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Direct and indirect effect of European Union directives in the context of European Union Court of Justice decisions

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ABSTRACT

The objective of this article is to analyze the direct effect of EU directives in vertical and horizontal legal relationships as well as the indirect effect of EU directives in the context of EU Court of Justice decisions. In particular, attention is paid to the study of the consolidated legal positions regarding the possibility of the “vertical direct effect”, “horizontal direct effect” and “indirect effect” of EU directives. Dialectical, comparative-legal, historical, and formal dogmatic methods were used in the research. As the result of analyze was made the conclusion that the EU directives, which are used by national courts to fulfill their obligations regarding the respective interpretation, can not be considered with direct effect, because in such disputes they serve as a means of determining the scope of other legal provisions that the national court treats or interprets. In such situations, the directive may be applied in cases indirectly, that is, by virtue of another (national) provision, as interpreted.

KEYWORDS: European Union, Law, justice, doctrines, courts.

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Efecto directo e indirecto de las directrices de la Unión Europea en el contexto de las decisiones del Tribunal de Justicia de la Unión Europea

RESUMEN

El objetivo de este artículo es analizar el efecto directo de las directrices de la UE en las relaciones jurídicas verticales y horizontales, así como el efecto indirecto de las directrices de la UE en el contexto de las decisiones del Tribunal de Justicia de la UE. En particular, se presta atención al estudio de las posiciones jurídicas consolidadas en cuanto a la posibilidad del “efecto directo vertical”, “efecto directo horizontal” y “efecto indirecto” de las directrices de la UE. En la investigación se utilizaron métodos dialécticos, comparativos-jurídicos, históricos y dogmáticos formales. Como resultado del análisis se llegó a la conclusión de que las directrices de la UE, que son utilizadas por los tribunales nacionales para cumplir con sus obligaciones en cuanto a la respectiva interpretación, no pueden ser consideradas con efecto directo, pues en tales controversias sirven como medio para determinar el alcance de otras disposiciones legales que el tribunal nacional trate o interprete. En tales situaciones, la directriz puede aplicarse en casos de manera indirecta, es decir, en virtud de otra disposición (nacional), tal como se interpreta.

PALABRAS CLAVE: Unión Europea, Derecho, justicia, doctrinas, tribunales.

Introduction

It is worth mentioning, that similarly to other legal systems, provisions of EU law were created by their securing in sources of law. Sources of EU law themselves are unique and specific. It is primarily due to peculiarity of EU law that arose as a result of the interconnection and interaction of international and national laws. The EU has developed into a far-reaching regional integration organisation endowed with a constitutional order (Gutnyk et al, 2021). The EU legal order is based on a clear distinction between external relations, on the one hand, and the internal market and the (internal) area of freedom, security and justice, on the other. External borders should be effectively controlled while internal borders gradually dismantled (Rosas, 2018). Directives are one of the main forms of lawmaking and specific source of law, which through introducing general rules of legal regulation in certain spheres of public life, add to harmonization (approximation) of national law.

Analysis of provisions of the Art. 288 of Treaty on Functioning of the European Union (hereinafter – ‘TFEU’) shows that in general directives do not have direct effect, as such legal act should be implemented in the legal system of the Member State. Thus, the problem is that although the directive can be clear, precise and unconditional, its legally defined nature requires further action by the Member States. It is worthwhile noting, that although all the Member States shall reach the objectives of directive, mechanism of its implementation may differ within the Member States. However, in case provisions are only generally outlined, are conditional, inaccurate or leave the Member States substantial powers over the implementation process, such directive in any case would not have direct effect (Steiner et al, 2006).

In this context P. Craig observes that reluctance to recognize that directives have direct effect is partly due to the fact that, although it is stated that regulations are directly applicable, such terminology is not used in relation to directives. It would be rational to save the difference between regulations, fully endowed with direct effect, and directives, as stated in the Art. 288 TFEU. Endowing directives with direct effect will reduce the difference, and this in its turn would lead to legal instability and violations of the functioning of the EU's law and order.

