

## Court of Justice of the European Union and Ukrainian Legal Order: Some Pre-accession Considerations

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**Abstract:** As the European Union candidate country (hereinafter the EU), Ukraine is one step away from becoming an EU Member State. From this point on, the country will be subject to the influence of EU institutions, including the Court of Justice of the European Union (hereinafter the CJEU). It is suggested that upon the accession of Ukraine, the CJEU's impact will be comparable to the influence on legal orders of other EU Members States provided necessary preparatory steps, such as training for judges, are taken. It is established that the main functions of the CJEU are to interpret and ensure the uniform application of EU law in each EU Member State, to ensure compliance with EU law by EU countries and institutions, to ensure respect for the rights and freedoms of individuals, to provide clarifications to national courts, and to promote “positive integration” and “negative integration” of EU Member States. With respect to the above-mentioned functions, it is argued that the CJEU will become an effective tool for Ukraine after it accedes to the EU. It will facilitate the harmonization of national legislation with EU standards through the application of precedents by national courts, influence the activities of legislative bodies, and help prevent future complaints by becoming

an additional “quasi-supervisory” body in Ukraine. It will also provide interpretation of the EU law at the request of national courts through the preliminary rulings and procedures, protecting human rights and freedoms by enabling individuals to apply to the CJEU for protection. At the same time, arguably, Ukraine will also impact the functioning of the CJEU by increasing the caseload and appointing judges from Ukraine as well as potentially Advocate-General. Given these potential implications, certain preparatory actions, like preparing a cadre reserve, may be considered at the present moment. Finally, the authors argue that even before Ukraine’s accession, the CJEU has an indirect impact on the Ukrainian legal order. It is suggested that constitutional amendments, as well as certain institutional changes like the establishment of an impartial judicial system and empowering a Ukrainian state body with powers to execute CJEU decisions, will need to take place prior to the accession, which is a demonstration of the CJEU’s indirect influence.

## 1. Introduction

Since gaining independence in 1991, Ukraine has been fighting for its status as a European country. On September 1, 2017, a major milestone was reached – the EU-Ukraine Association Agreement entered into force, confirming the country’s European course. Since June 23, 2022, Ukraine has been granted the status of an EU candidate country. Thus, Ukraine should pass the last milestone to obtain the deserved status of an EU Member State. In such circumstances, it is important to examine the role of EU legal institutions and their impact on the legislation, relations, and development of EU Member States. Given the leading role of such an EU institution as the CJEU, the jurisprudence of which is already mentioned in the EU-Ukraine Association Agreement and will only increase over time, this paper focuses on the role of the CJEU in Ukraine’s legal order in the case of Ukraine’s accession. This paper suggests that even before Ukraine’s accession, the CJEU as an institution already impacts the Ukrainian legal order, and such impact will culminate in the influence it has towards other EU Members States. At the same time, arguably, Ukraine will also impact the functioning of the CJEU.

Although Ukrainian and foreign scholars, such as O. Shpakovych, V. Muravyov, T. Komarova, I. Kaminska, I. Yakoviuk, L. Hrytsaienko, R. Manko, C. Riehle, J. Honan, B. Lasserre, J. Krommendijk, and others paid sufficient attention to the functions of the CJEU, its impact on the law of the Member States and the creation of European law, and its place in the system of judicial institutions, the issue of the impact of the CJEU on the Ukrainian legal order in the case of Ukraine's accession has not been studied in much detail yet.

It is suggested that upon the accession of Ukraine, the CJEU's impact will be comparable to the influence on legal orders of other EU Member States, provided necessary preparatory steps by Ukraine are made during the accession stage. To substantiate this hypothesis, the authors analyse the history of the CJEU's establishment, its key functions, its jurisprudence and the ways through which the CJEU will influence the Ukrainian legal order once Ukraine becomes a Member State. This issue is covered in the first chapter.

In the second chapter, the authors suggest that Ukraine will impact the structure, composition and functioning of the CJEU by increasing the caseload and appointing judges from Ukraine, as well as potentially Advocate-General. The authors analyse the rules and procedures of CJEU judges and Advocate-General selection and appointment, as well as the statistical data as to the caseload.

In the third chapter, it is argued that the CJEU already has an indirect impact on the Ukrainian legal order by "necessitating" certain legal reforms to be made. To substantiate this hypothesis, the authors analyse potential legal reforms which are necessary to be completed by Ukraine prior to the accession to the EU.

This article consists of three chapters: the first one analyses the impact of the CJEU on the Ukrainian legal order by reviewing the history of the CJEU and its present role in the EU from the standpoint of the future EU Member State and elucidates four directions of such impact: facilitation of the law harmonization, preliminary rulings as an instrument of cooperation with national judicial institutions, protection and monitoring of human rights compliance, as well as addressing modern challenges. The second chapter will mirror the central idea that Ukraine as a future Member State will also influence the CJEU as an EU institution by delegating new

judges, potentially a new Advocate-General, as well as increasing the case-load. In the third chapter, it is suggested that Ukraine will have to establish an efficient system of the CJEU decision enforcement, which may arguably include amending the Constitution of Ukraine and existing laws and defining the responsible authority, which demonstrates an indirect impact of the CJEU.

## 2. Impact of the CJEU on the Ukrainian Legal Order

### 2.1. History and the Role of the CJEU in the EU

To comprehend the very nature of the CJEU and its impact on the legal order of EU Member States, a brief historical overview should be conducted. The establishment of the CJEU dates back to the conclusion of the 1952 Treaty on the European Coal and Steel Community in its status as the Court of Justice of the European Coal and Steel Community.<sup>1</sup> However, after the conclusion of the Lisbon Treaty, it changed to the current status of the “Court of Justice of the European Union”. According to Article 19 of the Treaty on European Union (hereinafter the TEU),<sup>2</sup> the CJEU consists of the Court of Justice, the General Court and specialized courts. The Court of Justice’s *ratione materiae* applies to requests for preliminary rulings from national courts, appeals, and actions for annulment, etc.<sup>3</sup> The jurisdiction of the General Court extends to actions by the Member States, natural or legal persons against the institutions of the EU, disputes regarding consideration of compensation for damage caused by the EU or disputes between the EU institutions and their staff concerning employment relations, etc.<sup>4</sup>

We share the opinion of authors pointing out that given such a wide range of powers, the CJEU performs the functions of a constitutional (e.g. reviews the legality of acts of the EU institutions under Articles 263 and 265 of the Treaty on the Functioning of the European Union (hereinafter

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<sup>1</sup> Cornelia Riehle, “70th Anniversary of EU Court of Justice,” EUCRIM, December 15, 2022, accessed June 10, 2023, <https://eucrim.eu/news/70th-anniversary-of-eu-court-of-justice/>.

