
The CJEU's View On Supremacy Of EU Law

The supremacy of EU law

The notion of the supremacy of EU law denotes that where there is a conflict between an area of EU law and an area of the domestic law of a MS, EU law will overrule. However, the officiation of the principle remains to occur under treaty status. Instead, being generally implied by provisions such as Art. 4(3) of TEU, virtually a loyalty clause to the Union, and Art. 288 TFEU, the direct pertinence of regulations. In the absence of an explicit declaration of supremacy, the CJEU holds the central role in contributing major legal principles to the European constitutional order.

The case of Costa[6] concerned the conflict between Italian law and Art. 37 EEC (now Art. 31 TFEU). The Court held that the violation of a treaty provision does not invalidate a domestic law; however, the EEC involved the partial transfer of sovereignty from all MS to the EEC (EU). Thus, a subsequent unilateral law determined as incompatible with the aims of the EU, cannot prevail.

The CJEU's view on supremacy is arguably aptly applied in this instance and successive incidences.[7] EU law takes priority over national law owing to the voluntary relinquishment of specific areas of sovereignty. However, this is to ensure the maintenance of the rule of law over a supranational jurisdiction. Thus, the premise of supremacy is both 'legal and logical' [8] as it pragmatically aims to ensure a unified approach to legal order across the Community.

However, the degree to which the CJEU is 'pivotal' in transitioning the European legal foundations has not gone without notable bumps in the road, most obviously Brexit. The European Communities Act (ECA) 1972, was the decisive piece of law that marked the entrance of the UK into the EC. Section 2(1) of the ECA recognized the direct effect and legal validity of EU treaties and regulations under UK domestic law. Inevitably, the sovereignty of the UK courts and the limitation of parliamentary sovereignty by the consensual agreement of joining the EC. However, this did not stop the UK from leaving the EU in 2016. With the Leave campaign asserted insistently that the UK needed to regain control as Brussels was undermining their domestic constitutional values. Arguably though, this is not at the fault of the EU necessarily as the UK had the option to leave the EU at any given moment, indicated by Art.50 TEU.