility of submitting a request for a preliminary ruling is most relevant.

[8] See Article 141-v (141.c) of the Constitution of the Republic of Croatia which stipulates an obligation for national courts to apply the law in a manner consistent with EU law, the exercise of rights arising from the acquis of the Union is equated with the exercise of rights guaranteed by the Croatian legal order, and all legal acts and decisions adopted by the Republic of Croatia in the institutions of the EU shall be applied in the Republic of Croatia in accordance with the acquis of the Union. The constitutional amendments entered into force on the day of accession to the EU. The cited provision is part of Chapter VII entitled “European Union” and regulates the legal basis of EU membership, the transfer of constitutional powers to its institutions, the participation of Croatian citizens and EU institutions, the relationship between national and EU law, as well as the rights of EU citizens.

Finally, it must be borne in mind that enlargement also creates challenges for the Court of Justice of the EU and its functioning. Thus, with the accession of an entire block of states in 2004/2007, the number of judges nearly doubled overnight. Furthermore, enlargement brought significant changes regarding the language of the decisions and their publication, imposing a need to achieve a balance between efficiency and multilingualism. Hence, the increasingly shorter (and less reasoned) judgments of the Court, as in the *Ynos* case, may be due precisely to such challenges. Nevertheless, institutional adjustment should be expected, and the process of European integration is two-layered - it contains both an internal and an external dimension (Ognjanoska Stavrovska, 2024), which creates an impetus for reforming the Union and for cooperation among all actors. The latest amendments to the preliminary ruling procedure, mentioned above, confirm the arguments in this direction.

Procedural Aspects

The procedure for national judges to refer a request for a preliminary ruling to the Court of Justice is regulated by national procedural law. Even in the absence of such an explicit provision in national law, the national judge derives such competence through the direct application of Article 267 TFEU. However, given the positivist nature of the legal orders of the newer Member States (and especially procedural law as such), the explicit regulation of this procedure in national law can facilitate the work of the judges. In this sense, Article 267 TFEU creates a framework, that is, it sets conditions for the application of positive national procedural rules. If these rules are contrary to the Article, the national judge must set them aside, thus, the application of the preliminary procedure still depends on national procedural rules. What does not depend on national law is the existence of the competence, i.e., the obligation of the courts to initiate the procedure. Petrašević (2011) comparably explored the procedural aspects of the preliminary ruling procedure in his doctoral dissertation, and the following overview is based on that research. For example, he finds that Hungary has very detailed implementing rules, but they suffer largely from insufficient coherence. The provisions for submitting a request for a preliminary ruling are embedded in the Code of Criminal Procedure (CCP) and the Code of Civil Procedure (CCP), and they regulate the very possibility of the referral, establish the content of the request, the suspension of proceedings due to the referral, as well as the question of the right to appeal against the decision to refer a request to the Court of Justice. Slovenia has the most

detailed and consistent implementing legislation - the preliminary procedure is regulated in Article 113a of the Courts Act, which fully incorporates Article 267 TFEU, as well as the form of the request, the question of the right to appeal, the suspension of proceedings, and also confirms the binding effect of the CJEU decisions on the national court. The procedural legislation of Slovakia, however, is minimalist; specifically, the main procedural laws - the Code of Criminal Procedure and the Code of Civil Procedure - provide only for the possibility of suspending proceedings if the judge decides to refer a request for a preliminary ruling, while the remaining issues are left to case law, i.e., regulated by general procedural rules.

The integration of the preliminary ruling procedure into Croatian procedural law was carried out by introducing it first into criminal procedure, and subsequently into civil procedure (Petrašević & Vuletić, 2024). The Republic of Croatia, during the preparations for EU membership, adopted certain implementing norms for the application of the preliminary ruling procedure. The Croatian legislator decided to regulate the preliminary procedure in the special procedural acts: the Code of Criminal Procedure (CCP) and the Code of Civil Procedure (CPC).

The CCP regulates the preliminary procedure in Article 18, which generally governs the handling of preliminary questions, and paragraph 3 provides for the possibility of referring a request for a preliminary ruling to the Court of Justice of the EU (Petrašević & Vuletić, 2024, p. 153). The CPC regulates the preliminary procedure in Article 213, which governs the suspension of proceedings, where paragraph 2 lists the referral of a request for a preliminary ruling to the Court of Justice of the EU as one of the reasons for suspending the proceedings (Petrašević & Vuletić, 2024, p. 153).

