

BREXIT – AN ACT OF RESENTMENT IN THE NAME OF PARLIAMENTARY SOVEREIGNTY

Abstract – The Court of Justice of the European Union (CJEU) is far from what the European Founding Fathers intended it to be. Ever since its establishment in 1952, the CJEU has placed itself at the core of the European constitutional model while it has played the leading role in the process of integration and constitutionalization of the Community. Through various methods of legal interpretation and extensive self-empowering case law, it has established itself as an equal and independent institution within the European Institutional model. The CJEU's jurisprudence is widely regarded as a success story in contemporary academia, but it is not without drawbacks and deficiencies as well. On 23rd June 2016, 52% of Britons voted to leave the EU for taking back control from the CJEU in the name of confiscated parliamentary sovereignty. In this framework, this research paper argues that Brexit has to be studied in the sense of resistance against the constitutionalization project of the CJEU. Namely, the 'alienating' factor of the CJEU and its influence on Brexit is discussed in the following paper.

Key Words: Brexit; CJEU; Parliamentary Sovereignty; Constitutional Resistance; Constitutional Identity.

"The principle of Parliamentary sovereignty means ... that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever: and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament."²

Introduction

When we consider the nature of law and the role of the CJEU in the sense of EU integration, we should take into account that it has polycephalic nature with at least two different contextual implications. On the one hand, the EU legal order has always been one of the major instruments using of which the political objectives of integrations have been pursued in the face of the resistance of national polity while limiting the ability of national actors to contest political preferences laid down in the founding Treaties. On the other hand, EU law is a sui generis product of the integration process itself which functions as a medium for deliberations regarding political and social disputes.³ In this context, the role of the EU legal order and accordingly, powers of the CJEU have gradually expanded throughout the history of integration vis-à-vis the Member States.⁴

According to the continental legal theory, the role of a court is to apply the legal norms rather than to create them, but each application requires interpretation of outdated legal norms that can be an unlimited power in the hands of the mighty judiciary. The more general and vague the legislation is, the more sphere the courts have for construing practical rules using various flexible methods of interpretation like the teleological approach.⁵

¹ The paper had been created within the frames of the courses on the "EU Governance and Policy-making process; & Theories of European Integration" offered by the Director of the Institute for European Studies Nino Lapiashvili within the frames of the English –taught interdisciplinary Master's Programme in European Studies at Ivane Javakishvili Tbilisi State University. E-mail: ivakhavtasi@gmail.com

² See Albert V. Dicey, "Introduction to the Study of the Law of the Constitution", Liberty Fund ed., (1915): 87, available at https://files.libertyfund.org/files/1714/0125_Bk.pdf

³ See Mark Dawson and Floris deWitte, "From Balance to Conflict: A New Constitution for the EU", *European Law Journal*, Vol. 22, No. 2 (2011): 221.

⁴ See Dieter Grimm, "The Democratic Costs of Constitutionalisation: The European Case," 21 *EUR. L.J.* 460 (2015): 466.

⁵ See Henry G. Schermers, "The European Court of Justice: Promoter of European Integration", 22 *AM. J. COMP. L.* 444 (1974): 453.

Furthermore, it is vital to underline that a CJEU's ruling which interprets the EU primary legislation can only be altered by national governments through a treaty revision procedure that requires unanimous consent as well as ratification by all member states. Therefore, the capacity to interpret the Community's law is an immensely significant power whereas an individual state's attempt to overturn a CJEU judgement is extremely difficult.⁶ Within this context, the CJEU which is an authoritative interpreter of community law and is expected to "ensure that in the interpretation and application of the Treaties the law is observed",⁷ is a subject of great interest.

