

Centralizing the EU?

An analysis of the European Court of Justice's tendency to rule in favor of centralization of the European Union

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Abstract

The European Court of Justice has increasingly gained influence in the European Union, and it is therefore interesting to see what affect this has on the EU as well as the member states. The purpose of this study is to see how the ECJ has balanced the interests of the EU as a whole with the interests of the member states. Due to the ECJ's increasing amount of power, our hypothesis is that the ECJ has gone from favoring the member states' interest to favoring the EU interest, which is noteworthy since it is able to override the member state's national legislation.

This study is a text analysis where six court rulings, starting after the Single European Act in 1987 to 2010, are examined to reveal the ECJ's reasoning and ideas concerning the EU and member states' interests. This analysis is built on William H. Riker's theory on federalism that classifies federalism into two extreme categories: maximum and minimum centralized federalism. These categories are used as ideal types and after the analysis, we will classify which of these ideal types each ruling resembles the most.

Of all the court rulings, there was only one exception where the ECJ ruled in the member state's interest and this shows that the ECJ has not increasingly favored the EU interest, but instead has steadily supported the EU interest over time.

Key words: European Union, European Court of Justice, centralization, federalism, William H. Riker

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Table of contents

1	Introduction	1
1.1	Background	1
1.2	Problem and research question	2
2	Theory and Method	3
2.1	Theory	3
2.1.1	Riker's theory on federalism	3
2.1.2	EU federalism	4
2.2	Method	5
2.2.1	Ideal Types	6
2.3	Material	6
3	Analysis	8
3.1	Prioritizing National Interests	8
3.2	A Step Towards Centralized Power	10
3.3	Compatibility with the Treaty	11
3.4	True to EU Interest	14
3.5	Relying on the ECJ	15
3.6	Support to the EU	17
4	Conclusion	20
4.1	Criteria for conclusions	20
4.2	Conclusion	20
5	References	23
5.1	Primary material	23
5.2	Secondary material	24

1 Introduction

1.1 Background

It is startling how quickly the power of the European Court of Justice (ECJ) has increased. Today, not only does the EU law have a direct effect on the individual citizens of each member country, but it is also the most supreme law for all the member nations (Hix & Høyland, 2011 p.84-85)

The ECJ is responsible for ensuring that laws and rights are obeyed and followed in the correct way. These functions mean that the ECJ is to interpret the EU law and to judge the issues between the member countries, institutions and individuals within the EU. The fact that the ECJ is responsible for interpreting the common laws for the member countries gives the ECJ significant power since they form the EU law. (Tallberg, 2010 p.145)

The ECJ consists of one representative judge from each member state, eight advocate generals, and a President of the Court of Justice, and they all have different lengths of terms in order to ensure continuity. The judges are very influential in the political decision-making process, since neither they nor their actions are neutral. So their ability to form the legislative branch with judicial review is of great importance when analyzing how much strength the ECJ has. (Hix & Høyland, 2011 p.75-82)

Over time, the court has received a huge increase in the amount of cases brought to them. Statistics show that in 1970, the court had 79 cases, in 1990, the court had 384 cases and lastly, 569 cases in 2009. Due to this growth in the number of cases that were brought up to the ECJ, a Court of First Instance (CFI) was created in 1989 in order to help the ECJ with its rulings. The CFI works as a part of the ECJ and is used to help make rulings on certain subjects. If these rulings are overruled then they will go to the ECJ and be judged there. (Hix & Høyland, 2011 p.80) (Tallberg, 2010 p.143)

Each treaty that has occurred dealing with the EU has increased the power of the different institutions within the union. For example, the ECJ has gained so much power to the extent that its' rulings override the national legislation in the member states. This supranational factor is interesting in the sense that there could be a connection between the ECJ and federalist characteristics, since it is the ECJ that forms the EU law. (Hix & Høyland, 2011 p.82)

In 1987, the Single European Act came into force, which largely removed barriers that were in the way of free movement in the EU. In 1992, the Maastricht Treaty furthermore gave the EU more influence by adding the “third pillar” that included free movement, immigration politics and police and judicial cooperation. In the Amsterdam Treaty in 2004 these factors, except for the police and judicial cooperation, were integrated in the main treaty, so one can see that more and more areas are being moved to the center of the EU instead of staying within the member states. One can look at this as a sign of an increase of federalist characteristics in the EU. (Hix & Høyland, 2011 p.275-277)

Throughout our essay we assume that the EU is a federal political system. There is no formal claim from the EU that it is a federation, but it certainly has several characteristics of a federation. Because of this we find that we, for the purpose of this essay, can define it as a federal system. (Lijphart, 1999 p.42-47)

These factors contribute to forming the question if it is possible that the EU is becoming increasingly similar to the United States of America’s federalist system with the separation of powers between the different states, and will we soon be able to classify the EU as the United States of Europe? (Hix & Høyland, 2011 p.77 & Lijphart, 1999 p.47)

1.2 Problem and research question

For our essay, we have chosen to examine the European Unions Court of Justice (ECJ) and the impact of the verdicts that it makes. We are going to analyze whose interests the ECJ has taken into account when ruling in court cases, and this has raised the question if the EU is now more centralized or decentralized, because of the ECJ’s rulings. Our purpose is to describe the potential similarities or variations over time in the ECJ’s reasoning.

