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The Evolving Dynamics of European Integration: Exploring the Relationship betweenNational and European Courts

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INTRODUCTION

The European Union legal system did not arise from general purposes, nor does it present itself as the aggregation of a particular community, nor does it aspire to the universality of its normative provisions. Rather, it simply represents a union of states that share certain aspects of their economic and social life, and for this reason, it confers limited legal subjectivity, first to coal and steel companies and then to natural and legal persons operating in the member states' legal systems, if and to the extent that they are affected by the actions of the EU institutions.[1]

As is well known, subsequent evolution, induced by the multiple changes to the treaties, by the easy use of implicit powers, and above all guided by the Court of Justice itself, has made the EU system one that tends toward general purposes and aspires to assert its own legitimacy above that of the states that compose it, and to whose prescriptions no sector of associated life appears potentially foreign.[2]

This para-federal configuration of the EU legal system, therefore, required a set of values to be inspired by in the absence of a constitutional charter expressing them. Hence the well-known jurisprudence of the Court of Justice on fundamental rights - taken from the constitutions of the member states, but autonomously re-elaborated by the Court; hence the extraction of a general principle of equality from sectoral prohibitions on discrimination that is applicable beyond these.[3]

The Court of Justice of the European Union (CJEU) is an important institutional entity within the European Union (EU), playing an important role in the interpretation and execution of EU legislation. It was founded in 1952 and is made up of two principal judicial bodies: the European Union General Court and the Court of Justice of the European Union. The General Court, created in 1989, is in charge of first-instance proceedings, such as disputes between EU institutions or actions brought by people or corporations in response to EU directives. The Court of Justice of the European Union, on the other hand, is the EU's appellate court, responsible for issues requiring interpretation of EU law or judgment of the validity of EU activities.

The CJEU serves as the EU's top court, having the authority to hear matters involving the implementation and interpretation of EU legislation. As a result, the CJEU plays an important role in

[1] Ernesto Lupo, 29 febbraio 2016: “La primauté del diritto dell'UE e l'ordinamento penale nazionale”.
[2] The "Taricco" ruling before the Constitutional Court: how will the Consulta decide?, in AIC Magazine, No. 4/2016, p. 44 ff., available online. Therein also the other papers presented at the Conference Waiting for the Constitutional Court - The "Taricco" case and the relations between criminal law and European law, Istituto Luigi Sturzo, 4 October 2016.
[3] Ernesto Lupo, 29 febbraio 2016: “La primauté del diritto dell'UE e l'ordinamento penale nazionale”.

ensuring that EU legislation is appropriately and uniformly administered throughout all member states, therefore furthering EU integration. Primarily, the CJEU interprets and applies EU legislation, guaranteeing consistent application of that legislative order throughout all member states and preserving the rights of persons inside the European Union. Furthermore, the CJEU serves as an essential counterbalance to other institutional organizations within the EU, safeguarding the legal system's independence and the balance of power among the different institutions.

Article 19 of the Treaty on European Union (TEU) establishes that the CJEU "ensures that in the interpretation and application of the Treaties, the law is observed"[4]. Additionally, Article 263 of the Treaty on the Functioning of the European Union (TFEU) establishes that the CJEU has jurisdiction over "an action for annulment of an act of the Union [...] addressed to a natural or legal person" and "an action for failure to act [...] by the Union"[5].

The CJEU is also responsible for protecting fundamental rights within the Union. The Article 47 of the Charter of Fundamental Rights of the EU establishes that "everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article". The CJEU plays an important role in ensuring that this right is respected within the EU.

The European Union's Court of Justice has played a critical role in the establishment and implementation of European Union legislation. Its judgements established basic legal ideas that influenced EU law and the integration process significantly. The idea of "direct effect," for example, permits persons to rely on EU law directly in national courts without the necessity for implementing legislation. This idea was defined for the first time in the landmark judgment of Costa v. ENEL in 1964.

Moreover, the CJEU has established the principle of "primacy of EU law" over national law in a series of cases. This principle holds that EU law takes precedence over national law, and national courts must interpret and apply national law in a manner that is consistent with EU law. This has helped to avoid conflicts between national courts and EU law and ensured greater coherence in the application of EU law across all member states.

[4] Treaty on European Union. (Consolidated version). Article 19. Official Journal of the European Union.
[5] Treaty on the Functioning of the European Union. (Consolidated version). Article 263. Official Journal of the European Union, paragraphs 1 and 4.

The CJEU has also been involved in several important cases that have had a significant impact on EU policy and the lives of European citizens. For instance, in the case of Van Gend en Loos in 1963, the CJEU established the principle of direct effect of EU law, which enabled European citizens to directly rely on EU law in national courts. This represented a significant step forward in strengthening the rights of European citizens and creating a genuine European legal system.

-The Court of Justice and the theory of the counterweight of law

According to the notion of the balance of power in law, a legal system's ability to function independently and defend the rights of people depends on the balance of power between its many institutions. In this regard, the European Union Court of Justice serves as a crucial check on other institutional organizations within the EU, including the European Commission and the European Council. In fact, the CJEU has the authority to review the European Commission's proposals and determine if they adhere to the law and do not breach the rights of any particular person in regard to the Commission, which has the authority to propose new EU rules and regulations.

The study of CJEU rulings when the relationship between basic rights and competing public or private interests is taken into account relates to the research of CJEU case law involving counterbalances.

A legal strategy known as counterbalances is used to settle disputes between basic rights that are incompatible with one another or with public or private interests. In actuality, it entails choosing which basic right should take precedence in certain situations by weighing the relative importance of the several conflicting rights. In order to assure the preservation of other rights or interests, this balancing act may include the restriction or limitation of a basic right. In several of its rulings, the Court addressed the need for counterbalances, especially when it came to EU basic rights including the right to privacy, freedom of speech, and nondiscrimination.

The Court of Justice of the European Union often uses a case-by-case analysis balancing technique. The court carefully considers the particulars of the case and weighs the significance of the basic rights at issue, as well as any outside variables like competing public or private interests. In this way, the CJEU strives to strike a balance between basic rights that clash without compromising the efficacy and integrity of EU law. This strategy is founded on the proportionality principle, which states that any limitations on basic rights must be justifiable and reasonable in relation to the goal being pursued. To put it another way, if a limitation is required to safeguard a genuine public interest, it must interfere with basic rights as little as feasible.

Additionally, the CJEU has emphasized that it is required to ensure the uniform protection of basic rights across the whole territory of the EU as the highest interpretation authority of EU law. Therefore, in order to ensure the preservation of people's fundamental rights and the coherence of the EU legal system, fundamental rights must be construed consistently throughout all Member States. The CJEU acknowledges the significant contribution made by national courts to the defense of fundamental rights. They are obligated to work with the CJEU to uphold basic rights, including by referring preliminary questions for its analysis. By following the consistent interpretation of EU legislation supplied by national courts, national courts may guarantee that basic rights are appropriately safeguarded in their legal systems. According to the CJEU, counterbalancing measures are only required where fundamental rights are in conflict with one another or with public or private interests. Any restriction on basic rights must also be reasonable and required to fulfill the legal goal that is being sought. In order to maintain the highest level of protection for each fundamental right, the CJEU attempts to strike a balance between competing fundamental rights. This means that if a basic right needs be restricted in order to satisfy a valid necessity, doing so must be reasonable and proportionate to the goal at hand. Additionally, the Court mandates that any restriction on basic rights must be objectively justified, non-discriminatory, and enforced in a way that upholds the equality and non-discrimination principles.

As was already established, the CJEU's balancing technique is based on an analysis of the case's particular facts and calls for a fair and reasonable consideration of competing basic rights. The Court aims to establish a balance between the necessity of upholding basic rights and the necessity of upholding reputable public and commercial interests. To ensure the efficacy of EU activity and adherence to EU law, it does not hesitate to restrict basic rights.

In order to understand how the Court resolves these conflicts and how it applies the principles of proportionality and necessity in its decision-making process, the analysis of CJEU case law in relation to counter-balancing measures entails studying Court decisions that address the issue of balancing conflicting fundamental rights or fundamental rights and public or private interests.

According to the notion of the balance of law, a legal system's independence and the preservation of individual rights depend critically on the distribution of power among its many institutions. The CJEU serves as a crucial check on other EU institutional organizations like the European Commission and the European Council in this regard.

The European Commission, which has the authority to suggest new EU rules and regulations, is countered by the CJEU. The study of CJEU decisions that take into account the relationship between

basic rights and competing public or private interests is relevant to the examination of its jurisprudence with regard to counterbalances.

A legal strategy known as counterbalances is used to settle disputes between basic rights that are incompatible with one another or with public or private interests. In actuality, it entails weighing the relative importance of conflicting basic rights and determining which right should take precedence in various situations. To preserve other rights or interests, this procedure may entail reducing or restricting a basic right.

The CJEU has frequently discussed counterbalances in its rulings, especially when it comes to the EU's basic rights including the right to privacy, freedom of speech, non-discrimination, and enterprise freedom.

The generally uses a case-by-case balancing approach. The Court carefully considers the particulars of the case and assesses the significance of the opposing basic rights, as well as outside variables like the concerned public or private interests. seeks to strike a balance between basic rights that are in conflict without compromising the strength and integrity of EU legislation. This strategy is founded on the proportionality principle, which states that any limitations on basic rights must be justifiable and reasonable in relation to the goal being pursued. To put it another way, if a limitation is required to safeguard a valid public interest, it must do so with the least amount of interference to the affected basic rights.

Furthermore, the CJEU has declared that, as the highest interpretation authority of EU law, it is responsible for ensuring the uniform protection of fundamental rights across the EU territory. As a result, in order to maintain the protection of individuals' fundamental rights and the cohesion of the EU legal system, fundamental rights must be construed equally in all Member States. The CJEU acknowledges the critical role of national courts in safeguarding fundamental rights. They are obligated to work with the CJEU to defend basic rights, including referring preliminary questions to the CJEU for interpretation. National courts can guarantee that basic rights are sufficiently safeguarded in their legal systems in this manner, in accordance with the standard interpretation of EU law given by the Court.

The CJEU has determined that counterbalances are only required when there is a conflict between fundamental rights or when fundamental rights collide with public or private interests. Any restriction on basic rights must be proportional and necessary to accomplish the legitimate goal. The Court attempts to strike a balance between competing basic rights in order to ensure the greatest feasible

level of protection for each. This means that if a basic right is limited because of a justifiable need, the limitation must be reasonable and suitable to the goal pursued. Furthermore, the Court requires that any restriction on basic rights be founded on clear and specific criteria, be predictable, and have adequate legal protections to avoid misuse.

There have been occasions in recent years where Italian law and European law have clashed, posing a challenge to both the Italian legal system and the European Union as a whole. In such situations, the Court of Justice of the European Union, as the EU's top court, has played an important role in interpreting and implementing EU law. Its primary tasks are to guarantee that EU legislation is consistently interpreted and enforced, and that member states follow EU law.

The CJEU has played a critical role in establishing the precedence of EU law over national law in the situation of disputes between Italian and European law. In this sense, the principle of counterbalances has been a crucial notion, requiring national courts to guarantee that EU legislation does not undermine essential components of national legal systems, such as the protection of basic rights and the rule of law. The CJEU has, however, underlined that the concept of counterbalances should not impede the efficacy of EU legislation or create barriers to its application. An examination of the case law concerning counterbalances finds numerous noteworthy instances that have aided in clarifying the function and boundaries of this principle.

CHAPTER 1

The importance of the Costa v Enel case: Control Limits in the EU and Italian Legal Systems

The principle of the primacy[6] of European Union law constitutes an essential pillar of European legal construction, which nevertheless encounters particular difficulties in asserting itself when it has to operate in relation to the criminal law systems of the Member States, which are dominated by the principle of legality, and in general by constitutional principles that contribute to forming the very national identity of the Member States themselves, which the Union is required to respect. Emblematic of these difficulties are the obligations laid down by the Court of Justice in the Melloni judgment, which confronted the Spanish Tribunal Constitutional with the alternative of whether to accept a limitation of its constitutional right to a fair trial in homage to the functionality of the European arrest warrant, or whether to oppose the judges in Luxembourg head-on; as well as those laid down by the Court of Justice in the Taricco judgment, currently being examined by the Italian Constitutional Court, the sustainability of which against the yardstick of the principles underpinning Italian constitutional identity is examined in this contribution.[7]

Is crucial to understand and analyse the dispute between Mr. Costa and the Enel company - presented to it, moreover, by an Italian judge - the Court noted first of all "that, unlike ordinary international treaties, the EEC Treaty established its own legal order, which was incorporated into the legal order of the Member States when the Treaty entered into force and which the national courts are required to observe", and reiterated that the States "have limited, albeit in circumscribed areas, their sovereign powers and thus created a body of law binding on their citizens and on themselves"[8].

He went on to say: 'This incorporation into the law of each Member State of rules emanating from Community sources, and more generally the spirit and terms of the Treaty, have as their corollary the impossibility for States to prevail, against a legal order accepted by them on condition of reciprocity, of a subsequent unilateral measure, which cannot therefore be enforced against the common order. If

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[6] European Union. (Consolidated versions). Treaty on European Union, Article 4(2); Treaty on the Functioning of the European Union, Articles 288, 351. Official Journal of the European Union.
[7] Amedeo Arena: “From an Electricity Bill to the Supremacy of European Law, or the Making of Costa v. ENEL”.
[8] Court of Justice of the European Union. (1964). Case 6/64, Flaminio Costa v. E.N.E.L., Judgment of 15 July 1964, European Court Reports.

the effectiveness of Community law were to vary from one State to another according to subsequent domestic laws, this would jeopardies the implementation of the aims of the Treaty [...][9]. The obligations assumed in the Treaty establishing the Community would not be absolute, but merely conditional, if the contracting parties could escape compliance with them by means of further legislation'.

