

DOCTRINE OF SUPREMACY OF THE EUROPEAN UNION LAW OVER MEMBER STATE’S CONSTITUTIONS ACCORDING TO THE MELLONI CASE

ABSTRACT

The paper reviews the decision of the European Court of Justice in the case of “Stefano Melloni v. Ministerio Fiscal”, where the absolute primacy of European Union Law over those of the member states was exercised. This decision has a significant influence on framing the equality and mutual dependence of the constitutions of the Union member states and the law of European Union. The paper claims that from the point of view of EU Law, in relation to the national law, including the constitutions, primacy is held not only by the European Union Acts, adopted supranationally, but, also, the so-called intergovernmental legal tools – Framework Decisions. The current paper shows that expanding cooperation and maintaining achieved results in the scope of European integration, are fundamentally reflected on the supremacy of constitutions of the member states and cause content modifications thereof.

1. INTRODUCTION

Equality and codependence of EU law and laws of member states always takes one of the central places in European legal field. Even though it is not clearly defined in a material-normative form, which of the legal systems – national or supranational (European) – takes precedence,¹ the European Court of Justice and member states’ supreme courts are constantly attempting by their practices to define this issue. Motivations of supreme courts and European Court of Justice, aside from some contradictory exceptions, differ substantially.² The policy of European Court of Justice is grounded on three basic components, which are indispensable for perfect functioning and execution of EU Law and maintaining supranational

¹ It is noteworthy that article 6 of the draft European Constitution explicitly declared, that the European Constitution and other legal acts of the European Union adopted in accordance with the competences of the Union, have primacy over member states' laws, including constitutions. See ‘Treaty establishing a Constitution for Europe’ <https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_establishing_a_constitution_for_europe_en.pdf> accessed 20 July 2018.

² For example, the decision of the Czech Constitutional Court: Judgment EAW, 3 May 2006, <<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=974>> accessed 20 July 2018.

character primacy, unity and effectiveness.³ Constitutional courts act with the view of constitutional primacy and high quality assurance of basic rights and maintenance of their role and function. Practices of the Constitutional Court of the Federal Republic of Germany and of Poland reinforce this view.⁴ Although, if the equality of EU law and the member states' constitutions are assessed by the consequences of the courts' decisions, the tendency to decide for the benefit of the EU law becomes clear.

Aim of the current paper, by analyzing the preliminary ruling of the European Court of Justice on the case of “Stefano Melloni v. Ministerio Fiscal”⁵ (hereafter Melloni case), is to show that in relation to the constitutions of the member states, the EU Law holds primacy, including not only the acts of the supranational scope of the EU law, but, also, the legal instruments adopted for the deepening of cooperation in the justice field - Framework Decisions⁶. Besides, the paper develops an opinion, that, following the aforementioned case, the doctrine of primacy of the EU Law is further reinforced, broadened and completed.

2. FACTS OF THE CASE AND THE QUESTION OF THE SPANISH CONSTITUTIONAL COURT

In 2004, the Court of Appeals of Bologna issued a European arrest warrant against the Italian citizen, Stefano Melloni. According to the arrest warrant, Stefano Melloni was found guilty of fraud and the sentence of ten years of imprisonment was handed down *in absentia*.⁷ In 2008, for the execution of the European arrest warrant, by the order of Central Investigating Court, the Police arrested Stefano Melloni.⁸ He did not agree to being handed to Italy, although, by the decision of National Supreme Court, he was subjected to extradition to Italy.⁹

According to Melloni, since the Italian criminal procedure did not provide for the mechanism of decision review in absence of the accused, the European arrest warrant should not

³ European Court of Justice decision: Opinion 2/13 Article 218 (11) TFEU - Draft international agreement - Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms - Compatibility of the draft agreement with the EU and FEU Treaties, [2014], available on the website:

<<http://curia.europa.eu/juris/document/document.jsf?text=&docid=160882&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=304567>> accessed 20 July 2018. paras 188 and 189.

