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UNDERSTANDING OR MISUNDERSTANDING – LEGAL INTERPRETATION IN THE CASE-LAW OF THE EUROPEAN COURT OF JUSTICE

TEAM HUNGARY 2

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INTRODUCTION

Considering that one of the main features of legal language is that it operates with its own set of terms and concepts, it is particularly important for them to be defined precisely and consistently[1]. This is especially the case in the European Union, in which, being a special legal system, the legal concepts should be interpreted autonomously and, as much as possible, uniformly. In this paper we would like to present, through the examination of judgements, the importance of legal interpretation and the methods by which the precise definitions of terms and concepts are developed in the European Union. First, we will give a short introduction on the European Union and the concept of the European Judicial Cooperation; then we will outline, the Court of Justice of the European Union and its procedure in a few words, paying particular attention to the preliminary ruling procedure, and finally we will describe in detail the different methods of legal interpretation, with special regard to the comparison of various language versions of a legal text, and illustrate them through judgements.

THE EUROPEAN UNION AND THE EUROPEAN JUDICIAL COOPERATION

The European Union is an international organisation based on the Treaty of the European Union, namely the Maastricht Treaty, signed in 1992 and in force since 1 November 1993. Before Lisbon the EU law included elements relating to the originally three, subsequently two European Communities, which had been set up in the 1950s.

The three European Communities were the following:

- *European Coal and Steel Community*; concluded for 50 years, expired 23 July 2002,
- *European Atomic Energy Community (EAEC)*; concluded for an unlimited period and still in existence,
- *European Economic Community (EEC, later EC)*; concluded for an unlimited period, on the 1st of December 2009 integrated into the EU.

Two of these concerned economic integration in specific fields, while one was general in nature. From the European Communities after the Lisbon revision only the EAEC remained. The EU

[1] Katalin Gombos: EU Law viewed through the eyes of a national judge (page 2.)

law now includes the law of the former EC, which no longer exists under this name but has been fully integrated into the EU[2].

The Maastricht Treaty set up the three pillars structure of the EU. To the pre-existing Communities, which formed the EU's first pillar, two new fields of action were added, namely the Common Foreign and Security Policy (second pillar), and the Cooperation in the Fields of Justice and Home Affairs (third pillar). The pillar structure of the Union as based on the Maastricht Treaty was reflected in the structure of the EU Treaty.

The Amsterdam Treaty, signed in 1997 and in force since 1 May 1999, has changed the structure of the EU. Through the Amsterdam revision, part of the original third pillar was moved into its first pillar. As a result of this operation, the reduced third pillar was renamed as the Police and Judicial Cooperation in Criminal Matters, while the name of the second pillar remained the same. The pillar structure of the EU as based on the Amsterdam Treaty had also been reflected in the structure of the EU Treaty.

The Lisbon Treaty was formally signed on 13 December 2007. It was largely based on the Constitutional Treaty which had not entered into force. The Treaty transformed the fundamental documents of the EU. First, it fundamentally revised the EU Treaty (TEU). Second, it revised and renamed the EC Treaty, which became the Treaty on the Functioning of the European Union (TFEU). And finally, it transformed the Charter of Fundamental Rights into a binding document and gave it the same legal value as the Treaties. These changes also have had consequences for the structure of the EU. The pillar structure has ceased to exist and the TEU no longer reflects to the pillar structure in the way that it used to do it before the revision.

As we mentioned above, the Amsterdam Treaty had a key role in our subject matter at issue in that it integrated the "Judicial cooperation in civil matters" into the first pillar of the European Union. This official name includes a quickly expanding and developing European Civil Procedure, and it subsumes fragmented areas of the international civil procedure. Its main focus is on typical cross-border issues, determining jurisdiction and rules concerning recognition and enforcement of foreign judgments. This is supplemented by rules of traditional areas of

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[2] Christa Tobler-Jacques Beglinger: Essential EU Law in Charts HVG-ORAC (Budapest) 2014, Chart 1/1 and 2/4

international legal assistance, for example the cross-border service of documents and the cross-border taking of evidence[3].

Nevertheless, the pieces of legislature covered by the judicial cooperation in civil matters are only parts of the European Union law, the scope of which is encompassed in the French term „*acquis communautaire*", which is refers to the entire body of EU law and literally means the Community patrimony in the sense of its legal assets[4]. Consequently the *acquis* includes the Treaties, all the secondary legislation and judicial and quasi-judicial decisions made by the Community institutions. The acquis also covers the basic constitutional principles as formulated by the ECJ such as supremacy, direct effect, indirect effect, and uniform interpretation. Judicial interpretation can be considered as a tertiary source. Judicial interpretation comprises the entire jurisprudence of the European Courts embracing not only decisions, but general principles and even expressions of opinion.