Finally: “It follows from all the foregoing elements that, arising from an autonomous source, the law created by the Treaty could not, precisely because of its specific nature, be limited by any internal measure without losing its community character and without the legal foundation of the Community itself being undermined. The transfer, effected by the States in favor of the Community legal order, of the rights and obligations corresponding to the provisions of the Treaty thus implies a definitive limitation of their sovereign rights, in the face of which a subsequent unilateral act, incompatible with the Community system, would be entirely ineffective".

The College did not fail to assign an explicit definition to the property just described, openly designating it as “the primacy of Community law”. In fact, the principle of primauté is not proclaimed anywhere in the founding Treaties (not even in Article 189 of the EEC Treaty), but only through the opinion that the Luxembourg judges presented.

This is certainly not intended to claim that the Costa v. Enel ruling was “wrong”, but rather to express support for the thesis according to which the Court, realizing the contradiction into which it would have fallen if it had not completed the reasoning opened in Van Gend en Loos[10], chose to enrich the textual datum with its personal view of things. Indeed, one has authoritatively wondered what Community law would have been without such rulings. Certainly, without the affirmation of the principle of primacy, the principle of direct effect would have been lame, unfinished: the implementation of the Communities' rules would have depended on the goodwill of the Member States, which would have risked, as the only sanction for having adopted an act contrary to the European sources, a condemnation for failure to fulfil obligations from the Court of Justice. Community law, in short, would have been theoretically operative, but practically inoperable.

If it is true, on the other hand, that the main purpose of the Treaties consists in the creation of a single market and a customs union, it follows that common rules must be applied in the territories of all the

[9] Ibid.
[10] Court of Justice of the European Union. (1963). Case 26/62, NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v. Nederlandse administratie der belastingen, Judgment of 5 February 1963. European Court Reports, 1963.

Member States and that these rules must prevail over incompatible national provisions, unless the very essence of the commitments undertaken is disavowed. In other words, in the Court's view, if the States wanted to establish the Communities, and wanted to orient them to very specific purposes, they also accepted to bend their domestic law to the new legal system, in order to ensure the achievement of those purposes.

Moreover, primauté is presented, as far back as Costa v. Enel, as an absolute property: the Italian text: "the law born of the Treaty could not ... find a limit in any internal measure without losing its Community character ..." is not as limpid as the French one, where it is clearly stated that "*le droit né du traité ne pourrait ... se voir judiciairement opposer un texte interne quel qu'il soit, sans perdre son caractère communautaire* [...]". The internal norm yields before the Community norm, whatever nature the latter possesses.

From the words of Professor Amedeo Arena[11], regarding the primacy of European law over national law, it is possible to observe how the Legal Service of the European Commission and the members of the European Court of Justice themselves were already moving in that direction before 1964. It is evident, however, that the case and the opinion regarding the Costa v. ENEL ruling implemented a real 'legal revolution' allowing national courts to disapply national law in the event of conflict with European Union law.[12]

Consequently, if the court of justice was faced with a friction between the law of the member states and an act of law of minor importance to the system, it would have the freedom to review it under Article 11 of the Italian Constitution:

"[…] Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends."

Thus, guaranteeing a greater power of judicial review in frictions within a dispute between the Italian and EU legal order, allowing the courts to have an insurance against the risks caused by Italian concessions towards the European community. We see how the CJEU pushed for an "alliance" with the lower national courts, so as to avoid a centralised application of the primacy of the European legal order, while at the same time giving the lower courts a heady prospect of "engaging with the highest

[11] Arena, Amedeo. (n.d.). Faculty profile. Università di Napoli Federico II, Dip. Giurisprudenza. Retrieved April 12, 2023
[12] Amedeo Arena: "From an Electricity Bill to the Supremacy of European Law, or the Making of Costa v. ENEL".

court of the Community" and exercising a "de facto judicial review of legislation", a power that national legal systems usually entrusted exclusively to constitutional courts. They were thus placed at the centre of the principle of subsidiarity so that the CJEU may not intervene, except in areas of its exclusive jurisdiction, unless its action is deemed more effective than that taken at the national, regional or local level. Thus transforming national lower courts into real engines of European integration through a preliminary ruling procedure.

Professor Amedeo Arena, however, is keen to point out that the proceedings in Costa v. ENEL did not take place in exactly this way. In fact, the first Conciliating Judge's attitude of resistance to the preliminary ruling procedure is evident. Judge Carones did not express his willingness to address the complexity of the relationship between the EEC and national legal systems, considering it a matter for the ICC to make a preliminary reference to the CJEU. This thought was aligned with the deeply rooted view of the judiciaries of several member states who have always been sceptical of a path to Europeanisation and often the lower courts themselves consider dialogue with the CJEU a distraction from the considerable work pressure they face.[13]

Then Amedeo Arena speaks about the second judge, Judge Fabbri, Conciliator in the Costa v. ENEL case, who, prompted by the opinion of Stendardi[14], a great connoisseur of the relationship between Italian and EU law, interpreted his judgement in favour of Costa, disapplying the ENEL Statute by ruling in favour of the primacy of EU law so as to encourage the path of empowerment. Arena in fact highlights Stendardi's work that revolutionised the Costa v. ENEL case. Stendardi in fact first identified in Costa, an individual who could act as an ideal plaintiff for a case against a nationalised electricity company, of which he is a customer and shareholder. Subsequently, he persuaded the plaintiff not to allow the company's employees to read his meter and to avoid paying two electricity bills, creating two low-value lawsuits that would be dealt with by the court of last resort. This would have triggered the preliminary reference procedure under Article 177(3) of the EEC Treaty. Third, he persuaded two Italian magistrates to refer the matter to the International Criminal Court and, in one case, to the European Court of Justice, despite their lack of familiarity with Italian constitutional justice and the preliminary ruling procedure. Fourth, he had a dispute with prominent Italian lawyers and academics of the time, but eventually prevailed. Finally, he obtained a ruling from the European Court of Justice that reflected his views on primacy and contained a sentence similar to the one in his 1958 treatise on the relationship between Italian and EU law. Stendardi was recognised as one of the

[13] Amedeo Arena: "From an Electricity Bill to the Supremacy of European Law, or the Making of Costa v. ENEL"
[14] Prof. Gian Galeazzo Stendardi, lawyer, lecturer in Constitutional Law at the State University of Milan and subsequently associate professor of Administrative Law at the University of Urbino.

first entrepreneurial lawyers to be called 'euro-lawyers', as he built ad hoc cases and even wrote preliminary references to promote the integration through law of Europe. He exploited the attractiveness of judicial power over some national courts to achieve this goal. Moreover, he was considered the 'first architect' of the primacy of EU law.

-The Struggle for Individual Standing: Stendardi and Costa's Battle for European Citizens' Rights and Accountability

This emerging body of legal doctrine was still broad and vague enough to allow for very different expectations and hopes to be nurtured. One particular point that remained rather unclear was the role individuals should be left to play in the EC political and legal system and the extent to which direct effect should and could concern the political core of the treaties (eg the decision-making process). A variety of future paths were forecast as well as indicated. Van Gend en Loos's paragraph on the contribution of individuals in the implementation of the treaties[15] had been read by some as setting the stage for legal actions against any sort of violation of the spirit or letter of the treaties by the Member States or the Commission (including the more political aspects concerning the functioning of the EC institutions and their internal politics). As we said, among the promoters of this extensive reading of Van Gend en Loos were two members of the Milan bar who in 1963 engaged in the famous Costa v ENEL case, 43-year-old constitutional law professor Giangaleazzo Stendardi and 62-year-old lawyer Flaminio Costa.[16] Far from being a rather irrational dispute over a contested 1,925 Italian lire bill issued by the Italian electricity company ENEL led by uncontrolled, litigious if not foolish, lawyers (as many of the accounts seem to indicate nowadays), their undertaking was grounded in a consistently activist conception of a European rule of law. Their previous records and statements cast them as liberal lawyers (in the European sense of criticism of state intrusion in the area of both individual freedoms and economic market). Both of them had already repeatedly argued in various forms of intervention that individual standing before the two European Courts was a critical element for bringing about a Stato di diritto in Italy. At the time, Costa was calling for his government to accept "with no more delays the individual petition right before the European Court of Human Rights"[17]. Stendardi had theorised the role of individual legal activism before courts as a quasi-

[15] 'The fact that articles 169 and 170 of the EEC treaty enable the Commission and the member states to bring before the court a state which has not fulfilled its obligations does not deprive individuals of the right to plead the same obligations, should the occasion arise, before a national court' (Van Gend en Loos in (1963) Common Market Law Review 13).

[16] Giangaleazzo Stendardi only participated to the case before the Italian Constitutional Court but sug- gested the recourse to the ECJ. See G. Stendardi, 'Problemi in materia di leggi di legittimità di espropri- azione d'impresa', (1962).

[17] F. Costa, 'Riforme legislative urgenti per una più efficace tutela giurisdizionale del cittadino nella procedura penale', in in National Forensic Legal Congress.

substitute for political accountability, particularly at the European level. In various writings before and after the Costa case, he indicated that it is not necessary to have a Parliament directly elected by the people for the citizen to be protected; it only requires the existence of procedure capable of protecting the individual vis-à-vis the European organization.[18]

An early analyst of the Italian Constitutional Court (in 1955, he published one of the very first books on the newly founded court), he had immediately seized (however unsuccessfully) the opportunity opened by its creation in 1956 to defend freedom of speech through a preliminary ruling, thus causing its third decision (23 June 1956). Similarly, when claiming as early as 1958 that the ignorance of EC law supremacy was "a substantial violation of the treaties", he prophetically stated that "it will be necessary to plead judicially such an issue, in order to provoke a decision, for example of the European Court of Justice"[19]. This strong belief in law as the paramount tool for citizens was then naturally mobilised in this context against the December 1962 Italian nationalisation law. As a matter of fact, Stendardi, who had been adjunct professor at the private Milanese business school la Bocconi in the 1950s and was at the time an active member of the Italian liberal party in Milan[20], was highly critical of the ongoing process of nationalisation in Italy. In an article published in late 1962, Stendardi argued that nationalisation was both unconstitutional and contrary to the EC treaties and that the most likely legal consequences of these violations would bel a preliminary ruling before the European Court of Justice. It was therefore as a natural continuation of both their professional litigation know-how and their political commitments that the two of them tried a test-case (Flaminio Costa was both the plaintiff and his own lawyer in this case) asking a Milanese Giudice Conciliatore for a preliminary ruling before the ECJ (and the Constitutional Court) on the legality of ENEL's nationalisation. In a nutshell, the two cause lawyers argued two things. First of all the prevalence of EC law over the posterior Italian nationalisation bill; second, the fact that individuals could solicit the Court on the ground that the obligation of consulting the European Commission before engaging into the nationalisation process (Articles 93 and 102 of the EEC Treaty), an obligation breached by the Italian government, was not just politically but also legally binding and justiciable. Hence, they tested an extensive interpretation of the scope of direct effect that would have enabled individuals to ask for the legal implementation of the most political part of the treaties (EC political process).

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[18] G. Stendardi, I rapporti tra gli ordinamenti giuridici italiani e le Comunità europee (Giuffrè, 1958).
[19] Ibid.
[20] The "Partito liberale italiano" a small right-wing party closed to corporate interests had gained an unprec-edented momentum at the time in Milan (around 20% in 1963–1964 elections) actively campaigning against the politics of the centre-left-wing government and, particularly, its nationalisation policies. Professor Giangaleazzo Stendardi was on the party's list at the municipal elections in Milan in 1963 and eventually entered the municipal council in 1969. See M. Emanuelli, Accade a Milano 1945–2002

The ruling of the International Criminal Court (ICC) in the Costa v. ENEL case was considered by many to be a predictable defeat for Stendardi. From a legal point of view, the ICC adopted a dualist conception of the relationship between EU law and Italian law, in line with the majority of Italian international scholars[21]. The Court affirmed the precedence of successive national statutes over EU law, a result that even a proponent of federalism like Nicola Catalano had predicted in his academic writings[22]. Politically, the issue of the repeal of the ENEL statute, which was linked to the Italian Socialist Party's support for the Fanfani government[23], was too high a stakes for the ICC. The Court, established only a few years earlier and operating in a hostile environment, had hitherto focused primarily on the removal of fascist legislation[24], rather than on judicial review against the majority. Therefore, by adopting the theory of lex posterior, the ICC sought to anticipate the decision of the European Court of Justice by affirming the internal legality of the ENEL Statute regardless of whether it complied with the EEC Treaty according to the Luxembourg courts. However, the ICC did not declare inadmissible the referral to the Giudice Conciliatore as requested by some parties. On the contrary, the Italian judges used the Costa v. ENEL case to assert their authority in reviewing nationalisation statutes, relying on the criterion of the 'overriding general interest' established by the Italian Constitution. In addition, the Court addressed the issue of the constitutionality of the EEC Statute, endorsing the 'permissive' reading of Article 11 of the Italian Constitution proposed by the President of the Court Gaspare Ambrosini during the parliamentary work for the ratification of the ECSC Treaty[25]. However, the ICC ruling in the Costa v. ENEL case caused concern in the European Economic Community (EEC). For the Commission's legal service, it represented an existential threat to the EEC, as it created a permanent imbalance between those member states that had accepted internal primacy and those that had not.[26] Moreover, it seemed that the ICC ruling emptied the preliminary ruling procedure of its meaning, at least for the Italian courts. If the Italian courts were required to apply domestic law independently of conflicting EU law, what was the point of a ruling on the interpretation or validity of the latter?[27] It was perhaps for these reasons that even the president