⁴ Decisions of the Constitutional Court of the Federal Republic of Germany: BVerfG, Order of the Second Senate of 15, available on the website: <https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2015/12/rs20151215_2bvr273514en.html> accessed 20 July 2018;

BVerfGE 73, 339 2 BvR 197/83 Solange II, available on the website: <<http://www.servat.unibe.ch/dfr/bv073339.html>> accessed 20 July 2018;

BVerfGE 37, 271 2 BvL 52/71 Solange I, available on web-page: <<http://www.servat.unibe.ch/dfr/bv037271.html>> accessed 20 July 2018.

Decision of the Constitutional Court of Poland: P-1/05 (Judgment), EAW, 27.04.2005, available on the website: <<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=976>> accessed 20 July 2018.

⁵ The decision of the European Court of Justice: Melloni v. Ministerio Fiscal, C-399/11 [2013] <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62011CJ0399&from=EN>> accessed 20 July 2018.

⁶ For the legal nature of the Framework Decisions, see the European Court of Justice judgment: *Pupino v Italy*, C-105/03 [2005] <<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-105/03>> accessed 20 July 2018.

⁷ *Melloni Case* (n 5) para 14.

⁸ *ibid* para 15.

⁹ *ibid* para 17.

have been executed, because, on the one hand, according to the Framework Decision on the European arrest warrant and the surrender procedures between Member States,¹⁰ there was sufficient basis for rejecting the extradition.¹¹ On the other hand, a lack of such a possibility contradicted the right to fair trial guaranteed by the article 24, paragraph 2 of the Spanish Constitution. He found such limitation of the right to fair trial to be infringing on human dignity as well, as he did not have the ability to contest the sentence imposed for a grave offense in the country requesting the extradition, which simultaneously made an effective realization of the right to defense impossible.¹² Therefore, Melloni appealed to the Spanish Constitutional Court and requested the annulment of the decision on his extradition to Italy. The Spanish Constitutional Court admitted the constitutional claim, however, prior to the hearing of the case on merits, within the scope of preliminary decision procedure the Court applied to the European Court of Justice.¹³

It is noteworthy that the right to a fair trial in the Spanish Constitutional Court has an ‘external’ effect, which means guaranteeing minimal material-procedural tools for exercising this right in the country of extradition.¹⁴ According to the Court, if such elementary standard of protecting the rights of a person subject to extradition is not satisfied, the right to a fair trial guaranteed by the Spanish Constitution is indirectly violated and human dignity is infringed.¹⁵ Notably, the Spanish Constitutional Court, in 2009, annulled the decision of the court on the extradition of a person to Romania on the basis that the European arrest warrant did not include mechanisms for review of the ruling against the person subject to extradition in their absence.¹⁶

The Spanish Constitutional Court faced a dilemma in the case. A constitutional court of a member state does not hold authority to assess constitutionality of the secondary legal sources of EU. Moreover, Spain, as a member state, was obligated to execute the European arrest warrant issued according to the Framework Decision on European arrest warrant and surrender procedures. If it had declared the order of the Supreme National Court of Spain invalid, legal grounds for handing Melloni over to Italy would become annulled and Spain would be in violation of the above Framework Decision. But if the decision of the Spanish Supreme Court was declared consistent with the Constitution and Melloni was handed over to Italy for the execution of the sentence, the case-law of the Spanish Constitutional Court would be altered, on the one hand, and the standard guaranteed by the Spanish Constitutional Court on the right to a fair trial and protection of human dignity would, at the very least,

¹⁰ Council of Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States < <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0584>> accessed 20 July 2018.

¹¹ The Framework Decision on procedures of European arrest warrant and transfer of persons determines the grounds for non-compliance with the European arrest warrant, which can arbitrarily be divided into three groups: Absolute Grounds, Optional Grounds and Special Occasions.

¹² *Melloni case* (n 5) para 18.

¹³ *ibid* para 19.

¹⁴ *ibid* para 20.

¹⁵ *ibid*.