<sup>2</sup> Consolidated Version of the Treaty on European Union [2012] OJ C 326/27.

<sup>3</sup> Klaus-Dieter Borchardt, *The ABC of Community Law* (Office for Official Publications of the European Communities, 2017), 80.

<sup>4</sup> *Ibid.*, 82–3.

the TFEU)<sup>5</sup>, civil (e.g. gives opinions on arbitration clauses contained in a contract concluded by or on behalf of the EU pursuant to Article 272 TFEU), administrative (e.g. solves the disputes between the EU and its officials under Article 270 TFEU) and international court (e.g. settles the disputes between Member States according to Article 273 TFEU).<sup>6</sup> Although, an important note should be made. We consider the role of the CJEU quasi-constitutional in order not to confuse with the national constitutional courts, which in many cases face an important question on the compatibility of the EU law with national constitutions. These are definitely difficult questions, as they touch upon the issue of national sovereignty, and a very delicate balance must be reached between compliance with the EU law and compliance with national constitutions. This is an issue for a separate research, although this paper will slightly touch upon it.

Thus, given the nature of the CJEU's jurisdiction, it has a multifaceted impact on the legal order of Member States, in particular by promoting "positive integration" by strengthening EU power through the creation and strengthening of EU institutions, including the CJEU,<sup>7</sup> and "negative integration" by removing barriers between EU Member States through the joint opening of borders and abolition of tariffs.<sup>8</sup>

Considering the multifunctional nature of the CJEU and its contribution to the positive and negative integration of Member States into the EU, the following arguments will emphasize the importance of the CJEU as an instrument of Ukraine's post-integration into the EU in four areas. Notably, by analysing CJEU jurisprudence, it can be concluded that the CJEU will influence the Ukrainian legal order to the same extent it affects legal orders of other EU Member States, particularly by facilitating harmonization

<sup>5</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47.

<sup>6</sup> Oleh Solonenko ta inshi, "Tema 5. Status Yevropeiskoi Rady ta inshykh orhaniv YeS [Topic 5. The Status of the European Council and Other EU Bodies]," *Multymediynyi navchalnyi posibnyk "Pravo Yevropeiskoho Soiuzu"* [Multimedia Training Manual "Law of the European Union"], accessed October 15, 2023, <https://arm.naiu.kiev.ua/books/eulaw/info/lec5.html>.

<sup>7</sup> Jessica Honan, "The European Court of Justice as a Tool of European Integration," *ANU Undergraduate Research Journal* 12, no. 1 (2023): 53, accessed October 15, 2023, <https://studentjournals.anu.edu.au/index.php/aurj/article/view/730>.

<sup>8</sup> Ibid.

with the EU law, encouraging national courts to cooperate via the instrument of preliminary rulings, and ensuring better human rights compliance and serving as an additional forum for addressing modern challenges, including ones related to Ukraine.

## 2.2. CJEU Decisions as an Instrument of Harmonization of National Laws with the EU Law

One of the key tasks of the CJEU is to interpret the provisions of EU legislation, which in many cases leads to developing the rules of law. First and foremost, the CJEU established the concept of autonomy of the EU's legal order, independent from international and national legal systems, confirming its *sui generis* nature.<sup>9</sup> In the case *Flaminio Costa v. E.N.E.L.*, the Court explicitly emphasized that the Treaty establishing the European Economic Community (hereinafter the EEC Treaty) formed its own legal system of the EU.<sup>10</sup>

Moreover, in the aforementioned case, as well as in further practice, in particular, in *Amministrazione delle Finanze dello Stato v. Simmenthal SpA*, the CJEU substantiated the principle of the precedence of EU law, or the supremacy of EU law, over the national legislation of the Member States.<sup>11</sup> According to the principle, the domestic contradictory provisions are not only inapplicable but eliminate the possibility of the national authorities adopting new legislative measures incompatible with the EU provisions.<sup>12</sup> By this practice, the CJEU did not acknowledge that the provisions of national legislation that contradict the autonomous legal system of the EU are annulled but confirms that these provisions are not subject to application in practice.<sup>13</sup> Therefore, the principle of harmonization plays a crucial role in

<sup>9</sup> Tetiana Komarova, "Sud Yevropeiskoho Soiuzu ta mizhnarodnyi pravoporiadok [The Court of Justice of the European Union and the international legal order]," (2012) (Vyp. 108, (ch. 1)) *Aktualni problemy mizhnarodnykh vidnosyn*, 219, p. 223.

<sup>10</sup> CJEU Judgment of 15 July 1964, *Flaminio Costa v. E.N.E.L.*, Case 6/64, ECLI:EU:C:1964:66; Rafał Mańko, *The EU as a Community of Law: Overview of the Role of Law in the Union* (Briefing, European Parliamentary Research service, 2017), 1.

<sup>11</sup> CJEU Judgment of 9 March 1978, *Amministrazione delle finanze dello Stato v. Simmenthal*, Case 106/77, ECLI:EU:C:1978:49, para. 17.

<sup>12</sup> Mańko, *The EU as a Community of Law*, 4.

<sup>13</sup> Tetiana Komarova, "Vplyv Sudu YeS na konstytutsionalizatsiiu prava Yevropeiskoho soiuzu [The influence of the Court of Justice of the European Union on the constitutionalisation of

the EU's activities, which aims to bring the legislation of all Member States as close as possible to the European legally binding standards.<sup>14</sup>

One of the harmonization tools used by the EU is directives,<sup>15</sup> which set the minimum and maximum standards to force Member States to meet a directive's threshold using their own tools.<sup>16</sup> In its judgments, the CJEU also establishes the degree of compliance of a Member State's legislation with EU acts. In the case *Commission of the European Communities v. French Republic*,<sup>17</sup> the Court found that France had breached its obligations under Directive 85/374, in particular by prescribing in its Civil Code liability for less than EUR 500 in damages, which is contrary to the Directive.<sup>18</sup> Moreover, the CJEU emphasized that the limits of the Member State's margin of appreciation in establishing legislative provisions are determined in the directive itself and should be derived from its purpose and structure, which will ensure harmonization of producers' liability for damage and avoid inequality in the levels of consumer protection in different Member States.<sup>19</sup> These principles established by the CJEU will contribute to positive and negative European integration by preventing the Member State from interpreting legislation contrary to the EU's position and encouraging it to bring its position closer to the EU's.<sup>20</sup>

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European Union law”], *Yevropeiske pravo*, no. 1 (2012): 199.