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[21] See D. Anzilotti, Corso di diritto internazionale (1955); G. Morelli, Nozioni di diritto internazionale (1958), R. Monaco, Manuale di diritto internazionale pubblico (1960); but see R. Quadri, Diritto internazionale pubblico (1963).
[22] See N. Catalano, La Comunità economica europea e l'Euratom (1957).
[23] The Fanfani I government was the ninth executive of the Italian Republic, the third of the second legislature. The government was in office from 19 January to 10 February 1954, a total of just 22 days, having been refused a vote of confidence by parliament. It was the shortest government in the Italian Republic and the second shortest in the history of Italy after the Tittoni government.
[24] it was only until 1955 that the Italian Parliament appointed the final five justices needed to complete the membership of the ICC, thus effect- ively enabling it to carry out judicial review of legislation.
[25] G. Ambrosini and G. Quarello (Christian Democrats), Italian House of Representatives, Industry and Foreign Affairs Committees, Majority Report on Bill of 15 March 1952, no. 1822, for the Ratification and Execution of the Paris Treaties, 18 April 1951.
[26] See Rasmussen, 'From Costa v ENEL to the Treaties of Rome.
[27] See de Witte, 'Retour à Costa: La primauté du droit communautaire à la lumière du droit international', Revue trimestrelle de droit européen (1984)

of the European Court of Justice (ECJ), Andreas Matthias Donner[28], took the liberty of criticising the 'antiquated theory' behind the ICC ruling at a conference in March 1964, when the Costa v. ENEL case was still pending at the ECJ. Stendardi reiterated his arguments on the unconstitutionality of the ENEL Statute and its incompatibility with the EEC Treaty, but mentioned the concept of "decentralised primacy", arguing that the inconsistency with Community law would render the ENEL Statute unenforceable even without a previous declaration of unconstitutionality by the ICC. In summary, the ICC's ruling in Costa v. ENEL was a defeat predicted by many. From a legal point of view, the Court adopted a dualist view of the relationship between Community law and Italian law, affirming the precedence of subsequent national statutes over Community law. Politically, the question of repealing ENEL's statute was too high a stakes for the ICC, which was operating in a hostile context and had so far focused on other objectives. Nevertheless, the Court recognised its authority to review nationalisation statutes on the basis of the 'general interest' and addressed the issue of the constitutionality of the EEC Statute. However, the ruling caused concern in the EEC and seemed to render the preliminary ruling procedure meaningless. Stendardi continued to argue the unconstitutionality of the ENEL Statute, but also suggested its inapplicability based on the concept of "decentralised primacy".[29]

[28] A.M. Donner, Le role de la court di justice dans l'elaboration du droit européen (1964).
[29] Giudice Conciliatore of Milan (Fabbri), Case 1907/63, Costa v. ENEL, Brief on behalf of Flaminio Costa, 15 November 1963

CHAPTER 2

Costa-Enel: The Evolution of Judicial Perspectives on European Integration

The courts started from two opposite assumptions, in Luxembourg just over a year earlier they had arrived at a 'magic formula' in Van Gend en Loos i.e. a suis generis order involving the institutions, the member states, but also individual individuals. In that case we find an existential problem for judges, i.e. they cannot set out to assess whether or not the state had violated European law. In fact, the judges went further and said that behind the obligations of states there is also a right of individuals. Professor Tesauro[30] therefore points out how the legal role of individuals is added to the system as a whole, thus not only the obligations of states but the rights of individuals to have those obligations fulfilled.[31] In a certain sense, we find continuity in Costa v Enel on the part of the Court of Justice, something we do not find in the Constitutional Court, also because the Italian system was based on a defective constitutional coverage. It only covered the generally recognised rules of international law, not even treaties or Community treaties, which were considered important and special but lacked constitutional coverage. In fact, in the immediate jurisprudence that developed behind Article 11 (which concerned limitations of sovereignty), it was ruled out that treaties including EU treaties were covered at the constitutional level, thus remaining an ordinary law of adaptation. Already in the 1960s, the court realised this problem, but made no objection. The page on Costa ENEL by the Constitutional Court is very sparse, almost as if the judges wanted to 'run away from this critical issue'[32]. The court, therefore, had to note that Article 11 left the classification of sources unchanged, leaving the adaptation law as an ordinary law. Already in the Acciaierie San Michele case, however, there was more attention paid to this criticality that was there for all to see. Naturally, with the ruling of the Court of Justice in both Costa Enel and Acciaierie San Michele, where the dichotomy between the Constitutional Court and the Court of Justice was reproduced, there was talk of a violation of Community public order. It is evident, however, that there were continual concessions because even

[30] Giuseppe Tesauro (Naples, 15 November 1942 - Naples, 6 July 2021) was an Italian jurist, judge of the Constitutional Court from 2005 to 9 November 2014 and its president from 30 July 2014 to 9 November 2014. From 31 March 2016 to 25 June 2018, he was president of Banca Carige.
[31] See, Conference "Costa / Enel. Corte costituzionale e Corte di giustizia a confronto, cinquant anni dopo" Aula Magna "Emilio Alessandrini-Guido Galli", Palazzo di Giustizia Milan, 30 October 2014.
[32] Ibid. Intervention by Professor Tesauro.

the Court of Justice, which had made primacy as an inherent force of Community law a warhorse, had on some occasions even gone so far as to weaken the severity of this scenario.

Finally, primacy has also arrived in the consideration of the Constitutional Court, but it has arrived in a different way, without the anchorage to community law, leaving an anchorage to the national level, delegating competences, making a department of normative competences so that when the normative competence is of the community, the court of justice will take a step backwards, taking the question away from the constitutional point of view, leaving it as a question of competences. So, from a practical point of view and with mutual satisfaction to a common point.

In Costa Enel the most extraordinary thing was the request for a preliminary referral by the private parties, it was in fact opposed by both ENEL and the state lawyers with the very simple argument, saying that the Constitutional Court was not a jurisdictional body, but in absolute terms, not only under the terms of the treaty; taking up the debate in the Constituent Assembly where it was already being discussed whether it was a jurisdictional body or not. And so the court did not specifically answer on the point but said that to get to that it had to solve the problem of the interpretation of Article 11. Remarkably, in those years there was an attempt to convince the Constitutional Court to make a preliminary reference, an attempt that was repeated very few times afterwards. The dialogue between the courts also on the primacy has evolved from a long-distance dialogue, which was also of interest to the doctrine, to a constructive and formal dialogue, which, however, from this constructive dialogue has an equal relevance to a discussion that has the primacy as its object and that of the counter-limits. In all the member states we find present and strong counter-limits to the application of European law, in Italy it was only in 1973 with the Frontini ruling[33] that we constructed them, doing so in a limited manner without infringing on the power of the Community primacy, relying on fundamental rights and the principles of the constitutional order over this primacy, a fact that is more theoretical than practical. On fundamental rights, a sort of "communitarisation of counter-limits"[34] then took place. It is spoken of with Article 4 and Article 67 of the Treaty, and it is spoken of with Article 53 of the ECHR, opening up an apparently serene and simple scenario that can, however, give rise to criticism by preaching the level of greater protection wherever it lurks, smoothing the corners of the counter-limits. With the Costa Enel case, therefore, we can see a "factor of consolidation of the legal system as regards fundamental rights, so the counter-limit becomes a factor of progress"[35].

[33] See Corte di Cassazione, judgment No 183 of 18 December 1973, order issued on 21 April 1972 by the Court of Turin in civil proceedings between Frontini Franco Renato and others and the Ministry of Finance and others.
[34] See, Conference "Costa / Enel. Corte costituzionale e Corte di giustizia a confronto, cinquant anni dopo" Aula Magna "Emilio Alessandrini-Guido Galli", Palazzo di Giustizia Milan, 30 October 2014, intervention by Professor Tesauro.
[35] Ibid.

Professor Tesauro also mentions the Kadi case[36], which represents a remarkable progress in the consideration and evaluation of certain fundamental values that had previously remained in the shadows, we can see how the community is taking on values and therefore counter-limits that it did not evaluate before, showing a sign of progress. The professor continues: “The bitterness of the beginning of the conflict in the Costa Enel case is the only thing that makes the system as a whole grow”[37], it is in fact a dialogue that does not necessarily have to start from assonant ideas, nor does it have to continue with the same ideas; the diversity of opinions and positions are the richness of a legal system not its poverty.

It is interesting to underline the point of view of Prof. Antonio Tizzano, Judge of the European Court of Justice. He reminds us that as far as Italy is concerned, with the Granital jurisprudence[38], which challenges the counter-limits, not in a generic way, having the possibility to oppose any constitutional norm, but as fundamental principles of the national constitutional order. We can therefore consider the words of the Italian Constitutional Court as a model, having devised such a relationship with the system of counter-limits. Italy, as a court of justice, has never pretended to construct relations in hierarchical terms, of course, having confirmed that there is a primacy that also encompasses the constitutional aspect; in fact, for consistency being courts of that union respects the primacy of the European order. At the same time, however, Italy and the member states have never claimed to construct the law exclusively in this way, being convinced of the need for dialogue with the European community, having also written it into our case law. In fact, the court has always taken on the constitutional identity of the supreme values of the member states' legal systems, even disapplying fundamental principles of the treaty in the name of respecting the fundamental constitutional values of a member state. We are now witnessing a jurisprudence that has become consistent concerning freedoms of movement that have been sacrificed in the name of constitutional values assumed to be fundamental to a state of the Union. "The limitations are dictated by the will of the states to build a common system together, it is difficult for real rifts to be created as the common European constitutional heritage is an untouchable fundamental core of all states and must be protected"[39], as Italy did in the Kadi judgment in the face of international obligations from the United Nations. Prof. Tizzano also reminds us that it was written in one of the declarations annexed to the final act of the

[36] Kadi, European Court of Justice, Case C-402/05 P, September 3, 2008.
[37] See, Conference "Costa / Enel. Corte costituzionale e Corte di giustizia a confronto, cinquant anni dopo" Aula Magna "Emilio Alessandrini-Guido Galli", Palazzo di Giustizia Milan, 30 October 2014, intervention by Professor Tesauro.
[38] Judgment of the Court of Cassation, No 170, 5 June 1984, Court of Genoa, in civil proceedings between S.p.A. Granital and Amministrazione delle Finanze dello Stato.
[39] See, Conference "Costa / Enel. Corte costituzionale e Corte di giustizia a confronto, cinquant anni dopo" Aula Magna "Emilio Alessandrini-Guido Galli", Palazzo di Giustizia Milan, 30 October 2014, intervention by Antonio Tizzano.

intergovernmental conference that adopted the Lisbon Treaty, declaration number 17[40], which contains many key passages of the Costa Enel ruling, stressing the importance of this judgment.

- Clashing Perspectives: The Constitutional Court vs. the Court of Justice on the Nature and Application of Community Law

Another aspect of the Costa Enel ruling that should be emphasised is that for the first time the Constitutional Court clearly states that Article 11 allows, calling it a permissive norm, the Italian state to enter into relations with the nascent Europe by creating a treaty creating a system, without having to amend the constitution. Prof. Antonio Onida[41] intervenes on this topic and once again dwells on the value of Article 11; in fact, it already confers constitutional foundation by giving cessions of sovereignty, i.e. the state is not entirely sovereign but certifies the presence of other authorities, of other external mechanisms of legal production to which the state has ceded part of its space. It is no coincidence that Italy has never had the need for European clauses included in its constitution to adhere to treaties, while there are other states that felt that no further steps could be taken on the road to integration without amending their own internal constitutions. Italy, on the other hand, has always considered Article 11 sufficient as a constitutional basis for the realisation, through the treaties, of the cessions of sovereignty. Moreover, as we have already mentioned above, a dualistic premise can be deduced from the ruling, the existence therefore of two distinct legal systems that operate separately; later, the Italian Constitutional Court drew further considerations from this, establishing that the executive rules of the treaties, although being ordinary laws, as stated in ruling 14/74, are not subject to the normal constitutional legitimacy review of all other laws, therefore it immediately differentiated the regime of the executive laws of the treaties from the regime of ordinary laws. In judgement no. 98 of 1965[42], the judges of the court in Torino had raised a question of constitutionality on the executive rules of the ECSC treaty, saying that the new rules of the treaty brought major innovations that could only be introduced by amendment of the constitutional law, thus overturning Costa Enel's premise.