To narrow this question down, we have chosen to focus on the internal market and furthermore which role the verdicts regarding the freedom of goods within the internal market has played. We chose the internal market and free movement of goods because that is one main reason for states wanting to join the union, seeing as the free trade within such a big area like the EU would have big economic gains for a country. The internal market also limits the member states from doing whatever they want however they want, so there is a big controversy between the member states interests and the EU’s interests that is interesting to look closer into. (Steiner et al, 2006 p.309-310) By narrowing down this topic, we have found a more concrete question that we will lay focus on:

Has the ECJ changed its way of striking a balance between member states and the EU interest since the Single European Act in 1987?

2 Theory and Method

2.1 Theory

There are a lot of different definitions and theories on federalism, and in our essay we will focus on the one provided by William H. Riker. Riker's definition of federalism is a very specified and concrete definition and that is the main reason behind why we chose it. Another reason as to why we have chosen to use his theory is that his definition has stayed relevant over time and has been frequently used, so due to that we believe that it is reliable.

2.1.1 Riker's theory on federalism

As stated previously, we find that Riker's definition of federalism will help us analyze the court rulings that we will use for this essay. He defines federalism as: "a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions." (Riker, 1975 p.101) Riker states that this definition allows us to place governments on a continuum that measure how centralized the different governments are. On his scale, one extreme side entails a fully centralized government and on the other side is an alliance that cannot make any policy decisions without first consulting all the member governments. Federalism falls between these two extremes on the scale. (Riker, 1975 p.101)

The three different categories on Riker's scale of centralization (alliances, federations and fully centralized) can be divided into two different subcategories. The alliances are divided into weak and close, the federation is divided into peripheralized and centralized, and the fully centralized is divided into regionalized and dictatorial. According to Riker's scale, the more centralized an alliance, for example the EU, becomes the more it will resemble a federation. So, one can apply this to the EU and say that the more centralized the EU becomes then the more federal it becomes as well. (Riker, 1975 p.101)

However, Riker also states that it is extremely difficult to measure how "federalist" a government is due to certain classifications. Riker classifies federalist governments by seeing how centralized they are, and by creating certain typologies that measure the variations between federations. Amongst these typologies, Riker states that:

”one of the most remarkable features of federalism is the fact that in some federations there is a substantial degree of centralization over time while in others, the degree of centralization does not significantly change”. (Riker, 1975 p.131)

This quote demonstrates what we will analyze in our study and further discuss in our conclusion.

2.1.2 EU federalism

There are other theories on federalism that are relevant for this essay as well. For example, even though it is not our focal point, Arend Lijphart’s theory on federalism is relevant to this essays topic since it strengthens the argument that there is a connection between a strong judicial branch and a strong federation. In his book, “Patterns of Democracy”, Lijphart elaborates on the primary and secondary characteristics of federalism. He illustrates the two primary characteristics as noncentralization and decentralization of power. The secondary characteristics that he presents are a bicameral legislature, a written and rigid constitution and powerful judicial review. The difference between these characteristics is that the primary characteristics are components of federalism whilst the secondary ensure that the federation stays a federation. In this sense, one can see that it is important to have his theory in mind as well as Riker’s. (Lijphart, 1999 p.186-188)

Lijphart also presents criterions to see whether a state is federal or not. The criterions are made based on the primary characteristics of noncentralization and decentralization. The first one is whether the state is a formal federation, meaning that the federalism is in the constitution. The other questions the degree of decentralization in the state. (Lijphart, 1999, p.188)

It is furthermore important to look at what other literature writes about the uniqueness of EU federalism. Simon Hix and Bjørn Høyland state that “the EU has a legal-constitutional framework that contains two of the basic doctrines of a federal legal system: the direct effect of EU law on individual citizens throughout the EU, and the supremacy of EU law over domestic law.” (Hix & Høyland, 2011 p.100) The direct effect means that each EU law is instantly enforced on each member state and the fact that this law is supreme over the other member state’s national laws is a factor that gives an incredible amount of strength to the EU legislation. These are two dynamics that they consider to be federal features that the EU has attained and by them being established, the EU has transformed from an international organization to a quasi-federation. (Hix & Høyland, 2011 p.86 & 100)

Another input to this discussion is provided by Jonas Tallberg who elaborates on the EU political system and how to define it. He states that the EU no longer is a normal international organization, but neither a national state. The supranational

feature in certain policy areas in the union is what makes it special, in the sense that the members give up a piece of their sovereignty. (Tallberg, 2010 p.12)

The most federalist feature of the EU is the division of powers between central and regional level, in the EU case the regional level being the member states. Tallberg defines the EU as a political system, not just a deep international cooperation. He backs up this statement by bringing up three characteristics of a political system, and the EU has all three of them. These components are political actors that strive for their own interests within the system, political institutions for collective decision-making and political decisions that concerns distribution of resources. (Tallberg, 2010 p.11-13)

Tallberg says that it is hard to define what kind of system the EU is, but his conclusion is that it can be classified as a system of multi-level governance. (Tallberg, 2010 p.175)

2.2 Method

Decisions that the ECJ makes have a much bigger influence on the policy processes in the EU today than in the past. Therefore we find it significant to look at the actual court rulings to see if any important changes have occurred. (Tallberg, 2010 p. 149-152)

We have decided to do a descriptive text analysis of the court rulings that we have chosen, to see whether these show an increased centralization over time or not. The analysis tools we are going to use in our analysis are polar ideal types. That means that we will be using ideal types that have two extreme ends, in our case minimum centralization on the one end and maximum centralization on the other, which we have taken from William Riker's theory on federalism. The ideal types we have constructed are going to be the framework that the court rulings will be analyzed from. The analysis of the text will thus result in the rulings being categorized by which ideal type they are closest to. (Esaiasson et al, 2012 p.139-144 & 158-163)

As previously stated, we will use William Riker's theory on federalism as our base for the ideal types. We will concentrate the traits of centralization and decentralization in federalism that he is presenting when composing our ideal types, and then use these types as our tools in the text analysis. Since federalism is such a wide known phenomenon, we found it best to base our ideal types on already existing theories. (Esaiasson et al, 2012 p.139-144)

Our ambition is to describe if and how the ECJ has taken the EU's interest more into account than the member states', not to explain why this has happened.

