

CW – ESSAY

Table of Contents

Part A	2
Part-B	6
Question 3	6
References.....	11

Part A

Supremacy (primacy) of EU law is one of its cornerstone principles and in practice it is always followed by national courts

The most essential aspect of EU is the supremacy constrained in the EU legislative system. These principles are coded into treaties of EU while they are specifically inspired from case laws that are argued in the ECJ also known as (European Court of Justice). The cornerstone principle binds and directs the national court system to implement European Union law where the requested cases have a direct clash with legislations drawn on domestic court and national court would cite EU law for managing the situation. It is found that Treaty of Functioning of European Union also known as (TFEU) of Article 288 and TEU (Treaty of European Union) article 4(2) are two major citation sources for supremacy principle in EU¹. The mentioned article of TEU subjects union institutions to take precedence on laws and constitution which are considered viable by the authoritative power provided to them. This indicates that laws of EU are considered highest order in the scale of legal rules and norms devised by constitution.

For instance, in one of the case where a Dutch organisation headed by Van Gend en Loos raised issues with custom tax which was levied on imported products and materials from Germany. ECJ has upheld and also provided clarification on the practice of supremacy applied in Van Gend en Loos (1963) and Costa vs. ENEL in 1964. The decision supported and passed in the Van Gend en Loos case has made a significant contribution in selecting EU law as precedence over national legislation. These particular cases also need to be considered as an initiative to strengthen EU law over national ones.

The business claimed that the duty was against the EU member states' ban on customs tariffs under the Treaty of Rome. The ruling in this case by the ECJ was crucial. It was decided that the terms of the Treaty of Rome established individual rights for both citizens and legal entities, in addition to being enforceable on member states². Significantly, the ECJ held that EU legislation had a distinct and independent legal character and was more than just a collection of international agreements between states. In addition, the European Court of Justice (ECJ) created the doctrine of direct impact, which permits people to cite and rely on EU legislation in national courts. The

¹ Schnettger, Anita. "Article 4 (2) TEU as a vehicle for national constitutional identity in the shared European legal system." *Constitutional Identity in a Europe of Multilevel Constitutionalism* (2020): 9-37

² Ene, Marilena. "Van Gend en Loos Case." *Tax Mag.* (2021): 304.

supremacy principle was established by the Van Gend en Loos case. The ECJ boosted the authority of EU law above national law by acknowledging that it might establish individual rights and may be directly invoked by persons in national courts.

How the notion of EU law supremacy is applied is largely determined by national legal and constitutional systems³. Many EU member nations have civil law systems, which are characterised by a rigorous adherence to standardised legal codes. The written law, which includes EU treaties and rules, usually binds national courts in these systems, making it easier to integrate and implement the idea of supremacy. Common law systems, such as those in the UK, on the other hand, frequently rely primarily on case law and court precedent. The arrangement of these evidences the national court intervened in the matter and pulled out other legal cases to relay a path for application of ways through which EU legislation can be considered a viable option in court proceedings. It is found that member state had judicial authority which played an important position in the respect of European Union supremacy. However, the perception and actions of national courts took an aggressive stand to defend the application of EU law. The conservative approach in court proceedings helped such cases to be mitigated with supremacy principle. Therefore there was a division in support of EU as some of the court were defending their constitutional points while the national court decided to interact and apply ENJ for providing clarifications on issues. In another case where Mr. Costa regarded as Italian citizen was entangled in legal issues that would seek to compete against the draft sent under the pretext of national laws to devise the privatisation of ENEL which was a government controlled firm in energy sector. The argument proposed by Costa was citing treaty of Rome which was alleged to be breached by Italian national legislations. This particular case witnessed important announcement by ECJ that supremacy principles of EU legislation consists unique set of legislative nature which do not come under the norms of any treaty of EU nation⁴. It has the power to stand firm and supersede any nature of conflict rose from national legislations of any country without taking the date of law passed by the constitution assembly. However, it cannot be denied that supremacy nature of EU

³ Udoh, Gabriel Peter. "An Analysis of the Van Gend Judgment as a Pre-cursor to the Doctrine of Direct Effect." *Available at SSRN 3877282* (2021).