<sup>14</sup> Alexander Türk, “Harmonisation | Legal Guidance | LexisNexis,” LexisNexis | Legal and Professional Solutions and Products, July 28, 2020, accessed June 9, 2023, <https://www.lexisnexis.co.uk/legal/guidance/harmonisation-01>; Vitalii Humeniuk, “Harmonizatsiia ta unifikatsiia zakonodavstva Ukrainy vidpovidno do standartiv Yevropeiskoho Soiuzu [Harmonisation and unification of Ukrainian legislation in line with EU standards],” *Pravove zhyttia suchasnoi Ukrainy: u 3 t.* (Helvetyka 2020), 74.

<sup>15</sup> Article 288 TFEU.

<sup>16</sup> Publications Office of the European Union, “Summarised document: 12016E288 (European Union directives),” EUR-Lex – Access to European Union Law, accessed June 10, 2023, <https://eur-lex.europa.eu/EN/legal-content/summary/european-union-directives.html>; Maňko, *The EU as a Community of Law*, 3–4.

<sup>17</sup> CJEU Judgment of 25 April 2002, *Commission of the European Communities v. French Republic*, Case C-52/00, ECLI:EU:C:2002:252.

<sup>18</sup> *Ibid.*, paras. 26, 49.

<sup>19</sup> *Ibid.*, paras. 16–20.

<sup>20</sup> Bruno Lasserre, “National Courts and the Construction of Europe: United in Diversity,” *RED 2*, no. 3 (2021): 53, accessed June 25, 2023, [https://www.cairn-int.info/article.php?ID\\_ARTICLE=E\\_RED\\_003\\_0056](https://www.cairn-int.info/article.php?ID_ARTICLE=E_RED_003_0056).

In this regard, since the signing of the Association Agreement with the EU in 2014, Ukraine has committed itself to gradually aligning its existing laws and future legislation with the EU *acquis*<sup>21</sup>, and the CJEU will have a leading role in such harmonization by influencing judicial, law-making and executive branches of powers. Given that the CJEU judgments are fundamental for subsequent cases at the European level, such decisions should be applied by Ukrainian courts at all levels. Furthermore, judges should be familiar with the cases, actively follow new judgments, and apply them on their merits, taking into account the actual circumstances of the particular case. As already mentioned, there will be an impact on law-making and executive branches of power. Ukrainian legislators and Ukrainians are actively bringing the State legislation in line with the European standards. However, this also means that legislators should actively monitor the evolutionary decisions of the CJEU, which are developing the Court's case law, and take into account the recent interpretations or prohibitions provided by the CJEU.

Ukrainian authorities, taking into account previous case law and opinions granted by the CJEU, can take a proactive approach to prevent future applications or to correct potential gaps in the legislation. Thus, they effectively will be “predicting” future decisions.

Finally, it is crucial to define the overall status of the CJEU in the Ukrainian legal system. It is suggested that due to its overreaching powers and competencies, the CJEU will play the role of a “quasi-supervisory” body, which is unpredictable and unfamiliar for Ukraine, given that no international institution has ever exercised such supervision and control by issuing decisions binding to courts, executive as well as legislative bodies. It needs to be pointed out that, indeed, the impact of the European Court of Human Rights on Ukrainian legal order is considerable, and its decisions are the source of law in Ukraine under the special law. However, it is suggested that due to the preliminary rulings instrument and a wider range of issues on which the CJEU can decide, the impact of the CJEU will be even more significant and much more profound.

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<sup>21</sup> Preamble of Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, May 29, 2014, OJ L 161.



Such a multifunctional impact of the CJEU in the context of promoting harmonization will also develop Ukraine's European integration and keep the State *pari passu* to the other EU Member States.

### 2.3. Preliminary Rulings as an Instrument of Cooperation with National Judicial Institutions

This subchapter suggests that preliminary rulings can serve as an efficient instrument of cooperation between the CJEU and national judicial institutions, provided such national courts are ready to use this instrument appropriately, as such courts cooperate with national courts of other EU Member States in order to gain experience.

In its practice, the CJEU, in particular the Court of Justice, will have jurisdiction to give preliminary rulings on treaty interpretation.<sup>22</sup> According to the CJEU Annual Report for 2022, during this year, 546 cases out of the 806 brought before the Court of Justice concerned the requests for preliminary rulings.<sup>23</sup> Therefore, statistics show that there are no hierarchical relations between the Court of Justice and national courts but rather collaborative relations to render a fair judgment.<sup>24</sup> However, it is essential to take into account that the CJEU is not a court of appeal: it does not interfere with the jurisdiction of national courts of the Member States and does not assess the circumstances of the case but only aims to “reply on request” in accordance with the EU standards. National courts may request a preliminary ruling regarding the interpretation or validity of EU law in a particular case.

To exercise the right to preliminary rulings under Article 267 TFEU, the procedure and the requirements concerning the subject of the request, the object of the request, timeline, form and contents, as well as procedural requirements, will be met. It is suggested that the object of the request would probably be the most problematic area for national Ukrainian

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<sup>22</sup> Jasper Krommendijk, *National Courts and Preliminary References to the Court of Justice* (Edward Elgar Publishing, 2021), 9, accessed June 25, 2023, <https://www.elgaronline.com/monobook-oa/9781800374164.xml>.

<sup>23</sup> The Court of Justice of the European Union, “Annual Report 2022: The Year in Review,” 27, accessed October 15, 2023, <https://curia.europa.eu/panorama/2022/en/>.

<sup>24</sup> José Luís Da Cruz Vilaça, “Preliminary ruling (Article 267 TFEU),” *Concurrences*, accessed July 9, 2023, [www.concurrences.com/en/dictionary/preliminary-rulings-art-267-tfue#auteur](http://www.concurrences.com/en/dictionary/preliminary-rulings-art-267-tfue#auteur).

courts, as it would require knowledge of the constantly changing body of the EU law.