The Constitutional Court declared the need for a constitutional amendment unfounded, stating that the ECSC Treaty did not clash with constitutional premises. Apparently lacking in this first phase of

[40] Treaty of Lisbon , OJ C 306, 17.12.2007, final act of the Intergovernmental Conference; entry into force on 1 December 2009.
[41] Valerio Onida (Milan, 30 March 1936 - Milan, 14 May 2022) was an Italian constitutionalist, constitutional judge from 1996 to 2005, President of the Constitutional Court from 22 September 2004 to 30 January 2005 and professor emeritus of constitutional law at the University of Milan.
[42] See Judgment of Court of Cassation, n. 98, 25 June 1965, Court of Turin in civil proceedings between Acciaierie San Michele and the European Coal and Steel Community.

the jurisprudence was a clear affirmation of primacy, but according to Professor Onida: "the premises are all there because it is obvious that if there is another system that expands without being subject to the limits of the constraints of the national system, it means that this system will aspire to apply"[43], in fact very soon the Court will come to say clearly that European Community law applies directly. EEC 83/73[44] reiterates the distinction between the two systems, which are, however, coordinated with each other, and that Community law "is an immediate source of rights and obligations both for states and for their citizens" thus affirming the direct effect of Community law, "without the need for reproductive, supplementary or executive state measures". It can be seen how this construction, based on Article 11 and the cession of sovereignty, results in the affirmation of a direct effect of Community law, thus rendering unfounded the doubts that the judges had raised with regard to the conformity of the law implementing the treaties, considered as an ordinary law, with the fundamental principles of the constitution. Moreover, this judgment affirms the counter-limit by saying "it must be excluded that these limitations of sovereignty, concretely specified in the Treaty of Rome, may in any case entail for the organs of the EEC an inadmissible power to violate the fundamental principles of the constitutional order of the member states or the inalienable rights of the human person, if such an aberrant interpretation were ever to be given to Article 189 of the Treaty, the guarantee of constitutional review by this court on the continued compatibility of the treaty with those fundamental principles would always be ensured in such a hypothesis", we thus see how the counter-limit is affirmed in a theoretical manner. However, it is also important to highlight the Italian Constitutional Court's sentence 232 of 1975[45], which clearly reaffirms these principles: Article 11 as the foundation, the distinction between the two legal systems and "the direct obligatory efficacy of the acts of Community regulatory treaties vis-à-vis Italian citizens without the need for revision laws"[46]; it also denies that the Italian judge can disapply the incompatible internal law but states that instead questions of constitutionality should be raised, admitting primacy in the form in which it is realised in superior sources vis-à-vis an inferior source. This judgment recalls "the unconstitutionality of internal rules reproducing those expressed by the treaties, denying the possibility for the domestic legislator to occupy and make Community obligations its own by means of national legislative acts, because an internal rule reproducing such obligations is in itself contrary to the concept of cession of

[43] See, Conference "Costa / Enel. Corte costituzionale e Corte di giustizia a confronto, cinquant anni dopo" Aula Magna "Emilio Alessandrini-Guido Galli", Palazzo di Giustizia Milan, 30 October 2014, intervention by Valerio Onida.
[44] Council Directive 83/73/EEC of the European Economic Community, 1988.
[45] See Judgment of Court of Cassation, n. 232, 1975, Supreme Court of Cassation - unified civil sections - and on 10 April 1975 by the Court of Appeal of Rome in four civil proceedings between the company Industrie chimiche Italia centrale (I.c.I.c.) and the Ministry of Foreign Trade.
[46] Ibid.

sovereignty"[47]. Then comes the European Court of Justice's Simmental ruling[48], which undoubtedly allows us to go a step further by stating that a judge not only can but must apply Community law and in the event that he is faced with a conflicting domestic rule, he must not ignore the domestic law and deny it any effectiveness without the need to intervene with other proceedings.

We have two diametrically opposed positions, the first taken by the Constitutional Court in its ruling of 7 March 1964 and the other by the Community Court of Justice in its ruling of 15 July 1964. On the one hand, the first was based on a traditional and nationalistic reading of the founding treaties of the community, seeing those treaties as a set of rights and obligations of a horizontal nature, binding on the member states but operating in a society that coincided with the international society, i.e. of states and not of states and individuals. It is true that the Constitutional Court marked an important point of openness, which was, however, immediately denied by the fact that the interpretation of Article 11, which opened the way for the internal execution of the treaties, was made by denying that a position of Community law introduced through the law of execution into the domestic legal system could derive from that rule, capable of providing Community law with a special coverage against later, possibly conflicting, internal rules. On this point the Constitutional Court limited itself to saying that the empire of subsequent laws conflicting with community norms remains firm, affirming a reading of the community phenomenon of a more traditionally internationalist character. This is contrasted by the position of the Court of Justice, which was well aware of the Constitutional Court's ruling, cited by Advocate General Lagrange in his conclusions[49], rebutting every point, affirming its own original view of the Community phenomenon as something that has nothing to do with traditional public international law, even though it finds its formal basis in the latter, since it is in any case a treaty between nations. At the same time, it undoubtedly underlines the character of absolute originality of the Community phenomenon and of treaties. The originality is inherent first and foremost in the clear differentiation of the social basis; in fact, we are no longer faced with a society of states expressing the Community order, but we are faced with a society that brings together Community institutions, states and their organs, and above all individuals. Hence, an opposite reading to that of the Constitutional Court, as the Prof. Riccardo Luzzatto[50] reminds us: “characterised by a series of principles that derive from an original position vis-à-vis a differentiated social base and that finds its ultimate foundation in certain pivotal aspects: on the one hand the principle of direct

[47] See, Conference "Costa / Enel. Corte costituzionale e Corte di giustizia a confronto, cinquant anni dopo" Aula Magna "Emilio Alessandrini-Guido Galli", Palazzo di Giustizia Milan, 30 October 2014, intervention by Valerio Onida
[48] Simmenthal SpA v. Italian Minister of Finance, European Court of Justice, Case C-106/77, March 9, 1978.
[49] Opinion of Advocate General Lagrange of 25 June 1964, Flaminio Costa v. E.N.E.L., Giudice conciliatore di Milano, Italy, Case 6-64.
[50] Professor of International Law at various Italian universities from 1980 until 2010 at the University of Milan, member of the Council of the Milan Chamber of National and International Arbitration (1993-2005).

applicability and on the other the principle of the primacy of Community law"[51]. The professor then points out how the Costa Enel case shows us that, starting from a radical distinction of viewpoints and the opposition of legal consequences that the two judgments demonstrated, such frictions can be overcome pragmatically, through successive approaches such as those produced over time between the positions of the two courts. The Professor recalls what caused the dimetrically opposed starting position of the two courts. Indeed, from a political point of view in 1964, the phenomenon of European integration was not well received and accepted within Italian society and the Italian legal system. Within the Italian parliament, the extremes, both right and left, were still fiercely opposed to European community integration. This fact cannot have failed to explain its weight and effect to the court, which in 1964 showed its willingness to accept it. At the same time, years of enthusiasm for the construction of the European Community edifice were being experienced at the Community level; the Court of Justice showed that it wanted to support this progress of European unification in legal terms with all the means at its disposal. However, it created a system that is extremely sophisticated and advanced in terms of integration, going even further than in some federal-type systems. In fact, not in all federal states can the relationship between superior norms, belonging precisely to the federal order, and the norms of the member states be guaranteed a superiority in favour of the federal norms such as that guaranteed by the case law of the Court of Justice in favour of community norms.

[51]See, Conference "Costa / Enel. Corte costituzionale e Corte di giustizia a confronto, cinquant anni dopo" Aula Magna "Emilio Alessandrini-Guido Galli", Palazzo di Giustizia Milan, 30 October 2014, intervention by Riccardo Luzzatto.

CHAPTER 3

The ambiguity of the Taricco case to a broader scope: constitutional identity as a limitation of the supremacy of the European legal system

Another much-discussed example of jurisprudence is the Taricco case. Order No. 24 of 26 January 2017 is one of the opinions that changed the history of European jurisprudential integration, in which the Constitutional Court referred a preliminary question to the Court of Justice on the interpretation to be given to the Court's Taricco ruling. According to what happened in the case, the Court of Justice sent the national court the obligation to disapply the rules limiting the temporal effects that interrupt the statute of limitations in certain terms. This ruling caused the judge of the Court of Cassation to disapply the statute of limitations rules in a court of legitimacy in which the time limitation had already expired, thus following the request of the judge of the Court of Justice. In addition, the judges of merit and legitimacy entrusted the Constitutional Court with the task of assessing the compatibility of the findings in the Taricco case with the respect of constitutional principles on the subject of the reservation of the law and the prohibition of retroactivity in criminal matters and therefore through the principle of counter-limits by enforcing it on the content considered binding of the ruling. The Taricco ruling, however, was considered to be contrary from both points of view with the principles of constitutional criminal law, deriving from that of legality under Article 25(2) of the Constitution. This decision imposes an obligation of retroactive disapplication of statutes of limitation, which was justified by the fact that these rules are procedural and not substantive in nature. This argument was criticised because it excludes the possibility of applying the fundamental rights enshrined in the Charter of Fundamental Rights and the ECHR to cases of prescription of crimes. In essence, the Taricco judgment was seen as an affirmation of the principle of legality that limited the respect of citizens' fundamental rights. on the other hand, attributing direct effects to Article 325 TFEU and imputing an immediately perceptive scope to it. However, this has entailed the risk that national courts will have to identify the criminal offence themselves, especially in relation to the requirement of the 'seriousness' of the fraud and the 'considerable number of cases' in which the violation occurs. This risk jeopardises the principle of determinacy of criminal offences.

At this point, the Constitutional Court decided, displaying great institutional fairness, to make the third preliminary reference in its history, referring the request to the Court of Justice for clarification regarding the scope of its previous ruling, so as to understand how to interpret it by comparing it with the supreme principles we mentioned earlier. In doing so, we understand how the Constitutional Court's decision should not be interpreted as a sign of submission to the Court of Justice of the European Union, nor as a waiver of its own powers and duties. On the contrary, the ruling moves on delicate ground, trying to balance respect for the role of the European Court with the defence of the prerogatives of the Italian Constitutional Court within the national legal system. It is only by carefully observing the complexity of the judgment and its implications that it is possible to fully understand the significance of this balance. The Court's delicate role arises precisely from the difficult nature of the Taricco ruling, which presents certain problems of interpretation of the European legal system, especially with regard to the national court's disapplication of a rule that would violate the constitutional principle of legality in criminal matters.

After examining the difficulties that would arise from adopting a literal reading of the Taricco judgment and the possible implications in criminal matters, the Constitutional Court expressed its opinion on the reasons why it is important to avoid disapplying the judgment. According to the Court, respect for the fundamental principles of the Italian Constitution is an integral part of the constitutional identity of the Member States of the European Union. Therefore, preventing the disapplication of the Taricco judgment is of fundamental importance for maintaining the balance and cohesion of the European legal system. In fact, the Constitutional Court has expressed itself by defining as crucial not the uniformity of the legal system but instead loyal cooperation and respect for a "minimal but necessary rate of diversity in order to preserve the national identity inherent in the fundamental structure of the member state"[52].

The contribution of this judgment in the jurisprudential system comes from the work of reconstructing and clarifying the links and relations between the courts and between the legal systems, which, however, must not sever their derivation links with the traditional principles of national constitutions.

Particularly significant is the repeated reference to the responsibility of the Luxembourg courts in identifying the scope of Union law and defining its content, including Article 325 TFEU. This shows that what is at issue is not the primacy of the supranational legal system, with respect to which the

[52] Court of Cassazione, Order No. 24, 2017

Constitutional Court acts independently, but rather the supremacy of the national legal system (and its constitutional judge) in determining whether it entails a violation of its fundamental principles.

It is a claim of supremacy, therefore, that does not stem from a claim to replace the EU court, but rather from the search for a balance between the autonomy of EU law and its consistency with the values and ideals of national constitutions. In other words, the idea is to foster the emergence of devices within EU law capable of ensuring that the use of limitation controls at the national level does not affect the paradigm of the uniform application of European law, but on the contrary contributes to strengthening the continuity of values, in particular with regard to criminal law guarantees, between the different legal systems.The dangerous consequences of such a cultural orientation, common to other areas of law, are exacerbated in criminal matters, where the individual's freedom of self-determination and the need for equal treatment would require more caution from the judiciary.We can, however, see how the Court of Justice's intervention stems from the Italian state's continuous failure to protect the Union's finances and also from the judge's request for a preliminary reference; at this point, however, the disapplication solution put forward by the Court of Justice, as already anticipated based on the attribution to Article 325 TFEU of a direct effect that is far from incontrovertible, although admitted by a part of the doctrine, had caused some problems of retroactivity to the party at fault.Following this perspective we see how our Constitutional Court reaffirms its respect for the principle of the primacy of Union law, with the consequent "renunciation of spaces of sovereignty, even if defined by constitutional norms"[53]; it recognises that it is for the Court of Justice alone to interpret Union law and thus, as far as it is of interest here, the "meaning to be attributed to Art. 325 of the TFEU on the basis of the judgment in Taricco"[54]; it admits without hesitation "the liability of the Italian Republic for having failed to provide an effective remedy against serious tax fraud to the detriment of the Union's financial interests or in breach of the principle of assimilation, and in particular for having temporally compressed the effect of acts interrupting the limitation period"[55]. The recent order focuses mainly on the corollaries of the reservation of law and on the predictability and determinacy of the legal system, touching only incidentally on the problem arising from the retroactivity of the disapplication of the maximum limits to the increase of limitation periods. In the context of civil law systems, these corollaries are also indispensable in the procedural sphere and the Italian State, under Article 4.2 of the Treaty on European Union, is entitled to safeguard them. The Consulta points out the weaknesses of the Taricco judgment, in which the judge assumed

[53] Case C-105/14, Taricco and Others, Judgment of the Court (Grand Chamber) of 8 September 2015, ECLI:EU:C:2015:555, par. 6, paragraph 4.
[54] Ibid, par. 3, last paragraph.
[55] Ibid, par. 7, paragraph 6.

the role of a legislator capable of sanctioning ex post facto the continuation of criminal proceedings otherwise destined to be time-barred, entailing excessive discretion and unpredictability. The Constitutional Court held that this could not be accepted and that the “unmentionable” counter-limits had to be challenged.

Ultimately, in Order no. 24 of 2017, the preliminary reference, i.e. the most cooperative and most traditionally expressive instrument, if not even of the subalternity, at least of the "non-superiority" with respect to the Court of Justice of national judges, be they ordinary or constitutional, is used to send a message of "inverted primacy": European law must be read in the light of the inalienable core of constitutionality; and this core is quite extensive, well beyond the "common constitutional traditions", because it also protects the "constitutional identity" as a whole.

In essence, Taricco I ruled that the Italian statute of limitations for tax fraud was contrary to EU law, while Taricco II rejected the CJEU's jurisprudence and argued that the Italian Constitutional Court was not obliged to apply it. This second ruling sparked a debate on the relationship between national and European courts, national legal sovereignty and European integration. However, it is important to note that the Taricco II ruling had a limited effect on Italian law, as the Italian Parliament subsequently amended the statute of limitations for tax fraud to bring it into line with EU law.