However, during its lawmaking practice EU Court of Justice (hereinafter – ‘the Court’) in some cases allowed direct effect of directives, but limited it. In addition the Court has stated the difference between vertical and horizontal planes. ‘Vertical direct effect’ of directives may apply, when subjects to legal relationship are physical persons and the Member State. ‘Horizontal direct effect’ of directives takes place in case one physical person sues another individual. In general the Court has not recognized horizontal direct effect, thus EU citizens in national courts can refer to directive with direct effect only in case a lawsuit is filed against the Member State. In this context it seems relevant to examine and analyze cases, in which the Court has decided on the possibility of vertical direct effect of directives.

The objective of this article is to analyze the cases of the European Court of Justice, which consolidated legal positions regarding the possibility of the direct effect of EU directives in vertical and horizontal legal relationships. Despite the importance of the study of direct and indirect effect of EU directives, the existing scientific research is limited only to some aspects of the subject of this paper.

In this article were solved the following tasks:

- to characterize the “vertical direct effect” of EU directives;
- to find out the specific features of the “horizontal direct effect” of EU directives;
- to define the particularities of the indirect effect of EU directives;

The study was conducted through the critical analysis of the EU legal doctrine and the EU legislation. Particular attention is paid to the practice of the EU Court of Justice.

The subjects of the research were norms of the EU law as well as the the practice of the EU Court of Justice. The subject study are EU directives.

1. Literature review

The question of the peculiarities of the EU directives in the national law of the Member States in the context of the decisions of the EU Court of Justice has been reflected in the scientific works of such scholars as P. Craig, G. Búrca, S Prechal, J. Coppel ,W. Gerven, E. Frantziou, J. Weiler, P. Kapteyn and others. Thus, J. Coppel considers the fulfillment of obligations to be a key element of the concept of direct action of EU directives in the vertical plane, so if a Member State has not used all the means of implementation required by the directive within the specified time and thus has not implemented the directive, such a State must nevertheless comply with all the obligations contained in this directive (Coppel, 1994). S. Prechal, considering the possibility of direct effect of EU directives in the horizontal plane, concludes that in fact in EU law there are only rare cases of such an approach, as in general directives should not be aimed at individuals. But “it may be achieved by interpreting national law, in particular national private law provisions or open textured national rules such as good faith and good morals, in a way that the result is in compliance with EU fundamental rights” (Prechal, 2020). Also interesting is the point of view of M. Bobek according to which “indirect effect of EU law stands also as a “flexible” principle. It produces several consequences in national practice which are dependent on the wording and strength of EU law norm (used as the model) and wording and scope of national rule as well” (Bobek, 2014).

2. Methodology

In the article were used dialectical, comparative legal, historical, and formal dogmatic methods.

The dialectical method makes it possible to highlight the place of EU directives in the EU legal order. The comparative legal method was used to compare the “vertical direct effect” and “horizontal direct effect” of EU directives. The historical method is used to analyze the genesis of the direct and indirect effect of EU directives in the context of EU Court of Justice decisions. The formal-dogmatic method was used to interpret the provisions contained in the decisions of the EU Court of Justice.

3. “Vertical direct effect” of EU directives

The *Grad* case was one of the first cases, in which the preconditions for the direct effect of the directives were laid, as EU Court has made the decision that physical person in national courts can refer to any acts issued by European institutions. At the same time, it was mentioned that fact of the limited nature of the directive does not prevent these decisions to have direct effect (Case C-334/92 “Teodoro Wagner Miret v Fondo de Garantía Salarial”, 1993). In essence, these were the first reasoned assertions of the Court regarding the possibility of directives’ direct effect.

However, the full scope of the direct effect of the directives was formulated and enshrined in the *Van Duyn* case, in which the Court had to decide whether Article 3 (1) of Directive 64/221 had direct effect. The EU Court stated that if, based on the provisions of Article 249 (now 288 TFEU), the regulations are directly applicable and, by virtue of their nature, may have direct effect, then it does not suggest that other types of acts referred to in that article cannot have a similar direct effect (Case 41/74 “Yvonne van Duyn v Home Office”, 1974). In this case was allowed existence of other regulatory legal acts, apart of regulations, which to some extent have direct effect. In essence, the very fact of the possible direct effect of directives permeated when considering abovementioned cases.