More detailed and coherent regulation of the procedural aspects of the preliminary ruling procedure can contribute to national judges being more prepared to utilise it. Experientially, some of the procedural issues that should be considered are the following: whether the submission of such a request is prejudiced by a specific active case (especially regarding constitutional judges), whether the judge is obliged to consult the parties to the proceedings when making the decision to submit a request, to whom exactly the competence to decide whether to submit a request for a preliminary procedure is assigned - whether it is the presiding judge of the

trial chamber or the trial chamber as a whole, whether the decision to refer a request for a preliminary ruling is subject to appeal separately from the substantive decision on the case and whether two separate decisions should be issued - one for referring a request for a preliminary procedure and another for suspending the proceedings until the CJEU's decision. Finally, the issue of the costs of the proceedings should also be regulated.

Conclusions

The twenty years of experience from the largest enlargement of the European Union offer significant insights into the systemic challenges faced by the new Member States in aligning with and applying EU law. The Court of Justice of the European Union played a crucial role in facilitating legal integration, but the analysis of its case law reveals several essential areas of difficulty that still have implications for future enlargements, especially for the Western Balkan countries. Accession to the EU means not only a transfer of norms but also a long-term process of institutional learning, i.e., a gradual transition from political to legal integration.

The experience of the newer Member States of the European Union in the application of EU law reveals systemic challenges that are not limited merely to technical compliance, but point to deeper structural and institutional barriers.

The most prominent challenge relates to limited judicial preparedness - both in terms of knowledge and methods of interpretation, and in terms of awareness of the role of judges as active participants in advancing the Union’s legal order. Many judges originate from legal traditions based on formalism and strict textualism, which hinders the acceptance of the teleological approach characteristic of EU law. In most new Member States, an insufficient understanding of the dynamic character of EU law is observed, as well as a reluctance among some judges and administrative bodies to engage in an active judicial dialogue through the preliminary ruling mechanism. In certain cases, "excessive enthusiasm" among judges is also noted - through over-expansive interpretation of EU law, which, in turn, can lead to inadequate application or a misunderstanding of the principle of legal certainty. In this sense, the role and contribution of judges in the lower instances of the judiciary are also highlighted.

Furthermore, there is an insufficient or inadequate involvement in the preliminary ruling procedure - a key mechanism for judicial dialogue. The reasons for this are complex: from professional capacity, through hierarchical structure, to the absence of clear procedural rules in national legal systems. Consequently, references to the CJEU are often made by a small number of judges or courts, indicating selective, rather than systemic, implementation of EU law. The solution to most of the challenges lies in strengthening the capacity of judges through appropriate education, rather than legislative interventions.

A third significant challenge is the limited use of the full spectrum of EU legal sources, including general principles, case law, and "soft law." This problem is compounded by a lack of methodological training and the absence of an interpretative culture that would recognise the role of these sources. Additionally, national procedural law is often not sufficiently adapted to the functional logic of Article 267 TFEU. Despite the fact that EU law enables any court to refer a request for a preliminary ruling, the positivist orientation of national systems creates judicial retreatism.

Finally, the realisation of judicial independence as a precondition for effective administration of justice in the EU context remains a challenge. Some of the new Member States show backsliding on the rule of law, which points to the need for further strengthening of EU mechanisms, as well as domestic reforms that will free the judiciary from political influences. Although the dialogue between national judges and the judges in Luxembourg is most evident in the preliminary ruling procedure, the activation of other procedures concerning the Member States largely depends on the quality of the general application of EU law.

The experiences of these states are crucial for the Western Balkan countries, which are yet to enter the phase of full application of the Union *acquis*. European integration for the region is not merely a geopolitical project, but also a process of establishing a stable, transparent, and predictable legal environment. Accordingly, strengthening judicial dialogue, training judges, and creating a culture of legal autonomy remain key preconditions for a successful rapprochement with the Union.

European integration does not entail only a formal alignment of legislation, but must be accompanied by a deep-seated judicial reform, investment in legal training, the long-term construction of a legal culture, and the

provision of functional autonomy for judges as "European judges" in the true and full sense of the word. Only then can a substantive and lasting transformation be ensured that will overcome the challenges that marked the first two decades of enlargement.

Recommendations

1. ***Methodological Education and Training for Judges to Establish an EU Law-Oriented Legal Culture***

- To develop specialised programmes for initial and continuous legal education focusing on EU law interpretation methods (teleological, systemic, and comparative approach), the use of EU law sources with an emphasis on using CJEU case law and general EU principles in domestic decisions through appropriate reasoning.
- To establish a network of "EU Law Judges" who will serve as support for colleagues within the national judicial system.