We will describe and then draw conclusions from what we have arrived at, and thus we do not have any explanatory ambitions with this essay. Although we do think that an explanatory study on this subject would be interesting and could be a subject for future studies.

2.2.1 Ideal Types

The polar ideal types that we will use are taken from William Riker's extreme categories for federations, minimum and maximum centralized federalism.

Minimum:

“The rulers of the federation can make decisions in only one narrowly restricted category of action without obtaining the approval of the rulers of the constituent units.” (Riker, 1975 p.102)

Maximum:

“The rulers of the federation can make decisions without consulting the rulers of the member governments in all but one narrowly restricted category of action.” (Riker, 1975 p.102)

The reason why these types are not more extreme, to the extent where there is a pole with no decision-making in the constituent governments and vice versa, is that it would not be a federal system if so. Our view is that the EU is a federal political system and therefore our ideal types will all be based upon federalist characteristics. (Riker, 1975 p.102)

2.3 Material

For our text analysis, we have decided to study certain rulings from the ECJ to see how the ECJ's decisions are leading the EU in a federalist direction.

Our sample will include one ruling from approximately every fifth year since the Single European Act, which entered into force on July 1st, 1987. (1987, 1992, 1997, 2001, 2006 and 2010) We chose the Single European Act as our starting point because there were many barriers between member states that were removed as an effect of that treaty. Since our essay focuses on changes over time it is natural that we have chosen to pick rulings from different points in time. (Esaiasson et al, 2012 p.225 & Beckman, 2007 p.53 & Steiner et al, 2006 p.6)

We have decided that we will examine the rulings that are based on internal markets and have furthermore narrowed our search down to one of the particular freedoms, the free movement of goods. We chose the internal market because

there are many conflicts between the central and regional level there, seeing as the national interest is often interfering with the EU interest in this area. (Tallberg, 2010 p.57-60)

Our goal has been to choose cases that are as similar as possible so that we can rule out as many intermediate factors as possible that could have had an influence on the ECJ, and will therefore choose our material by using a “most-alike” approach. Since our purpose is to see whether the ECJ is now more prone to rule in favor centralization, it is the different outcomes that are interesting in this case, and that is why we are choosing cases on the basis of the independent variable. Based upon our limitations, there are only a few possible court rulings that fit the criterions in our study, and that is our motivation for choosing them. We are aware that it is hard to find cases that are absolutely alike, but we believe that our cases are as similar as possible. (Esaiasson, 2012 p.101-104)

Seeing as we do not have any ambition to generalize in our essay, we will therefore not strive for external validity, but will have our focus instead on internal validity. Although external validity is important, we believe that the subject is interesting in itself and that the magnitude of this essay will not allow us to generalize. Also there are so many variations between federations that make them more different than alike, which make it even harder to generalize. (Esaiasson et al, 2012 p.158-161 & Riker, 1975 p.131)

3 Analysis

By joining the EU, and thereby accepting the legal order within that union, the states limit their sovereignty. This is the case in most international alliances, a country gives up some of its own decision rights for the benefit of cooperation, but in the EU it has been taken a bit further since it is a limitation in *sovereignty*, not just decision-making. Keeping this in mind, it is obvious that conflicts will arise between the EU and national legislation since they're not always compatible. These conflicts will especially arise within the internal market since there are numerous clashes in interest. (Steiner et al, 2006 p.71)

The goal of our analysis is to find the clashes that occur between the EU and the member states interests, and by using our ideal types, we look for certain tendencies that show if the ECJ reasoning tends to favor the EU as a whole. Our purpose is to analyze the different ideas and interests that are presented within the rulings.

We have analyzed these court rulings in chronological order from 1987 until 2010. Since our attempt was to keep these cases as similar as possible within the realm of the free movement of goods, we tried to make all cases entail the Commission vs. a country. Unfortunately, we were unable to do so for our case from 1997 due to there being a lack of cases with this quality. So, instead in 1997, we have chosen a case that is the Commission and the French Republic against Ladbroke Racing Ltd. This could be problematic seeing as the EU and a member state have the same interest in this case. Although, since our purpose is to bring forward the ideas and reasoning of the ECJ, and not just the actual result of the judgment, we find that it is not problematic to the extent that it compromises our study.¹

3.1 Prioritizing National Interests

The ruling which took place fairly recently after the Single European Act in 1987, is an application that declares that a Commission decision to all member states is

¹ We will refer to the rulings in our analysis by writing the case number and then the page from which we extracted the information. When referring to summaries of the rulings we will write an S in front of the case number instead of a C. In the ruling from 2010, there are no page numbers, so in that analysis we will not refer to any pages.

void. (C-229/86 p.3759) This action was brought by a producer/exporter (Brother Industries Limited, Taiwan Brother Industries Limited and Brother International Europe Limited) against a commission decision that terminated:

“an anti-dumping proceeding relating to exports from a non-member state- decision on a refusal to regard the products concerned as originating in the State of exportation”. (S-229/86 p.3757)

The products of concern are typewriters. This means that the producer/exporter decided to challenge the Commission on their decision and this was on the grounds that the decision lacked competence and essential procedural requirements that they believed were due. By this, the producer/exporter means that the Commission’s decision was poorly executed and they decided to object to it by asking the ECJ to intervene. (C-229/86 p.3760)

Throughout the text, there are certain characteristics that show how the ECJ seems to be in favor of supporting national legislation. For example, under the facts section of this case, the ECJ states that:

“the decision nor the memorandum has any direct and concrete legal effects on the applicants since the definitive decision concerning the origin of goods will be taken by the national authorities.” (C-229/86 p.3761)

This quote is noteworthy because it shows that in this case, the ECJ decided to leave the power of the decision-making in the hands of the national authorities. The national authorities were told to check and prove whether or not the typewriters from Taiwan actually originally come from Taiwan. This is important because shows how much support the ECJ gives to the national legislations and lets them control their own free movement of goods.

However, even though the ECJ decided that the responsibility of this issue was to belong to the national legislators, they did not put any:

“obligations on the member states involved.” (C-229/86 p.3758)

They are to investigate the case but no follow up was deemed necessary. All that the ECJ asks is that each member state:

“takes the necessary measures in accordance with their own customs legislation.” (C-229/86 p.3762)

This factor within the ruling shows that the ECJ is putting all its faith and having full trust in the national legislature because they are letting them solve the issue. This shows that the ECJ reasons that the member states legislation should be prioritized.

The ECJ also made the declaration that the:

“application is dismissed as inadmissible” (C-229/86 p.3764)

,or not accepted, and the applicants were ordered to pay the costs that they themselves owed as well as for the intervener. (C-229/86 p.3764)

So overall, the ECJ’s assessment to make the decision void lead to leaving power in the hands of the national legislations which shows that in this time, the

EU was not fully centralized. This end result of the case proves the idea that the ECJ at this time favored national legislation which is a decentralized quality.

3.2 A Step Towards Centralized Power

Case C-30/90 from 1992 concerns the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland. The Kingdom of Spain stepped in as an intervener supporting the United Kingdom of Great Britain in Northern Ireland. This case starts with discussing how patents are governed by the Patent Act of 1977 and then continues to the Commission's presentation of the fact that the United Kingdom has not abided its obligations under Article 30 of the Treaty. (C-30/90 p.860) With this, the commission means that the defendant:

“distinguish between the manufacture of the patented product on national territory and the importation of the product from the territory of another Member State”. (C-30/90 p.861)

This distinguishing process:

“places imports at a disadvantage by virtue of the conditions on which they allow the competent authorities to grant a compulsory licence where the patent is being worked by importation.” (C-30/90 p.861)

These quotes explain that the commission views this as a breach of the rules that needed to be followed and has therefore chosen to take the issue to the ECJ.

One feature from this case that was interesting is the aspect that from early on explains that:

“as community law stands, the provisions on patents have not yet been the subject of unification at Community level or in the context of approximation of laws”. (C-30/90 p.864)

This means that the community laws are left for the national legislation to determine which gives significant power to the national legislation. The part that is of great importance and interesting to analyze is what followed. The paragraph after the previous quote states that this power cannot be given to the national legislation:

“would adversely affect the principle free movement of goods within the common market as provided for and regulated by the treaty.” (C-30/90 p.865)

Adverse affect means that something has a harmful or undesirable affect and this quote is significant because it supports the idea that the ECJ has the ability to take away the power from the national legislation and override it.

The Commission believed that the measure taken in the United Kingdom would then have a negative affect, on all the other member states. This is due to it having a poor affect on intra-community trade, which should not be prohibited but instead promoted in order to help out the different member states. (C-30/90 p.866)

Quantitative restrictions are limits on imports and exports and are prohibited between member states. The Commission believes that this situation also has an:

“effect equivalent to quantitative restrictions on imports” (C-30/90 p.866)

, which is viewed as negative. EU attempts “to guarantee the free movement of goods within the common market” and therefore anything that limits this is going to be viewed as negative and unacceptable. This reasoning shows how important the ECJ considers the free movement of goods to be. So the Commission bringing up this topic is of great importance to the free movement of goods within and between the member states. (Steiner et al, 2006. P.370 & 376)

In the EU law it is written that:

“national measures which seek to employ industrial or commercial property right in order to encourage or protect domestic production at the expense of imports from other member states will breach article 28 and will not be permitted under article 30: Commission v UK C30-90 (recumpulsory patent licenses).” (Steiner et al, 2006 p.670)

This quote explains the law behind the ECJ’s decision to agree with the Commission in their declaration that the “United Kingdom has failed to fulfil its obligations under article 30 of the Treaty”(C-30/90 p.869) This leads to the ECJ ordering the United Kingdom to pay the costs as well as for the Kingdom of Spain to pay its own costs as well.

This powerful ruling shows how the ECJ takes the side of the Commission and made a decision that would benefit the EU as well as all the member states instead of just giving in to one member states national interest. The fact that the ECJ could make the United Kingdom and the Kingdom of Spain not only pay the costs, but also take away its power to create a certain measure shows its overriding power over national legislations. This is a feature that shows the centralized power of the ECJ and the strength that it withholds.