Another important postulate regarding the direct effect of the directives in this case is the recognition by the Court that a person may refer to a directive as a means of protection in domestic courts. The Court noted that the incompatible with the binding effect of the directive of articles 288 of the TFEU (formerly 249 TEU) would be, in principle, exclusion of the possibility of use (meaning the possibility of referring to it -auth.) of this binding action by the interested parties. In particular, if the Community, in accordance with the directive, imposes an obligation on Member States

to comply with a particular line of conduct, the useful effect of such action will be reduced if individuals were denied the opportunity to invoke such a duty in the domestic courts and if the latter were deprived of the opportunity to take them into consideration as an element of Community law. Under EU law, national courts have the right to refer matters relating to the operation and interpretation of all acts of EU bodies, without exception, to the Court, in addition, it provides that the same right can be used by individuals in national courts. It is considered important to investigate in each particular case whether nature, general structure and wording of a provision can have a direct effect in relations between Member States and individuals (Case 41/74 “Yvonne van Duyn v Home Office”, 1974). In this way, the Court has noted that the usefulness of the directives will be considerably lower when individuals can not use them in their national courts (Kapteyn, 1998). Finally, the Court noted that if the EU law provides national courts with the authority to refer to the Court's judgments regarding the interpretation of all acts of EU bodies, it also means that physical persons may also be guided by these acts in national courts (Craig, 1998).

It can be argued that the main purpose of the directives was to leave the Member States the right to choose the way of fulfilling a specific EU commitment and that the Court should not have allowed individuals to cancel this given right, by referring to the provisions of directives. Consequently, the most important matter in the *Van Duyn* case is the desire of the Court to turn directives into an effective form of EU law and ensure their proper application by the national courts of the Member States. The main reason for the adowing directives with direct effect is to ensure the effectiveness of the implementation of EU law in the national legal order of the Member States.

Ratti case was another key case, which was of great importance for the development of the principle of direct effect of the EU law as a whole and of the possibility of directives' direct effect in particular. In this case the Court changed the approach to the very concept of the scope of "direct action". In particular, the Court emphasized that the directive could have a direct effect only after the expiration of the deadline for its implementation (Case 148/78 “Pubblico Ministero v. Ratti”, 1979). In this case, the so-called principle of estoppels was introduced by the Court. The essence of

the matter was that Member State, having not used the means of implementation required by the directive within the specified time frame and thus not having implemented the directive, still has to fulfill all the obligations contained in this directive (Coppel, 1994). Consequently, its specificity is manifested in the way when non-compliance with the deadline for the implementation of directives will rise the possibility of their direct effect in the territory of the Member States. As already mentioned, the directive will have direct effect if the obligations arising out of it are clear, precise and unconditional. In this case, the deviation from the text and the purpose of the directive is possible if the directive provides for such an option. It should be noted that there is no obligation to implement the verbatim text of directive, although sometimes it is the only way of its transposition (Svoboda, 2006).

During its law-making practice, the Court has repeatedly emphasized the difference between regulations and directives and stated that a directive could have direct effect in case the Member State did not comply with the deadline of implementation obligation or did not properly implement it. However, in this aspect, it is necessary to agree with the opinion of I. Kravchuk, who quite logically notes that "if there is a vertical direct effect when a Member State has not fulfilled its obligation regarding the implementation, it is necessary to determine how broadly one can interpret 'who is guilty' for such failure" (Kravchuk, 2004). On the basis of *Marshall* case, the Court declared that it would be the State to take responsibility for failing to implement the directive.

Thus, if the obligations contained in the directive were clear, complete and unconditional and the Member State did not implement those provisions in its national legal order, the Court would give the individual the right to refer directly to directives in the national court in order to strengthen effectiveness of EU law. In turn, the Member States that have not executed the directive can not refer to it in cases against individuals because they failed to comply with the obligation imposed by the directive. All of the abovementioned wording and approaches to the direct effect of directives apply to its vertical plane. Consequently, on the basis of the decisions of the Court, it can be assumed that the directives are endowed primarily with vertical direct effect.