One of the main functions of the CJEU has always been to strike a balance between the requirements of Treaties towards integration and the Member States' own interests. In its early years, the CJEU was serving as an engine and guardian of European integration while its jurisprudence was characterized by a teleological interpretation of Treaties provisions and therefore, extending the effective realization of the market integration.⁸ In this context, besides classical law-related fields, there has been a tendency of the increased judicial involvement in affairs of the EU's member countries which is the phenomenon known as "judicialisation of politics".⁹ Therefore, it is accurately argued that the CJEU, or in other words quasi-constitutional court of the European Union has been a driving force behind the market and political integration of the Union.¹⁰

The court's early success can be attributed to a variety of factors. On the one hand, the CJEU on its own has extended the legal authority in the context of its case-law while it has developed the position which argues that the community is based on the principle of rule of law. Therefore, "neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter" and within this framework, the founding treaties "established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of measures adopted by the institutions."¹¹ The cause for this institution's success, on the other hand, must be sought in the position of the national actors' reserved tolerance towards such jurisprudence. For example, one of the firmest national courts, the German Constitutional Court has a long-standing standard according to which Treaties of the community have autonomous meaning and direct effect¹² and the European Court of Justice has the capacity for authoritarian interpretation of the Treaties.¹³

Nowadays, the CJEU is at the heart of the European constitutional framework and plays the leading role in the process of integration and decision-making. Therefore, this institution has to bear responsibility for the successes and failures of the existing model of the EU. According to the survey conducted on the Brexit referendum day, nearly half of leave voters said that the biggest single reason for wanting to leave the EU was "the principle that decisions about the UK should be taken in the UK".¹⁴ The following research paper argues that all the developments regarding the CJEU's extensive influence translated itself into one of the major alienation factors or red linings¹⁵ in the general context of Brexit referendum. To put it another way, the CJEU's ever-growing influence was perceived as an infringement of the UK's constitutional identity. Within this framework, the first part of the paper examines the CJEU's attempt to transform the legal order of the

⁶ See Kenneth A. Armstrong, *Brexit Time: Leaving the EU- Why, How and When?*, Cambridge University Press, (2017): 118-119.

⁷ See Article 19, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (TEU), available at [Consolidated version of the Treaty on European Union \(europa.eu\)](#)

⁸ See Jürgen Schwarze, "Balancing EU Integration and National Interests in the Case-Law of the Court of Justice", in "The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-Law", Springer, Luxembourg, (2013): 257.

⁹ Riaan Eksteen, "The Role of the Highest Courts of the United States of America and South Africa, and the European Court of Justice in Foreign Affairs", Springer, (2019): 321.

¹⁰ See Roland Vaubel, "Constitutional Courts as promoters of political centralization: lessons for the European Court of Justice", *Eur J Law Econ*, Springer (2009): 204-204.

¹¹ See Case C-294/83 (ECR 1339)—Parti écologiste "Les Verts" v. European Parliament 1986, available at [EUR-Lex – 61983CJ0294 – EN – EUR-Lex \(europa.eu\)](#)

¹² See Beschluß Des Ersten Senats vom 18. Oktober 1967 – 1 BvR 248/63 und 216/67, available at [DFR – BVerfGE 22, 293 – EWG-Verordnungen \(unibe.ch\)](#)

¹³ See Beschluß des Zweiten Senats vom 8. April 1987 – 2 BvR 687/85, available at [DFR – BVerfGE 75, 223 – Kloppenburg-Beschluß \(unibe.ch\)](#)

¹⁴ See Lord Ashcroft, "How the United Kingdom voted on Thursday...and why", 24 June, 2016, available at [How the United Kingdom voted on Thursday... and why – Lord Ashcroft Polls](#)

¹⁵ See David Allen Green, "Brexit: why did the ECJ become a UK 'red line'?", 17 April, 2017, available at [What does 'red lines' mean? – UK in a changing Europe \(ukandeu.ac.uk\)](#)

European Union into a constitutional arrangement. What circumstances influenced the implementation of this project and whether the project can be considered successful. The second part tries to explain the negative attitude towards the CJEU in the UK. And in this context, several judgements that have had a direct impact on the consequences of Brexit are discussed.

Constitutionalisation without Constitution – the ongoing Project of the CJEU

The sovereignty of people and modern constitutions are usually viewed as complementary rather than contradictory concepts. However, once legal norms are regulated at the constitutional level, it is no longer open for ordinary politics and decision-making in classical terms, because their status becomes solid and revision – difficult. Therefore, it can be argued that constitutionalized regulations are partly taken from democratic deliberations.¹⁶ In this regard, the experience of European transformation and its constitutional nature is intriguing.

