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## Role of court precedents in the development of EU law and the legal systems of the candidate states: Examples of Ukraine and Moldova

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■ **Abstract.** The judgements of the Court of Justice of the European Union play a fundamental role in shaping the EU *acquis*. The relevance of this study lies in their impact not only on the law enforcement practice within the Union, but also on the trends in the development and amendment of the EU regulations. Considering the above, the purpose of this study was to determine the role of judgements of the Court of Justice of the European Union in shaping the law of the European Union and the legal systems of the candidate states. The methodological framework of this study was based on general scientific and special research methods, such as analysis and synthesis, induction, interpretation, formal logical, and comparative legal methods. The study established the existence of a link between the structural and functional evolution of the Court of Justice of the European Union and the increasing weight of its judgements; the study identified the channels of influence of its judgements on the establishment and development of European Union law. The study outlined the current challenges faced by the judges of the Court of Justice of the European Union and which affect the efficiency of its work. Based on the analysis of the judicial practice of Ukraine and Moldova regarding the use of judgements of the Court of Justice of the European Union, the study substantiated the general significance of judicial precedent in the context of European integration of the candidate states, as well as potential problems of their widespread use in the judicial practice of these states. The practical significance of the findings obtained is that they can be used in educational programmes for training specialists in the field of European law, to develop strategies and policies aimed at integrating candidate states into the EU, ensuring their compliance with the legal standards of the Union

■ **Keywords:** European Union law; Court of Justice; judgements of the Court of Justice; interpretation of European Union law; judicial practice

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## ■ Introduction

The Court of Justice of the European Union (CJEU) occupies a prominent place in the legal system of the European Union (the EU), playing a key role in the interpretation and application of EU law. The CJEU has a considerable impact not only on the trends in the adoption of legal acts but also on the institutional structure of the EU. The establishment and development of the CJEU is directly linked to the establishment and development of the EU as a whole. In its practice, the CJEU has defined and elaborated on such principles of EU law as the direct effect of EU law, the primacy of EU law over national law of the Member States, which has created a *sui generis* legal order. Considering this, the CJEU's judgements resonate not only within the EU, but also have a significant impact on international relations with third countries and international organisations and are an invaluable source of law for EU candidate states. Thus, the intensification of discussions on the Eastern Partnership policy in the wake of the war in Ukraine, the protests in Georgia, and the strengthening of Euro-Atlantic and European integration of new potential member states as of 2024, requires strengthening the protection and guarantee of human and civil rights and freedoms. The status of a candidate state implies full harmonisation of national legislation of candidate states with EU law, which necessitates the investigation of the role of the CJEU's precedents in this context.

On November 8, 2023, the European Commission (EC) adopted the Expansion Package until 2023<sup>1,2</sup>, which assesses in detail the current state and progress made by Ukraine, Moldova, and Georgia on their path to EU accession. Specifically, the EU focused on progress in implementing fundamental reforms in Ukraine and Moldova, as well as on providing clear guidance on future reform priorities. Considering the progress made by Ukraine and Moldova, as well as ongoing reform efforts, the EC recommended that accession negotiations with both countries be launched as early as 2024. That is why the present study focused on the significance of the CJEU's judgements for such candidate states as Ukraine and Moldova.

Certain aspects of the subject under study have attracted the attention of foreign and Ukrainian researchers. The legal nature and specific features of the CJEU's precedents are the subject of a series of academic studies. Thus, A. Boin & S.K. Schmidt (2020) and T. Pavone & R.D. Kelemen (2019) have retrospectively analysed the establishment of the CJEU, the relationship between this and other institutions of

the EU, the crises in its work that have led to reforms in its structure and composition since the 1970s, and its potential vulnerability. The essence of the conclusions of A. Boin & S.K. Schmidt (2020) is expressed in the metaphor that is included in the title of the study: "The EU Court of Justice – the Guardian of European Integration and Social Values". At the same time, A.W. Ghavanini (2023), move away from absolutising the role of the CJEU in European integration processes and propose to consider its interaction with other European as well as national institutions and the influence of the general public on its decisions as crucial factors in facilitating the CJEU's mission.

In the context of Ukraine's intensification of its European integration movement, an important aspect of the topic is the CJEU's cooperation with national courts of the Member States. The study of its mechanism and implementation of the results obtained in the practice of Ukrainian courts will contribute to the enhancement of the efficiency of the Ukrainian judicial system. Considering the above, the study by J.A. Mayoral & M. Wind (2022) is of interest, which examines preliminary ruling cases in the context of highlighting the interaction between the CJEU and national constitutional courts. The researchers concluded that the level of independence of the judiciary in a state determines the frequency of courts' appeals to the CJEU in case of doubt, for instance, regarding the interpretation of a particular EU act. Consequently, the legal systems of those states where the courts are not fully independent will be less influenced by the CJEU and will be less Europeanised.

A series of academic studies have focused on the analysis of the CJEU's landmark judgements and their impact on the functioning of other institutions and agencies of the EU and Member States. For example, C. Adam *et al.* (2020) reviewed the Court's judgements in cases concerning claims for invalidation of certain EU legal acts in the context of the EU's multi-level system of governance. This study demonstrated that the initiation of such lawsuits has a political component and identifies, using the examples of many relevant cases, the motives of political actors who make efforts to transform political conflicts into lawsuits for the cancellation of regulations. According to the results of the cited study, court decisions in cases of this type are identified as constitutive elements of the multi-level struggle in the EU policy-making process.

The study of individual judgements of the CJEU also suggests that they have a definitive impact on the

<sup>1</sup> Opinion of Directorate-General for Neighbourhood and Enlargement Negotiations "On Ukraine's Application for Membership of the European Union". (2022, June). Retrieved from [https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union\\_en](https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en).

<sup>2</sup> Ibidem, 2022.

development of EU law. M. Ovádek (2023) examined the significance of judicial precedent on the example of a landmark case on the issuance of a preliminary ruling, which was conventionally called “Portuguese judges”. The study emphasised its far-reaching consequences. The CJEU’s interpretation of Article 19 of the Treaty on the Functioning of the European Union<sup>1</sup> (TFEU) and Article 47 of the Charter of Fundamental Rights of the European Union (Charter of Rights) (right to an effective judicial remedy)<sup>2</sup>, which was provided by the CJEU<sup>3</sup>, was subsequently used to take unprecedented measures to counter democratic retreat in Poland and Hungary. This case and a series of other cases considered by the CJEU are appropriately used as weighty arguments in the study by L. Koen (2020) to substantiate the thesis on the role of the CJEU in European integration. The researcher insists on the only possible way of further development of the EU – integration through the rule of law, which includes the independence of the judiciary. This study by the President of the Court is also interesting for its convincing arguments and style of presentation, which is both clear/comprehensible and academic.

Despite the academic consensus on the influence of judicial precedent as a factor in the development of EU law, researchers also address the challenges in the CJEU’s work. A. Komanovics (2022), specifically, focused on the role of this institution in combating the derogation from the rule of law in Hungary and concluded on the presence of certain institutional and procedural limitations set by the TFEU that hinder the CJEU’s ability to provide a consistent response to systemic threats to European values. T. von Danwitz (2024) raised the contemporary issue of calls by some Member States to reduce the CJEU’s jurisdiction at the expense of its control over the observance of fundamental rights and rule of law standards. In this way, the scope of obligations under the *acquis communautaire* will be reduced, while member states will have additional opportunities to act independently, specifically, to restrict asylum and residence rights. In conclusion, the researcher emphasised that, in the context of the challenge he identified, the CJEU’s special responsibility to apply the *acquis communautaire* when it comes to ensuring that the rule of law and respect for fundamental rights are respected in the actions

of European institutions and governments of the Member States is strengthened.