The EU's institutions (except the European Central Bank[5]) were set up within the framework of the original European Communities and these are also used by the EU since the Maastricht Treaty. The Lisbon revision has brought about a number of important political changes concerning the institutions of the EU, the presidency of the European Council, the size of the European Parliament, and the structure of the ECJ.

THE COURT OF JUSTICE OF THE EUROPEAN UNION

From this time the former Court of Justice of the European Communities is officially called Court of Justice of the European Union[6]. It includes the Court of Justice, the General Court and specialised courts. According to Article 19(1) of the Treaty on the European Union (TEU), the (European) Court of Justice's function is to ensure that EU law is observed in its interpretation and application. Although the ECJ seeks to achieve consistency in its judgements, it does not form binding precedents and it always remains free to depart from previous decisions in the light of new facts. The ECJ interprets the Treaties and other Community legislation in such a way as

[3] Language training on the vocabulary of judicial cooperation in civil matters published by EJTN, 2013, unit 2
[4] „ L' union fait sien l'acquis communautaire"
[5] The ECB was created when the Economic and Monetary Union was introduced.
[6] Hereinafter referred to as ECJ.

to give effect more to what it conceives to be spirit rather than necessarily the letter of the Treaties.

The enforcement of EU law is based on the cooperation of the ECJ and the national courts of the various Member States. In this sense, there are many "European Union courts", since the national courts also play an important role in interpreting and applying EU law. However, the ECJ has the monopoly on the authoritative interpretation of EU law[7]. EU law contains elements that are intended to enhance its enforcement on both the level of the national courts and of the ECJ. On the level of the ECJ the TEU provides for a number of judicial procedures for bringing actions before the Court. These procedures have two types: the direct and the indirect procedures. Amongst the direct procedures we can find for instance the annulment procedure, the action for failure to act or the infringement procedure. On the other hand the preliminary ruling procedure is considered to be the indirect, because in this procedure the case is brought to the Court of Justice not by a concerned party, but rather by a national court which requires help solving questions in connection with the EU law that came up in an ongoing case. The national court's doubts may either concern the legal interpretation of EU law (primary or secondary law) or the validity of secondary EU measures[8].

In addition to the interpretation, the EU Law is consistent because of the doctrines developed by the ECJ. The most important doctrines are the following ones: direct effect, supremacy, primacy, direct applicability and obligation of interpretation. Within the EU each Member State court is allowed to interpret the EU legislations and rules, however the ECJ has outstanding role because of the preliminary ruling procedure. In this section we would like to present how the ECJ interprets certain legal concepts in this procedure.

The preliminary ruling of the ECJ has very important effect on the interpretation of legal concepts, because every Member State is entitled to apply the EU law, but there are many cases when the national court becomes confused during the process of application. This confusion can be caused by the not suitable understanding of the EU legal concept. It is very important to emphasize that, during the preliminary procedure, the ECJ cannot decide the dispute which lies

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[7] Christa Tobler-Jacques Beglinger: Essential EU Law in Text HVG-ORAC (Budapest) 2014, Part 1
[8] Várnay Ernő: Az Európai Unió joga published by KJK-KERSZÖV (Budapest) 2003 page 275-298

in front of the national court; the ECJ is only entitled to interpret the EU law or decide about its validity.

The general nature and essence of preliminary ruling is determined by Article 267 of the TFEU (formerly Article 234 TEC), which rules that "The ECJ has jurisdiction to give preliminary rulings on the following issues:
a) the interpretation of the Treaties;
b) the validity and interpretation of the acts of the institutions, bodies, offices or agencies of the Union."
If in front of a national court such issue arises, it can request the ECJ to make a decision about that problem. The national court is however obliged to request an answer from the ECJ if the problem involved is related to the following subject matters prescribed by the TFEU: first, in case in front of the national court a question arises which is in connection with the interpretation or validity of the community law; second, if the decision of the ECJ is necessary in order to decide the legal dispute, or third, in the event if there is no judicial remedy under national law against the decision of the national court.

