Cooperation Between Lithuanian Administrative Courts and the Court of Justice of the European Union in the Development of European Union Law: Constructive Dialogue

Prof. dr. Irmantas Jarukaitis[1]

Abstract: This article aims to assess the trends of cooperation between the administrative courts of Lithuania and the Court of Justice of the European Union (CJEU) based on the preliminary ruling procedure. The article consists of two parts. First, the nature and importance of the preliminary ruling procedure itself are briefly discussed. The transformations of the system of national courts have recently started in several EU Member States and the CJEU case law, developing the principle of independence of the judiciary, triggered by these transformations, calls for reassessment of the importance of the preliminary ruling procedure. The second part of this article evaluates the tendencies and the practices of the Lithuanian administrative courts in referring questions to the CJEU for a preliminary ruling.

The above-mentioned analysis leads to several conclusions. First, the fundamental role of the preliminary ruling procedure in development of EU law and ensuring its effectiveness at national level are emphasized and the importance of cooperation with national courts is stressed. Second, analysis of the case law of Lithuanian administrative courts reveals that they recognize the specific nature and principles of EU law and consistently apply it in their judicial activities. So far, Lithuanian administrative courts and the CJEU are engaged in rather intensive dialogue thus contributing to a consistent development of EU law.

Keywords: *Court of Justice of the European Union, national courts, preliminary ruling procedure, cooperation, dialogue between the CJEU and national courts, principle of independence of the judiciary.*

1 The Article presents personal opinion of the author.

DOI: https://doi.org/10.15388/EULLAJ.2023.2

Introduction

The 20th anniversary of the activities of the Supreme Administrative Court of Lithuania is a good opportunity to assess its contribution, as well as that of the entire system of Lithuanian administrative courts, to the development of the national and EU legal system. Going back to the origins of the creation of the Lithuanian administrative courts system after the restoration of independence, in 1998, the explanatory memorandum to the draft Law of the Republic of Lithuania on Administrative Proceedings, the draft Law of the Republic of Lithuania on the Establishment of Administrative Courts, the draft Law of the Republic of Lithuania on Administrative Disputes Commissions presented to the Seimas of the Republic of Lithuania for consideration[2] indicated that "[t]here aren't and have never been any specialized administrative courts in Lithuania. In this respect, Lithuania is far behind the democratic States of Europe". It was also noted that "[t]he presented package of draft laws is directly related to the final stage of the creation of a democratic system of courts in Lithuania, i.e. the establishment of specialized administrative courts provided for in the Constitution. The adoption of these laws would fill a significant gap in our judicial system, to which experts from the European Union have repeatedly drawn attention. At the same time, this would mean that in Lithuania the guarantees of judicial protection of human rights and freedoms are significantly strengthened, as this is the most important purpose of administrative courts". At least two conclusions can be drawn from the quoted content of the explanatory memorandum. First, the creation of the system of administrative courts was linked to the need to ensure a more effective protection of fundamental rights. Second, it is extremely interesting that the establishment of these courts in Lithuania was, at least indirectly, predetermined by the upcoming negotiations for the accession to the European Union (hereinafter referred to as the EU), although, as we know well, the EU does not have the substantive competence to regulate issues of *institutional set-up*[3] of courts of the Member States (in addition, not all the EU Member States have separate systems of administrative courts).

2 See the text at https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.58719?jfwid=170wd4eic6 [visited on 23 November 2021].

3 In this context, with regard to the second paragraph of Article 19(1) of the Treaty on European Union (hereinafter referred to as the TEU), in terms of delimitation of competences between the EU and its Member States, the issues of *institutional set-up* of national courts *should not be* understood as including the principle of independence of the judiciary. As discussed below, EU law functionally treats national courts as "EU courts", i.e. as courts, whose role in ensuring the effectiveness of EU law at the national level is essential. Though the second paragraph of Article 19(1) of the TEU was incorporated into EU primary law only by the Treaty of Lisbon in 2009, such treatment of national courts can already be traced back to the *Van Gend en Loos* judgment (the CJEU judgment of 5 February 1963 in *Van Gend en Loos*, 26/62, ECLI:EU:C:1963:1).

In retrospect, such a link between the establishment of administrative courts and the State's membership in the EU is extremely interesting. After the Republic of Lithuania became a Member State of the EU on the 1st of May 2004, EU law became an integral part of the Lithuanian legal system. Bearing in mind its specific principles, this means that EU law directly creates certain rights and obligations at national level, while Lithuanian courts (including administrative ones), having become EU courts, have a duty to interpret national law in a manner compatible with EU law and in the event of a conflict of laws – not to apply rules of national law contrary to EU law. In such cases, they have the right and sometimes the duty to make a reference for a preliminary ruling to the CJEU.[4] This aspect is extremely important as the preliminary ruling procedure creates preconditions for a dialogue between national courts and the CJEU, allowing for effective development not only of national law but also of EU law. As discussed further, the preliminary ruling procedure is not a "one-way street" where the CJEU, upon a request by a national court for interpretation of EU law content or for a decision on the legality of rules of the EU secondary legislation, performs these actions mechanically and unilaterally. Practice shows that this procedure is more horizontal than vertical in nature, i.e. national courts, requesting a preliminary ruling, are increasingly creative in their participation in the process of interpreting EU law, as they provide arguments on (why and) how questions should be answered, in some cases express doubts (openly or between the lines) as to the extent to which earlier judgments of the CJEU are optimal.

Thus, the purpose of this article is to assess the trends of cooperation between the administrative courts of Lithuania and the CJEU on the basis of the

4 The interesting fact is that the Constitutional Court of the Republic of Lithuania (hereinafter referred to as the Constitutional Court) internalised this aspect in its case law, giving it a constitutional "shade". To be specific, in the ruling of 14 December 2018, the Constitutional Court indicated that "*the court has the duty arising out of* the Constitution, *inter alia*, its Article 109(1), the constitutional principle of justice, the constitutional imperative of full participation of the Republic of Lithuania in the European Union, Articles 1 and 2 of the Constitutional Act "On Membership of the Republic of Lithuania in the European Union", *in order to properly interpret the provisions of European Union law*, which are applicable in the case under consideration, to address the Court of Justice of the European Union with a request for a preliminary ruling *when it has doubts as to the interpretation or validity of provisions of European Union law*" (emphasis by the author). It should be noted that this duty is more broadly defined here than provided for in Article 267 TFEU, as the Constitutional Court talks about the duty of courts in general (thus, not only of courts of the last instance) to make such reference. This wording allows for an assumption that the Constitutional Court assesses the preliminary ruling procedure also through the prism of the defence of a person's subjective rights (granted by EU law). In the same vein, on the related constitutional changes after the accession of the Republic of Lithuania to the EU, see, for example, Jarukaitis I. Adoption of the Third Constitutional Act and its Impact on the National Constitutional System. *Teisė/Mokslo darbai*, 2006, vol. 60, p. 29–30.

preliminary ruling procedure. The article consists of two parts. In view of the purpose mentioned above, first of all, the article briefly discusses the nature and importance of the preliminary ruling procedure itself. In this context, the fundamental role of national courts in ensuring the effectiveness of EU law at national level is assessed, and the most recent case law of the CJEU on ensuring the effectiveness of the preliminary ruling procedure is discussed. The transformations of the national courts' system have recently started in several EU Member States and the CJEU case law, developing the principle of independence of the judiciary triggered by these transformations, makes it necessary to reassess the importance of the preliminary ruling procedure for the viability of EU law. The second part of this article discusses and evaluates the tendencies of the practices of the Lithuanian administrative courts in referring to the CJEU for a preliminary ruling. This second part assesses how actively Lithuanian administrative courts use the preliminary ruling procedure and the quality/content of referrals to the CJEU for a preliminary ruling. The extent of their participation in the judicial dialogue is also analysed. This article evaluates not only the questions asked by these courts regarding EU law interpretation or legality but also the presentation of their own arguments on the direction of this interpretation, as well as the extent and the modalities of application of specific principles of EU law in the case law of administrative courts. Of course, given the limitations on the scope of the article, such an assessment is inevitably generalized and selective, but at the same time it reveals the most general trends of the case law in this area.

I.1 Nature and importance of the preliminary ruling procedure

In legal literature the European Union is quite often referred to as the "legal Community/Union" (in French *communauté/l'Union de droit*). Such characterisation has a variety of shades, it tries to emphasize the different aspects of the nature and functioning of the EU.[5] In the context of this article, the fundamental aspect of such qualification is the fact that the EU integration process itself, unlike various previous attempts to create an "integrated" Europe,[6] is based on law. EU law

5 The first President of the European Commission W. Hallstein was among the first to use this concept: see, for example, Von Danwitz T. The Rule of Law in the Recent Jurisprudence of the ECJ. Fordham International Law Journal, 2014, vol. 37, No. 5, p. 1312–1313. Meanwhile, the CJEU first spoke about *communauté de droit* in *Les Verts*: see paragraph 23 of the CJEU judgment of 23 April 1986 in *Les Verts* (294/83, ECLI:EU:C:1986:166).