In general, analyzing the vertical direct effect of directives, we can conclude that it has undergone significant changes in relation to the moment of its occurrence. In essence, leaving freedom of action for Member State in the process of its implementation, the Court asserts that an individual may directly refer to the provisions of the directive. This occurs, in particular, when the Member State acts solely at its discretion where an exact and specific obligation can be obtained from different parts of the directive or even in a situation where the Member State has a permit for non-compliance with the directive and the Commission has not expressed any objection (Case 441/ 99 “Riksskatteverket v Ghareveran”, 2001). It should be noted that references to directives are mandatory for the Member States; in most cases such requirement is contained in directive as a standard condition. Member States are obliged to refer to directives in their national acts, by means of which they implement directive. In the event that one directive is transposed into several national laws, all of them must contain a reference to the directive. The requirement for a reference is due to the fact that in the event of problems with the interpretation of harmonized with directives national law, national courts would know what directive underlies it and, if necessary, can send a request to the Court for a preliminary ruling on the interpretation of the directive.

4. “Horizontal direct effect” of EU directives

Regarding the possibility of direct action of directives in the horizontal plane, first of all, we share the view, that "like in domestic legal orders, in EU law horizontal effect can be realized in various ways. It may be achieved by interpreting national law, in particular national private law provisions or open textured national rules such as good faith and good morals, in a way that the result is in compliance with EU fundamental rights. Another option is to rely on the State's duty to protect the fundamental rights of private individuals. In Union law, there are only scarce examples of this approach" (Prechal, 2020).

With regard to the direct effect of directives in the horizontal plane, best practice here is *Marshall* case, in which the Court clearly stated that the provisions of the directive should not be directed towards an individual and can not be directly used against an individual. In particular, he stressed that "the directive can not be referred

to in cases against a private individual. It should be noted that, according to Article 294 of the TEU (now Article 288 of the TFEU - auth.), the binding nature of the directive, which provides for the possibility of referring to it in national courts, exists only in relation to "each Member State to which it is addressed". This means that the directive itself cannot create obligations for private individuals and that the provisions of the directives can not be referred to in cases against a private individual in national courts". In this case, it was actually declared infeasibility of horizontal direct effect of directives. As we see, the main argument of the Court was the provision of Article 249 of the TEU (now Article 288 of the TFEU), which states that directives are binding on the Member States to which they are addressed and, therefore, can not create obligations for other persons.

This position of the Court has evolved in the context of the *Faccini Dori* case. In particular, the Court noted that "the extension of case law (ie direct effect of directives) to the field of relations between private individuals would result in the automatic recognition of the right of the Community to impose obligations on individuals, whereas the Community has such powers only in that area, where it is provided by the regulations" (Case 91/92 "Faccini Dori v Recreb SRL", 1994). Consequently, the Court considers that the European Union has no authority to impose obligations on individuals through directives. Such authority falls outside the competence of the Member States. The justification for such a legal interpretation is carried out in accordance with the literal wording of Article 288 of the TFEU (former 249 TEU), which, in order to achieve the objectives of the directive, imposes obligations only on Member States. It should be noted that in this case, the EU Court touched upon the issue of competence between the Member States and in essence noted that this issue of competence was the main reason for the refusal to give a horizontal direct effect to the directive.

Another case in which the Court has confirmed the prohibition of horizontal effect of directives is *Adriatica di Securità SpA (RAS)* case. Before the Court of the EU there was a choice, what law to be applied, national legislation or a directive, in the regulation of horizontal legal relations. The Court, having considered the case, stated: "It should be remembered that, in accordance with settled case law, in applying

national law adopted before or after a directive, the national court must clarify the application of the law, to the possible extent, in the light of the scope and object of the directive, in order to achieve the objective and therefore comply with the third paragraph of Article 249 of the TEU (now Article 288 of the TFEU), in addition, a directive can not in itself create obligations for a private individual and can not be referred to in cases that consider such action " (Case C-233/01 "Riunione Adriatica di Sicurtà SpA (RAS) v Dario Lo Bue", 2002).