The dilemma is that it is not always clear when the decision of the ECJ is necessary in order to decide the dispute within the frames of the national procedure. The concept of necessity is two-folded, because it could mean that the preliminary decision is necessary to resolve the legal national issue; or the national court cannot decide the arose question securely without the prior decision of the ECJ. Thus necessity in these concepts are considered to be soft law terminology, which has no general objective characteristics, and the court of a Member State has broad discretion about the concept of necessity, which easily can lead to subjective decisions, resulting in a situation when, even though the preliminary procedure would be highly advisable, a national court decides the case without referring its questions for a preliminary ruling to the ECJ to decide.

The isolation from submitting a case can jeopardise the aim of Article 267 of the TFEU. These reasons forced the ECJ to develop general principles for those cases when the national court is obliged to apply the preliminary procedure. This step was made in the CILFIT-case.[9] The

[9] Case 283/81. Srl CILFIT and Lanificio di Gavardo SpA kontra Ministero della sanità ECLI:EU:C:1982:335

CILFIT-case is a milestone in the case law of ECJ, because the it has ruled that national courts against whose decision there is no judicial remedy must not request the preliminary reference ruling if the question of Community law is irrelevant, or has already been answered by the ECJ in an earlier judgment, or the correct application of Community law is apparent, raising no reasonable doubt. According to the judgement, the correct application of Community law may be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved. Before it comes to the conclusion that such is the case, the national court or tribunal must be convinced that the matter is equally obvious to the courts of the other member states and to the court of justice. Only if those conditions are satisfied, may the national court or tribunal refrain from submitting the question to the Court of Justice and take upon itself the responsibility for resolving it[10]. With this ruling the ECJ created the doctrine of '*acte clair*', which means that a case involving a piece of legislation with a reasonably obvious interpretation do not need to be referred to the ECJ. Having said that, it is important to keep in mind that other conditions should be met as well, for instance the different language versions[11] must be compared, and every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole[12]. Therefore, as the ECJ has established, a national court is not obliged to refer its question for a preliminary ruling if there is no scope for any reasonable doubt regarding the correct application of the European Union law[13].

LEGAL INTERPRETATION

Whether done in a preliminary ruling procedure, or in any of the direct procedures, the interpretation of EU law is theoretically based on Article 31 of the 1969 Vienna Convention on the Law of Treaties, which provides that the interpretation should be based on the ordinary meaning of the term of a Treaty, in the context and in the light of its object and goal[14].

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[10]Case 283/81. Srl CILFIT and Lanificio di Gavardo SpA kontra Ministero della sanità ECLI:EU:C:1982:335 (para. 16)
[11]Case 283/81. Srl CILFIT and Lanificio di Gavardo SpA kontra Ministero della sanità ECLI:EU:C:1982:335 (para.18)
[12]Case 283/81. Srl CILFIT and Lanificio di Gavardo SpA kontra Ministero della sanità ECLI:EU:C:1982:335 (para.20)
[13] http://www.caselawofeu.com/acte-clair-and-cilfit-case/
[14] Allan F. Tatham EC Law In Pratice HVG-ORAC Publishing (Budapest) 2006 chapter 1

In the history the earliest methods of legal interpretation were the grammatical and the logical interpretations. Grammatical interpretation is based exclusively on the words themselves. In the case-law of the ECJ three subtypes of the grammatical interpretation can be found: the literal, the technical and the contextual. Logical interpretation departs from the literal words on the ground that there may be other, more satisfactory evidence of the author's true intention.

As time went on, more interpretation methods were introduced, such as: legal interpretation by analogy, classical dogma, consideration of the subjective intent of legislation, or interpretation of the apparently more objective goal of legislation. These methods are more specific than the previous ones, and arose from the special nature of the EU law. In connection with the interpretation methods it should be noted that national courts of the Member States are allowed to use their usual methods of interpretation when dealing with cases with a purely national content. However, for example, when dealing with EU law, they are required to use the ECJ's methods of interpretation.

As we have already shown the interpretation can be distinguished by many categories such as analogical, dogmatical, teleological or comparative interpretation.

Interpretation can also be guided by treaties, legal principles, international conventions or fundamental rights. For instance, teleological interpretation is used to analyse the concepts to which EU terms refer, guided by the aims laid down in the founding treaties. Teleological interpretation is associated with the principle of *effet utile* or the effectiveness of EU law. This principle means that EU terms and notions must be interpreted with a view to effectively achieving the intent of legislation[15]. Besides these methods there are other specific interpretation methods, but in this paper we would like to take a closer look at the interpretation by way of comparing various language versions. This interpretation method is arising from the fact that the EU law is multilingual. Community legislation, which is drafted in several languages is multilingual in nature, and these different language versions are all equally authentic.