Subject of the request. Only a court or tribunal of a Member State may refer a matter to the CJEU for a preliminary ruling. To determine whether the referring authority is a court or tribunal, the CJEU takes into account several factors, such as whether (1) the authority is established by law, (2) it is permanent, (3) its jurisdiction is compulsory, (4) its procedure is *inter partes*, (5) it applies rules of law, (6) it is independent, etc.<sup>25</sup> Provided Ukraine completes the reforms briefly described in the second chapter, this requirement is likely to be satisfied. Object of the request. The request for a preliminary ruling must concern the interpretation or validity of EU law and not the national law or questions of fact raised in the main proceedings.<sup>26</sup> Taking into account the already complex and constantly changing body of the EU law, it would be an arduous task for Ukrainian judges to define the object of the request, which necessitates pre-accession training for judges. Timeline of the request. A national court or tribunal may submit a request for a preliminary ruling to the CJEU at any stage of the proceedings once it has established that it needs to interpret or apply EU law to render a judgment.<sup>27</sup> Moreover, according to the ILO Report on the Preliminary Rulings Procedures 2017 (hereinafter the 2017 Report), requests for preliminary rulings in the field of labor law could be referred to the CJEU not only by the Supreme Court but also by first-instance and second-instance courts (e.g. Belgium, Hungary, Norway, Slovenia, Spain).<sup>28</sup> This can form an additional challenge for Ukrainian courts since each and every general court will need to have an understanding of the EU law. Form and content of the request. Since the preliminary ruling will be of importance to all EU Member States, such a request should be translated into all official languages of the European Union and contain a clear, concise and detailed

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<sup>25</sup> Recommendations Court of Justice of the European Union 2019/C 380/01 of 8 November 2019 regarding the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, OJ C 380/1, para. 4.

<sup>26</sup> *Ibid.*, para. 8.

<sup>27</sup> *Ibid.*, paras. 12–3.

<sup>28</sup> Gerhard Kuras, “Preliminary Ruling Procedures,” International Labour Organisation, accessed October 15, 2023, [www.ilo.org/global/about-the-ilo/how-the-ilo-works/organigramme/governance/labour-law/judges/WCMS\\_719393/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/organigramme/governance/labour-law/judges/WCMS_719393/lang-en/index.htm).

description of the necessary factual circumstances of the case, national provisions, the context of the request for a preliminary ruling, the grounds for applying to the CJEU, the relationship between the challenged provisions of EU law and national law.<sup>29</sup> Submission of the application to the Court. The application for a preliminary ruling must be dated and signed and then sent to the Registry of the CJEU electronically, by post or the e-Curia application.<sup>30</sup> Results. The Registry will liaise with the national court or tribunal and send copies of all procedural documents, requests for information, etc. After the judgment is rendered or the order to close the proceedings is signed, the Registry will also send the necessary information, decisions, etc., to the court or tribunal.<sup>31</sup> All the listed requirements suggest that national courts will be gaining this experience over time and will be slowly developing the expertise in situations when it is necessary and critical to refer cases to the CJEU.

However, despite a preliminary ruling of the CJEU in a particular case is legally binding only for the national court that requested it, as it was established in the case *SpA International Chemical Corporation v. Amministrazione delle finanze dello Stato*, in the event of the invalidity of an EU act within the meaning of Article 267 TFEU (ex Article 177 of the EEC Treaty), national courts which faced such an illegitimate act have the opportunity to directly refer to the decision of the Court on invalidity.<sup>32</sup>

Given these standards, Ukraine, as a Member State, will also be able to cooperate with the CJEU by requesting a preliminary ruling under Article 267 TFEU. However, the national courts, including the Ukrainian ones, should be aware of the procedure for filing a request with the CJEU to ensure its quick and successful application in practice. The aforementioned 2017 Report raised the question of whether every judge should be trained on the procedure for referring a case to the CJEU for a preliminary ruling,

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<sup>29</sup> Recommendations Court of Justice of the European Union 2019/C 380/01 of 8 November 2019 regarding the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, OJ C 380/1, paras. 14–6.

<sup>30</sup> *Ibid.*, para. 23.

<sup>31</sup> *Ibid.*, paras. 30, 32.

<sup>32</sup> CJEU Judgment of 13 May 1981, *SpA International Chemical Corporation v. Amministrazione delle finanze dello Stato*, Case R-66/80, ECLI:EU:C:1981:102, paras. 13–4.

particularly in the field of labor law.<sup>33</sup> Accordingly, the national courts of such EU Member States as Germany, Ireland, Sweden, Spain and Slovenia do not impose any obligation for such training. In contrast, since the level of awareness of Ukrainian courts of the cooperation procedure with the CJEU could be a vulnerable factor, the experience of Finland (training on this issue could be included in courses organized for judges by the Ministry of Justice), Norway (general induction courses for newly appointed judges in the general courts in a country, which is not the EU Member State), Italy (the Judicial Training Centre regularly organizes seminars, and participation is strongly encouraged), and Hungary (the National Office for the Judiciary organizes numerous training courses on EU law and preliminary procedures, enables Hungarian judges to apply for European training programmes, encourages the use of a network of judicial advisers on European law who conduct training courses, provide advice and fill the Hungarian judiciary's websites with materials on the European Union obtained through a competition),<sup>34</sup> will be valuable for Ukraine.

From our perspective, given the need for effective assistance to Ukrainian courts in the proper application of EU law, it is suggested starting from today to provide comprehensive courses on EU case law for judges, maybe at some point even mandatory, including the procedure for applying for preliminary rulings. Moreover, the State should encourage further study of this area by judges voluntarily and appoint responsible authorities to monitor compliance with the requirements. It is also vital to create an internal standard for citing and referring to the case law of the CJEU as well as apply it analytically in accordance with the specific circumstances of avoiding "boilerplate" citations, as it happened with the European Court of Human Rights practice.<sup>35</sup> This can be a task for the Ministry of Justice of Ukraine or for the Government Office for Coordination on European and Euro-Atlantic Integration. Thus, upon Ukraine's accession, Ukrainian courts, by virtue

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<sup>33</sup> Kuras, "Preliminary Ruling Procedures."

<sup>34</sup> Ibid.

<sup>35</sup> Yaroslav Bielykh ta inshi, *Zvit za rezultatamy hromadskoho monitorynhu zastosuvannia Verkhovnym Sudom praktyky Yevropeiskoho sudu z prav liudyny* [Report on the results of public monitoring of the Supreme Court's application of the European Court of Human Rights case law] (USAID, Prohrama USAID «Nove pravosuddia», HO «Instytut prykladnykh humanitarnykh doslidzhen», 2019).

of a kind of “jurisdictional subsidiarity,”<sup>36</sup> will be able to issue judgments regarding the case law of the CJEU relevant to specific disputes, contributing to the consistent development of the legal system.