6 It is referred here to the fact that the history of Europe is, to a great extent, the history of wars, including 2 world wars that happened in the 20th century.

and its development are also among the fundamental preconditions for integration and, at the same time, a means to achieving it (integration through law).[7] In this respect, the EU integration process is an unprecedented success story, as the principle of "the rule of the stronger", which prevailed in Europe for centuries, has been replaced by the principle of the rule of law. The EU, uniting twenty-seven Member States with their wide variety of cultural, historical, social and economic heritage, has been able, over the past seventy years, on the one hand, to maintain and protect the fundamental values on which it is based,[8] and, on the other hand, to achieve the goals of its foundation.[9] In principle, this was only possible because the rules agreed at EU level have been respected. Thus, in the most general sense, EU law performs several important functions: it defines the guidelines and intensity of further integration;[10] it allows minimizing the likelihood of conflicts and, in the event of them, their resolution. Also, by providing substantive competence and establishing the decision-making procedures, it creates the legal basis for the consolidation and exercise of public authority powers at the EU level. Bearing in mind the different legal traditions of the EU Member States, their varying interests in certain situations, and given that, as noted by the US Supreme Court Justice J. Marshall in *Marbury v. Madison*, it is emphatically the duty of the judicial department to say what the law is[11], there is no doubt that the existence of the system of EU courts is a fundamental prerequisite for ensuring the effectiveness of EU law.

7 A vivid expression of this is the CJEU case law, which recognises such integrating character of EU law *expressis verbis*. For example, in paragraph 50 of the opinion of 14 December 1991 on *Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area*,1/91, EU:C:1991:490, the CJEU noted that "the Court of Justice has to secure observance of a particular legal order and *to foster its development* with a view to achieving the objectives set out in particular in Articles 2, 8a and 102a of the EEC Treaty and *to attaining a European Union among the Member States*, as is stated in the Solemn Declaration of Stuttgart of 19 June 1983 (section 2.5) referred to in the first recital in the preamble to the Single European Act. *In that context, free trade and competition are merely means of achieving those objectives*" [emphasis by the author].

8 Article 2 TEU establishes that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

9 Article 3(1) TEU indicates that the Union's aim is to promote peace, its values and the well-being of its peoples.

10 On the other hand, there are also open criticisms of such integrational EU law nature and its relative uncertainty: e.g. Kirchhof P. The European Union of States. (eds. Von Bogdandy A., Bast J.) *Principles of European Constitutional Law*. Hart Publishing, 2011, p. 735–736.

11 US Supreme Court judgment in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

When founding the Communities, it was decided to establish a decentralized judicial system, which, unlike more centralized federal[12] systems,[13] is based on the cooperation between the CJEU and national courts. This model, which stems from the idea that the CJEU ensures the uniformity of EU law across the EU and national courts ensure its effectiveness at national level,[14] has remained basically unchanged since its creation.[15] In this context, the preliminary ruling procedure laid down in Article 267 TFEU is the backbone of judicial cooperation across the EU.[16] However, it is also important to note that this procedure must be understood in conjunction with the principle of direct effect of EU law, it is essentially one of *raisons*

12 Given that the EU has real public authority powers and that they are distributed vertically, i.e. distributed between the EU and the Member States, there is no doubt that the EU is a federal *system* (but not a federal *state*). On the other hand, given that, in individual EU Member States, this term carries a different charge, formed historically, the term "federal" does not appear in EU legislation when describing the European Union. It is usually found in academic papers on law or politics, whereas in public discourse a more neutral term "supranational" prevails: Jarukaitis I. *Europos Sąjunga ir Lietuvos Respublika: konstituciniai narystės pagrindai.* Vilnius, Justitia, 2011, p. 38–40.

13 For example, Wells argues that in comparing the EU and US judicial systems, one can see two fundamental differences. First, in the EU most cases with an element of EU law are settled by national courts, meanwhile, in the USA there is a system of lower federal courts, which settle many cases with a federal element of regulation. Second, the US Supreme Court has power to review the judgments of the state courts, where federal law is applied, meanwhile the CJEU does not have such powers. See Wells M. Judicial Federalism in the European Union. Houston Law Review, 2017, No. 54, p. 700.

14 One could assume that the creators of the Communities thus sought to divide the powers of the judiciary into different levels of public authority and to create a delicate balance between the supranational and national levels. According to some authors, this kind of model better reflects the ideals of constitutionalism, and its nature determines the need for a close discourse between the CJEU and national courts. See, for example, Maduro M. P. Europe and the Constitution: What if this is as Good as it Gets? (eds. Weiler J. H. H., Wind M.) *Europe Constitutionalism Beyond State*. Cambridge, Cambridge University Press, 2003, p. 97.

15 For example, in opinion 1/09, the CJEU noted that "the guardians of that legal order and the judicial system of the European Union are the Court of Justice and the courts and tribunals of the Member States". Paragraph 66 of the CJEU opinion 1/09 of 18 March 2011, ECLI:EU:C:2011:123. On the other hand, as already mentioned, the second paragraph of Article 19(1) TEU was included in the EU primary legislation by the Treaty of Lisbon, and the whole Article 19(1) TEU is an explicit expression of this idea: "The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed. *Member States* shall provide remedies sufficient *to ensure effective legal protection in the fields covered by Union law*" [emphasis by the author].

16 The CJEU statistics, among other things, support this statement. For example, in 2020 the Court of Justice settled 792 cases in total, including 534 references for a preliminary ruling: Court of Justice of the European Union. Annual Report 2020. Judicial Activity. Luxembourg, 2021, p. 203: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-05/qd-ap-21-001-lt-n.pdf [visited on 23 November 2021].

d'être[17] of this procedure. The CJEU consistently notes in its case law that the preliminary ruling procedure establishes a dialogue between the CJEU and the judges of the courts of the Member States, which seeks to ensure uniform interpretation of EU law, as well as its consistency, full effectiveness, autonomy and, finally, unique nature of law created by the Treaties. The preliminary ruling procedure, therefore, aims to ensure that EU law is applied uniformly in all cases and in all Member States, preventing differences in its interpretation. It ensures such application by allowing national courts to eliminate difficulties that might arise from the requirement of full implementation of EU law in the judicial systems of the Member States. In the process of such cooperation, the CJEU provides national courts with interpretation, necessary for adoption of decisions in cases heard by such courts. Functions vested in national courts and the CJEU are, therefore, of crucial importance for the preservation of the legal essence itself enshrined in EU primary law.[18] Of course, such cooperation is not an end in itself. It aims, among other things, to ensure the effective protection of the subjective rights granted by EU law to natural persons and legal entities both against the Member States and against EU institutions in case of violation of EU law.[19]

National courts play an essential role in such a system. On the one hand, it is they who have the right of initiative in deciding whether to refer to the CJEU. On the other hand, as figuratively noted by J. H. H. Weiler, when the CJEU allowed EU law to be spoken through the mouths of the national judiciary it received the teeth of national courts.[20] Besides, looking empirically at the practice of coop-

17 The CJEU emphasized this connection in the aforementioned judgment in *Van Gend en Loos*, noting that "in addition the task assigned to the Court of Justice under Article 177, the object of which is to secure uniform interpretation of the Treaty by national courts and tribunals, confirms that the states have acknowledged that Community law has an authority which can be invoked by their nationals before those courts and tribunals" [author's note: the quotation refers to Article 177 of the EEC Treaty, the content of which is currently enshrined in Article 267 TFEU]. For more information on the systemic, horizontal impact of the principle of direct effect of EU law on the entire EU legal system, see, for example, Weiler J. H. H. Revisiting Van Gend en Loos: Subjectifying and Objectifying the Individual. *50ème Anniversaire de l'Arrêt Van Gend en Loos. 1963–2013.* Cour de Justice de l'Union Européene. 2013, p. 11–21. Of course, the principle of the primacy of EU law must not be forgotten in this context. It should also be noted that in the so-called *Poplawski II* judgment of 2019, the CJEU consolidated its case law on the principle of direct effect of EU law and its relationship with the principle of primacy of EU law: CJEU judgment of 24 June 2019 in *Daniel Adam Popławski* (C-573/17, ECLI:EU:C:2019:530).

18 CJEU judgment of 6 October 2021 in *Consorzio Italian Management e Catania Multiservizi and Catania Multiservizi* (C-561/19, ECLI:EU:C:2021:799, paragraphs 27–32 and the Court case law indicated therein).

19 Lenaerts K. On Judicial Independence and the Quest for National, Supranational and Transnational Justice. (eds. Selvik G., Clifton M. J., Haas T., Lourenço L., Schwiesow K.) *The Art of Judicial Reasoning. Festschrift in Honour of Carl Baudenbacher*. Springer, 2019, p. 157–158.

20 Weiler J. H. H. Journey to an Unknown Destination: A Retrospective and Prospective of the European Court of Justice in the Arena of Political Integration. (eds. Bulmer S., Scott A.) *Economic and Political Integration in Europe: Internal Dynamics and Global Context*. Blackwell, 1994, p. 135–136.

eration between the CJEU and national courts, it is obvious that the latter have a significant impact on the CJEU case law and thus on the content of EU law itself.[21] As mentioned before, various case law examples show that national courts not only formally ask on but also often seek to guide the interpretation of EU law in a certain direction.[22] This makes sense, since it is the national courts that are applying the EU law in specific factual situations. Importantly, the CJEU recognizes the impact of such a discourse with national courts and welcomes it.[23]

In view of the need to ensure the effectiveness of the preliminary ruling procedure, the CJEU's position shows that there are at least three factors which are considered essential. These include the independence of national courts, the absence of unjustified obstacles to the use of the preliminary ruling procedure and the proper implementation of the duty of courts of the last instance to refer to the CJEU for a preliminary ruling.