3.3 Compatibility with the Treaty

This ruling from 1997, is a case where two cases were joined together seeing as they are both appeals to the same judgment and regard the need to evaluate the compatibility between national legislation and the EU Treaty. In this case, it is the Commission of the European Communities and the French Republic versus Ladbroke Racing Ltd, a company that follows English law, and the case concerns restriction of competition within the EU. (S-379/95P and C-379/95P & C-359/95P and C-379/95P p.6302-6303)

The original case that is being appealed concerned a complaint from Ladbroke Racing with the Commission, the French Republic, 10 racing companies and the French economic interest group Pari Mutuel Urbain (PMU). PMU holds an exclusive right to manage off-course betting on horse races in France, and also the bets taken in France when races are held abroad. This restriction of competition is

what Ladbroke racing made its complaint about. The Commission rejected the complaint because there was no European community interest since the French legislation first has to be evaluated on the grounds of the Treaty's rules on competition. (C-359/95P and C-379/95P p.6303-6306)

The ECJ's final judgment was to annul the CFI's first decision and to refer it back to the CFI for reevaluation of the French legislation's compatibility with the Treaty. (C-359/95P and C-379/95P p.6314)

This judgment shows how the ECJ overrode the Commission by stating that the Commission's evaluation and decision to reject Ladbroke's complaint is wrong. This is shown in two quotes from the ECJ's judgment:

"... the Commission had failed to fulfil its duty to examine carefully the factual and legal issues brought to its attention by the complainants so as to satisfy the requirement of certainty which a final decision determining whether an infringement exists must satisfy" (C-359/95P and C-379/95P p.6306)

"The Commission's reasoning was thus based on a misinterpretation of the conditions governing the definitive determination of the existence of alleged infringements" (C-359/95P and C-379/95P p.6303-6306)

In these quotes, it is obvious that the ECJ stands above the Commission, since it says that the Commission has failed to fulfill requirements and misinterpreted conditions, and thus must reevaluate. This is important in the sense that by doing so, the ECJ states that the CFI's competence is lacking. (Steiner et al, 2006 p.149)

In the appeal, the different parties make pleas as to how they want the Court to act, and the French Republic presents their wishes of what they want ECJ to do. In this following quote one can see what the Commission and the French Republic think regarding the previous judgment of the CFI, and furthermore what they want in this case:

"It is to be noted that in their pleas the Commission and the French Republic challenge, [...] the Court of First Instance's reasoning that it was necessary for the Commission to complete its examination of the compatibility of the French legislation with the Treaty rules on competition before it could definitively reject the complaint..." (C-359/95P and C-379/95P p.6309-6310)

It is clear that the French Republic does not wish for their legislation to go under examination, and they argue that an examination is not necessary. In their final decision the ECJ refers the case back to the CFI, on the grounds that the previous examination was not satisfactory enough, and needs to be examined further. By doing this, the ECJ did not consider the French Republic's interest since they did not want further examination.

It is necessary to distinguish the difference between interest and sovereignty, and although the French Republic did not get what they wanted from this judgment, it did not intrude on their sovereignty. Although, it is also necessary to note that it is possible that in a reexamination of the French legislation, the CFI will state that the legislation actually is incompatible with the Treaty, and if so

there is a possibility that the French Republic's sovereignty could be limited. One can presume that this is the reason why the French Republic did not want another examination of their legislation.

“If, however, the Commission were to find that the legislation infringed the Treaty, it would then have to consider whether or not the fact that the companies and the PMU were complying with that legislation could lead to the adoption of measures against them in order to terminate infringements [...]” (C-359/95P and C-379/95P p.6311)

If this would be the case, the French Republic would have to abide to the EU legislation instead of its own, and if that occurred, then it would be intruding on their sovereignty. Although, it is possible that after the reevaluation, the Commission finds that French legislation does not violate the Treaty, and in that case the French Republic will not have to do anything about it.

The question whether EU law should be prioritized before national law is significant in this case since it concerns a possible clash of EU and national legislation. The ECJ says in their judgment that it is important to examine the compatibility between these two:

“That reasoning is thus based on the premiss that the lawfulness [...] of conduct of undertakings complying with national legislation [...] depends on whether that legislation is compatible with the Treaty.” (C-359/95P and C-379/95P p.6311)

Compatibility is here the single deciding factor for whether the French legislation is acceptable, which is also the ECJ's reason for referring the case back to the CFI, seeing as they did not carefully enough examine the French legislation before rejecting the Commission's decision. This is important because if the French legislation turns out to not be compatible, it would have to be changed, which would express the EU's overriding power.

This ruling shows that the ECJ has influence over national interest seeing as the ECJ referred the case back for further examination even though the French Republic did not want that. Although, it did not override the French interest entirely since the French Republic actually did want for the case to be referred back to the CFI, which the ECJ did. In this case the significance lies in the possible outcomes of the CFI's second ruling and what consequences that will have.

It is not completely clear which interest that is considered the most, especially since the Commission and a member state is on the same side in this dispute. Although, in the ECJ's reasoning they do not take the French Republic's interest into account, as they want the French legislation to be examined further. One can therefore see that it was the common EU interest that the ECJ prioritized in this case.

3.4 True to EU Interest

This court ruling, from 2001, is similar to the previous ruling from 1992 seeing as they both regard measures having an effect equivalent to quantitative restrictions. Therefore, some of the information will be repeated.