The CJEU has been transforming the founding Treaties into a quasi-constitutional tradition and a proto-federal regime since the mid-1960s.¹⁷ From its very inception, the Court's jurisprudence was characterized by a unique constitutional tradition rather than a pure international one. In this regard, the CJEU's case-law has always been one of the main sources for some of the major features of the constitutional framework of the European Community, including but not restricted: direct effect of EU law in the member states,¹⁸ the supremacy of EU law¹⁹ and a general principle of State liability for non-compliance with EU law.²⁰ These judgements asserted the supremacy of community law and therefore the constitutional notion that member states transferred sovereignty to the European Community. Furthermore, the CJEU has developed early on one of the major characteristics of classical constitutionalism that the community's legal order is autonomous and some founding provisions are not subject to intergovernmental amendments.²¹

Against such a well-established, influential and widespread case law, the CJEU's constitutional practice has been a target of cautious opposition from national actors, including courts. The jurisprudence of the CJEU is *inter alia* a product of a symbiotic and a complex dialectic relationship between the supranational institution and national courts.²² For example, the German Federal Constitutional Court in 1974, declared that the Community Law was not fully constitutionalized while it lacked a catalogue of fundamental rights guaranteed by the Basic Law. Therefore, the Bundesverfassungsgericht reserved the right to review the constitutionality of the secondary European legislation and concluded that national courts had the capacity to challenge the validity of EU measures on grounds of fundamental rights protected by the Basic Law as long as ('Solange') there was a democratic deficit into the community integration.²³

Despite such a counter-pressure, the CJEU's project in progress on constitutionalization was shortly greeted with accelerated integration of the European Community in the late 1980s. Mainly, after the Single European Act in 1986, market integration became a matter of major national interest for intergovernmental actors. Therefore, the case-law of the CJEU and the legal standards behind it became more influential. This process developed even further after the Maastricht Treaty and the Schengen Agreement. Another judgement of the German Federal Constitutional Court from 1986 is noteworthy in this context. The Constitutional Court acknowledged the community's progress towards more integration and protection of fundamental rights, however, the Court still did not surrender its jurisdiction over the constitutional review to CJEU. The Federal Constitutional Court merely

¹⁶ See Dieter Grimm, "The Democratic Costs of Constitutionalisation: The European Case", 21 EUR. L.J. 460 (2015): 460.

¹⁷ See Morten Rasmussen and Dorte S. Martinsen, "EU constitutionalisation revisited: Redressing a central assumption in European studies", *European Law Journal* Vol. 25, Issue 3, 251.

¹⁸ See Judgment of the Court, Van Gend & Loos, Case 26-62 (1963), available at [Judgment of the Court, Van Gend & Loos, Case 26-62 \(5 February 1963\) – CVCE Website](#)

¹⁹ See Judgement of the Court, Flaminio Costa v ENEL, Case 6/64 (1964), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61964CJ0006&from=EN>

²⁰ See Judgment of the Court, Andrea Francovich and Danila Bonifaci and others v Italian Republic, Joined cases C-6/90 and C-9/90 (1991), available at [resource.html \(europa.eu\)](#)

²¹ See 1/91 Opinion of the Court of 14 December 1991, available at [EUR-Lex – 61991CV0001 – EN – EUR-Lex \(europa.eu\)](#)

²² See Eric Stein, Lawyers, "Judges, and the Making of a Transnational Constitution", 75 AM. J. INT'L L. 1 (1981): 1.

²³ See Beschluß des Zweiten Senats vom 29. Mai 1974 -- BvL 52/71, available at [DFR – BVerfGE 37, 271 – Solange I \(unibe.ch\)](#)

declined indefinitely to exercise its jurisdiction over the applicability of secondary Community law.²⁴ However, this judgment was a de facto acknowledgement of the supremacy of European law and CJEU's jurisprudence/jurisdiction by one of Europe's most powerful courts.²⁵

These two judgments of the German Constitutional Court illustrate well the progress made by the European Union and CJEU's constitutional tradition, but this kind of progress was not codified. Therefore, the EU lacked its own constitutional moment as well as popular legitimacy. The remedial opportunity for codifying the constitutional legal order developed by the CJEU was presented in 2001 when the intergovernmental conference started working on constitutional reform and negotiations on the constitutional treaty. However, the ratification process failed when the voters in France and Netherlands rejected the constitutional dream of the federalists. Within this context, the Treaty of Lisbon in 2008 stipulated some of the major institutional reforms but without constitutional connotations.²⁶