Interpreting the concept of "court or tribunal" (in French *juridiction*) used in Article 267 TFEU, the CJEU, already in its early case law, named, as an integral feature of this concept, the requirement of independence of the national authority making a reference for a preliminary ruling. Historically, in the case law of the Court, the independence criterion was usually used in assessing whether national authorities that *were not* courts or tribunals under national law, had sufficient guarantees of independence and thus could be regarded as "courts or tribunals" for the purposes of Article 267 TFEU. Where a reference was made by a national court, its independence was presumed. To ensure the highest level of effectiveness of EU law, the CJEU interpreted the concept of "court or tribunal" extensively, as covering not only national courts[24] but also other national dispute resolution au-

21 For more, see, for example, Jarukaitis I. *Europos Sąjunga ir Lietuvos Respublika: konstituciniai narystės pagrindai*. Vilnius, Justitia, 2011, p. 427–437.

22 See, for example, the CJEU judgment of 24 November 1993 in *Bernard Keck and Daniel Mithouard* (joined cases C-267/91 and C-268/91, ECLI:EU:C:1993:905); the CJEU judgment of 5 December 2017 *M.A.S., M.B., intervener Presidente del Consiglio dei Ministri* (C-42/15, ECLI:EU:C:2017:936).

23 See paragraph 18 of the CJEU Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), according to which the referring court or tribunal may also briefly state *its view on the answer to be given to the questions referred for a preliminary ruling*.

24 A broad interpretation of the "court or tribunal" concept can also be found in cases where a national court refers to the CJEU. For example, in the case *Prokuratura Rejonowa w Mińsku Mazowieckim* some of the parties that joined the case claimed that the reference for a preliminary ruling was inadmissible as the CJEU was addressed by the president of the chamber of three judges without the participation of the other two members of the chamber, thus, for the purposes of Article 267 TFEU, such a reference was not made by a court. The CJEU rejected this argument by pointing out that, first, the references for a preliminary ruling were made by the Tenth Division (Appeals in Criminal Matters) of the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) by way of the President's of the adjudicating chambers signatures in

thorities that met the criteria of independence.[25] However, judicial reforms carried out in some EU Member States in recent years have led to the need to answer questions directly related to the independence of national courts. As mentioned before, there is direct link between the fact that national courts function as EU courts and the need to ensure their independence, as only an independent court can ensure the rule of law and, at the same time, the effectiveness of EU law. Besides, only in such a case we can speak about the fundamental principle of mutual trust in EU law.[26] The fact that the CJEU adopted the *Associação Sindical dos Juízes Portugueses*[27] and *Achmea*[28] judgments a week apart is a good illustration of the relationship between trust in national courts in ensuring the effectiveness of EU law and the need to guarantee their independence.[29] Besides, the judgment in *Banco Santander*[30] demonstrates that the CJEU has a horizontal approach to the principle of independence of courts, i.e. it takes into account its case law developed on the basis of Article 19 TEU and Article 47 of the Charter when interpreting Article 267 TFEU.[31] However, the *Getin Noble* case raises a question whether such transplantation of the case law formed on the basis of Article 19 TEU, Article 47 of the Charter is unconditional with regards to a preliminary ruling procedure. For example, one might wonder whether/to what extent the requirement that a court must be established by law (in French *établie par la loi*), which is a part of the independence requirement, is also applicable to a particular judge who made a reference for a preliminary ruling.[32]

the seven cases in the main proceedings and, second, it is not disputed that the Sąd Okręgowy w Warszawie (Regional Court, Warsaw) meets the requirements set out in paragraph 42 of this judgment: the CJEU judgment of 16 November 2021 in *Prokuratura Rejonowa w Mińsku Mazowieckim* (joined cases C-748/19–C-754/19, ECLI:EU:C:2021:931).

25 For more on this, see, for example, Jarukaitis I., Morkūnaitė M. *Teismų nepriklausomumo principas Europos Sąjungos teisės raidos kontekste. Teisė/Mokslo darbai*, 2021, vol. 118, p. 49–55.

26 Lenaerts K. Upholding the Rule of Law through Judicial Dialogue. Yearbook of European Law, 2019, vol. 38, p. 4–5. Prechal S. Article 19 and National Courts: a New Role for the Principle of Effective Judicial Protection? (eds. Bonelli M., Eliantonio M., Gentile G.) *The Principle of Effective Judicial Protection through the prism of Article 47 of the Charter of Fundamental Rights: A top-down and a bottom-up analysis*. Oxford, Hart Publishing, 2021, p. 1–16.

27 The CJEU judgment of 27 February 2018 in *Associação Sindical dos Juízes Portugueses* (C-64/16, ECLI:EU:C:2018:117).

28 The CJEU judgment of 6 March 2018 in *Achmea* (C-284/16, ECLI:EU:C:2018:158).

29 Lenaerts K. Upholding the Rule of Law through Judicial Dialogue. Yearbook of European Law, 2019, vol. 38, p. 11–12.

30 The CJEU judgment of 21 January 2020 in *Banco Santander* (C-274/14, ECLI:EU:C:2020:17).

31 Jarukaitis I., Morkūnaitė M. *Teismų nepriklausomumo principas Europos Sąjungos teisės raidos kontekste. Teisė/Mokslo darbai*, 2021, vol. 118, p. 65–66.

32 In the case *Getin Noble* (C-132/20) the reference for a preliminary ruling was made by a judge of the Supreme Court of Poland, whereas the Polish ombudsman who joined the case questioned the admissibility of such a reference. According to him, the judge in question was appointed in blatant violation of the fundamental rules of national law and could therefore not be regarded

The CJEU case law also reveals that national law may create various unjustified restrictions for national courts to use the preliminary ruling procedure. In this respect, the CJEU takes a consistent position, according to which Article 267 TFEU gives national courts the widest possible opportunity to refer questions to the CJEU when they consider that the specific case raises questions as to the interpretation or assessment of validity of the provisions of EU law and they are free to use this possibility at any given moment in the process.[33] Therefore, a rule of national law cannot be an obstacle for a national court to use this possibility as it is inseparable from the system of cooperation of national courts and the CJEU established by Article 267 TFEU *and from the functions of a judge charged with the application of EU law.*[34] For example, in the *Ognyanov* case, the CJEU faced a situation in which a rule of national law was interpreted as obliging the judges, making a reference for a preliminary ruling, to disqualify themselves from the case at issue solely because, at the time of making the reference, they set out the facts of the case and indicate the applicable law, and such presentation of information was considered to be an expression of a preliminary opinion of the judges. This leads not only to their disqualification and the annulment of their final decision but also to disciplinary proceedings against them for breach of discipline.[35] Meanwhile, in the cases *Miasto Łowicz,*[36] *Eu-*

as a "court" for the purposes of Article 267 TFEU. Meanwhile, Advocate General Bobek, in his opinion (Opinion of Advocate General Bobek of 8 July 2021 in *Getin Noble* (C-132/20, ECLI:EU:C:2021:557), indicated that to simply and mechanically "cut and paste" the concept of "tribunal established by law" from Article 47 of the Charter into Article 267 TFEU, without properly reflecting on the different content and purpose of those concepts, would not be a very wise approach. Therefore, in his opinion, the possible flaws in the appointment procedure of the judge who made the reference in the present case, and/or his personal and professional ties to the Minister for Justice/General Prosecutor, should not result in the inadmissibility of the present reference. At the time of writing the Article, the CJEU has not yet given a ruling in this case.

33 For example, paragraph 42 of the CJEU judgment of 24 October 2018 in *XC and Others* (C-234/17, EU:C:2018:853).

34 Paragraph 103 of the CJEU judgment of 19 November 2019 in *A. K. and Others* (*Independence of the Disciplinary Chamber of the Supreme Court*) (joined cases C-585/18, C-625/18 and C-624/18, EU:C:2019:982).

35 The CJEU judgment of 15 July 2016 in *Ognyanov* (C-614/14, ECLI:EU:C:2016:514). The CJEU stated in its judgment that in setting out such information, a national court is doing no more than meeting the requirements of Article 267 TFEU and Article 94 of the Rules of Procedure, therefore, where it presents, in its request, the relevant factual and legal context of the main proceedings, that is a response to the requirement of cooperation that is inherent to the preliminary reference mechanism and cannot, in itself, be a breach of either the right to a fair trial, enshrined in Article 47 of the Charter, or the presumption of innocence, guaranteed by Article 48 of the Charter. Accordingly, the CJEU concluded that such national practices are contrary to EU law.

36 Paragraphs 57–59 of the CJEU judgment of 26 March 2020 in *Miasto Łowicz* (joined cases C-558/18 and C-563/18, ECLI:EU:C:2020:234).

ropean Commission v. Republic of Poland[37] and *IS*,[38] the CJEU assessed situations where disciplinary proceedings were brought against national judges solely because they asked the CJEU for a preliminary ruling. Unsurprisingly, the Court noted that the mere possibility that disciplinary proceedings may be initiated in a certain case because of a reference for a preliminary ruling or a decision not to withdraw such reference after its submission, may prevent national judges from effectively exercising such a possibility. The CJEU also stressed that inability to make these judges subject to disciplinary proceedings or penalties for the exercise of such a possibility to address the CJEU, which falls within their exclusive competence, is a guarantee which is inherently related to their independence.[39] Besides, in the *IS* judgment the CJEU further develops its case law and emphasizes that according to the system of cooperation between national courts and the CJEU, enshrined in Article 267 TFEU, the national supreme court is prohibited, upon receipt of a complaint filed in the interests of law, from invalidating a ruling of a court of lower instance referring for a preliminary ruling even though that does not affect the legal effects of this ruling, on the basis that the questions raised are not significant or necessary for resolution of the dispute in the main proceedings. This conclusion is logical, given that such an assessment is *de facto* equivalent to the control of the admissibility of a reference of a preliminary ruling and, from the point of view of EU law, only the CJEU has such powers. In addition, such finding of illegality could weaken the meaning of the answers that the CJEU will give and could limit the exercise by national courts of their competence to refer to the CJEU for a preliminary ruling, thereby limiting the effective judicial defence of a person's rights deriving from EU law.[40]

Finally, in the context of the topic of this article, the scope of the duty of national courts of the last instance to make a reference for a preliminary ruling, which is provided for in the third paragraph of Article 267 TFEU, is significant.