2. ***Improving Access to and Understanding of CJEU Case Law***

- To establish digital tools and translations of key CJEU judgments and legal analyses into national languages.
- To encourage the use of *curia.europa.eu* and databases with integrated explanations, commentaries, and linked cases.

3. ***Proactive Use of the Preliminary Ruling Procedure (Article 267 TFEU)***

- To amend national procedural rules to facilitate the procedure for referring questions to the CJEU.
- To strengthen initial and continuous training for judges on the use of the preliminary ruling procedure, including the reasoning of judgments after receiving a decision from the CJEU.

4. Institutional Strengthening of Judicial Dialogue

- To promote seminars and exchanges between national judges and legal professionals from the CJEU, through programmes of the European Network of Councils for the Judiciary (ENCJ) and the Academy of European Law (ERA), with training that will also encompass other subjects in judicial proceedings.
- To activate the role of professional associations of judges, prosecutors, lawyers, and legal professionals regarding issues related to EU law and its application.

5. Developing Systems for Monitoring and Analysing Application

- To establish mechanisms for regular monitoring of the number, type, and outcome of references to the CJEU from national courts.
- To prepare annual reports assessing the legal and institutional weaknesses and progress in the application of EU law, which would also serve as a criterion for evaluating the work of judges and a factor in their promotion.

Bibliography

Academy of European Law (ERA). 2023. *Conference Proceedings: Litigation before the Court of Justice of the European Union*. ERA Forum Special Edition. Trier: Academy of European Law.

Bárd, Petra. 2021. "In Courts We Trust, or Should We? Judicial Independence as the Precondition for the Effectiveness of EU Law." *European Law Journal* 27 (1-3): 185–210.

Bell, John. 1995. "English Law and French Law – Not So Different?" *Current Legal Problems* 69: 70.

Bobek, Michal. 2008. "Learning to Talk: Preliminary Rulings, the Courts of the New Member States, and the Court of Justice." *Common Market Law Review* 45 (2008): 1611–1643.

Bobek, Michal. 2014. "Talking Now? Preliminary Rulings in and from the New Member States." *Maastricht Journal of European and Comparative Law* 21, no. 4 (2014): 781.

Burley, Anne-Marie, and Walter Mattli. 1993. "Europe Before the Court: A Political Theory of Legal Integration." *International Organization* 47 (1): 41–76.

Capeta, Tamara. 2005. "Courts, Legal Culture and EU Enlargement". *Croatian Yearbook of European Law and Policy* 1 (March):23-53. https://www.cyelp.com/index.php/cyelp/article/view/2.

Craig, Paul, and Gráinne de Búrca. 2020. *EU Law: Text, Cases, and Materials.* Oxford: Oxford University Press.

Czapliński, Władysław. 2001. "Harmonisation of Laws in the European Community and Approximation of Polish Legislation to Community Law." *Polish Yearbook of International Law* 25: 45–54.

European Commission, Legal Service. 2025. *20 Years of Enlargement Case Law of the Court of Justice of the European Union: Conference Proceedings*. Luxembourg: Publications Office of the European Union.

European Parliament. 2018. *The Application of European Union Law by National Courts: The Role of the Court of Justice of the European Union.* IPOL BRI(2018)608841. Brussels: European Parliament.

https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608841/IPOL_BRI(2018)608841_EN.pdf.

Ivančan, Antonija, and Davor Petrić. 2019. "Are Croatian Courts Prepared for the Interpretive Obligation?" *Review of Central and East European Law* 44 (4): 493–526. https://doi.org/10.1163/15730352-04404003.

Jarvis, Malcolm A. 1998. *The Application of EC Law by National Courts: The Free Movement of Goods.* Oxford: Oxford University Press.

Kagan, Robert. 1978. *Regulatory Justice: Implementing a Wage-Price Freeze*. New York: Russell Sage Foundation.

Kühn, Zdeněk. 2005. "The Application of European Law in the New Member States: Several (Early) Predictions." *German Law Journal* 6, no. 3: 563-82. https://doi.org/10.1017/S207183220001381X.

Lenaerts, Koen, and José A. Gutiérrez-Fons. 2013. *To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice*. AEL 2013/9. European University Institute. https://cadmus.eui.eu/bitstream/handle/1814/28339/AEL_2013_09_DL.pdf.