Ukrainian researchers began to actively develop the subject of the specific features of the functioning of the EU judicial institutions after Ukraine signed the Association Agreement between Ukraine<sup>4</sup>, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (the Association Agreement). It is advisable to pay special attention, in the context of the subject under study, to the monograph by T. Komarova (2018), which is fundamental for Ukrainian legal science and is based on an extensive source base. The researcher focused on a wide range of issues that are to some extent related to the subject of the present study. Specifically, the T. Komarova (2018) examined the history of the EU judicial system, the mechanism of cooperation between the CJEU and national courts of the Member States, and the impact of judicial practice on the interpretation of the *acquis communautaire*, European integration processes, institutions, and law. As a result, the researcher identified the current trend of democratisation of the procedure for the formation of the judiciary in the EU, defined the CJEU’s practice as a determinant of the constitutionalisation of EU law, and the main achievement – the possibility for individuals to use primary and secondary EU law to protect their rights directly in national courts. The conclusion about the CJEU’s attempts to strike a balance between the economic interests of integration, the interests of individual Member States, and the interests of individuals is of fundamental significance for the implementation of the judicial practice of the candidate states. Researchers in Moldova are less active in addressing the CJEU’s problematic. Considering this, it is relevant to address the study of a young Moldovan researcher M. Toncoglaz (2021), who analysed the role of this institution for the EU legal system and came to conclusions consistent with well-known research trends. The researcher acknowledged the exceptional integrative role of the CJEU, which it plays due to its broad competence.

The purpose of this study was to determine the role of judicial precedents in the establishment and development of EU law and the legal systems of the candidate states by analysing the CJEU judgements and judgements of courts of Ukraine and Moldova.

<sup>1</sup> Consolidated Version of the Treaty on the Functioning of the European Union. (2012, October). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT>.

<sup>2</sup> Charter of Fundamental Rights of the European Union. (2000, December). Retrieved from [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

<sup>3</sup> Judgment of the Court (Grand Chamber) in Case No. C64/16. (2018, February). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=199682&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10821084>.

<sup>4</sup> Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part. (2014, June). Retrieved from [https://zakon.rada.gov.ua/laws/show/984\\_011?lang=en#Text](https://zakon.rada.gov.ua/laws/show/984_011?lang=en#Text).

## ■ Materials and Methods

The study employed general philosophical, general scientific, and special research methods. Using the analysis method, the subject of the study was divided into its constituent elements and each of them was analysed separately. The CJEU's judgements were examined to determine their role in the establishment and development of EU law. The judgements of the courts of Ukraine and Moldova, wherein the CJEU's judgements were used, were considered in the context of clarifying the significance of judicial precedent for the development of the national legal systems of these states. The use of the synthesis method helped to combine the findings obtained during the analysis of the individual components of the subject of research into a single whole. Preference was given to induction rather than deduction, since the study of individual judgements led to several generalisations, for instance, the role of the CJEU's case law in the establishment and development of EU law, as well as its significance for the development of the legal systems of Ukraine and Moldova. The application of the interpretation method helped to establish links between various aspects of determining the content of evaluative concepts that characterise the CJEU's acts and determine their role in shaping the trends in the development of EU law. Any legal research, considering the specifics of its source base, which consists largely of legal acts, requires recourse to special methods, specifically, formal legal methods. Therefore, the texts of all court decisions, EU founding acts, and international treaties were examined using this method. To understand their content, the provisions of the court decisions were studied with a focus on their formal structure and the presence of a logical relationship. The comparative legal method was used to compare the practice of application of the CJEU's judgements by the courts of Ukraine and Moldova, and thus the general significance of judicial

precedent in the context of European integration of the candidate states was clarified.

To fulfil the purpose of this study, five groups of sources were used. The main array of sources included judgements, which were divided into two sub-groups: judgements of the CJEU<sup>1,2</sup> and judgements of the courts of Ukraine and Moldova<sup>3,4</sup>. The need to investigate these sources was a priority to fulfil the purpose of this study – to determine the role of judicial precedents in the establishment and development of EU law and the legal systems of the candidate states. Particular attention was paid to the CJEU's decisions, which are generally considered to be definitive. In addition, the CJEU uses the corresponding gradation in its summary materials posted on the official website of this judicial institution (Court of Justice of the European Union, 2024b). Among the judgements of Ukraine and Moldova, the study thoroughly examined and analysed those containing references to the CJEU's judgements. The Ukrainian case included several decisions of the Supreme Court delivered in commercial and administrative proceedings, as well as two decisions of the Constitutional Court of Ukraine. The Moldovan case included several decisions of the Constitutional Court of Moldova.

The other four groups were smaller in size, but no less important for fulfilling the purpose of this study. The EU founding acts, namely the Lisbon Treaty amending the Treaty on European Union and the Treaty establishing the European Community (the Lisbon Treaty)<sup>5</sup>, which were necessary to consider the structural and functional evolution of the CJEU. When investigating the significance of the CJEU's decisions for the development of the legal systems of Ukraine and Moldova as candidate states, it was necessary to analyse the conclusions of the EC regarding the application of Ukraine and Moldova for EU membership<sup>6,7</sup>. Furthermore, such an international treaty as the Association Agreement was examined<sup>8</sup>.

<sup>1</sup> Judgment of the Court of Justice of the European Union (Second Chamber) in Case No. C 575/2125. (2023, May). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?jsessionid=2EF6C8C92CBE9D965453B1EE93704C34?text=&docid=274102&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2362610>.

<sup>2</sup> Judgment of the Court of Justice of the European Union (Eighth Chamber) in Case No. C-329/17. (2018, August). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

<sup>3</sup> Judgement of the Supreme Court in Case No. 640/12095/21. (2023, November). Retrieved from <https://reyestr.court.gov.ua/Review/114735837>.

<sup>4</sup> Judgement of the Supreme Court in Case No. 910/12326/20. (2022, September). Retrieved from <https://reyestr.court.gov.ua/Review/106658261>.

<sup>5</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon. (2007, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>.

<sup>6</sup> Opinion of Directorate-General for Neighbourhood and Enlargement Negotiations “On Ukraine’s Application for Membership of the European Union”. (2022, June). Retrieved from [https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union\\_en](https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en).

<sup>7</sup> Opinion of Directorate-General for Neighbourhood and Enlargement Negotiations “On Moldova’s Application for Membership of the European Union”. (2022, June). Retrieved from [https://neighbourhood-enlargement.ec.europa.eu/opinion-moldovas-application-membership-european-union\\_en](https://neighbourhood-enlargement.ec.europa.eu/opinion-moldovas-application-membership-european-union_en).

<sup>8</sup> Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part. (2014, June). Retrieved from [https://zakon.rada.gov.ua/laws/show/984\\_011?lang=en#Text](https://zakon.rada.gov.ua/laws/show/984_011?lang=en#Text).

The institutional and functional changes in the CJEU were analysed, specifically, based on statistical data set out in the relevant materials of this institution, for instance, on the number of cases considered in 2019-2023 (Court of Justice of the European Union, 2024a), in the consolidated collection of completed cases for 2023 that are “significant” for the interpretation of certain acts of EU law (Court of Justice of the European Union, 2024b). The fifth group of sources included various materials, specifically, press releases of the CJEU (Court of Justice of the European Union, 2024c), which were used to obtain the most up-to-date information on the CJEU’s decisions and specific features of its functioning.