37 Paragraphs 222–235 of the CJEU judgment of 15 July 2021 in *European Commission v. Republic of Poland* (C-791/19, ECLI:EU:C:2021:596).

38 Paragraphs 89–93 of the CJEU judgment of 23 November 2021 in *IS* (C-564/19, ECLI:EU:C:2021:949).

39 However, the CJEU has adopted different procedural decisions in these two cases. In the *Miasto Łowicz* case, the CJEU rejected the reference for a preliminary ruling as inadmissible, having indicated that the disciplinary proceedings had been closed upon the decision that no disciplinary offences were found concerning the degrading of the good name of the office as a result of specific wording of reference for a preliminary ruling. Meanwhile, in the *IS* case, in spite of the fact that the request for a disciplinary action against the judge was withdrawn before its examination was started on the merits, the CJEU recognised that a part of the reference for a preliminary ruling concerning the disciplinary procedures was admissible and answered the referred question as, in the Court's opinion, there was an inherent link between the ruling of the Supreme Court of Hungary, by which the reference for a preliminary ruling was held unlawful, and the subsequent request for a disciplinary action against the judge.

40 Paragraphs 68–82 of the *IS* judgment.

This duty is particularly important as these are usually constitutional or supreme courts of the Member States, which have the last say in a case and which develop the jurisprudence on interpretation and application of law at the national level. Though the text of the third paragraph of Article 267 TFEU is imperative, the practice shows that unconditional, all-encompassing duty to address the CJEU does not make sense. The *CILFIT* judgment formulated the so-called *acte claire* and *acte eclairé* conditions, permitting national courts of the last instance to forego referring for a preliminary ruling.[41] This judgment was criticized in the doctrine, besides, over time the EU as such has changed too (for example, the number of official languages of the EU has significantly grown), therefore, exactly thirty-nine years later, in the *Consorzio Italian Management* judgment,[42] the CJEU decided to further develop its case law on this subject.

In assessing this judgment, it is important to underline the following aspects. First, like in the *CILFIT* judgment, it is evident from the entirety of arguments in the *Consorzio Italian Management* judgment that the preliminary ruling procedure is treated namely as a basis for judicial cooperation, it does not create a person's right to demand a reference to the CJEU. Second, the Court pointed out that the preliminary ruling procedure was intended to reveal the content of EU law, i.e. *to interpret it and to decide on its validity*, rather than to address the issues of *application* of EU law in a particular case, as the latter are within the competence of national courts.[43] Besides, the Court brought more specificity to criteria, according to which a national court should assess whether the interpretation of EU law, applicable in the case, is so obvious as to leave no scope for any *reasonable doubt* about its content. The CJEU noted, in this respect, that in deciding on the necessity of the reference, the national court must be convinced that the potential answer as to the interpretation of EU law is equally obvious to the courts or tribunals of last instance of the other Member States.[44] In addition, the national court should take into account that EU law has its characteristic features, including its various language versions, its specific terminology and autonomous legal concepts, and its provisions must be interpreted in a systematic manner, keeping in mind the overall context.[45] On the other hand, the CJEU

41 The CJEU judgment of 6 October 1982 in *Srl Cilfit* (C-283/81, ECLI:EU:C:1982:335).

42 The CJEU judgment of 6 October 2021 in *Consorzio Italian Management e Catania Multiservizi and Catania Multiservizi* (C-561/19, ECLI:EU:C:2021:799).

43 Paragraph 28 of the *Consorzio Italian Management* judgment.

44 And, on the contrary, if it was indicated to the national court (for example, by litigants) that the case law formed by courts of the same Member State or courts of various Member States on the interpretation of the EU law provision, which is applicable in the main proceedings, is not uniform, the national court should be particularly careful when assessing whether there are reasonable doubts as to the correct interpretation of such provision: paragraph 48 of the *Consorzio Italian Management* judgment.

45 Paragraphs 39–47 of the *Consorzio Italian Management* judgment.

considers that the mere fact that it is theoretically possible to interpret a provision of EU law in a number of ways does not in itself determine the existence of the duty to make a reference. If, having evaluated the context and the purpose of a relevant legal provision, as well as the system of rules it belongs to, a national court concludes that an alternative interpretation of this provision does not seem sufficiently convincing, it may decide that there is no reasonable doubt and, consequently, no duty to make a reference.[46] Finally, in the *Consorzio Italian Management* judgment the CJEU spoke for the first time about the duty arising from Article 267 TFEU for a national court to give reasons for its decision not to make a reference for a preliminary ruling.[47] Indeed, such a duty is important in order to understand the reasons why the national court decided not to make a reference, even though it was aware that the facts of the case in question fell within the scope of application of EU law. In principle, such reasoning should clearly reveal the reasons leading the national court to consider that it has no reasonable doubts as to the way in which it chooses to interpret EU law.

In summary, the CJEU case law consistently emphasizes the fundamental role of the preliminary ruling procedure in the development of EU law and in ensuring its effectiveness at national level and stresses the importance of cooperation with national courts. In this respect, the idea that national courts are functionally EU courts is fundamental and logically determines the need to define one of the essential parameters of their functioning under EU law – the principle of independence of the judiciary. This is the way to fully ensure an unhindered dialogue between the CJEU and national courts on the basis of the preliminary ruling procedure.

I.2 Cooperation between Lithuanian administrative courts and the CJEU in the development of EU law

Like other courts of Lithuania, administrative courts dealt with EU law in their case law even before the accession of the Republic of Lithuania to the EU.[48] This makes sense as most of the EU legal provisions were transposed into the national legal system before the Republic of Lithuania joined the EU. Of course, before

46 Paragraph 48 of the *Consorzio Italian Management* judgment.

47 Paragraph 51 of the *Consorzio Italian Management* judgment.

48 Jarukaitis I. *Lietuva ir Europos Sąjungos teisė 2004–2018 m.* (eds. V. Sinkevičius et al.) *Lietuvos teisė 1918–2018. Šimtmečio patirtis ir perspektyvos*. Vilnius, 2018, p. 835. Jarukaitis I. *Europos žmogaus teisių konvencija ir Europos Sąjungos teisė: požiūrių konvergencija Baltijos valstybių teismų praktikoje. Žmogus, teisinė valstybė ir administracinė justicija.* Vilnius: Supreme Administrative Court of Lithuania, 2012, p. 176–194.

the accession, the familiarisation of the Lithuanian courts with EU law was rather fragmented and indirect, besides, they could not use the preliminary ruling procedure.[49] After the Republic of Lithuania joined the EU, the situation has changed radically as EU law (including the European Union founding treaties) *de jure* became a part of national legal system, creating a legal basis for application of the preliminary ruling procedure.

Seventeen years of membership of the Republic of Lithuania in the EU has already revealed some tendencies and provided experience in this field. First of all, from *a quantitative point of view*, the statistics provided by the CJEU show that by the end of 2020, the Lithuanian courts had made 75 references for a preliminary ruling, including 36 references made by administrative courts.[50] In addition, according to the information provided by the Supreme Administrative Court of Lithuania (hereinafter referred to as the SACL), in 2021 (by 23 November) this court made 9 references to the CJEU.[51] Thus, the administrative courts are relatively active in this respect and the SACL has made the most references for a preliminary ruling out of all Lithuanian courts.[52] This trend is not surprising, as EU law regulates many areas falling within the competence of Lithuanian administrative courts. In this respect, the areas of taxation and customs,[53] competition and

49 That is, factual circumstances of a case, formally speaking, were subject to law of the *Republic of Lithuania*, to which certain provisions of EU law were transposed. However, in the light of the legislator's intention to harmonize national law with EU law, Lithuanian courts were already obliged to interpret national law in a manner compatible with EU law, thus also to interpret the content of the transposed EU law and, along with it, the CJEU case law. For more on the acquaintance of Lithuanian courts with EU law before the accession of the Republic of Lithuania to the EU, see, for example, Jarukaitis I. Lithuania's Membership in the European Union and Application of EU law at National Level. (ed. A. Lazowski) *The Application of EU Law in the New Member States. Brave New World*. T.M.C. Asser Press & Oxford University Press, 2010, p. 234–242.

50 Court of Justice of the European Union. Annual Report 2020. Judicial Activity. Luxembourg, 2021, p. 222: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-05/qd-ap-21-001-lt-n.pdf [visited on 23 November 2021].

51 For more details, see https://www.lvat.lt/teismu-praktika/kreipimaisi-i-europos-sajungos-teisingumo-teisma/2021-metai/888 [visited on 23 November 2021].