Since the Irish legislation on hallmarking was contrary to that of Article 30 of the Treaty, the Commission of the European Communities decided to give Ireland a formal notice on the 28th of June, in 1993 to submit its observations within two months. In this pre-litigation process (the activity prior to the actual decision to go to court), Ireland failed to reply to the Commission's declaration that consisted of certain requirements and prohibitions that they would like to see enforced. The Commission was disappointed and unsatisfied with this late reply, so the Commission sent an opinion again in November with a two months reply due date. Once again, Ireland responded late and due to this, the commission decided to bring this action to the ECJ. (C-30/99 p.4655-4656)

This court case then regards how precious metals (gold, silver, or platinum) are hallmarked, or labeled in terms of their standard, and marketed according to their fineness once they are imported into Ireland. Due to there being so many different points and arguments that are discussed in this case, we will not be able to present all of them, but instead focus on the ones we find most important. (C-30/99 p.4649-4650)

The United Kingdom of Great Britain and Northern Ireland intervened as Ireland's supporter in this case which eventually led to them being affected as well. (C-30/99 p.4649 & 4677)

In this case, the Commission first presents an argument that although Ireland is attempting to protect consumer and ensure fair trade, they fail at following certain rules:

“Irish rules concerning standards of fineness for precious metals constitute measures having equivalent effect to quantitative restrictions since they prohibit the marketing in Ireland, with the description and indication of fineness which they bear in their country of origin of articles made from precious metals lawfully manufactured and marketed in other Member States but not complying with those rules.” (C-30/99 p.4656)

This argument is very important because the measures having an equivalent effect to quantitative restriction is a very substantial topic in the single market and in this case, quantitative restrictions is the focal argument. As stated previously, quantitative restrictions are limits on imports and exports and are prohibited between member states. Quantitative restrictions are discussed in numerous areas of the court ruling so we therefore can see that the court is taking the Commission's side even from early on in the case. (Steiner et al, 2006 p.367 & 370)

As stated previously, the court is already agreeing with the Commission's points. The following quote is therefore very relevant and important to this case. The Court continues to argue and define that:

“any measure of the Member States which is capable, directly or indirectly, actually or potentially, of hindering intra-community trade must be considered to be a measure having equivalent effect to quantitative restrictions” (C-30/99 p.4659)

This idea is of great importance seeing as it protects all the member states instead of benefiting one. Therefore, the definition of quantitative restrictions presents a powerful point that shows that the ECJ is representing all of the EU Member States as a whole.

However, the court continues to argue that it is necessary to hallmark a precious metal that is not accurately indicating the fineness in accordance to the new country it is being imported to, in this case Ireland. This means that before a precious metal is imported, it should have the accurate patent that will ensure consumer and fair trade protection and only if it does not already do so, then can it be re-marked. This is a factor that shows how important the free movement of goods is to the member states. However, the Commission argues that Ireland may not re-hallmark a precious metal that is from another Member State if the hallmark that it already has is sufficient and intelligible to a consumer. (C-30/99 p.4660 & 4657)

This case ends with that the Court declares different rulings that were almost exact to the demands that the Commission presented prior. However, Ireland has failed to fulfill these obligations and this has led to the ECJ ordering Ireland to pay the costs. Due to The United Kingdom of Great Britain and Northern Ireland acting as interveners, they were also fined and both lands required to pay their own costs. The fact that the ECJ has the power over the individual countries to make them have to pay the costs strengthens the argument that the ECJ's law stands above the national law. This is an indicator of the strength of the ECJ and its centralizing effect. (C-30/99 p.4676)

Overall, this case showed not only that the ECJ showed concern for all member states, but also that the ECJ had an overriding power. The ability of the ECJ to stand higher than the national law is a very centralist quality.

3.5 Relying on the ECJ

This judgment from 2006, regards customs values of contact lenses for when they are imported to the United Kingdom from the Channel Islands. The ruling entails a preliminary ruling where article 29 was interpreted, and Dollond & Aitchison (D&A) and the Commission of Customs and Excise disagreed on that interpretation. (C-491/04 p.2132-2133)

D&A is an optician company, located on the Channel Islands. They provide contact lenses on mail order for customers in the United Kingdom, and the customers can additionally receive services like eye checks within their order. The disagreement between the parties concerns whether these services should be excluded from the tax that the contact lenses are bound to. (C-491/04 p.2137)

The Commission decided that the services were to be taxable to the same amount as the goods and this was appealed by D&A. After that, the VAT and Duties tribunal in Manchester in the United Kingdom decided not to make their own decision, but to refer three questions about the case to the ECJ for them to decide on. So this judgment is based on a request from a national court for the ECJ to interpret EU law. (C-491/04 p.2138)

In this case, the national court is referring a case to the ECJ before they make their own decision. This in itself is, even if the decision of the court is not, a sign that the ECJ has a big influence, since the national court does not want to make a decision on their own that later might be dismissed by the ECJ. Instead they refer a case beforehand, which is the case here:

“[...] the Vat and Duties Tribunal, Manchester, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:” (C-491/04 p.2138)

This can be taken as a sign of the ECJ’s higher influence, but not necessarily a sign of the ECJ’s tendency to rule in favor of a more centralized EU, since it is not certain that the ECJ will rule against national interest. Although, the fact that national courts want the ECJ to make a decision instead of them gives the ECJ more significance, even if the decision in itself does not.