We might conclude that the tradition of constitutionalization developed by the European Court of Justice since the 1960s has been challenged at various times by national actors, namely courts embodying internal identities and constitutional resistance. The acceleration of European Community integration since the late 1980s appeared to have tipped the balance in favor of the CJEU ambition. However, the uncodified nature of European constitutionalization remained a fundamental issue. And the unfruitful attempts of the early 2000s related to the European Constitution reform stood in stark contrast to the CJEU's long-standing agenda. Nevertheless, the discussions about the European Constitution partially translated into the adoption of the Lisbon Treaty. Therefore, two opposing concepts, constitutional tradition and constitutional resistance continued to exist, but without explicit connotations.

Resentment against the CJEU in the name of Constitutional Identity of the UK

The Westminster model of separation of powers and state governance pays particular attention to the sovereignty of Parliament. This is what defines Britain's constitutional identity.²⁷ Therefore, when talking about the causes of Brexit and Euroscepticism in the UK, in addition to the socio-economic aspects like partisanship, economic considerations and migration,²⁸ it is necessary to focus on the concept of reclaiming sovereignty of Parliament allegedly confiscated by the CJEU and its jurisprudence.²⁹

From the very beginning, the CJEU has stated that the European community was a legal order in which member states had limited their sovereign rights.³⁰ And when the UK joined the European Economic Community in 1973, it is plausible to assume that restrictions on the Parliamentary Supremacy were voluntarily agreed while enacting the Community Act by Parliament. However, the concept of taking back sovereignty became central to the campaign of Brexit. For example, it was mentioned that the referendum was about "deciding whether to be guided by a Commission with quasi-executive powers that operates more like the priesthood of the 13th Century papacy than a modern civil service; and whether to submit to a European Court of Justice (ECJ) that claims sweeping supremacy, with no right of appeal."³¹

²⁴ See *Beschluß des Zweiten Senats vom 22. Oktober 1986 -- 2 BvR 197/83*, available at [DFR – BVerfGE 73, 339 – Solange II \(unibe.ch\)](#)

²⁵ See Justin Collings, "Democracy's guardians: a history of the German Federal Constitutional Court 1951-2001", Oxford University Press, USA, (2015): 206.

²⁶ See Morten Rasmussen and Dorte S. Martinsen, "EU constitutionalisation revisited: Redressing a central assumption in European studies", *European Law Journal* Vol. 25, Issue 3, 269.

²⁷ See Christian Calliess and Gerhard Van der Schyff, "Constitutional Identity in a Europe of Multilevel Constitutionalism" in "Constitutional Identity in a Europe of Multilevel Constitutionalism", Edited by Christian Calliess, (2019): 288.

²⁸ See Sofia Vasilopoulou, "UK Euroscepticism and the Brexit Referendum", *The Political Quarterly*, Vol. 87, No. 2, April-June 2016.

²⁹ Boris Johnson said on the campaign trail before the Brexit referendum that voting to stay in the EU would mean "the steady and miserable erosion of parliamentary democracy in this country", See Macer Hall, "Boris Johnson urges Brits to vote Brexit to 'take back control'", *Express*, 20 June, 2016, available at [Boris Johnson urges Brits to vote Brexit to "take back control" | Politics | News | Express.co.uk](#)

³⁰ See Judgment of the Court, *Van Gend & Loos*, Case 26-62 (1963), available at [Judgment of the Court, Van Gend & Loos, Case 26-62 \(5 February 1963\) – CVCE Website](#)

³¹ See Ambrose Evans-Pritchard, "Brexit vote is about the supremacy of Parliament and nothing else: Why I am voting to leave

The ever-expanding jurisprudence of the CJEU and its complex impact upon the legal system of the UK was noted from the very beginning of the integration into European Community. Lord Denning, one of the most distinguished judges of the UK noted in 1979: “[The] flowing tide of the Community law is coming in fast. It has not stopped at the high-water mark. It has broken the dykes and the banks. It has submerged the surrounding land. So much that we have to learn to become amphibious if we wish to keep our heads above water.”³² The impact, however, was neither one-sided nor lightly received while the British legal tradition was much too conservative and complex for easy evolution.