It should be noted that although the Court rejected the horizontal direct effect of the directives, however, if it were to analyze a number of other cases, it would seem that the Court partially recognized it.

Thus, in particular, in the case of Bernaldez before the Court raised the issue of the interpretation of Directives 72/166 / EEC and 84/5 / EEC concerning vehicle owners' civil liability insurance. The matter of the case was that the national court ordered a Spanish citizen who caused the accident, being in a state of alcohol intoxication to compensate the damage caused by his actions to a third party. At the same time, the court dismissed the insurance company of the citizen from the obligation to pay any reimbursement, because, according to Spanish law, the insured sum should not cover losses caused by the person in a drunken state. In its appeal, the Supreme Court of Spain expressed doubts as to whether the exclusion was compatible with the relevant directives. The Court ruled that directives should be interpreted in such way as to exclude the ability of an insurance agency to refer to normative or contractual provisions for the purpose of refusing to pay compensation to injured third parties as a result of an accident caused by an insured vehicle (Case C-129/94 "Rafael Ruiz Bernaldez", 1996). However, the Court has not made any mention of the horizontal direct effect of the directives.

Another very interesting case regarding the possibility of recognizing the horizontal effect of the directives was the case *Smithkline*. National court addressed to the Court a question concerning the interpretation of EU Directive 76/768 / EEC on the approximation of the laws of the Member States in relation to cosmetic products. The EU Court ruled that Article 6 (3) of the directive excludes the application of a national law, that limits the forms of advertising of toothpastes (Case C-

77/97 “Smithkline Beecham”, 1999). Consequently, in the abovementioned cases, we can state that although the EC Court has not made any statements regarding the horizontal direct effect of the directive, when resolving similar cases before national courts, plaintiffs will not be able to refer to national law, and defendants will benefit from the prohibition contained in the directive. And this de facto is a partial recognition of the direct effect of directives in the horizontal plane.

Recently, in case Farrell, the Court has had the opportunity to clarify the concept of “emanation of the State” for the purposes of vertical direct effect of directives. At the same time, it reaffirmed its previous position with regard to the interdiction on the horizontal direct effect of directives, although the Advocate General in this case had suggested that it would be necessary a reopening of the debate on the recognition of horizontal effect of the directives (Case C-413/15 “Elaine Farrell” judgment, 2017).

Consequently, the Court contradicts itself, on the one side, denying the horizontal direct effect of the directives, while on the other recognizing it partially. It should be noted that there are still discussions between EU law researchers on this issue. Thus, we fully share the view that, in fact, in the cases of *Smithkline* and *Bernaldez*, the Court provided national courts only with a legal interpretation of the relevant provisions of the directive without any reference to its direct effect. The question put forward by national courts concerned only the interpretation of EU law and, accordingly, the Court could not take into account the issue on direct effect. In other words, the question of how to continue to apply the interpretation of the Court to decisions was entirely within the jurisdiction of the national court (Gerven, 2001). Consequently, at these seemingly controversial cases, the Court did not even partially recognize the horizontal direct effect of the directives, but only carried out an interpretation at the request of national courts, even if the parties to the case were individuals. A national court judge may need to interpret the provisions of the directive for various reasons, and not only when it comes to its direct application.

However, not all scholars adhere to the above position regarding the Court rulings, which makes it impossible to apply horizontal direct effect of directives. Quite interesting is the concept, whose supporters believe that cases traditionally classified

under the common title of "direct effect" should be divided into two categories. In cases of the first category, individuals engage the EU law if the provisions of national legislation are less favorable. ("l'invocabilité de substitution"). The second category of cases includes situations where individuals are looking for ways to avoid the application of the provisions of national law without accompanying their action with the application of the appropriate means of the EU ("l'invocabilité d'exclusion"). Consequently, cases in which the Court appears to have recognized the direct effect of directives belong to the second category (*Bernaldez, Pafitis i Draehmpaehl*). Accordingly, the directives can be applied in horizontal plane if the parties do not require direct application of the provisions of EU law, but only ask for the recognition of the provisions of national legislation inapplicable. The authors emphasize that this division corresponds to the basic doctrines of EU law, namely, the concept of direct action ("l'invocabilité de substitution") and the concept of supremacy ("l'invocabilité d'exclusion") (Lenz, 2000). However, it should be noted that the essential disadvantage of this concept is the complexity of its practical application, since to make a division between "l'invocabilité de substitution" and "l'invocabilité d'exclusion" is significantly difficult. In turn, the parties' ability to choose the law to be applied to the contract between them derives from the basic principle of the autonomy of treaties, which is defended at the level of the European Union.