By referring to previous ECJ judgments on the same matter, the ECJ states that the services are to be seen as goods and should therefore be taxable to the same amount, by bringing up the global perspective

“[...] it must be concluded that the offer is a global one in respect of which a single payment is made [...] Accordingly, the supplies of services must be regarded as part of the ‘payments made or to be made as a condition of sale of the imported goods by the buyer to the seller [...] therefore, as an integral part of the customs value.” (C-491/04 p.2144-2145)

This is important because the ECJ states that D&A’s offer is global and the services should therefore be included. By saying this the ECJ prioritize the EU interest before other interests.

One of the questions that the national court wanted answered concerns the question whether or not the services provided by D&A should be taxable at the same amount as the goods. More specifically they want to know if the principles from a certain previous judgment (C-349/96) on the same matter, can be used to decide in this case. The ECJ answers that these principles cannot be used in this way. (C-491/04 p.2141)

“[...] and as both the Commission of the European Communities and the United Kingdom Government submit, that judgment [...] cannot be interpreted as giving guidelines capable of being used directly in applying the provisions of Article 29 of the Customs Code.”

In this case the ECJ rules in favor of the Commission and a member state. But, is this just a case where the national interest and the common interest go together? It is certainly not a rule that the EU law always goes against national legislation in a way that interferes with national interest. One of the main reasons of states wanting to join the union is that it more often than rarely is beneficial to be a part of.

In this judgment the important thing is that a national court willingly referred questions about a case to the ECJ for them to answer instead of themselves. This shows, maybe not an active choice by the ECJ to centralize the EU, but a choice by a member states to let the ECJ make a decision, which in itself centralizes the EU. This kind of referring is one of the ECJ's primary tools for influence in the EU, and the fact that the national courts use this is an indication that the ECJ 's power is increasing. (Tallberg, 2010 p.146-149)

3.6 Support to the EU

This case (C-28/08 P) regards the access of personal data within the EU, and how restricted or available that data should be. The goods discussed in this case are personal data and the case regards whether this data should be free of access, thus included in the free movement of goods.

In this case it is the Bavarian Lager, a British company (supported by the Kingdom of Denmark, the Republic of Finland, the Kingdom of Sweden and the European Data Protection Supervisor) who wants access to certain personal data, which the European Commission (supported by the United Kingdom and the Council of the EU) does not want to give them.

The EU law states that all documents of the union's institutions and bodies, should be of open access to everyone within the union, but this can be breached with concern for certain public or private interests. It is the interpretation of what these certain public and private interests are that the parties are disagreeing about, since two different regulations say two different things on the matter.

This judgment is based on an appeal from the Commission who wants to annul a judgment of the CFI, where the CFI overrode the Commission's earlier decision to reject the request from Bavarian Lager to get access to personal data.

Since this is an appeal, all the different parts in the case present what they think the ECJ should do. The Commission wants the ECJ to annul the CFI's

judgment to annul the Commissions previous decision, to give a final ruling and to make Bavarian Lager to pay the costs. The Council and United Kingdom's wishes are in principle the same as the Commission's. Bavarian Lager wants the ECJ to completely dismiss the Commission's appeal and order the Commission to pay the costs. The Kingdom of Denmark, Kingdom of Sweden the Republic of Finland and the European Data Protection Supervisor also want the Commission's appeal to be dismissed.

The ECJ overrode the CFI's decision, by stating that it did not go well together with the EU law. This is normal procedure, but by actually using their right to overrule the CFI's judgments they confirm their powerful position as interpreters of the EU law.

"[...] the particular and restrictive interpretation which the General Court gave [...] does not respond to the equilibrium which the Union legislature intended to establish between the two regulations in question." (The General Court in this case is the same as Court of First Instance.)

One can see a resemblance between this case and the one from 1997 where compatibility with the Treaty was the deciding factor. Here it is the compatibility with the essence of union legislation that is of importance, and by declaring that all decisions need to be compatible with the EU, the ECJ makes an important statement that it is the EU interest that overrides all other interests.

The ECJ rules that the most important regulation, the one that grants free access to documents or the right to a private life, is the one about a right to a private life. By doing that they rule against the EU as an open democracy, and rather take the interest of a few single people into account.

"Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights"

Instead of ruling in favor of this openness principle they rule in favor of the few persons who did not want to disclosure their names:

"[...] the Commission sent the latter ("the latter" being Bavarian Lager, editor's note) a document containing the minutes of the meeting of 11 October 1996, with five names removed. Of those five names, three persons could not be contacted by the Commission in order to give their consent, and two others expressly objected to the disclosure of their identity."

But, it is important to note that a citizen of the EU is not the same as a member state. The important thing here is whose wishes and interests, in terms of the parties involved in the case, the ECJ favors.

In the following quote the ECJ addresses a part of a regulation concerning the openness of the EU:

"[...] the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen."

By using the phrase “peoples of Europe”, the ECJ declares the EU as superior to the member states since it is the membership of the EU and not the national state that is most important. It is the interest of the EU and its citizens that is the important thing, not the interest of a single company in a member state. So even though this ruling goes against the principle about an open democratic EU, it does not go against the citizens of the union.

From this result one can conclude that this judgment overall favored the European interest instead of the national interests of the member states, and therefore a move towards centralization can be found here.

4 Conclusion

4.1 Criteria for conclusions

Since our purpose is to see which interests the ECJ favors the most in their judgments, we will search for centralizing tendencies in the rulings. We are especially looking for tendencies in which the ECJ overrides member states' wishes and laws, and by using our ideal types we will see which of these two types each ruling leans closer towards.