## ■ Results

**Establishment of the Court of Justice and its functions.** Until the late 1980s, this institution was the only court with jurisdiction over the EU. With the entry into force of the Lisbon Treaty<sup>1</sup> in 2009, the CJEU was composed of the Court of Justice and the General Court<sup>2</sup>. The fundamental mission of the CJEU is to ensure the uniform interpretation of EU law and to provide the parties to litigation with the best possible judicial protection. The mission statement provides an understanding of the CJEU’s role and functions, which have evolved since its establishment under the influence of various factors, including changes in the EU legal and political environment, including the multilingualism of the proceedings, the adversarial nature of the proceedings, and the issuance of so-called preliminary judgements containing interpretations of certain rules of EU law.

The CJEU has become a multilingual institution, which has no analogue in any other court in the world, as each of the official languages of the EU can be the language of the case. This rule is implemented by translating the CJEU’s judgements into all official languages of the Member States, and some judgements even into the languages of the candidate states. This practice ensures accessibility and inclusiveness, allowing individuals and Member States to

take full part in court proceedings regardless of their native language. However, it also poses logistical challenges and requires considerable resources.

The adversarial nature of the litigation process promotes a thorough examination of legal issues and a dynamic exchange of opinions, which ultimately contributes to the development of EU law. Adversariality is particularly important for the Court’s preliminary rulings. The ability to issue preliminary rulings on questions of EU law raised by national courts is a unique aspect of the CJEU’s jurisdiction. This mechanism, known as the preliminary examination procedure, allows national courts to seek guidance from the CJEU on the interpretation and application of EU law in particular cases. By ensuring uniformity and consistency in the interpretation of EU law across Member States, this practice strengthens the EU legal framework. An example is the preliminary judgement of the CJEU in case No. C-575/2125 dated 25 May 2023 on the interpretation of certain provisions of Directive 2011/92<sup>3</sup> on the environmental impact assessment of urban development projects<sup>4</sup>. This judgement expands and clarifies the understanding of the Directive to ensure that its provisions are properly implemented by Member States. The importance of this CJEU judgement is also conditioned by the practical implementation of the Directive, which is aimed at achieving the EU objectives set out in Article 191 of the TFEU<sup>5</sup>, specifically, preserving, protecting, and improving the quality of the environment.

That is why precedents (the CJEU judgements) become part of the EU *acquis*. The CJEU has also consistently interpreted the Constituent Treaties. Its most famous judgements (e.g., Van Gend en Loos and Costa<sup>6</sup>) set out the principle underlying the functioning of the EU – EU acts are directly applicable to the citizens of Member States and prevail over national laws.

Subsequently, the CJEU has revealed other principles in its case law, including the role of the Constituent Treaties. It is worth addressing the CJEU’s judgement dated 7 August 2018 in Case No. C-329/17, which states that when interpreting a provision of

<sup>1</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Signed at Lisbon. (2007, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>.

<sup>2</sup> Treaty on European Union. (1992, July). Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C\\_.1992.191.01.0001.01.ENG&toc=OJ%3AC%3A1992%3A191%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.1992.191.01.0001.01.ENG&toc=OJ%3AC%3A1992%3A191%3ATOC).

<sup>3</sup> Directive of the European Parliament and of the Council No. 2011/92/EU “On the Assessment of the Effects of Certain Public and Private Projects on the Environment (Codification)”. (2011, December). Retrieved from <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32011L0092>.

<sup>4</sup> Judgment of the Court of Justice of the European Union (Second Chamber) in Case No. C 575/2125. (2023, May). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?jsessionid=2EF6C8C92CBE9D965453B1EE93704C34?text=&docid=274102&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2362610>.

<sup>5</sup> Consolidated Version of the Treaty on the Functioning of the European Union. (2012, October). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT>.

<sup>6</sup> Judgment of the Court of Justice of the European Union in Case No. 26-62 “NV Algemene Transport – and Forwarding Company van Gend & Loos v Netherlands Inland Revenue Administration. Reference for a Preliminary Ruling: Tariff Commission”. (1963, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0026>.

an EU law, it is necessary to consider not only its wording, but also the context in which it occurs, as well as the purpose pursued by certain rules<sup>1</sup>. Thus, in performing this function, the CJEU carries out an extended interpretation of the rules. The CJEU has issued a large number of decisions fundamental to the EU institutions and its legal system, some of which will be discussed below.

Therefore, the following changes in the role of the CJEU can be identified as the expansion of its jurisdiction, and thus an increase in the number of cases, the development of its control function, and the assertion of fundamental rights proclaimed in the EU. The CJEU's jurisdiction has expanded considerably to cover new areas such as personal data protection and digital rights. This reflects the growing complexity of EU law and the need for judicial oversight in new policy areas. Thus, the number of applications to the CJEU has increased noticeably, reflecting the expansion of EU law and the growing number of legal disputes involving EU institutions, Member States, and individuals. According to the CJEU's statistics for 2019-2023, the CJEU confirms a steady increase in the number of cases referred to the Court of Justice and the General Court (Court of Justice of the European Union, 2024a). This has increased the burden on the Court's resources and now urgently requires measures to increase efficiency and simplify procedures. The CJEU also plays a leading role in upholding the rule of law and ensuring the consistency and coherence of EU law. Its judgements are becoming increasingly influential in shaping not only EU law but also EU policies, as the CJEU factually exercises judicial oversight over the actions of EU institutions and Member States. As of the end of 2023, according to the CJEU's consolidated judicial statistics for 2019-2023, the largest number of lawsuits were related to the protection of fundamental rights and freedoms, especially in cases concerning issues such as non-discrimination, rule of law, consumer protection, interpretation of the provisions of the Founding Treaties, environmental protection, etc. This reflects the CJEU's commitment to upholding the values prescribed in the Founding Treaties and the Charter of Rights<sup>2</sup>. Overall, while the CJEU's core functions as

the guardian of EU law stay unchanged, its role has evolved in response to changing legal, political, and societal dynamics within and outside the EU.

**The role of the CJEU's judgements in shaping EU law.** In addition to its role as an interpreter of EU law, the CJEU actively contributes to its development through landmark judgements and case law. By setting legal precedents and clarifying the scope of EU law, the CJEU plays a crucial role in shaping the evolution of the EU legal framework. Its decisions have far-reaching implications, affecting not only Member States but also the wider legal community in the EU and beyond. This is reflected in all areas of EU law.

For example, in the area of data protection and privacy, the Schrems II judgement<sup>3</sup> invalidated the EU-US Privacy Shield agreement, citing concerns about the adequacy of data protection standards in the United States. The decision underlined the EU's commitment to protecting the privacy of its citizens and set a precedent for cross-border data transfers. Furthermore, the CJEU plays a crucial role in ensuring compliance with competition law and combating monopolistic practices. Notable decisions include the imposition of large fines on tech giants such as Google for anti-competitive behaviour, which demonstrates the EU's determination to ensure a level playing field in the digital market<sup>4</sup>. This decision had an impact on the CJEU's subsequent practice in assessing data transfer mechanisms to third countries with a prominent level of personal data protection. Thus, the CJEU used its own judgement in Schrems II in subsequent cases to consider complaints and appeals related to data transfers to countries that do not enjoy the same level of protection as the EU. For instance, in the judgement in case No. C-311/18 "Facebook Ireland and Schrems"<sup>5</sup> in 2020, the invalidity of the Privacy Shield mechanism in the context of data transfer to the United States was again recognised.

The protection of the principles of citizenship and free movement in the EU is another key area of the CJEU's work. Landmark judgements, including the Lounes case, have confirmed the right of EU citizens and their families to reside and move freely within the EU, strengthening the concept of European citizenship as a fundamental aspect of EU law<sup>6</sup>. In the

<sup>1</sup> Judgment of the Court of Justice of the European Union (Eighth Chamber) in Case No. C-329/17. (2018, August). Retrieved from <https://eur-lex.europa.eu/eli/reg/2023/1115/oj>.