52 By the end of 2020, the SACL made 29 references to the CJEU, while the Supreme Court of Lithuania – 25 references.

53 For example, the SACL ruling of 21 September 2004 in administrative case No. A7-745-04; ruling of 27 October 2004 in administrative case No. A1-355/2004; judgment of the extended chamber of judges of 18 December 2012 in administrative case No. A 602-2292/2012; judgment of 11 April 2013 in administrative case No. A 442-505/2013; judgment of 20 March 2014 in administrative case No. A 438-15/2014; judgment of 21 October 2014 in administrative case No. A 556-505/2014; ruling of 16 March 2015 in administrative case No. A-244-602/2015; ruling of 12 February 2015 in administrative case No. A-288-442/2015; ruling 20 October 2016 in administrative case No. A-2117-662/2016, judgment of 4 October 2017 in administrative case No. eA-151-556/2017, ruling of 29 August 2018 in administrative case No. A-375-556/2018.

State aid,[54] EU subsidies,[55] network industries,[56] the legal status of aliens,[57] and the non-contractual liability of the State for damage caused to private persons by infringements of EU law,[58] are to be noted, as it is in this type of cases that administrative courts most often need to interpret and apply EU law.[59] Comparing the trends of the case law of Lithuanian courts with those of the other EU Member States, it can be concluded that the number of references is statistically similar to that of other countries that joined the EU in 2004–2007 but lower than the number of references received from courts of the most active EU Member States (Belgium, Italy, the Netherlands and Germany). A look at the case law of courts of the "old" Member States of the EU and of Lithuanian courts reveals one trend: the statistics show that most references for a preliminary ruling to the CJEU are made by the Supreme Administrative Court of Lithuania and by the Supreme Court of Lithuania and not by lower courts, whereas in the "old" Member States it is the lower courts that make references more often. This practice has a logical explana-

54 For example, the SACL ruling of 11 May 2006 in administrative case No. A1-686/2006; ruling of 22 December 2006 in administrative case No. A2-2207/2006; ruling of 15 March 2010 in administrative case No. A822-337/2010; ruling of 27 May 2011 in administrative case No. A^{858}-294/2011; ruling of 18 April 2012 in administrative case No. A^{858}-290/2012; ruling of 20 April 2012 in administrative case No. A^{858}-1245/2012; ruling of 13 August 2012 in administrative case No. A^{858}-1516/2012; ruling of the extended chamber of judges of 21 June 2012 in administrative case No. A^{520}-2136/2012; ruling of 26 November 2012 in administrative case No. A 520-2995/2012; ruling of the extended chamber of judges of 21 January 2013 in administrative case No. A502-801/2013; ruling of 8 April 2014 in administrative case No. A^{502}-253/2014; judgment of 2 May 2016 in administrative case No. A-97-858/2016.

55 For example, the SACL ruling of 11 December 2007 in administrative case No. A11-1125/2007; ruling of 27 May 2013 in administrative case No. A146-924/2013; judgment of 29 October 2013 in administrative case No. A822-1029/2013; judgment of 11 September 2014 in administrative case No. A438-1102/2014; ruling of the extended chamber of judges of 10 July 2015 in administrative case No. A-1425- 858/2015, judgment of 14 October 2020 in administrative case No. eA-286-442/2020, judgment of 2 June 2021 in administrative case No. eI-16-525/2021.

56 For example, the SACL judgment of 10 November 2010 in administrative case No. A^{858}-1309/2010; ruling of 15 November 2010 in administrative case No. A^{858}-1371/2010; judgment of 7 June 2012 in administrative case No. A^{858}-1647/2012; judgment of the extended chamber of judges of 22 April 2014 in administrative case No. I146- 5/2014, ruling of 20 May 2020 in administrative case No. eA-1507-662/2020.

57 For example, the SACL judgment of 13 February 2012 in administrative case No. A822-1727/2012; ruling of 20 June 2013 in administrative case No. A 822-69/2013; ruling of 29 July 2013 in administrative case No. N 575-77/2013; ruling of 5 July 2013 in administrative case No. A858-762/2013, judgment of 3 July 2015 in administrative case No. eA-2468-624/2015; ruling of 6 October 2015 in administrative case No. A-3061-858/2015; ruling of 23 May 2016 in administrative case No. A-3183-624/2016.

58 For example, the SACL ruling of 24 April 2008 in administrative case No. AS444-199/2008, ruling of 8 May 2017 in administrative case No. eA-990-502/2017, ruling of 8 June 2020 in administrative case No. A-3669-756/2020.

59 See also Jarukaitis I. *Lietuva ir Europos Sąjungos teisė 2004–2018 m.* (eds. V. Sinkevičius et al.) *Lietuvos teisė 1918–2018. Šimtmečio patirtis ir perspektyvos*. Vilnius, 2018, p. 836–837.

tion: in a specific case, it is a court of lower instance that is the first to encounter the need to interpret EU law provisions. In addition, the proper interpretation and application of EU legal regulation to the facts of a specific case reduces the likelihood of appeal or cassation allowing for cheaper and faster resolution of a dispute. Of course, the aforementioned tendency of Lithuanian references can partially be explained by the workload of judges in courts of lower instance and the time necessary to prepare a high-quality reference to the CJEU, also bearing in mind that the courts of last instance have more experience and human resources. However, lower courts could certainly be more active and decide *ex officio* to make a reference to the CJEU even if the parties to a dispute do not ask for it.

In terms of quality/content of this case law, several aspects are to be noted. First, it is commendable that so far no reference for a preliminary ruling from the Lithuanian (administrative) courts has been rejected as inadmissible, even though such cases are generally not that rare in the CJEU case law.[60] In addition, the CJEU answered only one reference of Lithuanian administrative courts for a preliminary ruling[61] by giving a reasoned order (in French *ordonance*) adopted under Article 99 of the Rules of Procedure of the Court of Justice.[62] This shows that, before applying

60 As a rule, the national court's reference for a preliminary ruling is rejected as inadmissible either because the CJEU is not competent on the issue, i.e. it does not fall within the sphere of regulation of EU law *ratione materiae* or *ratione temporis* (see, for example, the CJEU judgment of 6 March 2014 in *Siragusa* (C-206/13, ECLI:EU:C:2014:126); the CJEU judgment of 24 October 2019 in *IN and JM v. Belgische Staat* (joined cases C-469/18 and C-470/18, EU:C:2019:895), or because the content of the national court's reference for a preliminary ruling does not make it possible to perceive the relationship between the facts of the case and the question asked about EU law. As for the latter aspect, it is to be noted that due to the fundamental importance of cooperation between the CJEU and national courts, the national courts' references for a preliminary ruling on interpretation of Union law are subject to the presumption of relevance, and the CJEU rejects a reference from a national court as inadmissible only if it is evident that the requested interpretation of EU law in a specific case is totally unrelated to the facts or the subject-matter of the dispute in the main proceedings, if the problem is hypothetical or if the CJEU does not have sufficient information on the factual and legal circumstances in order to provide useful answer to the questions asked (see, for example, the CJEU judgment of 25 July 2018 in *AY* (C-268/17, EU:C:2018:602).

61 The CJEU ruling of 5 February 2009 in *Mechel Nemunas* (C-119/08, ECLI:EU:C:2009:53). Interestingly, this ruling was adopted by a chamber of five judges.

62 It says that "[w]here a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order."
On the other hand, in view of the increasing workload of the CJEU, there is a recent trend toward responding to questions that do not pose complex challenges for the interpretation of EU law in the form of a reasoned order. Therefore, the mere fact that the CJEU responded to questions posed by a national court by a reasoned order (which is often adopted by a chamber of three judges) should not be understood as a signal that the submitted questions were unimportant or elementary.

for a preliminary ruling, the Lithuanian administrative courts assess the case law of the CJEU and do not refer questions that have already been answered by the CJEU.

Second, it is important to assess the content of rulings of Lithuanian administrative courts, by which questions for preliminary rulings are presented, to be more specific, the extent to which Lithuanian courts present reasons *related to the interpretation of EU law* in such rulings. Accordingly, it can also be assessed to what extent the CJEU takes into account such arguments of national courts and to what extent these arguments are reflected in its judgments. Due to the limitation of the scope of this article, it is not possible to discuss and evaluate in detail all such rulings adopted by Lithuanian administrative courts; thus, the rulings discussed below have been chosen selectively and subjectively as reflecting the general trend. In addition, such assessment is not intended to evaluate in detail the arguments put forward concerning all the subtleties of the legal regulation in the relevant area but rather to assess the totality of the arguments put forward, in proposing a specific *direction* of the anticipated answer.