Nowak, Tobias, and Monika Glavina. 2021. "National Courts as Regulatory Agencies and the Application of EU Law." *Journal of European Integration* 43 (6): 739-753. https://doi.org/10.1080/07036337.2020.1813734.

Petrašević, Tunjica, and Igor Vuletić. 2014. "Prethodni Postupak Pred Europskim Sudom Pravde i Njegova Implementacija u Hrvatsko Procesno Pravo." *Godišnjak Akademije Pravnih Znanosti Hrvatske* V, no. 1 (2014): 144–163.

Petrašević, Tunjica, and Sanja Mišević. 2023. "Dijalog Država Članica sa Sudom EU Kroz Prethodnopitanje S Posebnim Osvrtem na Prethodno Pitanje Ustavnog Suđa RH Upućeno Sudu EU." *Harmonius Journal of Legal and Social Studies in South East Europe* 12 (2023): 187–208.

Petrašević, Tunjica. 2011. *Prethodni postupak pred Europskim sudom s posebnim osvrtom na njegovu implementaciju u nacionalne pravne sustave država članica*. Doktorski rad, Pravni fakultet Sveučilišta u Zagrebu, Zagreb.

Petrić, Davor. 2023. "The Preliminary Ruling Procedure 2.0." *European Papers* 8 (1): 25–42.

Rodin, S. 2011. "Pravo Europske Unije i Pravni Poredak Republike Hrvatske Nakon 20 Godina Hrvatskog Ustava." In *Dvadeseta Obljetnica Ustava Republike Hrvatske*, edited by A. Bačić, 87–118. Zagreb: HAZU.

Sokanović, Lucija. 2023. "The Relationship of the Croatian Constitutional Court and Supreme Court to the Court of Justice of the European Union in National Case Law." *Central European Journal of Comparative Law* 4 (2): 295–316. https://doi.org/10.47078/2023.2.295-316.

Tamm, Dirk. 2012. "The History of the Court of Justice of the European Union Since Its Origin." In *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-Law / La Cour De Justice Et La Construction De L'Europe: Analyses Et Perspectives De Soixante Ans De Jurisprudence*, 9–35.

Van der Woude, Marc. 2021. "The Place of the General Court in the Institutional Framework of the Union." *EU Law Live Weekend Edition* No. 81 (November 27, 2021). Available at: https://eulawlive.com/weekend-edition/weekend-edition-no81/.

Георгиевски, Сашо, и Илина Ценевска. 2024. *Основи на правото на Европската Унија.* Скопје: Култура.

Георгиевски, Сашо. 2019. „Правната култура во македонското судство и владеењето на правото.“ *Предизвици – Списание за општествени прашања*, бр. 2, 6/2019: 52–58.

Огњаноска Ставровска, Лепосава. 2024. *Владеењето на правото како темелна вредност на Европската Унија и процесот на европска интеграција и во политиката на проширување со фокус на Западниот Балкан*. Докторска дисертација, Правен факултет „Јустинијан Први“, Универзитет „Св. Кирил и Методиј“, Скопје.

Case law:

Court of Justice of the European Union (CJEU). 1963. *Case 26/62 Van Gend en Loos v Nederlandse Administratie der Belastingen*. ECLI:EU:C:1963:1.

Court of Justice of the European Union (CJEU). 1964. *Case 6/64 Flaminio Costa v E.N.E.L.* ECLI:EU:C:1964:66.

Court of Justice of the European Union (CJEU). 1978. *Case 106/77 Amministrazione delle Finanze dello Stato v Simmenthal SpA*. ECLI:EU:C:1978:49.

Court of Justice of the European Union (CJEU). 1982. *Case 283/81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*. ECLI:EU:C:1982:335.

Court of Justice of the European Union (CJEU). 1984. *Case 14/83 Von Colson and Kamann v Land Nordrhein-Westfalen*. ECLI:EU:C:1984:153.

Court of Justice of the European Union (CJEU). 1990. *Case C-106/89 Marleasing SA v La Comercial Internacional de Alimentación SA*. ECLI:EU:C:1990:395.

Court of Justice of the European Union (CJEU). 2006. *Case C-302/04 Ynos Kft. v János Varga*. ECLI:EU:C:2006:9.

Court of Justice of the European Union (CJEU). 2021. *Case C-923/19 Van Ameyde España SA v Ginsurance NV*, Opinion of Advocate General Bobek, ECLI:EU:C:2021:69.