<sup>2</sup> Charter of Fundamental Rights of the European Union. (2000, December). Retrieved from [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

<sup>3</sup> Judgment of the Court of Justice of the European Union (Grand Chamber) in Case No. C-311/18. (2020, July). Retrieved from <https://curia.europa.eu/juris/liste.jsf?num=C-311/18>.

<sup>4</sup> Judgment of the General Court (Ninth Chamber, Extended Composition) in Case No. T612/1710. (2021, November). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=249001&pageIndex=0&doclang=EN>.

<sup>5</sup> Judgment of the Court of Justice of the European Union (Grand Chamber) in Case No. C311/18. (2020, July). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=228677&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3666002>.

<sup>6</sup> Judgment of the Court of Justice of the European Union (Grand Chamber) in Case No. C-165/16. (2017, November). Retrieved from <https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-165/16>.

era of digital transformation, the CJEU has addressed numerous legal issues related to digital rights and the regulation of online platforms. Decisions such as the Google Spain case<sup>1</sup>, which established the “right to be forgotten”, underline the CJEU’s efforts to strike a balance between freedom of expression and the rights of citizens to privacy and personal data protection in the digital sphere. For instance, in 2016, the aforementioned judgement was used to resolve the issues in case No. C-440/14 P “GC and Others v Commission”<sup>2</sup> concerning access to documents in the context of personal data protection.

In its summary of 2023, the CJEU of Justice of the European Union highlighted several completed court cases that are “significant” for the interpretation of certain acts of EU law (Court of Justice of the European Union, 2024b). Some of these decisions have direct references to the obligations of candidate states. See, for example, the judgement in case No. C-204/21<sup>3</sup> dated 5 June 2023 in the EC’s action against Poland concerning the independence and respect for the private life of judges. In the judgement, the CJEU emphasises that the EU is based on values common to the Member States and that respect for these values is a prerequisite for accession. Thus, the EU comprises states that have voluntarily committed themselves to these values, and respect for and promotion of these values is a fundamental prerequisite for mutual trust among Member States. Consequently, a Member State’s compliance with these values is a condition for the enjoyment of all rights arising from the application of the Founding Treaties to that Member State and cannot be reduced to an obligation that a candidate state must perform to join the EU and which it may ignore after accession. In this regard, the CJEU notes that Article 19 of the TFEU<sup>4</sup> specifies the value of the rule of law set out in Article 2 of the TFEU<sup>5</sup> and prescribes that it is for Member States to determine the system of remedies and procedures to ensure that individuals can enjoy their right to an effective judicial remedy in the areas covered by EU law.

The review also highlights the CJEU’s judgement concerning the EU’s sanctions policy towards certain Russian citizens in connection with Russia’s full-scale

armed aggression against Ukraine. Judgement in Case No. T-193/22<sup>6</sup> dated 15 November 2023 contains an interpretation of the criteria by which a person may be subject to EU sanctions. The CJEU also notes that these criteria, interpreted in the light of the legislative and historical context in which they were adopted, are not manifestly disproportionate considering the purpose of the restrictive measures and the overriding importance of maintaining peace. This decision had a considerable impact on the further introduction of the EU sanctions policy against Russian citizens as a justified instrument of foreign political influence on persons involved in the outbreak of hostilities on the territory of Ukraine on 24 February 2022. Since the application of such measures is not a regular practice of the EU, the CJEU’s judgement confirmed the legality of the measures imposed by the Union. Thus, as the “guardian” of EU law, the CJEU plays a key role in upholding the fundamental principles of the EU and ensuring the effective functioning of its legal system.

**Challenges in the work of the CJEU and the formation of judicial precedents.** While the CJEU plays a crucial role in upholding the rule of law and ensuring the uniform application of EU law, it faces a series of challenges, as illustrated in Figure 1. According to J.C. Fjølseth *et al.* (2022), the CJEU faces a sizeable backlog of cases, which leads to delays in resolving legal disputes. This backlog could undermine the prompt administration of justice and reduce the efficiency of the EU judiciary. The CJEU’s proceedings are complex and lengthy due to their multi-stage nature. This complexity can deter individuals and legal entities from bringing cases to the CJEU, specifically because of the costs involved: the cost of legal representation and procedural barriers can limit access to justice, especially for individuals and small businesses with limited resources. This factually creates inequality and impedes the observance of the rights and freedoms of EU citizens.

Another challenge is the problem of law enforcement. Although the CJEU has the power to interpret EU law, the enforcement mechanisms are left to the Member States, which must follow the judgements. In some cases, Member States may not

<sup>1</sup> Judgment of the Court of Justice of the European Union (Grand Chamber) in Case No. C131/1213. (2014, May). Retrieved from <https://curia.europa.eu/juris/liste.jsf?num=C-131/12>.

<sup>2</sup> Judgment of the Court of Justice of the European Union (Grand Chamber) in Case No. C440/14 P. (2016, March). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=174656&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3666002>.

<sup>3</sup> Judgment of Justice of the European Union (Grand Chamber) in Case No. C-204/21. (2023, June). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?jsessionid=FAA57A7554B89A9107F9D9F7785529FD?text=&docid=274364&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=3648032>.

<sup>4</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Signed at Lisbon. (2007, December). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>.

<sup>5</sup> *Ibidem*, 2007.

<sup>6</sup> Judgment of the General Court in Case No. T-193/22. (2023, November). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=281984&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3666002>.

follow the CJEU’s judgements, leading to problems in the enforcement of judgements, which is unacceptable in the context of the EU’s values. For instance, in 2020, the EC filed a complaint with the Court of Justice against Hungary regarding legislative measures that restrict the possibility of foreign funding for

non-profit organisations working to support migrants and refugees. Hungary’s actions were recognised as a violation of EU law. In such cases, the CJEU may impose financial sanctions against a Member State that fails to follow its judgements (Court of Justice of the European Union, 2024c).



**Figure 1.** Challenges in the work of the CJEU

**Source:** compiled by the authors of this study

A considerable challenge in the CJEU’s work is the language barrier. CJEU proceedings are conducted in several languages, which creates difficulties for both judges and litigants, especially for those who do not speak the official languages of the EU. Language barriers can impede the effective presentation of arguments and access to justice.

The problem of political pressure on judicial independence is significant. This concerns not only the judges of the CJEU, as this problem is global for all judges elected to office. The significance of this issue is highlighted in the European Parliament’s 2023 briefing (Mańko, 2023). In recent years, the CJEU’s case law has played an increasingly vital role in the development of common minimum standards of judicial independence, which are binding on EU Member States under EU law. The CJEU’s judgements may be subject to scrutiny and criticism by various stakeholders, including Member States, interest groups, and the public. Political pressure and public opinion may affect the independence of judges and the impartiality of judicial decisions.

An additional challenge for the CJEU’s work is the considerable increase in the body of EU law, which is vast and complex, covering a wide range of areas from antitrust to environmental regulations. Judges must ensure consistency and coherence in their judicial practice, which can be challenging considering the evolving nature of EU law and judicial practice.

The impact of Brexit on the functioning of the CJEU is noticeable. The UK’s withdrawal from the Union has raised questions about the CJEU’s jurisdiction over UK law and the enforcement of judgements. This transition creates practical challenges and uncertainty for legal practitioners and litigants. Addressing these challenges requires measures to improve the efficiency, accessibility and effectiveness of the CJEU, including reforms aimed at simplifying procedures, improving access to justice, and strengthening oversight and accountability for non-compliance with court decisions. Furthermore, promoting transparency, accountability, and independence of the judiciary

is essential to ensure the integrity and legitimacy of the EU legal system.