According to Prof. Ludovico Mazzarolli's[56] analysis[57], Article 189(1) of the EEC Treaty provides that for the absorption of their tasks, the Council and the Commission shall make regulations, which regulations shall have the characteristics of general and compulsory application of all their elements and thus direct applicability in each of the member states. The relationship between regulations and domestic law immediately arises, both for the member states and for their citizens. The Constitutional Court began to address the problem immediately, but with some initial hesitation. In the first judgement, judgement 14 of 1964, the court placed domestic law and EU regulations on the same level; in this case, in order to resolve any possible antinomies between the sources, the court argues that the hierarchical or chronological criterion of the arrangement of the sources must be applied. Ten

[56] Professor of Constitutional Law at the University of Udine, Avvocato cassazionista - Foro di Padova, President of the Conservatorio J. Tomadini di Udine, Full Member of the Istituto Veneto di Scienze Lettere ed Arti, Member of the Associazione italiana dei costituzionalisti (A.I.C.), Member of the Associazione italiana dei professori di Diritto amministrativo (A. I.P.D.A.), Member of the Italian Society of Administrative Lawyers (S.I.A.A.), Member of the European Law Institute (E.L.I.), Member of the International Institute of European Studies 'Antonio Rosmini', Member of the Scientific Committee of the 'Vezio Crisafulli' Laboratory, Co-Director of the Legal Studies Series of the Institute of Regional Legal Studies (I.s.g.re.)

[57] Conference 'Criminal legality and the 'primacy' of EU law. The Taricco case', University of Udine, 7 April 2017, intervention of Ludovico Mazzarolli.

years later, in Judgment 183 of 1973[58], the Court changes its mind and treats the EEC regulation as if it were a source of constitutional rank, and thus arrives at a twofold possibility of resolving any conflict with domestic legislation, depending on whether it follows or precedes the EEC regulation. This regulation acts in the legal system in the same way as sources of constitutional rank, given the indirect reference that Article 11[59] of the Constitution makes; therefore, the law that conflicts with the regulation if it precedes it will be repealed by the regulation, if it precedes it will eventually be declared unconstitutional by the Constitutional Court.

The pronouncement that remains definitive even today is the 170 of 1984, the Granital[60] judgement, where the court radically changes its position, in which the relationship between regulations of internal law and regulations of community law is no longer to be imagined by applying the hierarchical criterion because it does not focus on questions of the strength of the sources; instead, the criterion of competence is applied, which defines separate spheres and spheres of intervention but both directly designated by the same constitution. The court says that the two systems, the domestic and the Community, are configured as autonomous and distinct, even though they are coordinated according to a division of competence established by the Treaty. That is why since 1984 the instrument of disapplication has been used. The law, when contrary to the treaty, is not unlawful because the areas in which the domestic law and the EU regulation act are separate areas. The contrary law therefore no longer applies because, in relation to a given case in which hypothetically both the law and the regulation are applicable, the latter will prevail over the domestic law, by virtue of the provisions of Article 11 of the Italian Constitution. We thus see an evolution of the jurisprudence of the Constitutional Court that in twenty years has come to define today's position.

A problem arises when the contrast between a regulation and the law is not actually a contrast with the ordinary law but is a contrast that conceals a problem of antinomy between the regulation and internal constitutional principles. The court in 1984 says: "the observations made up to this point do not imply that the entire area of relations between community law and domestic law is removed from the jurisdiction of the Constitutional Court"[61] we understand how this court has already warned that the law implementing the treaty may be subject to the constitutional court's scrutiny, with reference

[58] Court of Cassation, Judgment 183 of 1973, made the Treaty establishing the European Economic Community executive in Italy.
[59] Costitution of the Italian Republic, article 11: “Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes. Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends”.
[60] Judgment of the Court of Cassation, No 170, 5 June 1984, Court of Genoa, in civil proceedings between S.p.A. Granital and Amministrazione delle Finanze dello Stato.
[61] Ibid.

to fundamental principles of our constitutional order and the inalienable rights of the human person. Again the Court: “in the hypothesis contemplated as improbable in the 1973 judgment”[62].

In fact in 1973[63] this improbable hypothesis, but at the same time contemplated by the Court, was declined as follows: “it is just the case to add that on the basis of Article 11 of the Constitution limitations of sovereignty were allowed only for the achievement of the purposes indicated therein, and it must therefore be excluded that such limitations concretely specified in the Treaty of Rome could in any case entail for the organs of the EEC an inadmissible power to violate the fundamental principles of our national order”[64].

To the so-called primacy of EEC law and the case law of the Court of Luxembourg, according to Prof. Ludovico Mazzarolli: "we arrive at it in an approximate manner", because everything derives from the new Article 117 paragraph 1 of the Italian constitution, as dictated by Constitutional Law 3 of 2001 put in place for quite different reasons, not put in place to deal with the relationship between the state and the European Union, yet Article 117 was rewritten as follows in its first paragraph: "legislative power exercised by the state and the regions in compliance with the constitution as well as the constraints deriving from the community order and international obligations". So, for the first time we find the presence of the European Union within the Italian constitution, Italy being one of the last countries, which had no trace in it of something it adhered to and even gave up part of its sovereignty. So that amendment was made "in a hurry and not well, with a slim majority, causing problems in reading the three limits, as if they were three limits all placed on the same level". From this way of reading the three limits came the twin[65] judgments of 2007, 348[66] and 349[67], which basically ended up saying that: "non-compliance with the ECHR, as interpreted by the Strasbourg court, entails constitutional illegitimacy of the domestic legislation for violation of international obligations and therefore of Article 117 of the constitution, Article 117 being legitimated to allow for the verification of whether the norm of the convention as interpreted by its court possibly conflicts

[62] Ibid.
[63] Court of Cassation, Judgment 183 of 1973, (ECLI:IT:COST:1973:183) made the Treaty establishing the European Economic Community executive in Italy.
[64] Ibid.
[65] Ugo De Siervo: “In judgments 348 and 349 of 2007, the Constitutional Court defined the relationship between ordinary legislation and the constraints arising from international agreements implemented by law in innovative terms compared to the past. These two judgments, although they refer to the entire area of legal constraints arising from international agreements, apply specifically to the relationship between primary sources and the constraints arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as they originated precisely from procedural events that referred to the problem of compliance with certain principles of this Convention, as applied by a series of judgments of the European Court of Human Rights”. In “Recent developments in the case law of the Constitutional Court in relation to the case law of the European Court of Human Rights”.
[66] Court of Cassation, Judgment 348 of 2007, (ECLI:IT:COST:2007:348), Judge-Rapporteur Gaetano Silvestri.
[67] Court of Cassation, Judgment 349 of 2007, (ECLI:IT:COST:2007:349), President-Editor: Tesauro.

with other constitutional norms"[68] emphasising that the court's convention is defined as a norm placed at a sub-constitutional level. The conclusion of these rulings is that the convention norms are interposed norms and belong to the category of sources, violating which one ends up violating a constitutional parameter, in this case 117 paragraph 2.

We thus see the consolidation of what Giovanni Piccirilli[69] calls, taking up Besselink's expression, a "composite" Constitution, that is, "an institutional and procedural architecture in which there are properly European sources and national sources, which refer reciprocally to each other and, indeed, presuppose each other" (pp. XV-XVI).

In the first part of Giovanni Piccirilli's book, the author goes further and dwells on the concept of reservation of the law, initially showing how a "granitic"[70] constitutional jurisprudence in accepting that acts having the force of law can regulate areas covered by the reservation of the law, as well as "the crisis of the guarantees of the legislative process"[71] which the Court has mostly refused to curb, now make certain readings of the function of the reservation of the law untenable. In particular, in the face of a constitutional jurisprudence that has understood the reservation of the law as a "reservation of normative level" and not as a "reservation of body"[72], it becomes difficult to defend readings of a guarantor type aimed at enhancing the function of protecting the individual from the arbitrariness of the executive power through the necessary intervention of Parliament.

Through the reservation of the law "the Constitution identifies those areas that in no way can be taken away not so much from this or that normative subject, but from the judge of those normative products, precisely identified in the Constitutional Court itself".[73] In this way, the guarantor aspect of the reservation of the law as a "framework within which the Court's function of formally guaranteeing the Constitution must necessarily take place"[74], as well as its positive aspect, understood as "the

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[68] Ibid.
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[70] Piccirilli, G. (2019). La “riserva di legge”: evoluzioni costituzionali, influenze sovrastatuali. 1–306. https://iris.luiss.it/handle/11385/185212, p. 50.
[71] Ibid, p. 75.
[72] Ibid, p. 40.
[73] Ibid, p. 87.
[74] Piccirilli, G. (2019). La “riserva di legge”: evoluzioni costituzionali, influenze sovrastatuali. 1–306. https://iris.luiss.it/handle/11385/185212, p. 88.

legislator's obligation not to deprive the Constitutional Court of the possibility of exercising its review on the point"[75], is enhanced in a new key.

In addition to the function of delimiting the "necessary perimeter of constitutional jurisdiction"[76], the author adds a second one, identified as the "protection of the joints of the legal system"[77] in the interaction between state and European Union law, "allowing the Court to maintain control over the supreme principles in those areas in which the internal legal system and European Union law overlap"[78].

The example of the Taricco case is brought in confirmation of this thesis, and, in particular, ruling no. 115/2018[79] that concludes the case. In the author's reading, the Court "supported the impossibility of application in the Italian legal system of the so-called 'Taricco rule' [...] in the light of the principle of determinacy as an integral part of the (supreme) principle of legality in criminal matters, referring to the need for certainty in that sphere which, in the Court's opinion, can only be ensured by a prior lex scripta"[80]: by which, the Court would have restored "a pre-1973 conception of the reservation of the law (at least in the criminal sphere), in the sense of making it impermeable to sources of European law"[81].

Of the two functions of the reservation of law identified in this first part of the book, I find particularly interesting the one that emphasises the de facto shift of the foundation of the institution from Parliament to the Constitutional Court, ensuring that in matters covered by the reservation of law the control of the constitutional judge cannot be excluded.

Prof. Piccirilli emphasises the existence of a "close interrelationship between the evolutionary dynamics of the reservation of law and those relating to European integration"[82], and, more specifically, that only "with the full recognition of the constitutional coverage" of Article 11 of the Constitution "was it possible to openly accept the incidence of European law itself" in matters covered by the reservation of law[83] , it is understandable that the author wants to elevate the role of the

[75] Ibid, p. 92.
[76] Ibid, p. 82.
[77] Ibid, p. 124.
[78] Ibid, p. 128.
[79] Court of Cassation, Judgment n. 115 of 2018 (ECLI:IT:COST:2018:115), President-Editor: Lattanzi.
[80] Piccirilli, G. (2019). La “riserva di legge”: evoluzioni costituzionali, influenze sovrastatuali. 1–306. https://iris.luiss.it/handle/11385/185212, p. 112.
[81] Ibid, p. 113.
[82] Ibid, p. 102.
[83] Piccirilli, G. (2019). La “riserva di legge”: evoluzioni costituzionali, influenze sovrastatuali. 1–306. https://iris.luiss.it/handle/11385/185212, p. 100.

reservation of law when he underlines the "protagonism (sometimes evident, sometimes more hidden) that the reservation of law has nonetheless had in the development of the relationship between the constitutional order and the supra-state dimension", to the point of making the reservation of law a "prerequisite for the activation of counter-limits, to protect those elements of intersection between legal systems that are fundamental rights"[84].

Here the debate is heated since many academics, as we have seen above, see Article 11 of the Constitution as the protagonist of the interaction between State and Union law; they consider the reservation of the law as one of those constitutional 'obstacles' that the constitutional judge had to overcome, appealing precisely to Article 11, to guarantee the primacy of European law, with the sole limit of the counter-limits, which can be activated regardless of the existence of a reservation of the law in the matter affected by European law. In the Taricco case, the Court has indeed elevated the reservation of the law in criminal matters (extended to include the regulation of limitation periods) to the rank of supreme principle of the system as a counter-limit; however, it would seem that the fact that a particular reservation of the law - that in criminal matters, which, as the author emphasises, enjoys a special position and protection among the reservations of law - can be qualified as a supreme principle of the legal system does not necessarily attribute to the institution of the reservation of the law as such the role of a hinge-institute in relations between the domestic legal system and the European legal system.

The reservation of the law is dealt with as a unitary institution, disregarding not only its various qualifications (absolute, relative, etc.), but also the specific subject matter reserved to the law, of the Taricco case, and of Judgment No. 230/2012[85], in which constitutional legality is confronted with conventional legality. Piccirilli's overall impression from reading the volume is that, if "supra-state influences" are added to the "constitutional evolutions", the capacity of the reservation of the law to limit, outside of the penal sphere, the free competition between sources in the regulation of a matter is rather weak, or at any rate has been strongly weakened over time: a constitutional jurisprudence that is very generous in accepting the intrusion of acts other than formal law into reserved matters is compounded by the tendency to be indifferent, in the eyes of the judges in Strasbourg and Luxembourg, as to the choice of source to which states have recourse in order to regulate a given matter.

[84] Ibid, p. 129.
[85] Court of Cassation, Judgment no. 230 of 2012 (ECLI:IT:COST:2012:230).

- Following the Taricco case, analysis of the Judgment No. 269/2017: a revolution in the 'double jeopardy' of the legislative system

By examining the Taricco case we gain valuable insights into the evolving dynamics of the reservation of law and the application of European Union law. The Court's ruling reinforces the notion that the reservation of law should maintain its autonomy from European legal sources, safeguarding the principle of determinacy and certainty in criminal matters. This signifies a restoration of the pre-1973 conception of the reservation of law, establishing it as an impermeable safeguard against EU legal influences. Notably, the reservation of law assumes a paramount role, becoming a prerequisite for activating counter-limits that protect fundamental rights in the realm of intersecting legal systems.