First of all, the case *Valčiukienė and Others* is to be discussed.[63] There the dispute about lawfulness of certain territorial planning documents adopted by the district municipality has arisen. During the hearing of the case, the SACL, *inter alia*, had doubts about the compliance of some provisions of the Resolution No. 967 of the Government of the Republic of Lithuania, with the rules of EU law, specifically with Article 3(2) of Directive 2001/42/EC. The applicants supported their claim to annul the disputed territorial planning documents with the argument that no strategic environmental impact assessment of those documents was performed, meanwhile the said provision of the Government resolution set forth an exception allowing not to apply such an assessment where solutions relate to only one subject of economic activity. It is evident from the reasons for making a reference for a preliminary ruling set out by the SACL that the chamber of judges had serious doubts as to the compliance of the said national provision with EU law. Having assessed the entirety of national legal regulation, the chamber, first of all, noted that from the point of view of national law, in the factual situation of that case, the strategic environmental impact assessment did not have to be performed. However, having analysed the content of Directive 2001/42/EC, the chamber concluded that the provision of national law in question was possibly in conflict with the requirements of this directive. It is evident from the content of the adopted CJEU judgment and the answer to the questions referred that the Court agreed with that evaluation.[64] Like the SACL, it basically indicated that such

63 The SACL ruling of 13 May 2010 in administrative case No. A822-464/210.

64 The CJEU judgment of 22 September 2011 in *Genovaitė Valčiukienė and Others v. Pakruojo rajono savivaldybė and Others* (C-295/10, ECLI:EU:C:2011:608).

national regulation does not comply with provisions of the directive as it is not possible to evaluate whether, in a specific case, a plan has "significant effects" for the environment based on the criterion, according to which the solution of the planning document in question is to indicate only one subject of economic activity, whereas this exact evaluation was the purpose of the regulatory framework set out in the directive.[65]

It is also necessary to mention the *Peftiev* case,[66] which perfectly illustrates that application of various law interpretation methods can produce different EU law interpretations (in terms of revealing the content of a legal rule). Such difference already indicates that a preliminary ruling should be sought. The dispute in the case was related, *inter alia*, to the interpretation and application of Article 3(1)(b) of Regulation 765/2006.[67] The SACL chamber noted in its reference that based on the linguistic interpretation of this provision of the Regulation (to which the respondents referred), competent institutions of the Member State would have the absolute/unlimited discretion in deciding whether (some) frozen funds are to be released in order to pay certain legal expenses. However, according to the assessment of the chamber of judges, such an interpretation would be manifestly incompatible with the imperative to ensure the protection of fundamental rights (in this particular case, the right to a fair trial). Having evaluated the entirety of the relevant EU legal regulation and the case law developed by the CJEU, the SACL chamber referred a question asking whether the said Regulation provision could be interpreted in a manner that an institution, responsible for the application of the derogation, has absolute discretion to decide on its application. In its judgment, the CJEU completely agreed with the SACL's arguments and indicated that the said Regulation provision must be interpreted in the light of Article 47 of the Charter and answered the referred question that, when taking a decision on whether to grant a derogation requested under relevant provision with a view to

65 See paragraphs 35–54 of the CJEU judgment.

66 See the SACL ruling of 3 May 2013 in administrative case No. A858-283/2013 and the CJEU judgment of 12 June 2014 *Užsienio reikalų ministerija and Finansinių nusikaltimų tyrimo tarnyba v. Vladimir Peftiev and Others* (C-314/13, ECLI:EU:C:2014:1645).

67 The dispute arose between the applicants whose funds were frozen in the Republic of Lithuania on the basis of EU legislation and the Lithuanian public authorities who refused to release some of these funds, although in accordance with Article 3(1)(b) of the Regulation, the applicants claimed that these funds were intended to pay the lawyer whose participation was necessary in bringing an action before the General Court of the EU. Article 3(1)(b) of the said Regulation indicated that "[b]y way of derogation from Article 2, the competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources are <...> intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services".

bringing an action challenging the lawfulness of restrictive measures imposed by the EU, the competent national authority does not enjoy an absolute discretion but must exercise its powers in a manner which upholds the rights provided for in the second sentence of the second paragraph of Article 47 of the Charter and observes the indispensable nature of legal representation in bringing such an action before the General Court.[68]

The *Eturas* case[69], dealing with the issues of interpretation and application of EU competition law in the digital environment, is particularly interesting.[70] In its reference, the SACL actually asked to what extent the classical case law of the CJEU in respect of Article 101 TFEU on concerted actions of undertakings must be applicable to business activities performed *online*. Having evaluated the case law developed by the CJEU with regard to concerted actions and the interpretation of

68 In addition, anticipating such a reply, the SACL chamber also asked what criteria a relevant national authority should apply in order to decide on the application of such a derogation. The CJEU replied that the national authority has the right to verify whether the frozen funds requested to be released are intended exclusively for payment of reasonable professional fees and compensation of expenses related to provision of legal services. Besides, it can set conditions of compliance with the purpose of the sanction imposed to ensure that the granted derogation is not abused.

69 See the SACL ruling of 17 January 2014 in administrative case No. A858-1900/2013 and the CJEU judgment of 21 January 2016 in *Eturas UAB and Others v. Lietuvos Respublikos konkurencijos taryba* (C-74/14, ECLI:EU:C:2016:42). For more on this case, see, for example, Havu K., Zupančič N. *Case Comment: Collusion and Online Platforms in Eturas*. The Competition Law Review, 2016, vol. 11, No. 2, p. 255–266; De Bandt P., Probst J. *Proving Concertation in the Context of Online Platforms: A Comment on the Eturas Case*. European Competition and Regulatory Law Review. 2017, vol. 1, No. 1, p. 74–79; Court of Justice of the European Union. Annual Report 2016. Judicial Activity. Luxembourg, 2017, p. 47.

70 The dispute in the case was about the resolution of the Competition Council of the Republic of Lithuania, by which the latter found a violation of competition law by concerted actions of travel agencies on the online platform. The features of E-TURAS online system (the program where computerized travel information and related services provided by travel agencies are processed and structured) were evaluated. This system was integrated into the websites of travel agencies, and users were able to purchase trips on these websites using a form of the E-TURAS booking system. The Competition Council found that the administrator of E-TURAS system introduced a technical cap on discounts applied to trips sold through this system, thus preventing the travel agencies from applying a discount greater than 3 percent. Before introducing this technical limitation, a system message was placed in the E-TURAS system, informing travel agencies about the discount capping. The Competition Council, having evaluated the system operation principles, its features, the system message published by UAB Eturas and information on discounts published on the websites of the travel agencies themselves, stated that travel agencies, using the E-TURAS system at the time, could reasonably assume that all the other travel agencies using the system would also apply discounts for trips not exceeding 3 percent. Therefore, it concluded that the travel agencies had disclosed to one another the rate of the discount they were going to apply in the future, expressing by their tacit agreement their common will regarding conduct in the relevant market. The Competition Council treated such a conduct of travel agencies as their concerted actions and decided that these travel agencies violated the Law on Competition and Article 101 TFEU.

the Charter, the chamber of judges of the SACL in their ruling, first of all, doubted whether the use of the presumption that economic operators were aware, or ought to have been aware, of the established discount capping in the system solely by reason of the existence of the system message and the fact that they had to perceive and evaluate the principles of operation of E-TURAS system, would be compatible with the provisions of Article 101 TFEU, which must be interpreted with regard to the Charter (in this case, Article 48 of the Charter establishing the presumption of innocence). Moreover, upon evaluation of the E-TURAS system operation specifics, a question arose to what extent the case law formed by the CJEU on distancing from actions contrary to competition law is unconditionally applicable in the digital environment. The CJEU agreed with the arguments of the SACL and, having taken into account the E-TURAS operation system specifics, arrived at the conclusion that the presumption that economic operators took part in concerted actions is possible only from the moment when these operators read the message sent by the system administrator. It is then deemed that they participated in performing concerted actions, unless they publicly distanced themselves from that practice, reported it to the administrative authorities or adduced other evidence to rebut that presumption, such as *evidence of a systematic application of a discount exceeding the cap in question.*[71] Thus, contrary to the Advocate Generals opinion, according to which it would be insufficient, for example, for the undertaking concerned to ignore the communication, to instruct its own employees not to conform to the practice, for deeming that it distanced itself from anticompetitive practices; it would also be insufficient or to oppose the practice *by mere conduct on the market* — for instance, by giving individual discounts,[72] the CJEU indicated that with regard to specific facts of the case, it is possible to rebut the presumption of participation in concerted practices also by other evidence than public distancing or reporting to administrative authorities. Specifically, the presumption of causal link between concerting of actions and the conduct in the market of the involved undertakings can be rebutted by proving *systemic* application of a discount exceeding the cap set.[73] Having evaluated the interpretation given by the CJEU, the chamber of judges of the SACL annulled the resolution of the Competition Council in respect of some of the applicants.[74] Generally, this case had quite a significant impact on the development of EU competition law.[75]

71 Paragraphs 26–40 of the CJEU judgment.

72 See paragraph 90 of the opinion of Advocate General of 16 July 2015 in *Eturas UAB and Others v. Lietuvos Respublikos konkurencijos taryba* (C-74/14, ECLI:EU:C:2015:493).

73 Paragraph 49 of the CJEU judgment.

74 The SACL judgment of 2 May 2016 in administrative case No. A-97-858/2016.

75 It should also be noted that the extended chamber panel of judges of the SACL by its ruling 17 February 2021 in administrative case No. eA-25-629/2021 made a reference for a preliminary ruling on interpretation of Article 101 TFEU in the context of activities of notaries. This

Given the specifics of the SACL judicial functions, it is evident that doubts about the conformity of national regulation with EU law may arise in hearing both individual cases and cases concerning the legality of regulatory administrative acts. Regarding the first category of cases, if SACL receives a reply from the CJEU that the relevant national regulation is incompatible with EU law, following the principle of supremacy of EU law, it *does not apply* such regulation to specific factual circumstances of the case. Meanwhile, an analogous answer in a case concerning the legality of regulatory administrative acts may result in discontinuation of the case or a part of the case in question.[76] Such a procedural decision is based on the idea that, in case of doubt about the compliance of national regulation with EU law, the court hearing an individual case has the right to refer to the CJEU for a preliminary ruling *itself* and, upon receipt of the answer, if necessary, not to apply rules of national law contrary to EU law.[77]

For example, in the *Vilniaus energija* case,[78] the dispute concerned the lawfulness of mandatory instructions given to the company by the Lithuanian Metrology Inspectorate not to use remotely transmitted readings of hot water meters in billing until a metrological verification of the system was carried out.[79] In assessing the situation in the case, the SACL chamber noted that national law treated a measuring instrument (meter) with remote data transmission function as a measuring system. Furthermore, such interpretation of the Law on Metrology and legal acts implementing it was approved by the extended chamber of judges of the SACL in its judgment of 9 July 2012 in case No. A143-10/2012. However, having assessed the CJEU case law on free movement of goods, as well as provisions of Directive 2004/22/EC, the chamber of judges doubted whether such national legal

ruling raises questions about the need to further develop the case law of the CJEU concerning definitions of an undertaking and of a decision of an association of undertakings and the claimed anti-competitive nature of such a decision. At the time of writing the Article, the CJEU has not yet given a ruling in this case.