**The significance of the CJEU’s judgements for Ukraine and Moldova as candidate states.** Attention to the CJEU’s judgements is crucial when adapting national legislation. This refers to the obligation to consider the explanations provided in the CJEU’s judgements. The CJEU’s judgements are binding on all EU member states. This means that national courts must follow the CJEU’s judgements when interpreting and applying EU law, including the provisions of EU treaties, directives, and regulations. Ignoring the CJEU’s judgements may lead to legal uncertainty and potential conflicts between national legislation and EU law.

As the highest interpreter of EU law, its judgements clarify the meaning and scope of EU legal norms, providing guidance on how to apply them in practice. Considering the CJEU’s opinions helps to ensure consistency and coherence in the application of EU law and enhances the protection of fundamental human rights and freedoms. Court rulings often deal with issues related to fundamental rights and freedoms of EU citizens. The adaptation of national legislation of the candidate countries to these decisions helps to protect the rights of individuals and legal entities, ensuring that they enjoy the full benefits of EU law and are not subject to arbitrary or discriminatory treatment. Furthermore, the CJEU’s decisions increase legal certainty. Compliance with them increases legal certainty for citizens, businesses, and public authorities. Judicial decisions provide clear guidance on the rights and obligations arising from EU law, reducing ambiguity and potential conflicts in legal interpretation. This helps to create a stable and predictable legal environment conducive to economic growth and social cohesion.

The study of the CJEU’s judgements can significantly contribute to the European integration of candidate states, especially at the stage of the negotiation process. As fairly noted by V. Lomaka *et al.* (2023), the case law of the CJEU has numerous Europeanisation effects. Following them is essential for advancing

European integration and upholding the rule of EU law. This demonstrates respect for the EU legal order and commitment to the common values and goals of the Union. The adaptation of Ukrainian legislation in line with the CJEU's judgements strengthens the overall cohesion and effectiveness of the EU legal system.

The Association Agreement<sup>1</sup> prescribes Ukraine's obligation to harmonise the provisions of national legislation to those of EU law. The legislation is adapted in stages and in this process due regard should be paid to the relevant case law of the CJEU, as stated, for instance, in Article 153 of this Agreement. Judicial practice of Ukraine contains references to certain judgements of the CJEU. A series of cases from the Unified State Register of Court Decisions of the Supreme Court of Ukraine contain references to the CJEU's case law: Case No. 910/9627/20<sup>2</sup> (FENS spol. s r.o. v. Slovak Republic<sup>3</sup>); Case No. 640/12095/21<sup>4</sup> (CJEU's cases of "Bundesamt Fremdenwesen und Asyl"<sup>5</sup>; "Commissaire gnral aux rfugis et aux apatrides"<sup>6</sup>; "Staatssecretaris van Justitie en Veiligheid"<sup>7</sup>); Case No. 910/12326/20<sup>8</sup> (CJEU's case of FENS spol. s r.o. v. Slovak Republic<sup>9</sup>); Case No. 910/14489/20<sup>10</sup> (CJEU's case of FENS spol.

s r.o. v. Slovak Republic<sup>11</sup>); Case No. 818/399/17<sup>12</sup> (CJEU's case of Yvonne van Duyn v. Home Office<sup>13</sup>); Case Nos. 9901/636/18 and 9901/186/19<sup>14</sup> (CJEU's case of Commission v. Poland<sup>15</sup>), etc. The list of such solutions is inexhaustible and constantly updated.

Notably, the Supreme Court's decisions under study were delivered within the framework of commercial and administrative proceedings. The subjects of consideration in these cases were as follows: ensuring public order and security, national security and defence of Ukraine, specifically regarding refugees; energy carriers; gas supply; export of electricity; functioning of the gas distribution system; architectural and construction control; state regulation in the energy and utilities sectors; qualification assessment of judges, etc.

Thus, in administrative proceedings, it is usually pointed out that the CJEU's case law is applied in a general context, without specifying cases. In commercial proceedings, there are references, mainly to the case of FENS spol. s r.o. v. Slovak Republic No. C-305/17 dated 6 December 2018<sup>16</sup> (regarding the interpretation of the provisions of Directive No. 2003/54/EC<sup>17</sup> on common rules for the internal electricity market). The case of Yvonne van Duyn v.

<sup>1</sup> Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part. (2014, June). Retrieved from [https://zakon.rada.gov.ua/laws/show/984\\_011?lang=en#Text](https://zakon.rada.gov.ua/laws/show/984_011?lang=en#Text).

<sup>2</sup> Judgement of the Supreme Court in Case No. 910/9627/20. (2022, August). Retrieved from <https://reyestr.court.gov.ua/Review/105852859>.

<sup>3</sup> Judgment of Justice of the European Union (Grand Chamber) in Case No. C305/17. (2018, December). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=208551&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3550687>.

<sup>4</sup> Judgement of the Supreme Court in Case No. 640/12095/21. (2023, November). Retrieved from <https://reyestr.court.gov.ua/Review/114735837>.

<sup>5</sup> Judgment of the Court (Seventh Chamber) in Case No. C-231/21. (2022, March). Retrieved from <https://eur-lex.europa.eu/legal-content/bg/TXT/?uri=CELEX%3A62021CJ0231>.

<sup>6</sup> Judgment of the Court (Grand Chamber) in Case No. C-573/14. (2017, January). Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0573#t-ECR\\_62014CJ0573\\_EN\\_01-E0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0573#t-ECR_62014CJ0573_EN_01-E0001).

<sup>7</sup> Judgment of the Court (Grand Chamber) in Case No. C-69/21. (2022, November). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0069>.

<sup>8</sup> Judgement of the Supreme Court in Case No. 910/12326/20. (2022, September). Retrieved from <https://reyestr.court.gov.ua/Review/106658261>.

<sup>9</sup> Judgment of Justice of the European Union (Grand Chamber) in Case No. C305/17. (2018, December). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=208551&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3550687>.

<sup>10</sup> Judgement of the Supreme Court in Case No. 910/14489/20. (2024, January). Retrieved from <https://reyestr.court.gov.ua/Review/116888006>.

<sup>11</sup> Judgment of Justice of the European Union (Grand Chamber) in Case No. C305/17. (2018, December). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=208551&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3550687>.

<sup>12</sup> Judgement of the Supreme Court in Case No. 818/399/17. (2018, April). Retrieved from <https://reyestr.court.gov.ua/Review/73173405>.

<sup>13</sup> Judgment of the Court in Case No. 41-74. (1974, December). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61974CJ0041>.

<sup>14</sup> Judgement of the Supreme Court in Case No. 9901/636/18. (2019, March). Retrieved from <https://reyestr.court.gov.ua/Review/80783425>.

<sup>15</sup> Judgment of the Court (Grand Chamber) in Case No. C-192/18. (2019, November). Retrieved from <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A62018CJ0192>.

<sup>16</sup> Judgment of Justice of the European Union (Grand Chamber) in Case No. C305/17. (2018, December). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=208551&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3550687>.

<sup>17</sup> Directive of the European Parliament and of the Council No. 2003/54/EC "On Common Rules for the Internal Market in Electricity and Repealing Directive 96/92/EC – Statements Made with Regard to Decommissioning and Waste Management Activities". (2003, June). Retrieved from <https://eur-lex.europa.eu/eli/dir/2003/54/oj>.

Home Office<sup>1</sup> is notable, which describes the terms “legal certainty” and “reasonable expectations”. The case of *Berlioz Investment Fund S.A. v Directeur de l’administration des Contributions directes* is considered relevant for use in judicial practice concerning taxation<sup>2</sup>. However, no reference to this case was found in the Supreme Court’s decisions. Therewith, there is an ambiguous practice of the Supreme Court: case No. 910/9627/20<sup>3</sup> ignored in the decision in case No. 910/14489/20<sup>4</sup>.