Conversely, we can analyse the Judgment No. 269/2017 that challenges the traditional notions of the legislative system's "double jeopardy." It raises questions regarding the compatibility of national legislation with EU law and the obligation of ordinary courts to address such concerns. The Court's clarifications regarding the distinction between directly effective provisions and conflicts between domestic and supranational rules without direct effect have sparked debate. This clarification led to discussions surrounding the limits and obligations of common courts in interpreting and applying EU law, particularly in reference to the principles outlined by the Court of Justice of the European Union.

By examining these two cases, we gain a comprehensive understanding of the intricate interplay between the reservation of law, the constitutional judge's role, and the application of EU law in the Italian legal system. While the Taricco case emphasizes the preeminence of the reservation of law in criminal matters, Judgment No. 269/2017 challenges the obligations of ordinary courts in addressing EU law conflicts. Together, these texts illustrate the evolving dynamics between national and European legal frameworks, shedding light on the complexities faced by the judiciary in navigating this intricate legal landscape.

Judgment No. 269 of 2017 gave rise to some doubts of the constitutionality of Article 10 of Law No. 287/1990, in the part in which it provides that all companies resident in Italy, with a turnover exceeding 50 million euros, must mandatorily pay a monetary contribution to the Competition and Market Authority. After declaring these questions of constitutionality to be unfounded, deeming said contribution to be reasonable and in accordance with the principles of equality and progressiveness of taxes contemplated by the Constitution, the Constitutional Judges formulated a series of clarifications concerning: the behaviour that judges must adopt in the face of rules of doubtful

compatibility with EU law; and the application of the Nice Charter by ordinary judges. On the first point, the court made it clear that in the case of "double jeopardy' [86], the obligation for the ordinary courts to rule in advance on doubts as to the validity and interpretation of European Union law exists only when 'directly effective' provisions are at issue. On the contrary, in the case of a conflict between a domestic rule and a supranational one without direct effect, it is up to the court to scrutinise the national rule, both with reference to the European parameters (as cited in the Italian legal system by means of Articles 11 and 117, paragraph 1, of the Constitution), and with reference to the other parameters identified by the referring court.This clarification immediately aroused considerable perplexity: it was not clear, in fact, whether the Court had intended to limit the 'obligation' of the common courts to proceed to the deliberation of the profiles of European Union law or whether, instead, it had intended to impose on the common court a real 'prohibition' to do so. In the latter case, the approach envisaged by the Court would reasonably have run counter to the principles set out in the case-law of the Court of Justice on references for a preliminary ruling.[87] This is for three main reasons: first, because, as the supranational courts have repeatedly emphasised, the duty to raise a question of constitutional legitimacy cannot preclude the ordinary courts from referring the matter to the European courts; second, because in the event of a conflict with a rule without direct effect, the ordinary court may ascertain the right to compensation for the damage caused by the "recalcitrant legislature";[88] and third, because the very question of whether a European rule has direct effect may lead to the need to seek clarification from the Court of Justice of the European Union.[89]The Consulta's considerations on the role of the common courts in relation to the application of the Nice Charter raised even more significant critical issues. The clarifications made by the Judge in this regard are based on the premise that the recognition of the value of the Treaties to the Charter of Rights of the European Union would have increased the possibility of a national rule 'infringing at the same time the Constitution and the Nice Charter'[90]. It follows from this finding - which, on closer inspection, is

[86] The expression 'double jeopardy' is used to indicate the hypothesis in which a legislative provision that the national court must apply to the concrete case shows profiles of incompatibility both with the Constitution and with European Union law, thus prospecting, at the same time, both the need for a referral to the Constitutional Court and the need for a preliminary reference to the European Court of Justice.
[87] Reference is made, in particular, to the well-known CJEU decision, Simmenthal, cit.
[88] CJEU, Joined Cases C-6/90 and C-9/90, Francovich, judgment of 19 November 1991
[89] As is well known, the Treaties only expressly enunciate the category of 'direct applicability'. For all other sources, beginning with the Treaties themselves, the source establishing 'direct applicability' is the case law of the Court of Justice.
[90] An authoritative doctrine has pointed out that this premise appears to be historically inaccurate; in itself, the entry into force of the Charter of Fundamental Rights and its assimilation to the Treaties by virtue of Article 6 TEU did not entail any significant innovation with respect to the previous system of protection of fundamental rights. In particular, the Charter of Fundamental Rights did not innovate in the content of those rights, which were already guaranteed through the instrument of general principles of European law; nor did it change the scope of their application, as defined by the case-law of the Court of Justice. The Charter has not innovated, per se, the methodologies for detecting and reconstructing rights, nor the techniques for balancing them with other values and antagonistic interests, which emerge from the European system or from the systems of the Member States; nor, lastly, has it innovated at the level of

not entirely persuasive, especially in view of the recognitive nature of the Charter, aimed primarily at codifying rules and principles pre-existing in the Treaties themselves, in the ECHR, in the common constitutional traditions and, more generally in the jurisprudence of the Court of Justice on fundamental rights as general principles of Community law - the Judge deduces the need for such violations to be stemmed with "intervent[ies] erga omnes" of the same Constitutional Court that "shall judge in the light of the internal parameters and possibly of the European ones [...] also with a view to ensuring that the rights guaranteed by the aforementioned Charter of Rights are interpreted in harmony with the common constitutional traditions, also referred to in Article 6 TEU and Article 52(4) of the CFREU". Even this further order of considerations, depending on the different meaning attributable to the words of the Consulta, could have been at odds with the principles sanctioned by the Court of Justice on the matter of a reference for a preliminary ruling. Well, the possible affirmation of a centralised and contextual review of the conformity of the rules of domestic law with the Constitution and the Nice Charter would reasonably have been at odds with Union law. No constitutional court enjoys the power to reserve to itself the power to interpret the Nice Charter unilaterally because it is only in dialogue with the Court of Justice that the values of each constitutional order can be assimilated into constitutional traditions common to the Member States. For this reason, a limitation of the power of the common courts to refer to the Court of Justice for clarification on the interpretation of the Charter of Fundamental Rights of the European Union would have run counter to the Simmenthal judgment and the principle of loyal cooperation enshrined in Article 4(3) TEU.

On the contrary, if the Constitutional Court had not intended to undermine the power of the national courts to apply the Charter of Nice, as interpreted by the Court of Justice, Judgment No 269/2017 would have been reasonably in line with the principles developed by the Court of Justice on preliminary references. Thus, the Constitutional Court's decision would have merely eliminated, also with reference to the Charter of Fundamental Rights of the Union, the 'obligation' to proceed to the prior assessment of supranational aspects before being able to initiate a constitutional legitimacy judgment. The fact that the Court evoked "a constructive framework of loyal cooperation between the different guarantee systems [...] so that the maximum protection of rights at systemic level is ensured", the fact that the Constitutional Court explicitly cited the Melki and A. v. B. judgments,437 in which the Court of Justice admitted the possibility for Member States to establish the priority nature of the constitutionality test, provided that the ordinary courts remain free to make preliminary references to the Court of Justice at any stage of the proceedings; and lastly, the fact that the

relations with other catalogues of fundamental rights, at the European and national levels. E. Cannizzaro, I valori costituzionali oltre lo Stato, cit.

Constitutional Court itself has confirmed that where a law is the subject of doubts as to its legitimacy both in relation to the rights protected by the Constitution and in relation to those guaranteed by the Charter of Nice in the context of Community relevance, the question of constitutionality must be raised, "without prejudice to recourse to the preliminary reference for questions of interpretation or invalidity of Union law".

In the context of the relationship between national and European law, an important judgment that raised some significant issues is worthy of consideration. As we have seen, the principle of the supremacy of EU law over national law is one of the cornerstones of the EU legal system, which has been established by the European Court of Justice through several key decisions. However, the Italian Supreme Court's ruling in this judgment recognised the need for a cautious application of this principle, in order to avoid an excessive control of the Member States and to preserve their legal systems in accordance with their competences.

- Balancing Supremacy and Autonomy: The Italian Supreme Court's Approach to EU Law in Civil Liability Cases with Italian Supreme Court No 23822/2018

In Judgment No. 269 of 2017, the Italian Constitutional Court addressed doubts regarding the constitutionality of a domestic law provision. The Court clarified that ordinary courts are only obliged to rule on doubts related to directly effective EU provisions and that conflicts between domestic and supranational rules without direct effect should be scrutinized by the national court. The Court's position raised concerns about limiting the power of common courts to refer to the Court of Justice for interpretation of the Charter of Fundamental Rights of the European Union (Nice Charter). Such limitations would contradict the Simmenthal judgment and the principle of loyal cooperation. However, if the Constitutional Court's intention was not to undermine the power of national courts to apply the Nice Charter, the judgment would align with the principles of preliminary references.

In the case of Italian Supreme Court No. 23822/2018, the Court recognized the principle of supremacy of EU law over national law but emphasized the need for cautious application to avoid excessive control of member states. The judgment dealt with a conflict between EU law on civil liability and Italian law in a car accident case. The Court highlighted the balance between EU law and national law, considering subsidiarity and proportionality. It stressed that decisions should be made at the appropriate level of governance, respecting the autonomy of national legal systems. The judgment affirmed that member states can maintain their own rules of civil procedure as long as they are consistent with EU law, while also respecting fundamental EU law principles.

Overall, these judgments acknowledge the supremacy of EU law while recognizing the importance of preserving the competences and legal systems of member states. They emphasize the need for a balanced approach, taking into account the specific circumstances of each case and respecting the principles of subsidiarity and proportionality. These principles allow for the effective protection of rights conferred by EU law while respecting the autonomy of national legal systems.

The judgment of the Italian Supreme Court No 23822/2018 is significant in the context of the relationship between EU law and national law. As we have seen, the principle of supremacy of EU law over national law is a cornerstone of the EU legal system and has been established by the European Court of Justice in a number of key judgments. However, the Italian Court of Cassation's ruling in this case recognised that the principle of supremacy should not be exploited in such a way as to have total control of the member states, applying it in compliance with the member states' competences so as to preserve their legal systems.

Judgment No. 23822/2018 of the Italian Supreme Court concerns a case where two persons residing in Italy had a car accident in Belgium and one of them claimed damages in an Italian court. The question raised was whether the Italian court could apply European law on civil liability arising from road accidents or whether it should apply Italian law instead. In particular, the Italian Supreme Court had to address the conflict between the principle of supremacy of EU law over the national law of the Member States and the competence of the Member States in matters of civil procedure. The Court stated that the principle of supremacy of EU law must be applied with caution. Although this law takes precedence over the national law of the Member States, this rule must be applied in a balanced manner and with respect for the rights and competences of the Member States.

We can see that through this ruling, the Court does not want to devalue European law; in fact, it emphasises the supremacy of EU law over national law as a fundamental principle of the EU legal order. However, it emphasises that the application of EU law must take into account the specific circumstances of each case, including the principles of subsidiarity and proportionality. The principle of subsidiarity requires the EU to act only when the objectives of a proposed action cannot be sufficiently achieved by the member states, either at central or at regional and local level. It is important to maintain a balance between EU law and national law and to ensure that EU law does not violate the constitutional identity of the member states. This allows decisions to be taken at the appropriate level of governance. In fact, according to this view, the role of national courts in ensuring the effective protection of rights conferred by EU law is crucial. National courts are responsible for the interpretation and application of EU law in their legal systems and must ensure that EU law is

fully applied while respecting the autonomy of national legal systems. They promote the need for a case-by-case approach to the application of EU law in national legal systems. This means that national courts must take into account the specific circumstances of each case, including the principles of subsidiarity and proportionality, and must weigh the interests of the EU against those of the Member States. The judgment also highlights the continuing challenges that national courts face when interpreting and applying EU law in their own legal systems. These challenges can be particularly acute in cases where EU law is complex or where there is a lack of clarity about the relationship between EU law and national law.

Member States must be free to decide on their own rules of civil procedure as long as these rules are consistent with EU law. Thus, the Court established the principle that Member States are not deprived of their legal sovereignty, but rather must respect EU law and harmonise it with their national law. This principle was affirmed by the Court of Justice of the European Union and is based on the fact that the European Union does not want to interfere with the sovereignty of the Member States, but rather to ensure the harmonisation and consistency of the rules of civil procedure throughout the Union. This means that Member States have the right to maintain their own rules of civil procedure, but only as long as these rules are consistent with EU law. For example, Member States may establish their own limitation periods, but these must be compatible with the principles of EU law. However, Member States are obliged to respect the fundamental principles of EU law, e.g. the principle of non-discrimination, the right of defence and the right to a fair trial. This means that the Member States' rules of civil procedure must be compatible with these fundamental principles. Judgment No 23822/2018 of the Supreme Court also has wider implications for the functioning of the EU legal system. In recent years, some Member States have expressed a growing concern about the potential impact of EU law on their national legal systems and on the balance of power between the EU and its Member States. These concerns are recognised and addressed by emphasising the importance of respecting the competences of the Member States and the principle of subsidiarity. This judgment makes an important contribution to the ongoing debate on the relationship between EU and national law and underlines the need for a balanced and nuanced approach that takes into account the specific circumstances of each case and respects the competences of the Member States. This approach is likely to be welcomed by those who advocate a more limited role for the EU in certain policy areas.