76 Of course, in some situations no conflict between national law and EU law is found: see, for example, the SACL judgment of 2 June 2021 in administrative case No. eI-16-525/2021.

77 In its case law, the SACL also follows the approach that administrative courts are not assigned with investigation of conformity of a regulatory administrative act to EU legal acts, for example, to an EU regulation. Doubts regarding potential contradictions between such acts are dispelled when hearing an individual contentious case in the context of which they arise (see the ruling of 3 April 2009 in administrative case No. I143-18/2009; the judgment of 2 July 2010 in administrative case No. I444-5/2010).

78 The SACL ruling of 25 June 2013 in administrative case No. A858-239/2013.

79 The Lithuanian Metrology Inspectorate held that, even though a hot water meter used was metrologically certified, it had a remote data transmission function, therefore, according to provisions of an order of the Director of the State Metrology Service, could not be used for billing as, according to this legal act, such a measuring instrument had to be treated as a measuring system, therefore, the entire system, and not just a separate meter, had to be metrologically verified.

regulation is compatible with EU law. In this regard, the CJEU held that Article 34 TFEU and Directive 2004/22/EC must be interpreted as precluding national legislation and practice according to which a hot-water meter which satisfies all the requirements of that directive and is connected to a remote (telemetric) data-transmission device is to be regarded as a measuring system and, as a result, cannot be used for its intended purpose so long as it has not been subject, together with that device, to a metrological verification as a measuring system.[80] The extended chamber of judges of the SACL, having assessed the interpretation given by the CJEU in this case, also taking into account its case law on the principle of supremacy of EU law, establishing the duty of national court not to apply rules of national law not conforming to EU law, upheld the applicant's complaint and annulled the disputed legal act on compliance with metrology requirements.[81]

Meanwhile, in the *Agrodetalė* case,[82] questions of interpretation of Directive 2003/37/EC arose. Specifically, it concerned questions whether provisions of this directive apply to the supply to the EU market and registration of used or second-hand vehicles manufactured outside the European Union, whether Member States may regulate the registration of such vehicles by special national rules and impose additional requirements for such registration (for example, the obligation to comply with the requirements of Directive 2003/37), also, whether Articles 2 and 23 of this directive can be interpreted as providing that the provi-

80 The CJEU judgment of 10 September 2014 in *UAB Vilniaus energija* (C-423/13, ECLI:EU:C:2014:2186). In fact, the CJEU supported the reasoning according to which for the purposes of Directive 2004/22/EC the function of the remote (telemetric) data-transmission device is limited to the remote transmission of data previously measured by the hot-water meter, therefore, it is not "a device with a measuring function" and does not come within the scope of the directive. Hot water meters themselves fall within the scope harmonized in detail in EU secondary legislation, therefore, Member States can apply additional national requirements to measuring instruments carrying the "CE" conformity marking and supplementary metrological marking only in cases provided for in EU secondary legislation. The CJEU indicated that the event discussed in the case does not fall under such an exception and the national regulation precludes the putting into use of a hot-water meter which satisfies all the requirements of Directive 2004/22, as it requires a repeated metrological verification. As the remote data transmission devices fall outside the scope of the said directive, the Court holds that national regulation and practices must be assessed in the light of the TFEU provisions on free movement of goods. Though, theoretically, such a requirement could be considered as aimed at protection of consumer rights, in practice the CJEU treated such provisions as exceeding what is necessary to achieve this objective as this protection is already assured by metrological verification of the meter itself. Finally, if the readings of the measuring instrument and this device differ, the price to be paid by the user is determined by the readings of the measuring instrument.

81 Judgment of the extended chamber of judges of the SACL of 5 January 2015 in administrative case No. A858-46/2014.

82 Ruling of the extended chamber of judges of SACL of 17 September 2015 in administrative case concerning the legality of regulatory administrative acts No. I-10-143/2015.

sions of the directive are applicable to certain categories of vehicles manufactured after 1 July 2009.[83] The CJEU stated that Directive 2003/37 provides for a uniform approval procedure for vehicles falling within its scope and is based on the principle of total harmonisation. It emphasized that the State in which the vehicles are manufactured is irrelevant for the purpose of the application of the EC type-approval procedure. It agreed with the opinion of the Advocate General noting that the system established by Directive 2003/37 has the aim of ensuring that all vehicles, new or used, which belong to specified categories and which are placed on the EU market for the first time, comply with the technical requirements laid down in that directive. The CJEU indicated that a second-hand vehicle imported from a third country which does not have EC type-approval and is intended to be used for the first time within the European Union is a "new vehicle" within the meaning of Directive 2003/37, and that Directive 2003/37 requires that the first placing on the market and the registration in a Member State of used or second-hand tractors imported from a third country are subject to compliance with the technical requirements laid down by that directive. The Court also indicated that provisions of that directive apply to second-hand vehicles coming under categories T1, T2 and T3 and imported into the European Union from a third country, where they are entered into service in the European Union for the first time on or after 1 July 2009.[84] After receiving the answer to the questions asked, the extended chamber of judges of the SACL noted that the Lithuanian court, hearing the individual case, may refer for a preliminary ruling if there is a need to interpret EU law. The chamber of judges also drew attention to the principle of supremacy of EU law and stated that in case of a situation where provisions of EU law, arising out of treaties, on which the European Union is founded and for which the CJEU has provided a clear and unconditional interpretation, are in competition with national legal regulation, this situation should be resolved by applying the conflict of laws rule, which establishes the priority of application of EU legal acts. Such circumstances, in the case at hand, led to the assessment that the part of the request in question had no object of the investigation any longer, therefore, a

83 In the main administrative proceedings pending before the Vilnius Regional Administrative Court (hereinafter referred to as the VRAC), the applicant challenged decisions of the municipal administration. By those decisions, the municipal administration refused to register second-hand tractors imported from the Republic of Belarus, as no documents were provided to confirm conformity of these tractors to a certain order of the Minister of Agriculture. This order provided that used wheel tractors, manufactured outside of the EU after 1 July 2009 and not registered in EU Member States, can be registered according to these rules if they were manufactured in accordance with the requirements of Directive 2003/37/EC. According to the VRAC, provisions of the said directive were applicable only to the registration of new vehicles.

84 The CJEU judgment of 15 June 2017 in *Agrodetalė* (C-513/15, ECLI:EU:C:2017:473).

relevant part of the case concerning the legality of regulatory administrative acts was discontinued.[85]

The principle of conform interpretation of national law with EU law is predominantly applied in Lithuanian administrative courts' case law, as most of the EU secondary legislation is transposed into national law.[86] However, there are cases that dealt with the issue of non-contractual liability of the State for damages caused to private entities by infringements of EU.[87] In such context, questions may arise both on the interpretation of the EU substantive/procedural law governing a certain area and of the content of the legal concept of non-contractual liability as such. A good example would be the reference of the VRAC to the CJEU in 2018[88] in the case in which this administrative court examined the applicants' claim for pecuniary and non-pecuniary damages supposedly due to improper implementation of Directive 2002/22/EC in legislation of the Republic of Lithuania. This administrative court also raised questions about proper interpretation of the provisions of the above-mentioned directive and about the conditions of non-contractual liability of the State (specifically about the causal link).[89] Upon receipt of

85 Judgment of the extended chamber of judges of the SACL of 6 November 2017 in administrative case concerning the legality of regulatory administrative acts No. I-1-756/2017. Besides, the SACL referred for a preliminary ruling in yet another case of such type, but at the time of writing the article the CJEU had not yet given a ruling: see the SACL ruling of 8 February 2021 in administrative case concerning the legality of regulatory administrative acts No. eI-1-492/2021, where questions are asked in the reference for a preliminary ruling on interpretation of Council decision 2007/533/JHA.

86 For example, Jarukaitis I. *Lietuva ir Europos Sąjungos teisė 2004-2018 m.* (eds. V. Sinkevičius et al.) *Lietuvos teisė 1918–2018. Šimtmečio patirtis ir perspektyvos*. Vilnius, 2018, p. 836.

87 See, for example, the SACL ruling of 24 April 2008 in administrative case No. AS444-199/2008, where this court admitted a theoretical possibility of the Lithuanian administrative courts to apply the CJEU *Francovich* and *Köbler* case law. In its ruling of 8 May 2017 in administrative case No. eA-990-502/2017 it awarded the applicant pecuniary damages caused by improper implementation of EU law in Lithuanian law.