In terms of the use of the CJEU’s judgements in the practice of the Constitutional Court of Ukraine (the CCU), only two judgements of the Constitutional Court of Ukraine mention the CJEU’s case law. This refers to the Decision of the Second Senate of the CCU No. 6-p(II)/2021 dated 16 September 2021 in case No. 3-349/2018 (4800/18, 1328/19, 3621/19, 6/20)<sup>5</sup> and the Decision of the Second Senate of the CCU No. 9-p(II)/2023 dated 1 November 2023 in case No. 3-53/2022 (126/22)<sup>6</sup>. The Judgement dated 16 September 2021 in its reasoning part is substantiated, inter alia, by the CJEU’s interpretation of the concept of human dignity as a key element in its practice, the Judgement dated 1 November 2023 – by the CJEU’s confirmation of the obligation of competent national authorities to follow the principle of proportionality. Notably, in these decisions of the CCU, apart from the CJEU’s practice, the practices of the European Court of Human Rights (the ECHR), constitutional courts of some states, specifically the USA, Germany, Lithuania, and Hungary, are also considered.

In some cases, when it is necessary to interpret the provisions of EU law implemented in the national

legislation of Moldova, the Constitutional Court also uses the judgements of the CJEU when considering the case on the merits and rendering a final decision. An example of such decisions is the Decision on the constitutional application regarding the unconstitutionality of certain provisions of Part 2 of Article 126 (2) of the Criminal Procedural Code<sup>7</sup> (application No. 49g/2023)<sup>8</sup> (“In its judgement in *Tele Sverige and Watson and Others*, Nos. C-203/15 and C-698/15<sup>9</sup> dated 21 December 2016, which was based on previous references by the Administrative Court of Appeal of Stockholm, Sweden, and the Court of Appeal of England and Wales, the Court of Justice held that Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council dated 12 July 2002 on the processing of personal data and the protection of privacy in the electronic communications sector<sup>10</sup> excludes legislation allowing authorities to access traffic data and stored location data if: (a) the purpose for which it is intended is not limited to the fight against serious crime and (b) such access is not subject to prior review by a court or other independent body. These findings were confirmed in the CJEU’s subsequent practices on access to traffic data. For instance, in Case No. C-746/18<sup>11</sup> dated 2 March 2021, the CJEU clarified that Article 15(1) of Directive 2002/58/EC<sup>12</sup> allows access to traffic data or location data held only to combat serious crime or a serious threat to security, regardless of the length of the period for which access to the traffic data is requested or the amount of data available in that respect...”). The relevant reference to the CJEU’s judgement is also contained in the

<sup>1</sup> Judgment of Justice of the European Union in Case No. 41/74. (1974, December). Retrieved from <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=88751&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3551522>.

<sup>2</sup> Judgment of Justice of the European Union (Grand Chamber) in Case No. C682/15. (2017, May). Retrieved from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=190721&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=3552442>.

<sup>3</sup> Judgement of the Supreme Court in Case No. 910/9627/20. (2022, August). Retrieved from <https://reyestr.court.gov.ua/Review/105852859>.

<sup>4</sup> Judgement of the Supreme Court in Case No. 910/14489/20. (2024, January). Retrieved from <https://reyestr.court.gov.ua/Review/116888006>.

<sup>5</sup> Judgement of the Second Senate of the Constitutional Court of Ukraine No. 6-p(II)/2021 in Case No. 3-349/2018 (4800/18, 1328/19, 3621/19, 6/20). (2021, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/v006p710-21#Text>.

<sup>6</sup> Judgement of the Second Senate of the Constitutional Court of Ukraine No. 9-p(II)/2023 in Case No. 3-53/2022(126/22). (2023, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/v009p710-23#Text>.

<sup>7</sup> Criminal Procedural Code of the Republic of Moldova. (2003, March). Retrieved from [https://www.legis.md/cautare/getResults?doc\\_id=123540&lang=ro](https://www.legis.md/cautare/getResults?doc_id=123540&lang=ro).

<sup>8</sup> Judgment of Constitutional Court of the Republic of Moldova in Case No. 49g/2023 “On the Exception of Unconstitutionality of Certain Provisions of Article 126 para. (2) of the Code of Criminal Procedure (Safeguards for the Collection of Information on Telephone Conversations). (2023, December). Retrieved from [https://www.constcourt.md/public/ccdoc/hotariri/h\\_22\\_2023\\_49g\\_2023\\_rou.pdf](https://www.constcourt.md/public/ccdoc/hotariri/h_22_2023_49g_2023_rou.pdf).

<sup>9</sup> Judgment of the Court (Grand Chamber) in Cases Nos. C-203/15 and C-698/15. (2016, December). Retrieved from <https://curia.europa.eu/juris/liste.jsf?num=c-203/15>.

<sup>10</sup> Directive of the European Parliament and of the Council No. 2002/58/EC “On the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector”. (2002, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002L0058>.

<sup>11</sup> Judgment of the Court (Grand Chamber) in Case No. C-746/18. (2021, March). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CA0746>.

<sup>12</sup> Directive of the European Parliament and of the Council No. 2002/58/EC “On the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector”. (2002, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002L0058>.

judgement to dismiss the complaint No. 161g/2023<sup>1</sup> challenging the unconstitutionality of certain provisions of Article 232 of the Customs Code (as amended by Law No. 1149 as of 20 July 2000)<sup>2</sup> (“...the CJEU also examined the customs provisions of Bulgaria<sup>3</sup>, according to which in case of withdrawal of goods placed under the customs warehousing procedure from customs supervision, the holder of the customs warehousing permit was obliged to pay a financial penalty in the amount of 100% to 200% of the value of the withdrawn goods, as well as the amount corresponding to the value of these goods. The court noted that the fine, which consists of an obligation to pay an amount corresponding to the value of the goods withdrawn from customs control, does not appear to be proportionate. Thus, the fine of this amount exceeds the limits of what is necessary to ensure, specifically, that the goods placed under the customs warehousing procedure are not withdrawn from customs supervision. In such circumstances, the CJEU noted that the penalties in question are intended to punish not any fraudulent or illegal actions, but any violation of customs legislation. The CJEU therefore held that such a sanction was disproportionate...”).

Analogous references are contained in the Judgment on the constitutional petition to declare Article 87(2) and (3) of the Labour Code unconstitutional<sup>4</sup> (obligation to obtain the consent of the trade union body upon dismissal) (complaint No. 149g/2019)<sup>5</sup> (“...the Court of Justice of the European Union interpreted Article 7 of Directive No. 2002/14/EC<sup>6</sup> as not requiring that employee representatives be granted enhanced protection against dismissal, but clarified that any measures taken to transpose the Directive must meet a minimum level of protection (Judgment of the Court of Justice of the European Union No. C-405/08<sup>7</sup>”). Another example is the Decision

on the Declaration of Certain Provisions of the Civil Procedure Code of the Republic of Moldova of 2003 as Unconstitutional<sup>8</sup> (judicial mediation) (complaint No. 3g/2018)<sup>9</sup> (“In case 317/08, the CJEU considered whether the establishment of a mandatory conciliation procedure as a condition for the admissibility of a lawsuit is compatible with the right to effective judicial protection. The Court ruled that fundamental rights are not absolute prerogatives, but may be subject to restrictions, provided that they are truly in line with the aims of the general interest pursued by the measure in question and do not involve, in terms of the aim pursued, a disproportionate and unacceptable interference that would undermine the very content of the rights thus guaranteed, and the case law cited, as well as the practice of the ECHR, the judgement in *Fogarty v. the United Kingdom*<sup>10</sup> dated 21 November 2001, §33”).