The issue regarding the ultimate sovereignty between the UK Parliament and the CJEU first became a matter of litigation and enormous public interest in a landmark case regarding the regulation which required ships to have a majority of British owners if they were to be registered in the UK.³³ This regulation initially restricted access to British waters and was introduced by the Conservative government.³⁴ The number of cases in the long litigation which was conducted both within the national courts and the CJEU finally confirmed the supremacy of the EU law over the UK’s own legislation in the areas where the EU had competence. The most significant aspect of these decisions was the fact that after this case the House of Lords has been given the authority to ignore an act of the UK parliament which may conflict with EU law under the Human Right Act of 1998.³⁵ The factual outcomes of this case and most importantly, providing the judiciary with powers trumping the Parliament contradicted with the constitutional identity of the UK.³⁶ It is widely argued that this case, often seen as the British version of the landmark decision of *Marbury v. Madison*³⁷ was a shock for the British legal and political tradition and along with the Maastricht Treaty created a basis for renewed Euroscepticism.³⁸

Since the UK became a member of the European Community, several judgements of the CJEU have been criticized and were deemed to be an excess of original jurisdiction by the British political actors and population. Therefore, the resentment towards the CJEU was accumulated over 47 years of membership mostly regarding the constitutionalization tradition. But for the purposes of the paper, it is interesting to evaluate two opinions made directly before and shortly after the Brexit referendum and their impact on the final result.

Four months before the Brexit referendum in February 2016, the CJEU ruled in a preliminary opinion³⁹ presented by Advocate General that the Home Secretary of the UK could not deport a non-EU national with a British-born son just because she had a criminal record for smuggling contraband unless the mother’s conduct posed a serious threat to public security (exceptional measure).⁴⁰ According to the factual circumstances, the woman was a single mother with a British-born 16 years old son. She was jailed after attempting to smuggle contraband (a mobile phone SIM Card within the prison) and was sentenced to 12 months in jail. After completing her sentence she was faced with deportation but British immigration judges ruled that deportation of this woman would amount to the expulsion of her son as well. This decision was appealed by Theresa May who was then Home Secretary and the case was sent by the national courts for a ruling to the CJEU.⁴¹ The preliminary

the EU”, *The Telegraph*, 13 Jun 2016, available at [Brexit vote is about the supremacy of Parliament and nothing else: Why I am voting to leave the EU \(telegraph.co.uk\)](#)

³² See *Shields v. E Coomes (Holdings) Ltd.* [1979] 1 All ER 456, 462., available at [Shields v E. Coomes \(Holdings\) Ltd – Case Law – VLEX 793546717](#)

³³ See *R (Factortame Ltd) v Secretary of State for Transport*, Case C-213/89, 1990, available at [EUR-Lex – 61989CJ0213 – EN – EUR-Lex \(europa.eu\)](#)

³⁴ See *Merchant Shipping Act 1988*, available at [Merchant Shipping Act 1988 \(legislation.gov.uk\)](#)

³⁵ See *Human Rights Act*, available at [Human Rights Act 1998 \(legislation.gov.uk\)](#)

³⁶ See “The Supremacy of European Community Law”, available at [The Supremacy of European Community Law \(lawteacher.net\)](#)

³⁷ See *Marbury v. Madison*, 5 U.S. 137 (1803), available at [Marbury v. Madison :: 5 U.S. 137 \(1803\) :: Justia US Supreme Court Center](#)

³⁸ See Catherine Baksi, “Landmarks in law: the 90s fishing case that stoked UK Euroscepticism”, *the Guardian*, 29 Mar, 2019, available at [Landmarks in law: the 90s fishing case that stoked UK Euroscepticism | Studying law | The Guardian](#)

³⁹ See *Judgement of the Court in Case C-304/14, Secretary of State for the Home Department v CS*, 2016, available at [EUR-Lex – 62014CJ0304 – EN – EUR-Lex \(europa.eu\)](#)

⁴⁰ Alan Travis, “Criminals with UK children cannot be automatically deported, says EU court”, *The Guardian*, 4 Feb, 2016, available at [Criminals with UK children cannot be automatically deported, says EU court | Immigration and asylum | The Guardian](#)