In light of this, it is necessary to remember that applying for a preliminary ruling can be a key tool for Ukrainian courts to cooperate with the CJEU, which will prevent misinterpretation of EU law by Ukrainian courts and reduce the risk of further litigation and appeals, and therefore, the level of usage of this “preventive approach” must be impeccable.

At the same time, it is indicated that cooperation between the national courts of Ukraine and the national courts of other EU Member States with respect to the peculiarities of the preliminary ruling application can be a very fruitful exercise as well. Courts of EU Member States may share their experience, which may lead to better structuring of this process in Ukraine and avoiding situations where the preliminary ruling can be used as a tool for prolonging court proceedings, i.e. abusing the right to the preliminary ruling. It would also be an interesting exercise since approaches of national courts in the EU Member States may vary. An important note is that such cooperation may be launched even before the accession since it will help Ukrainian judges to better understand the EU legal system.

#### 2.4. Protection and Monitoring of Human Rights Compliance

One of the foundations of the EU institutions, including the CJEU, is the fulfilment of the objectives set out in Article 2 TEU, such as “respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights”. Moreover, under Article 6 TEU, the EU Member States are obliged to protect and respect the principles as well as recognized rights and freedoms enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union. Indeed, the CJEU in *J. Nold, Kohlen- und Baustoffgroßhandlung v. Commission of the European Communities* highly emphasized the value of fundamental rights protection, which

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<sup>36</sup> Lasserre, “National Courts and the Construction of Europe,” 52; see also: Julie Dupont-Lassalle, “La «subsidiarité juridictionnelle», instrument de l’intégration communautaire?,” *Droit et Société* 80, no. 1 (2012): 47, accessed June 25, 2023, <https://www.cairn.info/revue-droit-et-societe1-2012-1-page-47.htm?ref=doi>.

should be considered as “an integral part of the general principles of law” which should be followed by the Member States.<sup>37</sup>

In this area, the CJEU also reviews whether EU standards and State measures constitute a proportionate interference with human rights. For example, in accordance with Article 8(3)(e) of Directive 2013/33,<sup>38</sup> which sets out the standards for the reception of persons seeking international protection, an applicant may be detained when the protection of national security or public order requires it. Moreover, in *J. N. v. Staatssecretaris van Veiligheid en Justitie*, the CJEU concluded that the EU, in adopting the above provision, had achieved a fair balance between the individual’s right to liberty and the requirements for the protection of national security and public order.<sup>39</sup> However, such intervention will be proportionate only if the competent national authorities verify the level of threat posed by specific individuals.<sup>40</sup>

Additionally, the case of *Andrea Francovich and Danila Bonifaci and others v. Italian Republic* is also worth mentioning as the CJEU emphasized the State’s liability for loss and damage caused to individuals as a result of the State’s violation of the EU law.<sup>41</sup>

In this context, it is worth mentioning that even though international law is not characterized by the principle of a direct effect of legal norms,<sup>42</sup> in its practice, the CJEU did develop the possibility for individuals and legal entities to directly refer to the provisions of EU acts before national courts, even without the provisions’ implementation in national legislation.<sup>43</sup>

<sup>37</sup> CJEU Judgment of 14 May 1974, *J. Nold, Kohlen- und Baustoffgroßhandlung v. Commission of the European Communities*, Case 4–73, ECLI:EU:C:1974:51, para. 13.

<sup>38</sup> European Parliament and Council Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180/96, accessed June 10, 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>.

<sup>39</sup> CJEU Judgment of 15 February 2016, *J. N. v. Staatssecretaris voor Veiligheid en Justitie*, Case C-601/15, ECLI:EU:C:2016:84, para. 67.

<sup>40</sup> *Ibid.*, para. 69.

<sup>41</sup> CJEU Judgment of 19 November 1991, *Andrea Francovich and Danila Bonifaci and others v. Italian Republic*, Case C-6/90 and C-9/90, ECLI:EU:C:1991:428, paras. 36–7.

<sup>42</sup> Tetiana Komarova, “Vplyv Sudu YeS na konstytutsionalizatsiiu prava Yevropeiskoho soiuzu,” 199.

<sup>43</sup> CJEU Judgment of 5 February 1963, *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration*, Case 26–62, ECLI:EU:C:1963:1;

The CJEU established this principle in the case of *Van Gend en Loos v. Nederlandse Administratie der Belastingen*. In this case, the transport company had to pay customs duties established by national legislation when importing goods; however, the CJEU, applying the principle of direct effect of legal norms, found that such payment of duties was illegal under Article 12 of the EEC Treaty and guaranteed the transport company protection under European law.

In view of this, even if the legislation of Ukraine as a future EU Member State contains incompatible provisions that differ from the requirements of the EU legal framework, individuals and legal entities may apply to national courts to restore the guarantees they have been given based on the doctrine of direct effect of norms introduced by the CJEU. Moreover, because of this practice, Ukraine will be obliged to strictly comply with the provisions of the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, as the CJEU has opened up the possibility of individuals to sue the State itself for damages for non-compliance with the guarantees set out in the EU norms. However, it is worth noting that this approach requires a significant time resource, and thus, during the negotiations, Ukraine should emphasize the necessity for long transition periods for obligations that it may not be able to fulfil objectively, in particular due to the consequences of the war.

## 2.5. CJEU Decisions as an Effective Response to Challenges

In addition to the development of classical industries, the CJEU does not ignore the current challenges. In 2022, the Court received 1710 cases covering sensitive areas requiring special attention.<sup>44</sup> These include cases related to the healthcare crisis or the war in Ukraine. Indeed, recently, the CJEU delivered a judgment in the case of *Robert Roos and Others v. Parliament*,<sup>45</sup> which concerns the legality of restrictions imposed by the EU institutions

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Donna Starr-Deelen and Bart Deelen, "The European Court of Justice as a Federator," *Publius: The Journal of Federalism* 26, no. 4 (1996): 84, accessed June 25, 2023, <https://academic.oup.com/publius/article-abstract/26/4/81/1884830?redirectedFrom=fulltext>.

<sup>44</sup> The Court of Justice of the European Union, "Annual Report 2022: The Year in Review," 5.

<sup>45</sup> CJEU Judgment of 27 April 2022, *Robert Roos and Others v. Parliament*, Case T-710/21 and T-722/21, ECLI:EU:T:2022:262.

to protect the health of their employees due to Covid-19, which the Court found necessary, sufficient and proportionate.