The position of the Supreme Court of Ukraine in terms of analysing the CJEU’s judgements is mainly that the courts consider law enforcement practice, including the CJEU’s judgements, when applying the law. At the same time, an analysis of the judgements of the Supreme Court of Justice of Moldova for 2020-2023 revealed no references to the case law of the CJEU. Therewith, the practice of the constitutional courts of the studied states is insignificant (Ukraine – 2 judgements; Moldova – 3 judgements and 1 ruling). The above decisions relate to the interpretation of certain EU law provisions implemented in national legislation. Thus, Ukraine and Moldova are not currently members of the EU and are not subject to the CJEU’s judgements on a mandatory basis. Therefore, they cannot be a source of national law; the CJEU’s judgements should be regarded as allowing to establish the meaning of the provisions of EU law. Analogously to the practice of applying ECHR judgements,

<sup>1</sup> Judgment of Constitutional Court of the Republic of Moldova in Case No. 161g/2023 “On the Exception of Unconstitutionality of Certain Provisions of Article 232(a) and (h) of the Customs Code (in the Wording of Law No 1149)”. (2024, June). Retrieved from [https://www.constcourt.md/public/ccdoc/decizii/d\\_50\\_2024\\_161g\\_2023\\_rou.pdf](https://www.constcourt.md/public/ccdoc/decizii/d_50_2024_161g_2023_rou.pdf).

<sup>2</sup> Customs Code of the Republic of Moldova. (2021, August). Retrieved from [https://www.legis.md/cautare/getResults?doc\\_id=135043&lang=ro](https://www.legis.md/cautare/getResults?doc_id=135043&lang=ro).

<sup>3</sup> Law of Bulgaria “On Customs”. (1999, January). Retrieved from <https://lex.bg/laws/ldoc/2134384640>.

<sup>4</sup> Labour Code of the Republic of Moldova. (2003, March). Retrieved from [https://www.legis.md/cautare/getResults?doc\\_id=113032&lang=ro](https://www.legis.md/cautare/getResults?doc_id=113032&lang=ro).

<sup>5</sup> Judgment of Constitutional Court of the Republic of Moldova in Case No. 149g/2019 “On the Exception of Unconstitutionality of Article 87 para. (2) and par. (3) of the Labour Code (Obligation to Obtain the Consent of the Trade Union Body when Dismissing)”. (2019, February). Retrieved from <https://www.constcourt.md/public/ccdoc/hotariri/ro-hcc8sesizarea3g2018b26e1.pdf>.

<sup>6</sup> Directive of the European Parliament and of the Council No. 2002/14/EC “On Establishing a General Framework for Informing and Consulting Employees in the European Community – Joint Declaration of the European Parliament, the Council and the Commission on Employee Representation”. (2002, March). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0014>.

<sup>7</sup> Judgment of the Court (Third Chamber) in Case No. C-405/08 “The Danish Society of Engineers and the Confederation of Danish Employers”. (2010, February). Retrieved from <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62008CJ0405>.

<sup>8</sup> Civil Procedural Code of the Republic of Moldova. (2003, May). Retrieved from [https://www.legis.md/cautare/getResults?doc\\_id=110220&lang=ro](https://www.legis.md/cautare/getResults?doc_id=110220&lang=ro).

<sup>9</sup> Judgment of Constitutional Court of the Republic of Moldova in Case No. 3g/2018 “On the Exception of Unconstitutionality of Some Provisions of the Code of Civil Procedure of the Republic of Moldova, Adopted by Law No. 225 of 30 May 2003 (Judicial Mediation)”. (2018, April). Retrieved from <https://www.constcourt.md/public/ccdoc/hotariri/ro-hcc8sesizarea3g2018b26e1.pdf>.

<sup>10</sup> Judgment of the European Court of Human Rights in Case No. 37112/97 “Fogarty v. the United Kingdom”. (2011, November). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-59886%22%5D%7D>.

the principles arising from its decisions on comparable issues are to be considered, even if they relate to other states.

The methods and ways of interpreting acts by the CJEU, considering the significant role of case law in the EU legal system, may be useful for the practice of the Constitutional Court of Ukraine and the Constitutional Court of Moldova, as well as other candidate states. Thus, in the performance of its functions, the CJEU carries out an extended interpretation of the provisions of EU law. This method allows filling gaps in the law and is also one of the means by which the competences of the Union's institutions are expanded. Furthermore, the CJEU provides systematic interpretation of EU law, which reflects the inextricable link between a particular rule and the system of the act in which it is contained and the entire system of EU law. Notably, the preamble plays a significant role in the interpretation of an act. The provisions of the preambles to the constituent agreements and the articles establishing the objectives of these agreements shall be interpreted by the CJEU holistically (comprehensively) in such a way as to best promote the objectives of the act.

It is worth noting the problem of the use and application of court precedents as sources of law in states with a continental legal system, including Ukraine and Moldova. This system of law does not prescribe the use of judicial precedents in resolving court cases. Therefore, in the legal understanding of national judges and lawyers, precedents are not an equivalent analogue of substantive law. This may become a considerable obstacle to the correct understanding and application of EU law in the states that become new EU members. As practicing lawyers in countries with continental legal systems understand it, the application of judicial precedent may carry a considerable risk of distorting the idea and letter of a substantive legal rule. In such systems of law, decisions of higher courts may be considered by lower courts only for the sake of uniformity of judicial practice, but not as a reason for making a decision. In this context, following the opinion of M. Eliantonio (2010) that the Court of Justice provides a basic "toolkit" for ensuring compliance with EU law by national courts and authorities throughout the European Union, it should be added that the same "toolkit" can and should be effectively used for the adaptation of legislation by the courts of the Member States at the stage of European integration. Thus, attention to the judgements of the EU Court of Justice when adapting national legislation is essential to ensure compliance with the law, protect fundamental rights and freedoms, avoid violations, enhance legal certainty, and promote European integration. This demonstrates the commitment to the rule of law and the values of the European Union.

## ■ Discussion

The findings of this study in terms of the role of the CJEU's judgements in the development of Union law generally do not contradict the positions of other researchers who have focused on analogous issues. The author of this study agrees with the statements of N. Gierczyk (2005) regarding the integrating and constitutive role of the CJEU, as well as the definition of judicial precedent as an integral part of the evolution of the EU legal system and the EU institution as a whole.

At the same time, this study found an "academic niche" and specified a series of aspects of the general topic of the impact of the CJEU's judgements on EU law. Thus, the study detailed the channels of influence of judicial precedent on the formation and development of the *acquis communautaire*. Judicial interpretation clarifies the meaning and intent of legislative provisions, helping to establish legal principles and standards on which future lawmaking and application of the law is based. CJEU precedents can fill in gaps or ambiguities in legislation by providing solutions to legal issues that are not directly addressed in the text of the act, especially in case of directives. Judicial precedents reflect the evolution of social values, norms, and expectations, influencing the legislative response to new social, economic, and technological changes in European society, thereby adapting the law to social change. CJEU precedents set legal standards and principles that influence not only legislative but also political practice in the EU. Judicial precedents provide feedback to legislators on the effectiveness and adequacy of existing legislation, highlighting shortcomings or inconsistencies in legislation, prompting legislators to review and reformulate legislation to address the shortcomings identified in court decisions. Consistent application of court precedents contributes to the stability and predictability of the legal system, increasing confidence in the rule of law.

Compared to all the studies published previously, this study analysed some of the CJEU's most recent landmark decisions. This refers to two decisions made in 2023. Firstly, the interpretation of the criteria for imposing EU sanctions on a person has substantially influenced the EU's further sanctions policy towards persons involved in the outbreak of hostilities against Ukraine on 24 February 2022. Secondly, the judgement in the EC's lawsuit against Poland on the independence and privacy of judges noted that it is impossible to reduce adherence to EU values to a candidate's obligation to join the Union, which can be ignored after becoming a Member State.