⁴ Rafał, M. A. Ń. K. O. "60 years of Van Gend & Loos: Direct effect of EU law and a'new legal order'." (2023)

law does not meet relevant points of member state legislation either due to conflict or different set of legal principles in custom.

Since the UK left the EU, and introduced the Retained EU Law Act 2023, supremacy no longer has relevance in UK law, and the UK national courts do not have to be bound by this EU law principle

The implemented changes is executed first by UK's exit from EU which signalled the application of BREXIT. This incident is considered an important turning point for UK and EU laws as both became conflicted to each other due to the exit of UK. The application of RLEA act, 2023 and other measures by legislative body of UK made a significant statement in denying the application of EU law over UK national boundary⁵. Therefore, the supremacy principle does not properly cover the entirety of UK legal system.

Due to Brexit, there came an imbalance in constitutional body of UK as it have to compete and defy the supremacy of EU law. With the exit of UK in January 31, 2020, the period of transition came for the country. It relayed a less significant identity of EU law as the principles of supremacy were denied in UK than other European Union countries. Application of RLEA act also known as Retained EU Law Act, 2023 and EU (Withdrawal act), 2018 was sought after by UK to break the monotonous concept of EU legislative body⁶. RLEA can be considered as the departing gift from EU as it retained some of the provision of EU with modification from UK interest in EU. The post Brexit condition has converted majority of EU legislations into principles of UK legislation which was the primary working nature of RLEA act 2023. The UK's takeoff from the EU was represented by the withdrawal arrangement haggled between the two gatherings. This understanding illustrated a change period that went on until December 31, 2020, during which EU regulation kept on applying in the UK.

Notwithstanding, the progress time frame finished on December 31, 2020, and the UK completely left the EU's single market and customs association. After that date, the UK is not generally limited by EU regulation similarly it was while it was an individual from the EU. The UK can set its own

⁵ "Retained EU Law (Revocation and Reform) Act 2023"

⁶ Arena, Amedeo. "From an unpaid electricity bill to the primacy of EU law: Gian Galeazzo Stendardi and the making of Costa v. ENEL." *European Journal of International Law* 30.3 (2019): 1017-1037

regulations and guidelines, including those connected with exchange, migration, and different regions that were already dependent upon EU guidelines⁷.

The UK and the EU likewise arranged an economic deal called the EU-UK Exchange and Participation Understanding, which became effective on January 1, 2021. This understanding oversees different parts of the connection between the UK and the EU, including exchange, however it doesn't expose the UK to similar degree of EU regulation and guidelines as it did while it was an EU part.

While the choice to leave the EU doesn't really showcase the unimportant aspect of EU law but, it mirrored the UK's craving to have more command over its own regulations, guidelines, and direction. One of the key contentions made by defenders of Brexit was that the UK ought to recapture control of its regulations and guidelines, liberated from EU impact. Leaving the EU permitted the UK to recover sway over regions like movement, exchange, and guidelines, which were beforehand dependent upon EU rules and orders. This shift was viewed as a reassertion of public power⁸. The UK could now set its own guidelines in different areas, like horticulture, fisheries, and item norms, without complying with EU principles. This was seen as a chance to create guidelines that were more lined up with English inclinations and needs. It's essential to take note of that the effect of Brexit on the EU's apparent incomparability involves understanding and suppositions on this issue fluctuate. Some contended that Brexit debilitately diminished the EU law supremacy by diminishing its size and worldwide impact, while others argue that the EU's versatility and solidarity notwithstanding Brexit challenges have reinforced its attachment and resolve⁹.

The United Kingdom has established a legal framework that allows national law to supersede retained EU legislation under certain conditions. This gives national courts in the UK greater discretion over how to interpret and implement laws derived from the EU.