CONCLUSION

The two cases that were previously analysed, Costa Enel case and the Taricco case are two significant judicial cases that provide insights into the evolving dynamics of European integration and the relationship between national and European courts. In the Costa Enel case, which occurred in the early stages of European integration, the Court of Justice established the principle of the primacy of European law over national law. The Court of Justice ruled that national measures contradicting the obligations imposed by European law are invalid. This landmark decision emphasized the supremacy and direct effect of European law, including its impact on the rights of individuals. On the other hand, the Taricco case, deals with the interpretation and application of European law within the realm of criminal matters. The Constitutional Court was concerned about the compatibility of the Taricco ruling with fundamental principles of Italian constitutional law, such as the principle of legality and the prohibition of retroactivity in criminal matters. In examining the relation between the Costa Enel case and the Taricco case, several points can be highlighted. Firstly, both cases reflect the ongoing tension and interaction between national and European legal systems. Costa Enel established the primacy of European law over national law, highlighting the Court of Justice's authority in interpreting and enforcing European legal principles. This primacy principle plays a role in the Taricco case as well, where the Constitutional Court seeks clarification from the Court of Justice on the interpretation of its previous ruling, demonstrating the importance of harmonizing national and European legal frameworks. Furthermore, the Taricco case raises questions regarding the scope and application of European law in criminal matters. It touches upon the balance between European legal principles and national constitutional principles, such as the principle of legality. The Constitutional Court's concern about the compatibility of the Taricco ruling with Italian constitutional principles reflects the delicate task of reconciling the obligations and principles of European integration with the constitutional identities of member states. Both cases demonstrate the ongoing dialogue and interaction between national courts and the Court of Justice in shaping the European legal framework. The Costa Enel case set the stage for the recognition of European law's supremacy, while the Taricco case exemplifies how national courts seek guidance and clarification from the Court of Justice in interpreting and applying European legal principles.

As has been analysed, it is observed that whenever there is an uncertainty of interpretation (one thinks of the concept of "respective scope" in Article 53 of the Nice Charter or of Art. 51. 1 of the same document when it refers to the 'implementation of Union law') or, on the contrary, there is a space left to the interpretation of the European judges (we refer to the margin of appreciation and the obligation to respect national constitutional identities), well, in all these cases we always end up referring to the peculiar distribution of competences existing within the Union order. We have understood how the European system is far removed from the federal model, which implies, like all state systems, a unity of powers and a legal monism that, at the European level, has not taken place. Nor does this seem to be the direction in which the Union is heading; on the contrary, the trend seems to be towards a system within which all states retain their political identity. Proof of this can be found, with regard to the protection of rights, in Article 51(2) of the Nice Charter[91] , which is precisely the result of the Member States' concern that through this matter the Union could expand its competences. What emerges is, therefore, the States' intention to "keep the Union's power under control" and not to lose its prerogatives. Certainly, the openness can be favoured by the Court of Justice itself insofar as the degree of "abandonment" to the European judge of the control is also linked to the degree of trust it inspires, in this sense are to be read the parameters set by the German Constitutional Court (which has not failed to criticise for other aspects) that leaves the control of the legitimacy of acts in the hands of the European judge only if in those matters in which the supranational system ensures equivalent protection. The trend, however, seems to be in the direction of greater openness on the part of the constitutional courts; it is certain that the opportunities recently missed by the Court of Justice to demonstrate its willingness to engage in dialogue have certainly not favoured cooperation and may soon make their effects felt. The problem, basically, is that the perspective of the supranational court and that of the national constitutional courts start from very different assumptions and yet - in the current framework - both sides have no choice but to coexist in the best possible way on pain of, for the Court of Justice, the loss of legitimacy with the national courts and the undermining of their cooperation and, for the national judges, if they entrench themselves in extremist positions, the application of the theory of counter-limits, the consequences of which could be quite drastic. Moreover, as is well known, the Court of Justice needs the constant cooperation of national judges because, in fact, the effectiveness and effectiveness of the European system is largely based on unwritten rules entrusted to the perpetual renewal of agreements between judges.

[91] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, 2.

The constitutional turn to EU law, however, also has a negative externality: in a situation where “more Courts are called upon to ensure the observance of more Charters”[92], constitutional courts find it increasingly difficult to stand as guarantors of the fundamental rights protected by the Constitution[93]. On the one hand, the common judge, by using the instrument of referral to dialogue directly with the judges in Luxembourg, and often applying the Charter of Rights even in purely domestic situations, ends up giving rise to what the Constitutional Court itself has called an inadmissible "diffuse review of constitutionality"[94]. On the other hand, the Court of Justice, when called into question regarding the scope of fundamental rights, tends to impose its own balances, long in favour of a primacy of fundamental market freedoms[95]. In this regard, Taricco is an emblematic case insofar as, despite the Constitutional Court's countless urgings to inject some of the common constitutional heritage into the protection of fundamental rights, the Court of Justice, while admitting that the principle of legality must be respected, insisted on keeping the standard of protection flattened to the ECHR's lowest common denominator, leaving the state free to embrace its own specificity only in the absence of harmonising interventions by the European legislature. Understandable, therefore, that in the face of what has been termed the displacement doctrine[96], i.e. the slow marginalisation of the constitutional courts from the inter-ordinamental dialogue driven by the prominence of the common courts, even the Constitutional Court is trying to regain ground, heeding the 'arguments for a direct dialogue' with the Court of Justice[97] and overcoming its reluctance to make a preliminary reference. It is clear that the recent ruling No. 269 of 2017, analysed above, is also ascribable to this logic: asking the common judge, without prejudice to the possibility of interlocuting with the judge in Luxembourg, to address the Constitutional Court in the first instance when the rights set forth in the Charter intersect with the rights guaranteed by the Constitution, is a way of making one's voice heard not only in exceptional cases where a supreme principle of the order is at issue. And thus, probably, “to defuse the weapon of counter-limits, avoiding the temptation to use it as an (improper) means to recover spaces of constitutional identity”[98].

[92] Augusto Barbera, Magazine n: 4/2017, 2: “La carta dei diritti: per un dialogo fra la corte italiana e la corte di giustizia”
[93] Which, in Italy, is part of the already problematic transformation of the 'Court of Rights' into a 'Court of Powers': see Grosso (2016).
[94] Judgment no. 269/2017.
[95] Cartabia 2009, 9.
[96] Komárek 2014, 527.
[97] Cartabia 2008.
[98] Augusto Barbera, Magazine n: 4/2017, 2: “La carta dei diritti: per un dialogo fra la corte italiana e la corte di giustizia”, p. 168.

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RIASSUNTO TESI:

L'ordinamento giuridico dell'Unione europea non nasce da finalità generali, né si presenta come l'aggregazione di una comunità particolare, né aspira all'universalità delle sue disposizioni normative. Piuttosto, rappresenta semplicemente un'unione di Stati che condividono alcuni aspetti della loro vita economica e sociale e, per questo motivo, conferisce una limitata soggettività giuridica, prima alle imprese del carbone e dell'acciaio e poi alle persone fisiche e giuridiche che operano negli ordinamenti giuridici degli Stati membri, se e nella misura in cui sono interessate dalle azioni delle istituzioni dell'UE.

Come è noto, l'evoluzione successiva, indotta dalle molteplici modifiche ai trattati, dall'uso disinvolto di poteri impliciti e soprattutto guidata dalla stessa Corte di Giustizia, ha reso l'ordinamento dell'UE un ordinamento che tende a fini generali e aspira ad affermare la propria legittimità al di sopra di quella degli Stati che lo compongono, e alle cui prescrizioni nessun settore della vita associata appare potenzialmente estraneo.

Questa configurazione para-federale dell'ordinamento giuridico dell'UE, quindi, richiedeva un insieme di valori a cui ispirarsi in assenza di una carta costituzionale che li esprimesse. Da qui la nota giurisprudenza della Corte di giustizia sui diritti fondamentali - tratta dalle costituzioni degli Stati membri, ma rielaborata autonomamente dalla Corte; da qui l'estrazione di un principio generale di uguaglianza dai divieti settoriali di discriminazione, applicabile al di là di questi.

La Corte di giustizia dell'Unione europea (CGUE) è un'importante entità istituzionale all'interno dell'Unione europea (UE), che svolge un ruolo importante nell'interpretazione e nell'esecuzione della legislazione comunitaria. È stata fondata nel 1952 e si compone di due organi giudiziari principali: il Tribunale dell'Unione europea e la Corte di giustizia dell'Unione europea. Il Tribunale, creato nel 1989, è responsabile dei procedimenti di primo grado, come le controversie tra le istituzioni dell'UE o i ricorsi presentati da persone o società in risposta alle direttive dell'UE. La Corte di giustizia dell'Unione europea, invece, è la corte d'appello dell'UE, responsabile delle questioni che richiedono l'interpretazione del diritto dell'UE o il giudizio sulla validità delle attività dell'UE.

La CGUE è il massimo organo giurisdizionale dell'UE e ha l'autorità di esaminare le questioni che riguardano l'attuazione e l'interpretazione della legislazione dell'UE. Di conseguenza, la CGUE svolge un ruolo importante nel garantire che la legislazione dell'UE sia amministrata in modo appropriato e uniforme in tutti gli Stati membri, favorendo così l'integrazione dell'UE. In primo luogo, la CGUE interpreta e applica la legislazione dell'UE, garantendo un'applicazione coerente dell'ordine legislativo in tutti gli Stati membri e preservando i diritti delle persone all'interno dell'Unione europea. Inoltre, la CGUE funge da contrappeso essenziale alle altre organizzazioni istituzionali dell'UE, salvaguardando l'indipendenza del sistema giuridico e l'equilibrio dei poteri tra le diverse istituzioni. L'articolo 19 del Trattato sull'Unione europea (TUE) stabilisce che la CGUE "vigila sull'interpretazione e sull'applicazione dei trattati nel rispetto del diritto". Inoltre, l'articolo 263 del Trattato sul funzionamento dell'Unione europea (TFUE) stabilisce che la CGUE è competente per "un ricorso di annullamento di un atto dell'Unione [...] rivolto a una persona fisica o giuridica" e "un ricorso per carenza [...] dell'Unione".

La CGUE è stata anche coinvolta in diversi casi importanti che hanno avuto un impatto significativo sulla politica dell'UE e sulla vita dei cittadini europei. Ad esempio, nella causa Van Gend en Loos del 1963, la CGUE ha stabilito il principio dell'effetto diretto del diritto dell'UE, che ha permesso ai cittadini europei di fare affidamento direttamente sul diritto dell'UE nei tribunali nazionali. Ciò ha rappresentato un significativo passo avanti nel rafforzamento dei diritti dei cittadini europei e nella creazione di un vero e proprio sistema giuridico europeo.

Il caso Costa contro Enel evidenzia l'importanza del primato del diritto dell'Unione europea nella costruzione giuridica europea. Tuttavia, esso incontra difficoltà nell'affermarsi rispetto ai sistemi di diritto penale degli Stati membri, dominati dalla legalità e dai principi costituzionali. La sentenza Melloni e la sentenza Taricco, che esaminano entrambe la sostenibilità dell'identità costituzionale italiana, evidenziano queste difficoltà.

Nella seguente tesi ho analizzato la controversia tra Costa ed Enel essendo essa cruciale da comprendere, in quanto il Trattato CEE ha stabilito un proprio ordinamento giuridico, che è incorporato nell'ordinamento giuridico degli Stati membri. La Corte ha osservato che gli Stati hanno limitato i loro poteri sovrani e hanno creato un corpo di leggi vincolanti per i loro cittadini e per loro stessi. L'incorporazione di norme di fonte comunitaria nell'ordinamento di ciascuno Stato membro comporta l'impossibilità per gli Stati di prevalere su un ordinamento giuridico da essi accettato a condizione di reciprocità. Se l'efficacia del diritto comunitario variasse da uno Stato all'altro sulla base delle leggi nazionali, ciò comprometterebbe l'attuazione degli obiettivi del Trattato. Gli obblighi assunti nel Trattato che istituisce la Comunità non sarebbero assoluti, ma solo condizionati, consentendo alle parti contraenti di sottrarsi all'osservanza attraverso ulteriori leggi.

Il diritto creato dal Trattato non può essere limitato da alcuna misura interna senza perdere il suo carattere comunitario e minare il fondamento giuridico della Comunità. Il trasferimento di diritti e obblighi corrispondenti alle disposizioni del Trattato implica una limitazione definitiva dei diritti sovrani, rendendo inefficace un atto unilaterale incompatibile con il sistema comunitario. Il Collegio definisce esplicitamente la proprietà come "primato del diritto comunitario", che non è proclamato da nessuna parte nei Trattati istitutivi o nell'articolo 189 del Trattato CEE. Il principio di primauté non è proclamato da nessuna parte nei Trattati istitutivi, ma solo attraverso il parere dei giudici di Lussemburgo. Senza l'affermazione del principio di primauté, il principio dell'effetto diretto sarebbe rimasto zoppo e incompiuto, affidandosi alla buona volontà degli Stati membri, che avrebbero rischiato una condanna per inadempimento da parte della Corte di giustizia.

Il diritto comunitario sarebbe stato teoricamente operativo ma praticamente inoperante. I Trattati mirano a creare un mercato unico e un'unione doganale, che richiede l'applicazione di norme comuni in tutti i territori degli Stati membri. Queste norme devono prevalere sulle disposizioni nazionali incompatibili, a meno che gli impegni non vengano disconosciuti. Gli Stati devono anche adattare il loro diritto interno al nuovo sistema giuridico per raggiungere scopi specifici. La primauté, come si è visto nella causa Costa contro Enel, è una proprietà assoluta, in quanto la norma interna cede di fronte alla norma comunitaria, indipendentemente dalla sua natura.