After analyzing cases in which the Court touched upon the horizontal direct effect of directives and having investigated the positions of scholars on this difficult issue, it can be concluded that one has not applied the Court with a special request for the application of horizontal direct effect. It means that the Court has a great freedom of action in applying the EU directives, what is expressed first of all in the sphere of influencing national laws, and possibility of the withdrawal of horizontal direct effect of directives from national legislation. In any case, it would be desirable for the Court to clarify these issues in its jurisprudence in order to avoid legal uncertainty. We agree with C. Mătușescu, that "for a long time, the horizontal effect narrative in the case law has been dominated by a stark discrepancy between the horizontal application of fundamental rights enshrined in directives and those enshrined in Treaty articles. It is trite EU law that, while Treaty-based rights could enjoy direct effect 'a directive may

not of itself impose obligations on an individual and [cannot] be relied upon as such against such a person. However, the policy rationale behind this distinction is not self-evident. This is especially true in respect of the application of horizontal effect to fundamental rights” (Mătușescu, 2017).

Analyzing the doctrine of direct effect in the vertical and horizontal plane, we fully share the opinion of D. Weiler, who noted that "the consequences of this doctrine had and have a significant influence. The Court has changed the traditional understanding of international public law, through which international legal obligations have become outcome-oriented and addressed to State. The most important thing in the doctrine of direct action was not just the conceptual change that it introduced. In practice, direct action meant that Member States that had breached their obligations would not be able to transfer their disputes at international level or at Community level. They will deal with lawsuits for petitions of individuals in their own courts within their legal jurisdiction. In fact, individuals in real cases and disputes (mainly against public authorities) become the main "advocates" of the legal integrity of EU law in Europe ” (Weiler, 1991).

5. Indirect effect of EU directives

Quite interesting is the question of the concept of indirect effect of directives in the national law of the Member States. As we know, individuals can file an action in court on the basis of a national legal act aimed at implementing the directive, however, the act itself may turn out not to be in compliance with the purpose specified in the directive, in order to fill the gaps, The Court has created a concept of indirect effect. The subject matter is that the rules of EU law, even if they do not have direct effect, should be taken into account by national courts in the application of their national legislation.

In general, we share the view that “indirect effect of EU law stands also as a “flexible” principle. EU law may be used as argument in different forms: as confirmative argument to underline the relevance of the chosen decision, which clearly flows from national law, as mediatory argument where EU norm determines which of plausible paths of interpretation of national law must be chosen; as evolutive

argument where EU law bent the traditional interpretation of national norm and open it for new non-established meanings” (Bobek, 2014).

The concept of indirect effect was developed by the Court on the basis of the rejection of horizontal direct effect of directives and reflected in the case *Von Colson*. This case concerned the fact of discrimination in the employment of women on the grounds of sex. Having decided that the fact of discrimination had taken place, the German court applied to the Court on EU matters in this case and interpretation of the directive (Equal Treatment Directive). After examining this case, the Court first noted that "this directive does not contain unconditional and sufficiently precise obligations relating to the list of sanctions for discrimination, to which, in the absence of timely fulfilled implementation measures, individuals could refer in order to obtain specific compensation in accordance with the directive” (Case 14/83 “Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen”, 1984). In this case, we reach the conclusion that the directive did not have direct effect and individuals could not invoke it in their national courts. However, the Court stated that "in applying national law, the task of the national court is to interpret and use the law adopted for the implementation of the directive in accordance with the requirements of Community law, within the limits of the freedom of action under national law”. In essence, this meant that national courts were required to interpret national legislation in accordance with the directives. However, this obligation applies only to national implementation measures.