⁷ Porras-Gómez, Antonio-Martín. "The EU Recovery Instrument and the Constitutional Implications of its Expenditure." *European Constitutional Law Review* 19.1 (2023): 1-24.

⁸ "European Union (Withdrawal) Act 2018"

⁹ Elliott, Mark. "Constitutional Adjudication and Constitutional Politics in the United Kingdom: The Miller II Case in Legal and Political Context." *European Constitutional Law Review* 16.4 (2020): 625-646.

Part-B

Question 3

Depending upon proper evaluation of the case of Saulius who is the main factor of discussion in this case, Saulius may have rights according to the Workplace Stress Directive 2021. The first European Commission Council Framework Directive provided its first significant approach for the prevention of work related stress and the management of psychological risks in its document **“Introduction of Measures to Encourage Improvements in the Safety and Health of Workers at Work (89/391/EEC)”**.¹⁰ This directive has mentioned about providing a quiet room for the employees at the workplace for enhancing their meditative practices, to get over the complications of stress and burnout. Stressland which has been a member state of EU has not implemented the workplace stress deductive 2022 creating violation under the directive of the National Law. Under the EU law the member states are obligated to transpose deductives into the national law within the deadline that is provided by the EU. According to the EU directive; **monitoring job content, working conditions, terms of employment, social relations, mental health wellbeing** and others are important to be practised.¹¹ Through these procedures, the employers must tend to provide security to the employees to decrease their job stress. In this case, it is identified that stress land has not implemented the directive which provides violation by stress land. The act seems to fall short in the case of Stressland, as it does not provide a separate and dedicated room for meditation for the employees. This mainly had been aimed to ensure proper relief from the employer’s stress. Stressland by violating the implementation of the Directive may face future complications as it is highly necessary for the member states to implement the necessary rules and regulations through the EU directives. In the case of Workplace Stress Directive 2021, Streeland employers have not provided dedicated meditation places to the employees through which their stress and burnout issues can be solved. Saulius wishes to use the stress room however his employer is unable to provide him with a proper meditation room where he can get over his anger and frustration related to increased work stress. The Board of Governors of All Together Housing includes three members from the council who have been nominated by the council itself. The lack of having a proper

¹⁰ Zoni S, Lucchini RG. European approaches to work-related stress: a critical review on risk evaluation. Safety and health at work. 2012 Mar 1;3(1):43-9.

¹¹ “Guidance on work-related stress, European Commission.”

meditation room is getting complicated for Saulius as there has been a massive issue of stress management for him and travelling to the local cathedral is highly time-consuming. Depending upon the EU directive, it is the responsibility of the company to provide a dedicated meditating room to Saulius as there has been proper legal guidance mentioned by the EU directive. According to the ***October 2023 Infringement Package***, it is mentioned by the EU that all the member States have to maintain and comply with the obligations under the EU law.¹² This law aims to ensure proper application of EU law for the benefit of the citizens as well as businesses in all the member states. The key decisions taken by the EU Commission are implemented in different industries starting from the environment and fisheries to internal market, entrepreneurship, SMEs as well as other industries. Based on the October 2023 Infringement Package, Stressland has to face severe complications of infringement and in case of failure of any kind of negotiation, the case can further reach the Court of Justice of the EU.

It is the responsibility of each member state to implement the EU directive when it is issued. In the case of Stressland transposing the directives into national law must be performed through which it can avoid the infringement cases. Transposition involves incorporating the directives requirements into the legal frameworks of the countries in allowing the member states to achieve directives goals by implementing their own unique legal requirements and administrative systems. Every member state of the EU has their dedicated legislation which is complied to that of EU regulations. Stressland has its own regulations and based on the directives in Workplace Act 2022, which mentions the employees must be provided a quiet place for meditation. On the contrary, the requirements of the acts have been less specific in mentioning the presence of the meditating room inside the office premises. The directive has not mentioned that these meditating places have to be inside the workplace premises providing room to the company as the company does not obliterate Saulius to go to the cathedral nearby. However, the main point of concern here is the time and availability of the cathedral under the act as reaching the cathedral and coming back to the workplace involves time constraints as it is during lunch breaks. Based on the factor of supremacy and the ***principles of supremacy of the EU laws***, they always are superior compared to the national laws as established by the ***European Court Of Justice***.¹³ Saulius must stick to the EU Directive as