⁴¹ See Ian Drury and Martin Robinson, “Foreign criminals with British children cannot be automatically deported after Moroccan single mother jailed for smuggling wins backing of EU’s top court”, 5 Feb 2016, *Daily Mail*, available at [Foreign](#)

opinion of the CJEU stipulated that deportation would breach the child's right to family life. This opinion was used by Eurosceptic campaigners as evidence of unwarranted interference and a dangerous precedent against UK sovereignty and its ability to control internal intelligence affairs.⁴² Steve Baker, then the chairman of Conservatives for Britain, said regarding the court's opinion: "I have pointed out that we cannot govern our country and deliver the decisions that the public want when we are subject to the jurisdiction of the ECJ...Once again we can see that the only safe choice is to take back control by voting to leave."⁴³

Soon after the Brexit referendum, the Grand Chamber of CJEU issued the judgement regarding the UK Government's 2014 data retention law which required providers to retain electronic communications.⁴⁴ The CJEU ruled that EU law precluded national governments from general and indiscriminate retention of personal data. It was also stipulated that personal data might be retained where strictly necessary for the purposes of combating serious crime. This decision was made in times of fierce debates regarding national security and privacy rights. The terrorist attacks in Europe were declared as a major factor for national governments' expanding surveillance capabilities. Consequently, the relevance of the issue was particularly sensitive. This decision, shortly after the Brexit referendum further aggravated the situation and added to the growing resentment and antagonism towards the EU within the UK's political elite.⁴⁵

The factor of the CJEU was not only crucial before the referendum day, but also became particularly acute in the Brexit enforcement process after the referendum. In this regard, one of the most contentious debates over the UK's approach to the negotiations with the EU after the referendum has been the jurisdiction of the CJEU.⁴⁶ The influential political elite pointed to "taking back control" in the context of Britain leaving the CJEU's supremacy.⁴⁷ For example, Theresa May's one of the official commitments during the election campaign in 2016 was to end the jurisdiction of the CJEU in Britain. To paraphrase her promise, she was arguing that the British legislation would be made in Westminster, Edinburgh, Cardiff, and Belfast if the UK left the European Union. And judges in national courts, not in Luxembourg, would interpret those statutes.⁴⁸ Consequently, it is reasonable to assume that the CJEU's project sparked a de-constitutionalization movement among the majority of the British voters and "taking back control" was viewed as an attempt of constitutional resistance against infringement of the UK constitutional identity.

Conclusion

The European integration is partly a product of the revolutionary and self-empowering jurisprudence of the CJEU which helped the community to transform into a supranational quasi-constitutional entity. In this process of constitutionalisation, the member states' sovereignty weakened while the CJEU's powers were extended.⁴⁹ Such activism is perceived as hostile by different interest groups on different sides of the political spectrum. When it comes to the issue of Sovereignty within the EU, the question is who are the actual "Masters of the Treaty", European governments or non-elected judges at the CJEU?⁵⁰ However, it should be mentioned that

[criminals with UK children cannot be automatically deported | Daily Mail Online](#)

⁴² See Riaan Eksteen, "The Role of the Highest Courts of the United States of America and South Africa, and the European Court of Justice in Foreign Affairs", Springer, (2019): 382.

⁴³ See David Barrett, "Laura Hughes, Moroccan criminal fighting deportation is Abu Hamza's daughter-in-law, a Tory MP reveals", The Telegraph, 5 Feb, 2016, available at [Moroccan criminal fighting deportation is Abu Hamza's daughter in-law, a Tory MP reveals \(telegraph.co.uk\)](#)

⁴⁴ See Judgement of the Court in joined Cases C-203/15 and C-698/15, *Tele2 Sverige AB v Post- och telestyrelsen and Secretary of State for the Home Department v Tom Watson and Others*, 2016, available at [CURIA – Documents \(europa.eu\)](#)

⁴⁵ See Riaan Eksteen, "The Role of the Highest Courts of the United States of America and South Africa, and the European Court of Justice in Foreign Affairs", Springer, (2019): 383.