[15] Gombos Katalin: EU Law viewed through the eyes of a national judge

MULTILINGUALISM IN THE EU

Debating Europe

24 OFFICIAL LANGUAGES

60+ INDIGENOUS REGIONAL OR MINORITY LANGUAGES

WITH

40 MILLION SPEAKERS

INCLUDING

Catalan, Basque, Frisian, Welsh, Yiddish, Saami

EUROPEAN CITIZENS AND LANGUAGES

54% are able to hold a conversation in at least 1 ADDITIONAL LANGUAGE

25% are able to speak at least 2 ADDITIONAL LANGUAGES

10% are conversant in at least 3 ADDITIONAL LANGUAGES

COUNTRIES WHERE CITIZENS DO NOT SPEAK ANY FOREIGN LANGUAGE

65% HUNGARY
62% ITALY
61% UK, PORTUGAL
60% IRELAND

FOREIGN LANGUAGES SPEAKERS IN THE EU

38% speak ENGLISH
11% speak GERMAN
12% speak FRENCH
5% speak RUSSIAN
7% speak SPANISH

Image credit: CC Flickr/Yukino Miyazawa, Biblioteca de Babel XI. Sources: EU Commission, Special Eurobarometer 386. December 201

INTERPRETATION BY WAY OF COMPARING VARIOUS LANGUAGE VERSIONS

According to Article 1 of Council Regulation 1/1958 ('Regulation'), the official languages and the working languages of the institutions of the Union shall be Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish. Those are 24 languages altogether. Even though Article 4 declares that regulations and other documents of general application shall be drafted in the official languages, internally, however, the Commission (which is mainly responsible for drafting the documents in the EU) works in three languages – English, French and German – unofficially referred to as the 'procedural languages'[16]. This material generated inside the Commission, when amended by the competent body, gets translated into all the official languages in accordance with Article 1 of the Regulation, by which all the different versions of any given EU legislation are considered to be official and have the exact same legal effect. However, this gives rise to many questions in connection with legal interpretation, especially if there are differences between the 'original' and translated versions of the piece of legislation which is to be applied in the case involved.

This was the situation in the Stauder-case[17], where the German version of a Decision of the Commission made the sale of butter at a reduced price dependent on the revealing of the name of the beneficiary to the sellers, while the French, Italian and Dutch versions did not contain this condition. The ECJ established that when a single decision is addressed to all the Member States, the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all four languages.

According to the well-established principle of the ECJ, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions. EU provisions must be interpreted and applied

[16] European Commission Directorate –General for Translation: English Style Guide (page 80)
[17] C-29/69. Erich Stauder vs. City of Ulm – Socialamt. ECLI:EU:C:1969:57 (para. 3)

uniformly in the light of the versions existing in all EU languages. In case of a divergence between the language versions, the provision in question must thus be interpreted by reference to the general scheme and the purpose of the rules of which it forms part[18].

This principle has been summarized and declared in this way for the first time in the Cricket St Thomas-case[19], where the question essentially was whether the Milk Marketing Board of England and Wales's exclusive right to buy milk from the producers extended to milk pasteurized by the producer; in other words, as phrased by the ECJ, whether the concept of milk produced and marketed without processing includes milk pasteurized by the producers[20]. The ECJ noted that the English version excluded from the exclusive purchasing right any milk that has been processed, and contained a number of terminological discrepancies in connection with the terms 'processing' or 'manufacturing' as well, while the other (French and German) language versions were consistent in their use of terms and contained a distinction between the concept of the treatment of milk and processing operations. The ECJ expressly declared that it would be incompatible with the requirement for the uniform application of Community law if the English version had served as the sole basis for the interpretation of this provision, and reiterated the previously established principles that Community regulations in cases of doubt should be interpreted and applied in the light of the other languages[21], and by reference to the purpose and general scheme of the rules of which it forms a part[22]. Besides examining the different language versions of the provision, the ECJ observed the distinction made by the Community rules between milk used for direct human consumption in the form of whole milk and other milk products, the technical elements of the pasteurization process, and the objectives of the legislation at issue.