Moreover, the CJEU did not avoid the tragedy of the military aggression launched against Ukraine by the Russian Federation on February 24, 2022. In *RT France v. Council*<sup>46</sup> of 27 July 2022, it was established that the EU reacted to the invasion, inter alia, by imposing sanctions on the Russian Federation, including the prohibition of media outlets (e.g. RT France) promoting Russian propaganda. The General Court established that since RT France was funded from the Russian state budget, the lawful and proportionate restriction of the channel's activities is aimed at protecting public order and security in the EU, which are threatened by the systematic propaganda campaign launched by Russia, as well as at protecting the values, interests and security of the EU, consolidating and supporting democracy, peace, etc.<sup>47</sup>

Therefore, this approach of the CJEU, even before Ukraine accedes to the EU, will form a safe “pillow” for the future practice of the Member States, aimed to protect them from unlawful interference. For Ukraine, after its accession, it will be a powerful tool that will speed up the recovery and post-war legal reconstruction.

### 3. Ukraine's Effect on the CJEU

Last but not least, it is necessary to emphasize that Ukraine's accession to the EU will revive the concept of a “wider Europe” and the idea of a European political community to address issues of common interest on which the European Council held a strategic discussion in 2022.<sup>48</sup> However,

<sup>46</sup> CJEU Judgment of 27 July 2022, *RT France v. Council of the European Union*, Case T-125/22, ECLI:EU:T:2022:483.

<sup>47</sup> *Ibid.*, paras. 49, 59, 239.

<sup>48</sup> European Council, “Conclusions on Wider Europe, Ukraine, the Membership Applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans, Economic Issues, the Conference on the Future of Europe and External Relations,” EUCO 24/22, 2022, accessed October 15, 2023, <https://www.consilium.europa.eu/media/57442/2022-06-2324-euco-conclusions-en.pdf>; Barbara Lippert, “The EU and the Second Large-Scale Eastern Enlargement – Déjà Vu and Innovations,” in *Ukraine's Possible EU Accession and Its Consequences*, ed. Nicolai von Ondarza (German Institute for International and Security Affairs (SWP), 2022), accessed October 15, 2023, <https://www.swp-berlin.org/en/publication/ukraines-possible-eu-accession-and-its-consequences#table-of-contents>.



it will put an additional burden on the EU structure and institutions. Indeed, Ukraine, after it accedes to the EU, will have a significant impact on the CJEU from a variety of perspectives.

### 3.1. Number of Judges

As stated in Article 19(2) TEU, the Court of Justice consists of one judge from each Member State,<sup>49</sup> forming a total of 27 judges. In Article 48(c) of the Statute of the Court of Justice of the EU, it is established that the General Court consists of two judges from each Member State.<sup>50</sup> However, Member States may not manage to appoint judges immediately: for example, after the expiry of the term of Marko Ilesič, the General Court judge from Slovenia, the State was unable to elect new representatives for several years.<sup>51</sup> Therefore, Ukraine, as an EU Member State, after consultation with the body responsible for giving an opinion on the suitability of potential candidates to perform the relevant functions,<sup>52</sup> will be able to appoint one judge to the Court of Justice and two judges to the General Court. This issue may be addressed and mediated starting today by preparing a reserve of cadres ready to fulfil necessary positions.

### 3.2. Advocate-General

According to Article 252 TFEU, the role of the Advocate-General, who is acting with complete impartiality and independence, is to make reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the EU, require the Advocate-General's involvement.<sup>53</sup> There-

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<sup>49</sup> Consolidated Version of the Treaty on European Union [2012], OJ C 326/27.

<sup>50</sup> Article 48(c) of the Protocol (No. 3) to the TFEU on the Statute of the Court of Justice of the European Union [2016], OJ C 202/220; Court of Justice of the European Union, "Court of Justice of the European Union: Ensuring the Protection of EU Law, Publications and Electronic Media Unit, 2023, accessed October 15, 2023, [https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-05/cour\\_garante\\_qd-03-20-178-en-n.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-05/cour_garante_qd-03-20-178-en-n.pdf).

<sup>51</sup> Camille Frati and Lex Kleren, "Slovenian Enigma at the Court of Justice of the EU," *Lëtzebuerger Journal*, November 24, 2022, accessed August 9, 2023, <https://journal.lu/en/slovenian-enigma-court-justice-eu>.

<sup>52</sup> Council of the EU, "EU Court of Justice: Nine Judges of the General Court Appointed," Press release 997/21.

<sup>53</sup> Consolidated Version of the Treaty on the functioning of the European Union [2012], OJ C 326/47.

fore, the Court of Justice is assisted by eleven Advocates-General<sup>54</sup> and on the Court's request, the number of Advocates-General may be increased. The largest Member States (based on the population) have permanent Advocates-General, and the remaining posts are rotated among the other Member States based on alphabetical order.<sup>55</sup> Since 2020, after the United Kingdom's withdrawal from the EU, Germany, France, Italy, Spain, and Poland have had permanent Advocates-General. Therefore, if Ukraine, upon accession, has a population comparable to the population of Poland, it will become one of the largest Member States, which are allowed to have a permanent Advocate-General in the CJEU. In any case, this issue will definitely be a matter of negotiations, even though the presence of such an Advocate-General would allow the EU to better "absorb" Ukraine.

### 3.3. Caseload from Ukraine

The hypothesis is that in the first years after Ukraine's accession to the EU, the CJEU will receive a record number of cases. There will be several reasons for this influx of cases, which are as follows. Firstly, the CJEU practice covers many areas of law, thus using the procedure of preliminary rulings, Ukrainian national courts will want to receive the Court's opinions for further application and development of national practice. Secondly, already in 2022, there are cases concerning the war in Ukraine,<sup>56</sup> and therefore, we should continue to expect an increase in applications relating to it, both from Ukraine and other Member States. Thirdly, according to statistics, the largest number of references for a preliminary ruling by Member State (2018–2022)<sup>57</sup> come from the most populated and largest EU countries (Germany, Spain,

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<sup>54</sup> Declaration on Article 252 of the TFEU regarding the number of Advocates-General in the Court of Justice in Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 [2016], OJ C 202/335.

<sup>55</sup> Rafał Mańko, *Role of Advocates General at the CJEU* (Briefing, European Parliamentary Research service 2019), 2–3; Joint Declaration on Article 31 of the Decision adjusting the instruments concerning the accession of the new Member States to the European Union [1995] OJ L1, 221.