⁴⁶ See "Brexit: What has the European Court of Justice got to do with the NI Protocol?", BBC, 12 October, 2021, [Brexit: What has the European Court of Justice got to do with the NI Protocol? – BBC News](#)

⁴⁷ See "Britain's unhelpful obsession with the European Court of Justice", Financial Times, available at [Britain's unhelpful obsession with the European Court of Justice | Financial Times \(ft.com\)](#)

⁴⁸ See "The government's negotiating objectives for exiting the EU: PM speech", available at [The government's negotiating objectives for exiting the EU: PM speech – GOV.UK \(www.gov.uk\)](#)

⁴⁹ See Dieter Grimm, "Europe's Legitimacy Problem and the Courts", in D. Chalmers, M. Jachtenfuchs and C. Joerges (eds.), "The End of the Eurocrats' Dream: Adjusting to European Diversity", Cambridge University Press, (2016): 244.

⁵⁰ See K.J. Alter, "Who Are the "Masters of the Treaty": European Governments and the European Court of Justice" in K.J. Alter (ed.), "The European Court's Political Power. Selected Essays", Oxford University Press, (2009): 109.

resentment towards international courts is a wide phenomenon while recent years have seen growing resistance in many parts of the world against international courts.⁵¹ Furthermore, it may not be an exaggeration to say that identity-driven resentment towards international courts, namely CJEU has become a common occurrence in the EU as well.⁵² Within this context, this paper tried to concentrate on political pressure that was built up in the UK against the CJEU's project of constitutionalization. Brexit as a historical event can be analyzed from different angles and perspectives, attention can be paid to different circumstances, which may have compelled 52 % of British voters to vote to leave. The paper argued that a vital part of voters was motivated and thought that there was no other option to restore the UK's constitutional identity, i.e parliamentary sovereignty other than to step aside from the ever-growing jurisdiction of the CJEU.

Bibliography

47. "Brexit: What has the European Court of Justice got to do with the NI Protocol?", BBC, 12 October, 2021.
48. "Britain's unhelpful obsession with the European Court of Justice", Financial Times.
49. "The government's negotiating objectives for exiting the EU: PM speech".
50. "The Supremacy of European Community Law".
51. Alan Travis, "Criminals with UK children cannot be automatically deported, says EU court", The Guardian, 4 Feb, 2016.
52. Albert V. Dicey, "Introduction to the Study of the Law of the Constitution", Liberty Fund ed., (1915).
53. Ambrose Evans-Pritchard, "Brexit vote is about the supremacy of Parliament and nothing else: Why I am voting to leave the EU", The Telegraph, 13 Jun 2016.
54. Bundesverfassungsgericht, Beschluß Des Ersten Senats vom 18. Oktober 1967 – 1 BvR 248/63 und 216/67.
55. Bundesverfassungsgericht, Beschluß des Zweiten Senats vom 22. Oktober 1986 -- 2 BvR 197/83.
56. Bundesverfassungsgericht, Beschluß des Zweiten Senats vom 29. Mai 1974 -- BvL 52/71.
57. Bundesverfassungsgericht, Beschluß des Zweiten Senats vom 8. April 1987 – 2 BvR 687/85.
58. Catherine Baksi, "Landmarks in law: the 90s fishing case that stoked UK Euroscepticism", the Guardian, 29 Mar, 2019.
59. Christian Calliess and Gerhard Van der Schyff, "Constitutional Identity in a Europe of Multilevel Constitutionalism" in "Constitutional Identity in a Europe of Multilevel Constitutionalism", Edited by Christian Calliess, (2019).
60. Court of Appeal of England and Wales, Shields v. E Coomes (Holdings) Ltd. [1979] 1 All ER 456, 462.
61. Court of Justice of the European Union, Case C-304/14, Secretary of State for the Home Department v CS, 2016.
62. Court of Justice of the European Union, 1/91 Opinion of the Court of 14 December 1991.
63. Court of Justice of the European Union, Case 26-62, Van Gend & Loos, (1963).
64. Court of Justice of the European Union, Case 6/64, Flaminio Costa v ENEL, (1964).
65. Court of Justice of the European Union, Case C-213/89, R (Factortame Ltd) v Secretary of State for Transport, 1990.
66. Court of Justice of the European Union, Case C-294/83 (ECR 1339)—Parti écologiste "Les Verts" v. European Parliament 1986.
67. Court of Justice of the European Union, Cases C-203/15 and C-698/15, Tele2 Sverige AB v Post- och telestyrelsen and Secretary of State for the Home Department v Tom Watson and Others, 2016.
68. Court of Justice of the European Union, Joined cases C-6/90 and C-9/90, Andrea Francovich and Danila Bonifaci and others v Italian Republic, (1991).