[18] See in C-558/11 Kurcums Metal ECLI:EU:C:2012:721 (para. 48); C-147/97 Institute of the Motor Industry and Commissioners of Customs and Excise ECLI:EU:C:1998:536 (para. 16); C-451/08 Helmut Müller GmbH and Bundesanstalt für Immobilienaufgaben ECLI:EU:C:2010:168 (para. 38) C-515/12. «4finance» UAB kontra Valstybinė vartotojų teisių apsaugos tarnyba és Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos ECLI:EU:C:2013:868 (para. 23 and 27)

[19] C-372/88 Milk Marketing Board of England and Wales and Cricket St Thomas Estate ECLI:EU:C:1990:140

[20] C-372/88 Milk Marketing Board of England and Wales and Cricket St Thomas Estate ECLI:EU:C:1990:140 (para. 13)

[21] C-19/67 Sociale Verzekeringsbank and Van Der Vecht ECLI:EU:C:1967:49 (p.354.)

[22] C-30/77 Régina and Pierre Bouchereau ECLI:EU:C:1977:172 (para. 14)

It can be observed therefore that from the different methods of legal interpretation the ECJ in this case compared various language versions of a legal text[23], and this method of interpretation was supplemented by the interpretation of the objective goal of legislation and the logical and systematic interpretation. Based on its findings thereof the ECJ gave the answer that the exclusive right of the Milk Marketing Board of England and Wales is exercisable in respect of pasteurized milk.

Likewise have the questions referred for a preliminary ruling by a Hungarian court been solved by the ECJ applying the comparison of various language versions of a legal text in a recently delivered judgement[24]. In this case, GSV Kft. sought the release for free circulation of goods consisting of fabric of glass fibres originating in China, and there was a conflict between him and the National Treasury and Customs Authority of Hungary regarding the question that under which TARIC[25] code the fabric to be imported should be declared.

The problem was essentially that the Hungarian version of Council Decision 87/369/EEC of 7 April 1987 used the expression 'szitaszövet' in a tariff heading where the other language versions (such as the French, Spanish, German, English, Polish and Swedish, which all had been examined by the ECJ) referred expressly to a different type of fabric. Taking into account the physical characteristics of the product, the Hungarian customs authority took the view that the product in question was subject to a provisional anti-dumping duty. This has been contested by GSV based on the Hungarian translation of the provisions at issue.

The ECJ again referred to the above-mentioned principles, and next to the comparison of various language versions applied the method of teleological interpretation and the interpretation of the objective goal of legislation. Based on its findings it declared that the product at issue indeed falls within the TARIC code stated by the customs authority.

In a side note, this case gave rise to a very interesting problem in its second question referred for a preliminary ruling: can payment of the anti-dumping duty be waived, on the basis of the Community legal order, for a legal or physical person which, trusting in the wording of the

[23] Katalin Gombos: EU Law viewed through the eyes of a national judge (page 4.)

[24] C-74/13 GSV Kft. vs. Nemzeti Adó- és Vámhivatal Észak-Alföldi Regionális Vám- és Pénzügyőri Főigazgatósága. ECLI:EU:C:2014:243

[25] TARIC is an integrated tariff of the European Communities.

Regulation published in the language corresponding to its nationality – without ascertaining potentially different meanings in other language versions – on the basis of the general and well-known understanding of the legislation in that person's language, imports into the territory of the European Union a product manufactured outside that territory, taking into account that, according to the language version that the person knows, that product is not included in the list of goods subject to anti-dumping duty(…)[26]?

The ECJ, referring to the previously mentioned case-law, gave the answer that the fact that the product does not correspond to the designation given to it in that code and those regulations as published in the language of the Member State of origin of the declarant and on which alone he based its declaration is not liable to entail the annulment of its tariff classification under that code made by the customs authorities on the basis of all the other language versions of that code and those regulations[27].

It is important to note that in this case the parties to the main proceedings agreed that the product in question is not a 'szitaszövet' according to the Hungarian version of the provision. However, is it possible to draw the conclusion from the answer of the ECJ to the second question that the citizens are required to check and compare all the different language versions of the piece of legislation which is to be applied in their case? Probably the answer is no, especially since the bodies of the EU maintain the policy that all EU citizens have the right to write to them and receive a response in their native language[28]. On the other hand, the possibility to discover and examine the other language versions of a provision in case of doubt is open for everyone. In these circumstances it will be interesting to see how the case-law of the ECJ develops in connection with this issue.