Mainly we are looking for a conflict between an EU institution and the national interest of one or several member states, and how the ECJ deals with this conflict. Did it rule in favor of one or the other, or is the judgment equally satisfactory or unsatisfactory for both parties? When the ECJ rules in favor of an EU institution we interpret that as a sign of ruling in the EU interest.

In some cases it is not absolutely clear whose interest is taken into account the most, but that is what our analysis is for; to read between the lines and see what the judgment's consequences actually mean for the parties, and for the centralization of the EU.

4.2 Conclusion

Now we will compare these six rulings to answer our question whose interest the ECJ has favored the most in their judgements. Through our analysis, we have discovered that in five of the six rulings, there was a tendency for the ECJ to rule in favor in the EU's interest instead of the member states interest. The court ruling from 1987 was the only one of the six that ruled in favor of national legislation.

In the beginning of our essay, we had the hypothesis that the ECJ, as an increasingly powerful institution within the EU, has lead the Union towards a more centralized federal system. Our analysis has shown us that this centralization is in fact not a new phenomenon, but has instead been a consistent factor in the ECJ's decision-making.

In 1987, the overall essence of the judgment was that the member state was given the opportunity to make the decision themselves. The ECJ did not require

anything from them so they had no obligations, except for the ECJ's wish for them to look into the case in greater detail and make the decision that fit best with their rules. This means that the final decision-making was in the constituent government instead of the federal government, which is a characteristic of Riker's minimum centralized federation that we have used as our ideal type. When looking at this court ruling, one can see that in this point in time the ECJ was giving power to the regional levels of the union.

This is a huge contrast from the result that we witnessed in the rest of the court rulings. Already in 1992, one can witness a centralization of the EU and this continues even to the last court ruling that we chose from 2010. One can see that the ECJ is deciding to lay a greater focus on the benefits of the EU as a whole and not the individual interests of the member states. For example, if we look at the ruling from 1992, which regards the limitations on imports and exports, the ECJ decided that these limitations were not in the best interest of the EU as a whole and therefore the United Kingdom was obliged to remove these limitations. This is obviously a characteristic of the maximum centralized ideal type, since it gives power to the center and not the lower levels.

We continue to find this maximum centralized ideal type characteristic in the court ruling from 1997. In this ruling the ECJ actually rules in favor of the French interest to a certain extent, but the focal point remains that the ECJ's decision challenges the French interest overall. This is because of the possibility that they might have to adjust their legislation. This ruling is not as clear as the previous one on whether the ECJ ruled in favor of EU interest or national interest, but when you read between the lines and look to the consequence of the judgment one could see a majority of the maximum ideal type.

Another ruling where the maximum ideal type is found is the following case in 2001 where the Commission challenges Ireland on an issue that is also related to limitations on imports and exports. This ruling, similar to the one from 1992, shows how the ECJ took sides with the Commission and overrode their national law. The centralized characteristics that are prevalent in this court case, as in the previous rulings. The ECJ attempted to ensure that the free movement of goods benefited all member states and not just fit the national interest of Ireland. This is another example of the common interest of the Union overriding the interest of a single member state.

Once again, our findings lead to the conclusion that the maximum centralized ideal type is predominant in the case from 2006 as well. This case is similar to the one from 1997 in the sense that it is a bit unclear as to if the national interest is overruled. In this case, the national court referred questions to the ECJ and this in itself showed that the national courts are dependent on the ECJ since they would rather refer a case than to rule on it themselves and then possibly be overruled by the ECJ. This shows that the ECJ is more powerful than the national courts and that is a characteristic of a maximum centralized ideal type. Since the ECJ is the

federal government's court and not the constituents', the power lies within the center rather than at regional level.

As stated previously, the final judgment of our essay from 2010 is similar to the ones from 1997 and 2006, seeing as all three of them are complicated due to it being unclear as to whose wishes have been taken into account the most. Since there are member states on both the applicant's side and defendant's side of this case, either way a member states interest will be denied. However, it is still apparent that the ECJ's ruling overrides the individual countries interest due to it standing above the national legislation. Here, one can see the maximum ideal type in the fact that it was the Commission's wishes that were granted by the ECJ and therefore as in the four previous cases, the common interest was prioritized.

All in all one, one cannot see a pattern over time that the ECJ has increasingly taken the EU interests into account more than the member states. Although it is prevalent that the ECJ makes decisions that favor the EU instead of the member states, it is not something that has increased over time. This has instead been a consistent event. One can interpret this as the centralization tendencies of the ECJ to not be a new thing, which we believed in our hypothesis, but instead something that has occurred for a while.

Our analysis has left us pondering when the ECJ started to consider the EU interest more than the member states. For example, if it took place even before the SEA Treaty or if it occurred in between the time of 1987 and 1992 where we noticed a change in the decision-making. Unfortunately, due to our type of study we are unable to analyze this. This event has made us hypothesize that it may be possible that the ECJ simply did not change so quickly right after the SEA, but instead it took a few years for the drastic change that occurred. Another hypothesis is that the ECJ was affected in 1992 by the Maastricht Treaty, which opened up the internal market even more. We believe that this question would have been an interesting topic to study in greater detail.

So to answer our question, the ECJ has not changed its way of striking a balance between the EU and the member states's interests, but has been consistent in ruling in favor of the EU interest in all but one of the rulings in this study.

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