⁵¹ See Mikael Rask Madsen, Pola Cebulak and Micha Wiebusch, "Backlash against international courts: explaining the forms and patterns of resistance to international courts", International Journal of Law in Context (2018): 197.

⁵² For example, the recent decision of the Polish Constitutional Tribunal held that several parts of the Treaty of European Union (TEU) were inconsistent with the Polish Constitution, thus placing European Union law below the State's legal framework and therefore, challenging the jurisdiction of the CJEU, See Judgment in the name of The Republic of Poland, Ref. No. K 3/21

69. David Allen Green, "Brexit: why did the ECJ become a UK 'red line'?", 17 April, 2017.
70. David Barrett, "Laura Hughes, Moroccan criminal fighting deportation is Abu Hamza's daughter-in-law, a Tory MP reveals", *The Telegraph*, 5 Feb, 2016.
71. Dieter Grimm, "Europe's Legitimacy Problem and the Courts", in D. Chalmers, M. Jachtenfuchs and C. Joerges (eds.), "The End of the Eurocrats' Dream: Adjusting to European Diversity", Cambridge University Press, (2016).
72. Dieter Grimm, "The Democratic Costs of Constitutionalisation: The European Case," 21 *EUR. L.J.* 460 (2015).
73. Eric Stein, Lawyers, "Judges, and the Making of a Transnational Constitution", 75 *AM. J. INT'L L.* 1 (1981).
74. Henry G. Schermers, "The European Court of Justice: Promoter of European Integration", 22 *AM. J. COMP. L.* 444 (1974).
75. Ian Drury and Martin Robinson, "Foreign criminals with British children cannot be automatically deported after Moroccan single mother jailed for smuggling wins backing of EU's top court".
76. Judgment in the name of The Republic of Poland, Ref. No. K 3/21.
77. Jürgen Schwarze, "Balancing EU Integration and National Interests in the Case-Law of the Court of Justice", in "The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-Law", Springer, Luxembourg, (2013).
78. Justin Collings, "Democracy's guardians: a history of the German Federal Constitutional Court 1951-2001", Oxford University Press, USA, (2015).
79. Kenneth A. Armstrong, *Brexit Time: Leaving the EU- Why, How and When?*, Cambridge University Press, (2017).
80. K.J. Alter, "Who Are the "Masters of the Treaty": European Governments and the European Court of Justice" in K.J. Alter (ed.), "The European Court's Political Power. Selected Essays", Oxford University Press, (2009).
81. Lord Ashcroft, "How the United Kingdom voted on Thursday...and why", 24 June, 2016.
82. Macer Hall, "Boris Johnson urges Brits to vote Brexit to "take back control", *Express*, 20 June, 2016.
83. Mark Dawson and Floris deWitte, "From Balance to Conflict: A New Constitution for the EU", *European Law Journal*, Vol. 22, No. 2 (2011).
84. Mikael Rask Madsen, Pola Cebulak and Micha Wiebusch, "Backlash against international courts: explaining the forms and patterns of resistance to international courts", *International Journal of Law in Context* (2018).
85. Morten Rasmussen and Dorte S. Martinsen, "EU constitutionalisation revisited: Redressing a central assumption in European studies", *European Law Journal* Vol. 25, Issue 3.
86. Riaan Eksteen, "The Role of the Highest Courts of the United States of America and South Africa, and the European Court of Justice in Foreign Affairs", Springer, (2019).
87. Roland Vaubel, "Constitutional Courts as promoters of political centralization: lessons for the European Court of Justice", *Eur J Law Econ*, Springer (2009).
88. Sofia Vasilopoulou, "UK Euroscepticism and the Brexit Referendum", *The Political Quarterly*, Vol. 87, No. 2, April-June 2016.
89. Supreme Court of the United States, *Marbury v. Madison*, 5 U.S. 137 (1803).
90. Treaty on European Union and the Treaty on the Functioning of the European Union (TEU).
91. UK legislation, Human Rights Act.
92. UK legislation, Merchant Shipping Act 1988.