The concept of indirect effect has also been applied to national law, which was essentially adopted before certain directive and was not intended to comply with it. A striking example of such an action was the *Marleasing* case, which referred to a dispute between the two Spanish companies regarding the legitimacy of their establishment. In considering this case, the Spanish court addressed the Court with a question whether Article 11 of Directive 68/151, which has not yet been implemented in national law, has direct effect, thereby abolishing the declaration of invalidation of a company on grounds other than the grounds for invalidity provided for by the aforementioned article. In this case, the Court has faced horizontal direct effect of directives.

Having considered this case, the Court mentioned that, in the question of whether a private individual could refer to directive against national law, it should be noted that, as the Court has repeatedly pointed out, a directive itself can not create obligations for physical persons and one cannot refer to the provisions of directive in an action against private individual. Thus, once again, it has been confirmed that there is no possibility for . However, in this case, the Court mentioned that "by applying national law, irrespective of whether the provisions in issue are dated earlier or later in relation to the directive, national courts interpreting national law should always do so in the context of the scope and object of the directive in order to achieve its results. " (Case 106/89 "Marleasing S.A v. La Commercial International De Alimentacion S. A.", 1990). The Court's decision in this case means that, when applying national law, adopted earlier or later from directives, the national court is bound to interpret it as much as possible in accordance with the directives.

While considering another case of *Kolpinghuis Nijmegen*, the Court has somehow modified and even restricted the concept of indirect effect of directives. He stated that "the obligation of national courts to interpret the relevant provisions of national law in accordance with the scope of the directive is limited to the general principles of law which form part of Community law, namely the principle of legal certainty and the absence of retroactive effect" (Case 80/86 "Officier van Justitie v. Kolpinghuis Nijmegen", 1987). At the same time, the Court has emphasized that this postulate does not matter if the date indicated in the document according to which the national legislation is to be changed has not yet come to an end. Here, the first question is from what time arises the "indirect action" of directives, and national and foreign scientists cannot give a clear answer.

In general, we also share the view that "the doctrine of indirect effect can be usefully seen in light of the EU's careful management of uniformity and flexibility, whereby domestic measures remain in effect and are being interpreted in light of EU law in order to facilitate EU objectives. Importantly, interpretative discretion remains with the domestic authorities, who are also to act as faithful agents in accordance with the duty of sincere cooperation" (Hameed, 2022).

Conclusions

Consequently, EU directives, which are used by national courts to fulfill their obligations regarding respective interpretation, can not be considered with direct effect, because in such disputes they serve as a means of determining the scope of other legal provisions that the national court treats or interprets. In such situations, directive may be applied in cases indirectly, that is, by virtue of another (national) provision, as interpreted. On the other hand, the directive, creating an indirect action, is not applied under national law, but is applied independently and contrary to other national rules. It is also necessary to draw attention to a number of problems that may arise as a result of the implementation of directives in national law. There may rise problem situations (when national courts, taking into account the "horizontal direct effect" or "retroactive vertical direct effect" of directives) considering the way and possibility of applying doctrine of indirect effect in the in a way that will affect the legal certainty of individuals. In this context, we note that the case law of the Court is trying to keep Member States from failing to comply with EU law. In this aspect, the adoption of the concept of "retroactive direct effect" is impossible. Taking "horizontal action" as the basis of national law, directives would still not create obligations on their own, and their provisions as a result can not be used against a person. In this case not directives, but national law would be source of obligations.

Analysis of peculiarity of direct and indirect effect of directives in horizontal and vertical relations shows, that the concept of indirect effect is important in cases, where principle of direct effect cannot be applied. National authorities are obliged to interpret their national provisions, aimed to execute directive, according to its scope and object, even when directive is not of direct effect. The Court created the concept of 'indirect effect' primarily to improve efficiency of EU law. EU managed to fill significant gap in the effectiveness of EU law, in spheres where its legal provisions lacked direct effect, by virtue of imposing obligation on the Member States to interpret national law in accordance with EU law. In its turn the concept of 'direct effect' is a key element in improving the effectiveness of EU law. An important aspect of direct effect is that national courts should refer to the EU law and apply it in the event of a conflict between EU law and national law of Member State.

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