Il professor Amedeo Arena sottolinea il primato del diritto europeo su quello nazionale, già evidente nel servizio giuridico della Commissione europea e della Corte di giustizia europea prima del 1964. La sentenza Costa contro ENEL ha attuato una rivoluzione giuridica, consentendo ai tribunali nazionali di disapplicare il diritto nazionale in caso di conflitto con il diritto dell'Unione europea. Ciò ha permesso alla Corte di giustizia di controllare atti di legge minori nell'ambito di una controversia tra l'ordinamento giuridico italiano e quello dell'UE, garantendo un maggiore potere di controllo giurisdizionale e un'assicurazione contro i rischi causati dalle concessioni italiane nei confronti della comunità europea. La CGUE ha spinto per una "alleanza" con i tribunali nazionali inferiori per evitare un'applicazione centralizzata del primato dell'ordinamento giuridico europeo, dando al contempo ai tribunali inferiori l'opportunità di confrontarsi con il più alto tribunale della Comunità e di esercitare un controllo giurisdizionale de facto sulla legislazione. Ciò ha posto le corti inferiori al centro del principio di sussidiarietà, consentendo alla CGUE di intervenire solo nelle aree di sua esclusiva competenza, a meno che la sua azione non sia ritenuta più efficace di quella intrapresa a livello nazionale, regionale o locale.

La dottrina giuridica dell'Unione europea era ampia e vaga, con aspettative e speranze poco chiare. Il ruolo degli individui nel sistema politico e giuridico della CE e la misura dell'effetto diretto sul nucleo politico dei trattati non erano chiari. Stendardi e Costa, due avvocati milanesi, si impegnarono nella famosa causa Costa contro ENEL nel 1963. Entrambi sostenevano che la legittimazione individuale davanti alle Corti europee fosse un elemento critico per la creazione di uno Stato di diritto in Italia. Stendardi aveva teorizzato il ruolo dell'attivismo legale individuale come quasi sostituto della responsabilità politica, in particolare a livello europeo. Il governo italiano ha violato l'obbligo di consultare la Commissione europea prima della nazionalizzazione, che era giuridicamente vincolante e passibile di giudizio. La Corte penale internazionale (CPI) si è pronunciata nella causa Costa contro ENEL, confermando la prevalenza delle leggi nazionali successive sul diritto dell'UE. Il caso è stato visto come una prevedibile sconfitta per Stendardi, in quanto riguardava l'abrogazione dello statuto dell'ENEL, legato al sostegno del Partito Socialista Italiano al governo Fanfani. La Corte penale internazionale, istituita in un ambiente ostile, adottò la teoria della lex posterior per affermare la legalità interna dello statuto dell'ENEL, indipendentemente dalla conformità con il Trattato CEE. Il caso ha affrontato anche la questione della costituzionalità dello Statuto CEE, avallando la lettura permissiva dell'articolo 11 della Costituzione italiana. La sentenza della Corte penale internazionale ha suscitato preoccupazione nella Comunità economica europea (CEE), creando uno squilibrio permanente tra gli Stati membri che accettavano il primato interno e quelli che non lo accettavano. La sentenza della Corte penale internazionale nella causa Costa contro ENEL è stata una sconfitta prevista da molti. La Corte ha adottato una visione dualista del rapporto tra diritto comunitario e diritto italiano, affermando la prevalenza delle leggi nazionali successive sul diritto comunitario. La sentenza suscitò preoccupazione nella Corte di giustizia europea e sembrò rendere inutile il procedimento di rinvio pregiudiziale. Stendardi continuò a sostenere l'incostituzionalità dello Statuto dell'ENEL e ne propose l'inapplicabilità sulla base del "primato decentrato".

Un altro aspetto cruciale della tesi è evidenziato nell’analisi del caso Taricco, che ha avuto un impatto significativo sulla giurisprudenza europea. In questo caso, la Corte costituzionale italiana ha sottoposto alla Corte di giustizia dell'Unione europea una questione preliminare sull'interpretazione della sentenza Taricco. La CGUE ha stabilito che i tribunali nazionali devono disapplicare le norme che limitano gli effetti temporali dell'interruzione della prescrizione in determinati casi. Tuttavia, la Corte costituzionale italiana ha messo in dubbio la compatibilità della sentenza Taricco con i principi costituzionali, in particolare per quanto riguarda la riserva di legge e il divieto di retroattività in materia penale. La sentenza Taricco è stata criticata per aver imposto la disapplicazione retroattiva dei termini di prescrizione, considerata una violazione dei diritti fondamentali dei cittadini. Ha inoltre sollevato preoccupazioni sulla determinazione dei reati e sul principio della certezza del diritto. La Corte costituzionale, pur rispettando il ruolo della CGUE, ha cercato di bilanciare l'autorità della Corte europea con le prerogative della Corte costituzionale italiana all'interno del sistema giuridico nazionale. Il capitolo sottolinea l'importanza dell'identità costituzionale come limite alla supremazia dell'ordinamento giuridico europeo. La Corte Costituzionale ha sostenuto che preservare i principi fondamentali della Costituzione italiana è cruciale per mantenere l'equilibrio e la coesione del sistema giuridico europeo. Ha riconosciuto la necessità di un tasso minimo di diversità per preservare l'identità nazionale all'interno dell'UE. Inoltre viene esplorato il rapporto tra le norme dell'UE e il diritto interno in Italia, tracciando l'evoluzione della giurisprudenza della Corte Costituzionale in materia e sottolinea l'uso della disapplicazione da parte della Corte in caso di conflitto tra il diritto interno e le norme dell'UE. L'approccio della Corte si concentra sulla divisione delle competenze tra l'ordinamento giuridico interno e quello dell'UE, salvaguardando i principi costituzionali.

Nel complesso, il caso Taricco e le sentenze successive hanno evidenziato la complessa interazione tra corti nazionali ed europee, la tensione tra sovranità giuridica nazionale e integrazione europea e l'importanza dell'identità costituzionale come limite alla supremazia del sistema giuridico europeo.

I due casi analizzati in precedenza, il caso Costa Enel e il caso Taricco, sono due casi giudiziari significativi che forniscono spunti di riflessione sulle dinamiche in evoluzione dell'integrazione europea e sul rapporto tra corti nazionali ed europee. Nel caso Costa Enel, avvenuto nelle prime fasi dell'integrazione europea, la Corte di giustizia ha stabilito il principio del primato del diritto europeo su quello nazionale. La Corte di giustizia ha stabilito che le misure nazionali che contraddicono gli obblighi imposti dal diritto europeo sono invalide. Questa decisione storica ha sottolineato la supremazia e l'effetto diretto del diritto europeo, compreso il suo impatto sui diritti degli individui. Il caso Taricco, invece, riguarda l'interpretazione e l'applicazione del diritto europeo in ambito penale. La Corte Costituzionale si è preoccupata della compatibilità della sentenza Taricco con i principi fondamentali del diritto costituzionale italiano, come il principio di legalità e il divieto di retroattività in materia penale. Esaminando il rapporto tra il caso Costa Enel e il caso Taricco, si possono evidenziare diversi punti. In primo luogo, entrambi i casi riflettono la continua tensione e interazione tra i sistemi giuridici nazionali ed europei. Costa Enel ha stabilito il primato del diritto europeo sul diritto nazionale, evidenziando l'autorità della Corte di giustizia nell'interpretare e applicare i principi giuridici europei. Questo principio di supremazia gioca un ruolo anche nel caso Taricco, dove la Corte Costituzionale chiede chiarimenti alla Corte di Giustizia sull'interpretazione della sua precedente sentenza, dimostrando l'importanza di armonizzare i quadri giuridici nazionali ed europei. Inoltre, il caso Taricco solleva questioni relative alla portata e all'applicazione del diritto europeo in materia penale. Tocca l'equilibrio tra i principi giuridici europei e i principi costituzionali nazionali, come il principio di legalità. La preoccupazione della Corte Costituzionale circa la compatibilità della sentenza Taricco con i principi costituzionali italiani riflette il delicato compito di conciliare gli obblighi e i principi dell'integrazione europea con le identità costituzionali degli Stati membri. Entrambi i casi dimostrano il dialogo e l'interazione in corso tra i tribunali nazionali e la Corte di giustizia nella definizione del quadro giuridico europeo. Il caso Costa Enel ha posto le basi per il riconoscimento della supremazia del diritto europeo, mentre il caso Taricco esemplifica come i tribunali nazionali cerchino indicazioni e chiarimenti dalla Corte di giustizia nell'interpretare e applicare i principi giuridici europei.

Come è stato analizzato, si osserva che ogni volta che c'è un'incertezza interpretativa (si pensi al concetto di "campo di applicazione rispettivo" dell'art. 53 della Carta di Nizza o all'art. 51 della Carta di Nizza), il diritto di accesso al mercato non è più un problema. 51. 1 dello stesso documento quando si parla di "attuazione del diritto dell'Unione") o, al contrario, si lascia uno spazio all'interpretazione dei giudici europei (ci riferiamo al margine di apprezzamento e all'obbligo di rispettare le identità costituzionali nazionali), ebbene, in tutti questi casi si finisce sempre per fare riferimento alla peculiare distribuzione delle competenze esistente nell'ordinamento dell'Unione. Abbiamo compreso come l'ordinamento europeo sia ben lontano dal modello federale, che implica, come tutti gli ordinamenti statali, un'unità di poteri e un monismo giuridico che, a livello europeo, non si sono verificati. Né questa sembra essere la direzione verso cui si sta dirigendo l'Unione; al contrario, la tendenza sembra essere quella di un sistema all'interno del quale tutti gli Stati mantengono la propria identità politica. Ne è prova, per quanto riguarda la tutela dei diritti, l'articolo 51, paragrafo 2, della Carta di Nizza, che è proprio il risultato della preoccupazione degli Stati membri che attraverso questa materia l'Unione possa ampliare le proprie competenze. Emerge quindi l'intenzione degli Stati di "tenere sotto controllo" il potere dell'Unione e di non perdere le sue prerogative. Certo, l'apertura può essere favorita dalla stessa Corte di giustizia nella misura in cui il grado di "abbandono" al giudice europeo del controllo è legato anche al grado di fiducia che esso ispira; in questo senso vanno letti i parametri fissati dalla Corte costituzionale tedesca (che non ha mancato di criticare per altri aspetti) che lascia il controllo di legittimità degli atti nelle mani del giudice europeo solo se nelle materie in

cui l'ordinamento sovranazionale assicura una tutela equivalente. La tendenza, tuttavia, sembra andare nella direzione di una maggiore apertura da parte delle Corti costituzionali; certo è che le occasioni recentemente perse dalla Corte di giustizia per dimostrare la propria disponibilità al dialogo non hanno certo favorito la cooperazione e potrebbero presto far sentire i loro effetti. Il problema, in sostanza, è che la prospettiva della Corte sovranazionale e quella delle Corti costituzionali nazionali partono da presupposti molto diversi, eppure - nel quadro attuale - entrambe le parti non hanno altra scelta che coesistere nel miglior modo possibile pena, per la Corte di giustizia, la perdita di legittimità nei confronti delle Corti nazionali e l'indebolimento della loro collaborazione e, per i giudici nazionali, se si arroccano su posizioni estremiste, l'applicazione della teoria dei controlimiti, le cui conseguenze potrebbero essere piuttosto drastiche. Inoltre, come è noto, la Corte di giustizia ha bisogno della costante collaborazione dei giudici nazionali perché, di fatto, l'efficacia e l'efficienza del sistema europeo si basano in gran parte su regole non scritte affidate al perpetuo rinnovamento degli accordi tra i giudici.

La svolta costituzionale verso il diritto dell'UE, però, ha anche un'esternalità negativa: in una situazione in cui "più Corti sono chiamate a garantire l'osservanza di più Carte", le Corti costituzionali hanno sempre più difficoltà a porsi come garanti dei diritti fondamentali tutelati dalla Costituzione. Da un lato, il giudice comune, utilizzando lo strumento del rinvio per dialogare direttamente con i giudici di Lussemburgo e applicando spesso la Carta dei diritti anche in situazioni puramente interne, finisce per dare luogo a quello che la stessa Corte costituzionale ha definito un inammissibile "controllo diffuso di costituzionalità". D'altra parte, la Corte di giustizia, quando viene chiamata in causa sulla portata dei diritti fondamentali, tende a imporre i propri equilibri, a lungo a favore di un primato delle libertà fondamentali del mercato. A questo proposito, Taricco è un caso emblematico in quanto, nonostante le innumerevoli sollecitazioni della Corte Costituzionale a iniettare un po' del patrimonio costituzionale comune nella tutela dei diritti fondamentali, la Corte di Giustizia, pur ammettendo che il principio di legalità deve essere rispettato, ha insistito nel mantenere lo standard di tutela appiattito sul minimo comune denominatore della CEDU, lasciando lo Stato libero di abbracciare la propria specificità solo in assenza di interventi armonizzanti del legislatore europeo. È comprensibile, quindi, che di fronte a quella che è stata definita la displacement doctrine, ovvero la lenta marginalizzazione delle Corti costituzionali dal dialogo interordinamentale guidata dal protagonismo delle Corti comuni, anche la Corte costituzionale stia cercando di recuperare terreno, ascoltando gli "argomenti per un dialogo diretto" con la Corte di giustizia e superando la sua riluttanza a fare un rinvio pregiudiziale. È chiaro che anche la recente sentenza n. 269 del 2017, analizzata sopra, è riconducibile a questa logica: chiedere al giudice comune, ferma restando la possibilità di interloquire con il giudice di Lussemburgo, di rivolgersi in prima istanza alla Corte costituzionale quando i diritti sanciti dalla Carta si intersecano con i diritti garantiti dalla Costituzione, è un modo per far sentire la propria voce non solo in casi eccezionali in cui è in discussione un principio supremo dell'ordinamento. E così, probabilmente, "disinnescare l'arma dei controlimiti, evitando la tentazione di usarla come mezzo (improprio) per recuperare spazi di identità costituzionale".