Considering the emphasis on the role of judicial precedent in the development of the legal systems of the candidate states in this study, the following is worth noting on the example of Ukraine and Moldova.

This topic is part of a broader theme. This refers to the application and influence of EU law overall, not just judicial precedent outside the supranational union of states. Supporting the basic findings of, for example, M. Cremona & J. Scott (2019) and A. Reich & H.-W. Micklitz (2020) regarding the impact of the *acquis communautaire* on the legal systems of non-EU states, it should be noted that it is inappropriate to use the provocative hypothesis put forward by F. Casolari & M. Gatti (2022) to investigate the subject of this paper and analogous topics. This refers to the initial interpretation of the extraterritoriality of EU law as a manifestation of distrust in other systems of legal regulation of social relations. The author of this study considers the generally positive assessment of the impact of the *acquis communautaire* on the development of legislation of states outside the EU legal framework, specifically the candidate states, to be paramount and undisputed. For instance, the author of this study supports the opinion of K. Smyrnova (2020), who defined the content of such influence as the Europeanisation of the legal order of Ukraine.

In the context of analysing the impact of the CJEU's judgements on the development of the legal systems of candidate states, it is important to identify the factors that determine it. This study considered the obligations enshrined in the provisions of European integration agreements to be the priority. At the same time, it is appropriate to agree with the approach used by M. Cremona & J. Scott (2019), A. Reich & H.-W. Micklitz (2020), where a wider range of conditioning tools was highlighted, both formal and informal. Therewith, the potential and capabilities of the CJEU's judgements as a factor in the adaptation of national legislation of third countries to EU law are not unlimited and cannot fully/effectively counteract authoritarian tendencies in the system of organisation of state power. An example of research "romanticism" is the study by R. Petrov & P. Kalinichenko (2011), where the authors optimistically combined Ukraine and Russia in their study of the practices of application of the EU *acquis* by national courts of non-EU states. Among the manifestations of the impact of the CJEU's judgements on the legal system of the candidate states, this study emphasises the promotion of European integration, which does not suggest that other relevant manifestations are ignored or underestimated. The conclusion of K. Smyrnova (2014) that the CJEU's decisions contribute to the improvement of the legal culture of business entities in Ukraine is worth further development through new research.

The examples of Ukraine and Moldova show that the role of the CJEU's judgements in the development of the legal systems of the candidate states is of interest at the research level, but the place of such precedents in the legal system of the candidate states

is not properly regulated at the regulatory level. Despite the rather fragmentary application of the CJEU's case law outside the EU, neither the EU nor the candidate states have officially spoken out on this issue.

## ■ Conclusions

There is a connection between the structural and functional evolution of the CJEU and the increasing weight of its judgements. In the 21<sup>st</sup> century, the EU judicial system has undergone considerable reforms, specifically, the entry into force of the Lisbon Treaty led to the expansion of the CJEU's jurisdiction, the introduction of an urgent preliminary ruling procedure, and the development of the control function. These changes have strengthened the role of the CJEU as a factor in the establishment and development of EU law.

The current challenges facing the CJEU include the complexity and length of court procedures, the existence of cases of non-compliance with judgements by Member States, and the language barrier as a hypothetical obstacle to the effective presentation of arguments by litigants and access to justice, pressure on the judiciary from Member States, interest groups and the public, the growing body of EU law, uncertainty, due to Brexit, about the CJEU's jurisdiction over the UK, and the enforcement of relevant judgements. The channels of influence of judicial precedent (CJEU's judgements) on the establishment and development of EU law are defined as interpretation of legislation, filling gaps in legislation, adaptation to social changes in the EU, development of legal standards, creation of a feedback mechanism, and promotion of legislative stability.

The analysis of the case law of Ukraine and Moldova, in the context of the use of the CJEU's judgements, allows summarising the overall significance of judicial precedent in the context of the European integration of the candidate states. While compliance by national courts with the CJEU's judgements in interpreting and applying EU law will contribute to European integration, ignoring them will lead to legal uncertainty and potential conflict between national legislation and EU law. Furthermore, certain judgements of the CJEU serve as guidelines for candidate states and can counteract/warn against manifestations of authoritarianism. For instance, a judgement emphasising the impossibility of reducing compliance with EU values to an obligation of a candidate state that can be ignored after becoming a Member State can be considered as such. It is also worth noting the activity of appeals to the CJEU's judgements in the judicial practice of the two states. The Supreme Court of Ukraine has repeatedly referred to judicial precedent in its decisions, and the list of relevant decisions is constantly updated. At the same time, in administrative proceedings, as a rule, the application

of the CJEU's case law is indicated in a general context, without specifying cases. At the same time, based on the analysis of the materials of the Supreme Court of Justice of Moldova for 2020-2023, its judgements do not refer to concrete judgements or the general practice of the CJEU. However, the Constitutional Court of Moldova, like the Constitutional Court of Ukraine, referred to the decisions of the CJEU in its judgements. Therewith, the respective Moldovan and Ukrainian constitutional cases are small in scope.

It is worth noting the potential problem of widespread use of the CJEU's judgements in the national practice of candidate states whose legal systems belong to the continental family. The legal culture of legal practitioners in these countries is characterised by the perception of judicial precedent as a carrier of a considerable risk of distortion of the idea and letter

of a substantive rule of law. Considering this, the dilemma of precedent versus substantive law may be a permanent trigger for judges and lawyers.

Promising areas for further research on the role of judicial precedent in the development of EU law and the legal systems of the candidate states include, specifically, a review of the practices of using the CJEU's judgements by the courts of other candidate states, as well as the study of new decisions of Ukrainian courts containing references to the case law of the CJEU.

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#### ■ Conflict of Interest

The authors of this study declare no conflict of interest.

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## **Роль судових прецедентів у розвитку права ЄС і правових систем держав-кандидатів: прикладі України та Молдови**

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■ **Анотація.** Рішення Суду Європейського Союзу відіграють одну з фундаментальних ролей у формуванні *acquis* Європейського Союзу. Актуальність дослідження полягає в їх впливі не лише на правозастосовну практику в межах Союзу, а й на тенденції розвитку та зміни правових актів Європейського Союзу. З огляду на зазначене, метою статті є визначення ролі рішень Суду Європейського Союзу у формуванні права Європейського Союзу та правових систем держав-кандидатів. Методологічною основою дослідження є загальнонаукові та спеціальні методи дослідження, такі як аналіз і синтез, індукція, інтерпретація, формально-логічний та порівняльно-правовий. У публікації встановлено наявність зв'язку між структурно-функціональною еволюцією Суду Європейського Союзу та посиленням ваги його рішень; визначено канали впливу його рішень на формування й розвиток права Європейського Союзу. Окреслено сучасні виклики, з якими стикаються судді Суду Європейського Союзу та які впливають на ефективність його роботи. За результатами аналізу судової практики України та Молдови щодо використання рішень Суду Європейського Союзу обґрунтовано загальне значення судового прецеденту в контексті євроінтеграції держав-кандидатів, а також потенційні проблеми їх широкого використання в судовій практиці цих держав. Практичне значення отриманих результатів полягає в тому, що воно може бути використано в освітніх програмах для підготовки фахівців у сфері європейського права, для розроблення стратегій і політик, спрямованих на інтеграцію держав-кандидатів до ЄС, забезпечуючи їх відповідність правовим стандартам Союзу

■ **Ключові слова:** право Європейського Союзу; Суд Справедливості; рішення Суду Справедливості; тлумачення права Європейського Союзу; судова практика