¹² “EU October 2023, Infringement Package”

¹³ Lindeboom J. Why EU law claims supremacy. Oxford Journal of Legal Studies. 2018 Jun 1;38(2):328-56.

the supremacy of the EU law is always above the national law. For instance, in the cases of “*Van Gend en Loos v Nederlandse Administratie der Belastingen*” or “*Costa v ENEL*” the court mentioned the primacy of the EU law first to be applied before all the national acts and laws. The national authorities while in the cases of conflict must choose to refuse the application of the national laws and acts if any EU law is in force. Saulius through the enforcement of EU law and stress directive must provide Saulius the right to get a meditation room where he can get over his stress. In the case of *Von Colson and Kamann v Land Nordrhein-Westfalen (1984)*, the ESJ established that the individuals could rely on the direct decisions of the national laws if the national laws are in direct effect of the EU laws.¹⁴ On the contrary, if any member state does not implement the EU directives within the right time, the individuals may rely on the EU directive even if the national laws do not meet the expected standards.

In Saulius’ case, the *Workplace Stress Directive 2021* clearly mentions the clear and precise requirements about providing a quiet room for meditation for the employees in an organisation during breaks. It confers all the employees’ access to this facility as it is the right of every employee working in organisations to get their desired quiet and empty room for meditation. On the contrary, the case of Stressland has been less precise on location requirement as it has not implemented the Workplace Stress Directive 2021 within 31st January 2023.¹⁵ This lack of implementation is in line with the direct effect of the EU law as *primacy of EU is more compared to national law*. Saulius in this case has to argue with the employer of having the EU law based right of having access to a meditation room at his workplace as it has been mandated in the directive. However, there are certain challenges and implications related to the fulfilment of the rights as there are practical challenges and implications to be considered. The main challenge is based on the *legal proceedings* as Saulius may be required to initiate the legal proceedings against his employer to enforce his right under the EU law which can be highly cost oriented and time consuming and also

¹⁴ Marin L. The general principles of European (criminal) law as limitation to the enforcement of EU law: the Kolpinghuis Nijmegen rule. The Court of Justice and European Criminal Law. Leading Cases in a Contextual Analysis, Oxford, Hart. 2019.

¹⁵ Jain A, Torres LD, Teoh K, Leka S. The impact of national legislation on psychosocial risks on organisational action plans, psychosocial working conditions, and employee work-related stress in Europe. Social Science & Medicine. 2022 Jun 1;302:114987.

create complications related to his employment. On the other hand, the employer of Saulius argues that the cathedral near the office meets the EU law of the workplace stress directive as it has available meditation spaces but it is within a short distance from the workplace and requires increased time to visit and return. Visiting the cathedral and returning within the specific lunchtime is not possible for Saulius which creates a valid point of contention in the legal proceedings. It is highly necessary for the employee as well as the employer to focus on developing practical solutions and negotiate the entire situation and not get into resorting to any legal action. **Communication development** within the employer and Saulius is highly necessary as communication development and **negotiation** can eradicate the legal actions in future and save time as well as money by setting up a meditation room within the workplace.¹⁶ This process can make it simplified and more accessible for Saulius to visit the room and meditate during the lunch break time. Negotiation and developing practical decisions by the employer of Saulius is highly necessary as without complying to the decisions, the employer may have to **provide compensation for violating the EU provision** of providing stress related depression free meditating spaces according to the EU workplace stress directive 2021. The employer's failure to comply with the EU directive can lead to legal infringement cases, where the employer may face monetary as well as existential crisis by not abiding to the EU law which has primacy over the national law.¹⁷ These are potential and practical steps which can be taken by Saulius through which overall improvement in employment standards can occur resulting in development of a harmonious workplace where employees work in a stress free environment. The use of a meditating room can be used by every employee during their lunch breaks as each employee has the right to get out of the stress through meditation mentioned by the EU law. The Workplace Stress Directive provides a clear and precise requirement for such facilities for allowing the employees to rely on the Stress Directive even if it hasn't been included in the national law due to the primacy of the EU law. Consulting with legal professionals and taking their suggestions can be the best course of action for Saulius as they have increased knowledge related to the well-versed EU law and National Labour regulations. Thus, it