Many of the methods of legal interpretation have been applied by the ECJ in the case where it was asked to determine the definition of 'foodstuffs'[29]. The question was whether the Kingdom of Netherlands had failed to fulfil its obligations under Article 12, read in conjunction with

[26] C-74/13 GSV Kft. vs. Nemzeti Adó- és Vámhivatal Észak-Alföldi Regionális Vám- és Pénzügyőri Főigazgatósága. ECLI:EU:C:2014:243 (para. 47.)
[27] C-74/13 GSV Kft. vs. Nemzeti Adó- és Vámhivatal Észak-Alföldi Regionális Vám- és Pénzügyőri Főigazgatósága. ECLI:EU:C:2014:243 (para. 53.)
[28] http://ec.europa.eu/languages/policy/linguistic-diversity/official-languages-eu_en.htm
[29] C-41/09 European Commission and Kingdom of the Netherlands, ECLI:EU:C:2011:108

Annex H, of Sixth Council Directive 77/388/EEC of 17 May 1977, by applying a reduced rate of value added tax to the supply, importation and intra-Community acquisition of certain live animals, in particular horses, which are not normally intended for use in the preparation of foodstuffs for human and animal consumption. In the procedure the Commission argued that only those live animals can benefit from a reduced rate of value-added tax that are normally intended for use in preparation of foodstuffs, which is not the case for horses, and which is confirmed by the French, Italian and English versions of the provision at issue. The Commission furthermore stated that animals are not foodstuffs. The Kingdom of Netherlands claimed that none of the language versions confirmed that the phrase 'normally intended for use in the preparation of foodstuffs' applies to live animals, but on the contrary it refers only to ingredients. The Kingdom of Netherlands further argued that the Commission has failed to provide any factual evidence showing that horses are not normally intended for use in the preparation of foodstuffs, and stated that horses are indeed normally intended for use in the preparation of foodstuffs.

The ECJ compared the various language versions of a legal text[30] and noted that according to the German and the Dutch version thereof, the above-mentioned phrase applies only to ingredients, the English, the French and the Italian version thereof on the other hand applies to live animals as well. The ECJ then applied the grammatical legal interpretation method[31] when it observed that during an amendment of the piece of legislation at issue, a comma was substituted for a semi-colon, and, from a semantic point of view, the use of a semi-colon clearly indicates that the three parts of the phrase (that is foodstuffs as such; live animals … that are not themselves foodstuffs; and products used to supplement foodstuffs or as a substitute for foodstuffs) are equal in that the requirement to be normally intended for use in the preparation of foodstuffs must be met by all of them. As the next step, the ECJ observed the purpose of the EU legislature at issue[32], applying the teleological legal interpretation method and the consideration of the subjective intent of legislation. When stating that it is well known that, in the European Union, horses are not, usually and in general, intended for use in the preparation of foodstuffs[33], the ECJ

[30] C-41/09 European Commission and Kingdom of the Netherlands, ECLI:EU:C:2011:108 (para. 42 and 43)
[31] C-41/09 European Commission and Kingdom of the Netherlands, ECLI:EU:C:2011:108 (para. 46 and 50)
[32] C-41/09 European Commission and Kingdom of the Netherlands, ECLI:EU:C:2011:108 (para. 52)
[33] C-41/09 European Commission and Kingdom of the Netherlands, ECLI:EU:C:2011:108 (para. 56)

took a historical and, to some extent, systematic approach in its legal interpretation. Having considered all these aspects, it has found the action brought by the Commission well founded and held that the Kingdom of Netherlands has failed to fulfil its obligation set out in the Directive above.

Another problem is that consequently the concept of the court is not exactly the same in every Member State. Moreover, in some states, the same functions in connection with property or company records or registration procedures are carried out by a court, but in another state by other administrative bodies. In addition, there are many terms within the EU law, which are seemingly identical with the domestic terminology, but actually they have different meanings. A good example to support this statement is the concept of the 'referring court' within the preliminary ruling procedure. The example for this situation is in relation with a Hungarian case called Cartesio.[34] This case is significant because, by examining it, we can present not only the preliminary ruling of the ECJ, but also the viewpoints of interpretation related to the concept of national court. Cartesio is a Hungarian limited partnership company whose application for registration of the transfer of its seat to Italy was rejected by the Hungarian Court of Registration. Cartesio intended only to transfer its de facto head office to Italy, while continuing to operate under Hungarian company law. Cartesio appealed against the rejection of the Court of Registration, and during the appeal process, "the question was referred to the ECJ to determine whether Articles 43 and 48 EC Treaty preclude a member state from imposing an outright ban on a company incorporated under its legislation transferring its de facto head office to another Member State without having to be wound up in Hungary first, and to have the seat transfer entered in the Hungarian Company Register".[35]