<sup>56</sup> The Court of Justice of the European Union, Annual Report 2022: The Year in Review, 56.

<sup>57</sup> "General Activity of the Court of Justice (2018–2022)," CURIA, 2023, accessed August 9, 2023, [https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-03/stats\\_cour\\_2022\\_en.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-03/stats_cour_2022_en.pdf).

Italy, etc.), thus considering the total area and population of Ukraine, it will also be among the leaders in applications. Fourthly, the largest number of cases filed to the European Court of Human Rights in 2022 were against Ukraine. European Court of Human Rights issued 144 judgments in cases against Ukraine, 141 of which recognized at least one violation.<sup>58</sup> Consequently, given the negative impact of the war and human rights violations, as well as the overall level of development of the State, there will be more cases from Ukraine compared to the founding members of the EU.

#### **4. Ukraine's Steps towards the Development of an Independent Judicial System Eligible for the Further Implementation of CJEU Decisions**

An indirect impact of the CJEU can be noted in judicial reform conducted by Ukraine as well as other steps which Ukraine will take before the accession. Particularly, Ukraine will have to establish an efficient system of the CJEU decision enforcement, which may arguably include amending the Constitution of Ukraine and existing laws, including the Law of Ukraine on the Constitutional Court of Ukraine, adoption of special legislation, defining the responsible authority, and providing efficient cooperation with the EU.

It is argued that the Constitution of Ukraine most probably would need to be amended, potentially providing for the direct effect of the EU law as well as certain institutional changes like the establishment of an impartial judicial system and empowering certain administrative bodies with powers to execute CJEU decisions. Such changes arguably will need to take place before the accession, and in this way, the CJEU has influenced the Ukrainian legal order so far. However, the exact form and shape of such changes certainly will be a matter of political and diplomatic consensus. For this purpose, we consider the following steps which Ukraine may potentially take.

1. Potential amendment of the Constitution of Ukraine and current laws, particularly in the area of Ukraine Constitutional Court and national court's functioning. As the recent national cases of the EU Member

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<sup>58</sup> "Violations by Article and by State in 2022," European Court of Human Rights, 2023, accessed August 9, 2023, [www.echr.coe.int/documents/d/echr/Stats\\_violation\\_2022\\_ENG](http://www.echr.coe.int/documents/d/echr/Stats_violation_2022_ENG).

States show, constitutional courts tend to support the idea of constitutional primacy, which can be considered by the EU institutions as a way of not complying with CJEU decisions and Community law.<sup>59</sup> Indeed, the Constitutional Court of Romania, in its Decision No. 390/2021, retreated from the position that the priority of the Constitution is a limitation of the rule of EU law and developed the doctrine of “national constitutional identity”.<sup>60</sup> Analysing a similar decision of the Hungarian Constitutional Court in 2016, Gábor Halmai concluded that there is a tendency for the State to “abuse” constitutional identity for merely national purposes, leading to evasion of its obligations under European law.<sup>61</sup>

Member States could also establish a rather strict framework for the EU’s influence on them. For instance, the conservative interpretation of the Estonian Constitution requires mandatory amendments and a referendum if Estonia decides to join political, economic, and military associations of states, in particular, to protect the sovereignty of the State.<sup>62</sup> Therefore, for reasons of further clarity, a number of experts recommend including provisions on the direct applicability of the EU law.<sup>63</sup>

Considering the Ukrainian constitutional approach is as strong as the Estonian one, conducting the accession procedure with the most legitimate and transitional means is recommended. In our opinion, after joining the EU, Ukraine should take measures to prevent abuses of the “national constitutional identity” concept at the same time allowing for the demonstration of the will of the Ukrainian people via constitutional supremacy.

<sup>59</sup> Renáta Uitz, “National Constitutional Identity in the European Constitutional Project: A Recipe for Exposing Cover Ups and Masquerades,” *Verfassungsblog*, 11 November 2016, accessed October 13, 2023, <https://verfassungsblog.de/national-constitutional-identity-in-the-european-constitutional-project-a-recipe-for-exposing-cover-ups-and-masquerades/>.

<sup>60</sup> Constitutional Court of Romania, 08 June 2021, 390/2021 (Romania), accessed October 15, 2023, [https://www.ccr.ro/wp-content/uploads/2021/07/Decizie\\_390\\_2021\\_EN.pdf](https://www.ccr.ro/wp-content/uploads/2021/07/Decizie_390_2021_EN.pdf).

<sup>61</sup> Gábor Halmai, “National(ist) Constitutional Identity?: Hungary’s Road to Abuse Constitutional Pluralism,” *EUI Department of Law Research Paper*, no. 8 (2017), accessed October 13, 2023, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2962969](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2962969).

<sup>62</sup> Anneli Albi, “Estonia’s Constitution and the EU: How and to What Extent to Amend It?” (2002) VII *Juridica International*, no. 7 (2002): 42, accessed October 15, 2023, [www.juridicainternational.eu/article\\_full.php?uri=2002\\_VII%20\\_39\\_estonias-constitution-and-the-eu-how-and-to-what-extent-to-amend-it](http://www.juridicainternational.eu/article_full.php?uri=2002_VII%20_39_estonias-constitution-and-the-eu-how-and-to-what-extent-to-amend-it).

<sup>63</sup> *Ibid.*, 48.

To achieve this, it is necessary not only to harmonize national legislation with European one but also to amend the Constitution of Ukraine and laws clearly enshrining the primacy of EU law. Such an approach would make it impossible to make political decisions that would be justified by the supremacy of the national constitution and abuse the goals and interests of the EU as a whole. Moreover, the establishment of the short-term transitional period after Ukraine's accession will enable the Constitutional Court of Ukraine to review the national legislation for compliance with EU standards and provide explanatory opinions for this approach. As soon as Ukrainian judges reach a sufficient level of knowledge, national courts themselves will be able to apply the primacy of EU law and not apply provisions of national legislation that contradict it.