88 The VRAC ruling of 21 June 2018 in administrative case No. I-65-789/2018.

89 In particular, the VRAC expressed in its ruling doubts about the content of Article 26 of Directive 2002/22/EC regarding the accessibility of the data of a caller's location in case of a call to the emergency number 112 (or the existence of a requirement to make such location data available when a call is made without a SIM card, the minimum accuracy of such data). This court also asked whether, in evaluating the presence of non-contractual liability elements, it is enough to establish an indirect causal link between the EU law infringement and damages suffered by a person. The VRAC pointed out that, according to the data at its disposal, in 19 EU Member States it was possible to call the number 112 without a SIM card and, as for the accuracy of determining location, information made available by the operators met requirements of national law. As regards the question whether, according to EU law, an indirect causal link is sufficient, the VRAC pointed out that it is sufficient according to national law, therefore, the interpretation of EU law according to which a direct causal link must be established might be incompatible with the principle of equality of persons.

the CJEU judgment,[90] the VRAC partially upheld the applicants' demand of claim and awarded them pecuniary and non-pecuniary damages.[91] This judgement was essentially approved by the SACL.[92]

The case law of administrative courts demonstrates the significance of EU law for proper dispute settlement even when a certain issue is not fully regulated by EU secondary legislation, especially when the factual situation at hand carries a transnational element.[93] This statement is well reflected in the reference for a preliminary ruling made by the SACL in 2020 in the field of recognition of professional qualifications. Having stated in the case at hand that the applicant had not obtained formal evidence of qualifications as a pharmacist under Directive 2005/36/EC in any EU Member State, and therefore could not benefit from the principle of automatic recognition, the chamber of judges of the SACL stated that the applicant has actually fulfilled, in several EU Member States, including the Republic of Lithuania, the requirements for the acquisition of professional qualifications laid down in this directive. In this case, the SACL referred questions regarding the scope of application of the said directive and the applicant's possibility to defend her rights on the basis of freedoms of the EU internal market. It is evident from the content of the reference for a preliminary ruling that the chamber of judges doubted whether provisions of Directive 2005/36/EC apply to the facts of the case, however, its position was that even in the absence of harmonization of a certain aspect in EU secondary legislation, the applicant's rights should be protected on the basis of EU primary law.[94] In its judgment the CJEU basically upheld

90 The CJEU judgment of 15 September 2019 in *AW, BV, CU, DT v. Lietuvos valstybė* (C-417/18, ECLI:EU:C:2019:671).

91 The VRAC judgment 19 December 2019 in administrative case No. I-27-789/2019.

92 The SACL ruling of 8 June 2020 in administrative case No. A-3669-756/2020. In this context, attention should be paid to the fact that having dealt with the infringement case started by the European Commission, the CJEU stated in its judgment of 9 September 2008 *Commission v. Republic of Lithuania* (C-274/07, ECLI:EU:C:2008:497) that the Republic of Lithuania failed to properly implement obligations under EU law, specifically the provisions of Directive 2002/22/EC related to making caller's location data available when calling the single European emergency number 112.

93 In such cases, it is necessary to assess whether the facts of a case do not fall within the scope of EU primary legislation, first of all, the freedom of the internal market, as well as EU citizenship provisions. In this respect, it should also be noted that, according to the CJEU case law, the application of freedoms of internal market may be relevant not only in exclusively transnational contexts. See, for example, the CJEU judgment of 15 November 2016 in *Ullens de Schooten* (C-268/15, ECLI:EU:C:2016:874, paragraphs 50–54).

94 The SACL ruling of 8 April 2020 in administrative case No. eA-3312-822/2020. A situation was assessed in the case where a person did not obtain formal evidence of professional qualifications of a pharmacist, as she performed requirements for this not in one but in several EU Member States. The SACL indicated that, not being able to engage in professional activities of a pharmacist in Lithuania, the applicant underwent restrictions because she used the right

such an assessment indicating that, on the one hand, the said directive does not cover situations, where a person, requesting recognition of his professional qualifications, has not obtained formal evidence of such qualifications enabling him to pursue a regulated profession in his home Member State, but, on the other hand, decided that the freedom of movement of workers in the EU and the right of establishment (i.e. Articles 45 and 49 TFEU) do apply and create certain obligations for authorities of the host Member State.[95]

Finally, it should be noted that Lithuanian administrative courts have also had to deal with cases raising the issue of compliance not of national law but of EU secondary legislation with the requirements of EU primary law. Specifically, it was the VRAC that made a reference to the CJEU in 2014 concerning such an issue.[96] The dispute in the case in question was about administrative acts under which EU direct support was granted to the applicants.[97] The VRAC gave arguments in its

to free movement of persons and the education and training of a pharmacist, as required by EU law, took place in the United Kingdom and the Republic of Lithuania. Therefore, the SACL asked whether provisions of the EU directive were applicable in the case, which provide that a person did not obtain formal evidence of qualifications, as she or he performed requirements for obtaining a professional qualifications not in one but in several EU Member States, also whether the EU primary legislation (namely, Articles 45 and 49 TFEU and Article 15 of the Charter) must be interpreted as obliging the competent authority that recognises qualifications to assess the content of all the documents presented by the person, which can prove his or her professional qualifications, their conformity with the requirements for obtaining the professional qualifications in the host Member State and, if necessary, to set compensation measures.

95 The CJEU judgment of 8 June 2021 in *BB v. Lietuvos Respublikos sveikatos apsaugos ministerija* (C-166/21, ECLI:EU:C:2021:554). The Court actually indicated in the operative part of the judgment that in case when a person has no formal evidence of qualifications as a pharmacist, as understood under the provisions of that directive, but acquired professional skills relating to that profession both in the home Member State and in the host Member State, the competent authorities of the latter are required to assess those skills and compare them with those required in the host Member State for the purposes of gaining access to the profession of a pharmacist. If those skills correspond to those required by the national provisions of the host Member State, it must recognise them. If that comparative examination reveals that those skills correspond only partially, the host Member State is entitled to require the person concerned to show that he or she has acquired the knowledge and qualifications which are lacking. It is for the competent national authorities to assess, if necessary, whether the knowledge acquired in the host Member State, *inter alia*, by way of practical experience, is sufficient to prove possession of the knowledge which is lacking. If that comparative examination reveals substantial differences between the education and training undertaken by the applicant and the education and training required in the host Member State, the competent authorities may set compensation measures to make up for those differences.

96 The VRAC ruling of 10 February 2014 in administrative case No. I-353-629/2014.

97 By the disputed administrative acts, the respondent applied the so-called modulation of direct payments, also reduced the level of complementary national direct payments. The applicants stated that modulation of direct payments was incompatible with provisions of EU primary and secondary legislation.

ruling about interpretation of provisions of EU primary and secondary legislation (including Regulation No. 73/2009), also presented its doubts about lawfulness of Commission Implementing Decision of 2 July 2012 C(2012) 4391 *final*.[98] The CJEU upheld some of the VRAC's arguments and invalidated the above-mentioned Commission Implementing Decision as unlawful.[99] Besides, the SACL had to deal with the issue of *belated translation* of EU legal acts.[100]

Several conclusions can be drawn from the case law discussed. First, it can be said that seventeen years after the accession of the Republic of Lithuania to the EU, EU law, through its daily application, has become an integral part of the Lithuanian legal system, a common tool of judicial work. The case law of Lithuanian administrative courts shows that they consistently apply EU law, recognize its specific principles and characteristics. On one hand, Lithuanian administrative courts and the CJEU are engaged in rather intensive dialogue thus contributing to a further consistent development of EU law. This dialogue is fruitful; its quality is good: Lithuanian courts give detailed and convincing arguments in their references for a preliminary ruling, including their opinion on the way EU law should be interpreted. As a rule, the reasoning underlying the judgments of the CJEU in the cases concerning these references is similar to that given by the Lithuanian courts in their references. It should also be noted that, quite often, the decision to ask for a preliminary ruling is taken *ex officio*, i.e. without a request from the litigants. On the other hand, regional administrative courts could be more active in referring for a preliminary ruling, as so far it has been the SACL that has played the key role in the development of EU law through its dialogue with the CJEU. Incidentally, the judgment of the European Court of Human Rights in the *Baltic Master* case confirms that the litigants' requests to refer for a preliminary ruling to the CJEU must be taken seriously and, when EU law is applicable to facts of a

98 In the opinion of the chamber of judges of the VRAC, this decision, by which the European Commission authorised the making of complementary national direct payments in Lithuania for 2012 and by which it applied a 10% reduction to the complementary national payments, could have been in breach of the Act of Accession 2003, also the principles of non-discrimination, good administration, legal certainty and legitimate expectations.

99 The CJEU judgment of 12 November 2015 *Bronius Jakutis and Kretingalės kooperatinė ŽŪB v. Nacionalinė mokėjimo agentūra prie Žemės ūkio ministerijos and Lietuvos valstybė* (C-103/14, ECLI:EU:C:2015:752). The CJEU, *inter alia*, indicated that modulation of direct payments and complementary national direct payments should have been mutually aligned and that in adopting the disputed decision the European Commission overlooked this aspect.

100 For example, the SACL in its judgment of 25 July 2011 in administrative case No. A^{438}-305/2011 dealt with the issue of, *inter alia*, application of EU legislation that was not properly published in the Lithuanian language. Having regarded the fact that in the period relevant for the dispute the applicable EU legal acts were not properly published in the Lithuanian language, and with regard to the case law formed by the CJEU on this issue, the chamber of judges of the SACL decided not to apply them in the case.

case, a refusal to make such a reference must be motivated in sufficient detail.[101] Nevertheless, this isolated case where it has not been done does not spoil the very positive overall impression on the effective judicial dialogue between Lithuanian administrative courts and the CJEU, which confirms that law can be an effective means of integration.

101 Judgment of 16 April 2019 in *Baltic Master LTD v. Lithuania* (application no. 55092/16). It should also be noted that when the ECtHR rendered the said judgment, the SACL decided to reopen the proceedings in the relevant case and to refer it to the CJEU for a preliminary ruling: see the SACL ruling of 3 November 2020 in administrative case No. A-2638-968/2020.