¹⁶ Kalogiannidis S. Impact of effective business communication on employee performance. European Journal of Business and Management Research. 2020 Dec 10;5(6).

¹⁷ Traser JS, Béres N, Marinkás G, Pék E. The Principle of the Primacy of EU Law in Light of the Case Law of the Constitutional Courts of Italy, Germany, France, and Austria. Central European Journal of Comparative Law. 2020 Dec 9;1(2):151-75.

can be concluded that negotiation can only be the way forward for Saulius as taking legal actions can cost time and money based constraints for both Saulius and his employer.

References

- [1] Schnettger, Anita. "Article 4 (2) TEU as a vehicle for national constitutional identity in the shared European legal system." *Constitutional Identity in a Europe of Multilevel Constitutionalism* (2020): 9-37.
- [2] Ene, Marilena. "Van Gend en Loos Case." *Tax Mag.* (2021): 304.
- [3] Udoh, Gabriel Peter. "An Analysis of the Van Gend Judgment as a Pre-cursor to the Doctrine of Direct Effect." Available at SSRN 3877282 (2021).
- [4] Rafał, M. A. Ń. K. O. "60 years of Van Gend & Loos: Direct effect of EU law and a 'new legal order'." (2023).
- [5] Arena, Amedeo. "From an unpaid electricity bill to the primacy of EU law: Gian Galeazzo Stendardi and the making of *Costa v. ENEL*." *European Journal of International Law* 30.3 (2019): 1017-1037.
- [6] "Retained EU Law (Revocation and Reform) Act 2023"
- [7] Porras-Gómez, Antonio-Martín. "The EU Recovery Instrument and the Constitutional Implications of its Expenditure." *European Constitutional Law Review* 19.1 (2023): 1-24.
- [8] "European Union (Withdrawal) Act 2018"
- [9] Elliott, Mark. "Constitutional Adjudication and Constitutional Politics in the United Kingdom: The Miller II Case in Legal and Political Context." *European Constitutional Law Review* 16.4 (2020): 625-646.
- [10] Zoni S, Lucchini RG. European approaches to work-related stress: a critical review on risk evaluation. *Safety and health at work.* 2012 Mar 1;3(1):43-9.
- [11] "Guidance on work-related stress, European Commission."
- [12] "EU October 2023, Infringement Package"
- [13] Lindeboom J. Why EU law claims supremacy. *Oxford Journal of Legal Studies.* 2018 Jun 1;38(2):328-56.
- [14] Marin L. The general principles of European (criminal) law as limitation to the enforcement of EU law: the Kolpinghuis Nijmegen rule. *The Court of Justice and European Criminal Law. Leading Cases in a Contextual Analysis*, Oxford, Hart. 2019.
- [15] Jain A, Torres LD, Teoh K, Leka S. The impact of national legislation on psychosocial risks on organisational action plans, psychosocial working conditions, and employee work-related stress in Europe. *Social Science & Medicine.* 2022 Jun 1;302:114987.

[16] Kalogiannidis S. Impact of effective business communication on employee performance. *European Journal of Business and Management Research*. 2020 Dec 10;5(6).

[17] Traser JS, Béres N, Marinkás G, Pék E. The Principle of the Primacy of EU Law in Light of the Case Law of the Constitutional Courts of Italy, Germany, France, and Austria. *Central European Journal of Comparative Law*. 2020 Dec 9;1(2):151-75.