2. Adoption of the specific law. In order to ensure qualified legislation to regulate the relations with the CJEU based on the example of the Law of Ukraine on the Fulfilment of Decisions and Application of Practice of the European Court of Human Rights, a special law could be adopted to regulate relations arising from the State's obligation starting with the procedure of the Court's preliminary rulings into Ukrainian legal proceedings and ending with the description of the mechanism of the CJEU's judgments execution.<sup>64</sup>

Referring to the aforementioned Law of Ukraine on the Fulfilment of Decisions and Application of Practice of the European Court of Human Rights, the obligation to enforce ECHR judgments is entrusted to the Division of Enforcement of Judgments of the Department of State Enforcement Service of the Ministry of Justice of Ukraine. This body or a similar one may also be obliged to implement and execute the CJEU's decisions and guidelines. In this regard, it is important to establish a special body tasked with tracking compliance by courts with the requirements set out in the CJEU's decisions, preparing reports on the application of the practice and monitoring the implementation of the EU court decision. The latter function could be performed in cooperation with European representatives. For this

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<sup>64</sup> Pro vykonannya rishen ta zastosuvannya praktyky Yevropeiskoho sudu z prav liudyny [On the Fulfilment of Decisions and Application of Practice of the European Court of Human Rights]: Zakon Ukrainy [Law of Ukraine] vid 2 hrudnia 2012 r., No. 3477-IV, accessed August 9, 2023, <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.

purpose, it is advisable to enshrine the provisions on exchanging information with EU experts, seeking advice and sending implementation reports.

3. Ensuring a highly independent and impartial judicial system. Due to the dual role of national courts, which are called upon not only to resolve disputes under national law but also to apply EU law, they must always be independent, as required by Article 19(1) TEU.<sup>65</sup> It is worth mentioning Ukraine is on the way to fulfilling this obligation: in 2014, Ukraine launched a judicial reform to bring its judicial system in line with European standards and ensure the protection of human rights through the settlement of legal disputes based on the rule of law. Since then, several independent judicial bodies have been established, including the High Council of Justice, which submits proposals for the appointment or dismissal of judges; the Ethics Council, which reviews all candidates to the High Council of Justice for compliance with the criteria of professional ethics and integrity; the High Qualification Commission of Judges which provides mandatory qualification assessment of judges, etc. At the end of June 2023, the European Commission noted Ukraine's positive steps in judicial reform and recommended that Ukraine should focus on continuing the reform of the Constitutional Court of Ukraine.<sup>66</sup> According to the Presidential Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023, Ukraine still has a number of goals, including reorganization of local courts, development of the anti-corruption control system, development of alternative and pre-trial dispute resolution, establishment of the High Court of Intellectual Property, etc.<sup>67</sup> Still, Ukrainian and European experts believe

<sup>65</sup> Sacha Prechal, "Article 19 TEU and National Courts: A New Role for the Principle of Effective Judicial Protection?," in *Article 47 of the EU Charter and Effective Judicial Protection, Volume 1*, eds. Matteo Bonelli, Mariolina Eliantonio and Giulia Gentile (Hart Publishing, 2022), accessed October 15, 2023, <https://www.bloomsburycollections.com/monograph-detail?docid=b-9781509947973&tocid=b-9781509947973-chapter1>.

<sup>66</sup> European Pravda, "European Commission Acknowledges Ukraine's Progress in Implementing 'Candidate' Recommendations," June 22, 2023, accessed October 15, 2023, [www.eurointegration.com.ua/eng/news/2023/06/22/7164201/](http://www.eurointegration.com.ua/eng/news/2023/06/22/7164201/).

<sup>67</sup> Pro Stratehiiu rozvytku systemy pravosuddia ta konstytutsiinoho sudochynstva na 2021–2023 roky [On the Strategy for the Development of the Justice System and Constitutional Justice for 2021–2023], Ukaz Prezydenta Ukrainy [Decree of the President of Ukraine], vid 11.06.2021, no. 231/2021, accessed October 15, 2023, <https://zakon.rada.gov.ua/laws/show/231/2021#Text>.

that these goals are realistic even in the context of the war with Russia.<sup>68</sup> Ukraine is obliged to promptly complete the judicial reform in order to fulfil European Commission requirements and further develop Ukrainian judicial institutions as independent and impartial bodies.

## 5. Conclusions

Summing up the above-mentioned information, it is essential to emphasize that prior to Ukraine's accession, the CJEU as an institution already has an impact on the Ukrainian legal order, and such impact will increase upon the start of the negotiations culminating in the influence it has on other EU Member States.

The CJEU is an efficient and effective EU institution. After Ukraine's accession to the EU, it will be the Court's case law that will help the State to harmonize its legislation and bring it in line with EU standards through the application of precedents by national courts and legislative bodies, as well as the Court's *de facto* status of an additional supervisory body in Ukraine.

In addition, the CJEU will actively cooperate with national courts by providing preliminary rulings on the interpretation or application of EU law upon request. In this context, it is Ukraine's responsibility to familiarize judges with the peculiarities of this procedure through training programmes and ensure that judges will actively apply the CJEU's case law in their decisions, as well as to ensure the implementation of the Court's decisions at the national level by adopting the relevant legislative framework and designating a responsible authority.

Moreover, having developed the concept of the direct effect of legal norms, the CJEU guaranteed the possibility for individuals and legal entities to apply directly to the courts on the basis of EU acts, and thus, the CJEU will stand for the protection of human rights and fundamental freedoms, allowing citizens to protect and restore their violated rights.

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<sup>68</sup> Hromadske, “‘Chymalo vyklykiv’. Yak v Ukraini prosvaietsia sudova reforma [‘A Lot of Challenges’: How Judicial Reform Is Progressing in Ukraine],” August 10, 2023, accessed October 15, 2023, <https://hromadske.ua/posts/chimalo-viklikiv-yak-v-ukrayini-prosvavyetsya-sudova-reforma>.

Furthermore, the Court's case law, applied by Ukrainian courts in their judgments, will become a valuable instrument for the broad development of various branches of law, in particular, in the context of the CJEU's rapid response to the current challenges caused by Russia's war against Ukraine and its consequences. Moreover, the CJEU will set standards for both current and future practices for all Member States regarding the war in Ukraine, which will become a powerful tool for the post-war reconstruction of Ukraine and define its status in the European arena.

Ukraine, in turn, as an EU Member State, will have an impact on the work of the Court through Ukrainian judges and Advocates-General who will be involved in the activities of the CJEU, increasing the number of cases considered by the Court after Ukraine's accession.

An indirect impact of the CJEU on the Ukrainian legal order can be seen via judicial reform implemented by Ukraine as well as other steps which Ukraine will take before the accession. Particularly, Ukraine will have to establish an efficient system of CJEU decision enforcement, which may arguably include amending the Constitution of Ukraine and existing laws, designating the responsible authority for the execution of CJEU judgments, as well as for cooperation with the EU.

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