In connection with this case, we would like to present what kind of bodies can turn to the ECJ for preliminary ruling. The ECJ stated in many decisions that the name of the submitting body is irrelevant. The organization however must be created under legal acts, it must function permanently, it must have compulsory powers, its process should be contradictional, it must apply legal acts and it must be independent and impartial. If these criteria are met, then the preliminary procedure can be conducted. However, it is important to note that the concept of

[34] C-210/06. Cartesio Oktató és Szolgáltató bt. ECLI:EU:C:2008:723.

[35] http://www.worker-participation.eu/Company-Law-and-CG/ECJ-Case-Law/Cartesio

these conditions have been relativized by the decisions of the ECJ. For instance, a Member State body can turn to the ECJ if it is not created under legal acts, but it exercises public power as a professional organization, and its organization provides such remedies, which can influence the exercise of rights conferred by EU law.[36] Usually the organization which starts the preliminary procedure functions permanently and has compulsory powers, thus the relativization of these concepts are not as important as the relativization of the concept of the '*inter partes*' procedure. The ECJ has delivered opinions in "*ex parte*" and in "*inter partes*" procedures as well, but the main point is that the preliminary ruling can be submitted by a national body before which a procedure is pending, it performs judicial activities and the parties turned to this body for a legal decision. In the Cartesio case, the referring body was a registry court, the procedure of which is more administrative than *inter partes* procedure. In Hungary, the Registry Court performs the authentic registration of companies, and decides in first instance about the registrations and change entries of the companies. The question was whether the concept of the registry body and the appellate court which reviewed its decisions complies with the sui generis concept of court made by the ECJ. The Registry Court is created under legal acts, it supplies public power, it functions permanently and it gives decisions under the rule of law.[37] However, we can state that the procedure of the registration courts are not '*inter partes'*, but rather administrative procedures.[38] The practice of the ECJ shows us that according to the EU law there is no legal dispute during the registration procedure of a Registry Court. However, if a party wants remedy against the decision of the first instance court, a legal dispute arises.[39] This statement was made also in the Cartesio-case by the ECJ and Advocate General Maduro, when they stated that the Registry Court made an administrative decision without settling a legal dispute, and this is not considered to be a judicial function within an '*inter partes*' procedure under Article 267 of the TFEU, thus the first instance registry court cannot submit the question for preliminary ruling. However, because of the appeal against the decision of the registry court, the Court of Appeal can initiate a preliminary ruling procedure under the Article 267 of the TFEU, regardless of whether the procedure is ex parte or not. The ECJ stated in its judgement that a registration court

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[36]C- 246/80. C. Broekmeelen v. Huisarts Registrate Commissie.ECLI:EU:C:1981:218 (para 16)
[37] Gombos Katalin: A jog érvényesülésének térsége az Európai Unióban. 121. o. (2014. Complex kiadó)
[38] C-182/00. Lutz GmbH and partners, 2002. ECLI:EU:C:2002:19. (para 14)
[39] C-411/03. SEVIC Systems AG. ECLI:EU:C:2005:762.

to which an appeal was brought can initiate a preliminary ruling procedure before the ECJ despite the fact that the procedure of the referring court is not an '*inter partes*' procedure.[40]

The above considered problems showed us that sometimes it is very hard to decide whether an organization or a body has the right to initiate a preliminary ruling procedure before the ECJ. Dámaso Ruiz-Jarabo Colomer Advocate emphasized in several petitions that in the decisions of the ECJ the concept of court are not sufficiently accurate, that's why new methods would be desired. He suggested that the concept of court should contain every judicial organization of a Member State and every organization as well, which makes such decisions which can be challenged in any kind of lawsuit. However the permissibility of the preliminary ruling can be influenced by other factors as well. The ECJ has held in many cases that a reference is not precluded by national rules of precedent under which the referring court is bound by the decision of a higher national court on the issue of EU law[41], or a reference should not be made if it is likely to be rejected by the ECJ because the dispute is not genuine.[42] The interpretation of the basic legal terms is very important, because the EU is a multilingual environment, but certain doctrines - such as the principle of equal treatment - must be complied with in order to equally enforce the rule of law. This equality however is very hard to achieve because of the different language versions of the EU law. The ECJ with its dynamic legal interpretation helps the member states to develop similar judicial interpretation methods. The ECJ held in connection to the obligations of the Member States in the Frankovich-case that "the full effectiveness of Community rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain redress when their rights are infringed by a breach of community law for which a Member State can be held responsible."[43] Therefore a Member State must pay adequate compensation caused to beneficiaries of a directive in case it was not implemented at all, or it was not implemented properly. This decision also shows the importance of the Member States' obligations in connection with the unified legal interpretation.