¹⁶ *ibid* para 22.

become limited (more probably, violated), on the other. Therefore, the Spanish Constitutional Court, within the preliminary ruling procedures, applied to the European Court of Justice with a question: *in case of systematic interpretation of the articles 47 (right to a fair trial), 48 (presumption of innocence and right to defense) and 53 (level of protection)*¹⁷ of the Charter of Fundamental Rights of the European Union, is a member state, receiving extradition request, entitled, having higher standard of fundamental rights protection guaranteed by its Constitution, to refuse execution of an European arrest warrant in a case, when the state requesting extradition does not possess mechanisms for reviewing a sentence passed in *absentia* of the person subject to extradition?¹⁸ The motivation of the question makes it clear, that the Spanish Constitutional Court wished to employ the constitutional standard on the basis of the article 53 of the Charter of Fundamental Rights of the European Union, as it was defending the basic processual rights on a higher level than the EU Law, specifically, the Framework Decision.¹⁹

3. THE RESPONSE OF THE EUROPEAN COURT OF JUSTICE

The European Court of Justice, as already stated, is the guarantor for the realization of the primacy, unity and effectiveness of the EU Law. Sometimes it attempts to achieve this goal at the expense of reducing the standards of fundamental rights. In this sense, this case is no exception. Regarding the Melloni case, the European Court of Justice stated unequivocally that such an interpretation of the article 53 of the Charter of Fundamental Rights, which would give a member state the possibility not to adhere to the EU Law completely in conformity with the Charter,²⁰ and to act according to its own Constitution, would undermine the principle of primacy of the EU Law.²¹ Pursuant to the ECJ, it is a settled case-law that, by virtue of the principle of primacy of the EU Law, an essential feature of the EU legal order, the rules of national law including the constitutional order, cannot be allowed to un-

¹⁷ According to article 53 of the Charter of Fundamental Rights of the European Union, “Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the [European] Union or all the Member States are party, including the [ECHR] and by the Member States’ constitutions.”

¹⁸ The European Court of Justice was asked three questions in total, but the rest of the questions go beyond the scope of the present work.

¹⁹ It is noteworthy that the Constitutional Court of the Federal Republic of Germany has developed the concept of constitutional identity in the case related to the European arrest warrant, which allows the Federal Constitutional Court of Germany the possibility to assess the compliance of the European arrest warrant, as well as other general acts of the Union, to the right to dignity recognized by the German basic law. The decision of the Constitutional Court of the Federal Republic of Germany is available on the website:

<http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2015/12/rs20151215_2bvr273514en.html;jsessionid=8C76433FF1384ABF38F047A3F8583A4E.1_cid370> accessed 20 July 2018.

²⁰ The European Court of Justice found the execution of the European arrest warrant and handing the person subject to extradition over in accordance with the Charter of Fundamental Rights of the European Union, despite the fact, that, as has been mentioned, the person was not equipped with the mechanism for revision of the judgment of conviction passed *in absentia*. See *Melloni case* (n 5) para 53.

²¹ *ibid* para 58.

dermine the effectiveness of the EU Law on the territory of that State.²² Moreover, the Court underlined the importance of protecting the principles of mutual trust and recognition between member states and stated that the refusal to execute European arrest warrant, barring the exceptional cases provided in the Framework Decision, would undermine the principles of mutual trust and recognition.²³

Following the Judgment of the European Court of Justice, the Spanish Constitutional Court rejected Melloni's appeal and, utilizing the mentioned Framework Decision, at the very least, limited the standard of the right to a fair trial and the right to protection of dignity established by the Spanish Constitution.

4. CONCLUSION

By the judgment of the European Court of Justice on the Melloni case, the perfection and substantial broadening of the doctrine of primacy of the EU Law over the laws of the member states was carried out. It has, for the first time in the history of Union, passed beyond supranational margins and spread through all dimensions of the EU law, including the justice field, namely, cooperation in criminal cases. This judgment established that the national courts should, on the one hand, interpret the internal acts, including constitutional ones, according to the EU Law and, on the other hand, they should not to take such constitutional decisions, that would undermine the primacy and effectivity of the EU Law. From the point of view of EU Law, it is also inadmissible to adopt the constitutional provisions that would potentially jeopardize the primacy of the EU Law. However, before the normative materialization of the principle of primacy of the EU Law in judiciary practice, legal literature will always dispute: whether the European Union's Law has primacy over the constitutions of the member states.

²² *Melloni case* (n 5) para 59.

²³ *ibid* para 63.