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[40] C-210/06. Cartesio Oktató és Szolgáltató bt. ECLI:EU:C:2008:723.
[41] C-146/73 Rheinmühlen Düsseldorf v Einführ- und Vorratsstelle für Getreide und Futtermittel (Joined Cases 146 & 166/73) ECLI:EU:C:1974:12
[42] C-104/79 Pasquale Foglia v. Mariella Novello ECLI:EU:C:1980:73
[43] http://www.caselawofeu.com/

SUMMARY AND PROPOSALS

As we emphasized in our essay the rule of the ECJ is very important during the process of interpretation of the EU law. Because of the multilingualism of the EU there has to be an independent and impartial body, which can prescribe a direction to the national courts on the ways of the interpretation of the EU law. Every language version holds its own specificities, which in their own way are unique. This uniqueness of the Member States gives both the beauty and the difficulty of the legal system of the EU; on one hand it is important to preserve the legal traditions of the Member States, but on the other hand it is necessary to create a unified Community law. Without the preliminary ruling of the ECJ the situation of the Member States would be more difficult. However, despite the outstanding landmarks within the field of interpretation ruled by the ECJ, it is very hard in a particular case to solve the problems of interpretation. Interpretation of the legal rules can be subjective despite the general doctrines - such as effet utile, principle of liability of the Member States or Simmenthal doctrine - which are in obligatory for the Member States, because of they have a soft law nature. It is obvious that without the interpretation of the ECJ, the different language versions of EU norms would cause more confusing legal situations. However, the Member States not always use the option or the possibility of a preliminary ruling procedure, thus the emergence of some new and effective legal instruments would be also necessary.

As a first proposal we could ask whether it is possible to develop a system of a uniform substantive law in the same language within the EU. This could be a common concept in the European Union. In order to create such legal system, the Member States however must give up their own legal and language characteristics. If there is a relevant legal dispute and there is only one rule in connection with its settlement that is available only in one language - it could be French, English, German or whatever the community legislation would choose - it would be easier to avoid the problem of the different language versions, because then there would be no need of any kind of language interpretation. This proposal however could not function properly, because the uniqueness of the Union is arising from the fact that despite the efforts of integration, the Member States still wish to preserve the main characteristics of their existence, and the best way to achieve that is to save the special elements of their own languages. It cannot be expected from a judge of a Member State to settle a dispute and make a decision in a unified

language, and not in his mother tongue. Judges are still people and people can make more logical and cleaner decisions when they can think in their mother tongue. Moreover, the legal characteristics of the Member States are often connected to the language characteristics as well, thus it is impossible to apply a uniform legal language in every Member State.

Our second proposal would involve acquiring more definitions of the legal terms from the legislative bodies. It could be a more feasible and a more practical proposal as well. When a legislative body considers it necessary for a term in a legal text to be interpreted consistently, than he should always provide a definition of the term in the same text. With this solution the confusions of the interpretations could be easily avoided. In connection to this proposal the legislator could establish a principle of primacy in interpretation, which means that the interpretation of a legal term would be in accordance with the main principles and aims of the European Area of Freedom, Security and Justice. However we must acknowledge that this solution would put significant burden on the legislative bodies. Law would never be able to regulate all aspects of life, it will always try, but a legal loophole can occur all the time. Therefore using interpretative provisions and definitions is a good solution, but it is not always applicable.

For national courts during the application of EU law it is a very serious problem that the EU law has inconsistent terminology. Thus it would make their jobs also easier if more multilingual legal dictionaries and glossaries would be prepared with definitions of EU legal terms.

Since the problems of interpretation are very hard to resolve, the ECJ must continue to have a major role. The preliminary ruling procedure helps the Member States with the issues of interpretation; however this procedure sometimes takes a lot of time, and many administrative acts need to be done in order to initiate the preliminary procedure. Thus perhaps it would be favourable to establish a less formal body or organization which, next to the ECJ, could help to solve the problems in connection with the interpretation as quickly and effectively as possible.