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THE CONCEPT AND FACES OF THE PRINCIPLE DIRECT EFFECT OF EUROPEAN COMMUNITY LAW

Abstract

The aim of this paper is to describe and elaborate a concept of direct effect as the general concept in EC/EU law. To achieve that, it is necessary to make the analysis of some scholar's opinions and ECJ's jurisprudence. First, I will try to explain the concept of direct effect and the direct applicability in general in order to find different meanings of a direct effect. Then, I will present and explain some meanings or features of direct effect and refer to the practical importance of direct effect.

Key words: community law, EU law, direct effect, direct applicability, legal protection, European Court of Justice.

CONCEPT

1. Direct effect and/or direct application?

Having in mind that provisions that account for Community law/EU law are initially established beyond the member states, their enforcement in member states depends upon understanding and clarification of two questions. Firstly, the member states should accept and recognize EU law as integral

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part of their internal legal order and secondly, national courts should approve their application and provide direct legal protection of subjective rights to the community subjects. Within the community law/EU law, the first issue has been resolved in framework and by the principle of direct application, while the second issue has been set on by the principle of direct effect.¹ However, despite the fact that both principles have been accepted as basic principles in legal theory and practice of the European Court of Justice (ECJ), now the Court of Justice of the European Union, there is no uniform position with regard to their interrelation, nor about the reasons why the Court of Justice does not recognize direct horizontal effect of the directives, which makes this question still up to date.²

With regard to the relationships between the concepts direct application and direct effect, there are some scholars who consider the concepts direct effect and direct applicability to be interchangeable,³ while others emphasize that those concepts must be carefully distinguished.⁴ A third group recognizes this distinction but without dramatization.⁵ There are authors who consider that direct applicability is concerned with the process of incorporation of the Community law in national legal systems, but primarily regulations.⁶

The reasons for different perceptions of those concepts should be sought in the specific nature of community law whose legal provisions are linked to the international and national law, but at the same time are autonomous and have unique mode of implementation in the legal systems of the member states, as well as a special method of enforcement. For those reasons its distinctive and *sui generis* nature should not be explained by traditional

¹ For the distinction between direct applicability and direct effect see J. Winter, *Direct Applicability and Direct Effect - Two Distinct and Different Concepts in Community Law*, (1972)9 *CML Rev.*, 425.

² See S. Prechal, *Does Direct Effect Still Matter?* 37 *CML Rev.*, (2000) 1047-1069, J. Bengoetxea, *Is Direct Effect a General Principle of European Law?* In: U. Bernitz, J. Nergelius, C. Cardner and X. Groussot, *General Principles of EC law in a process of development*, Kluwer, 2008, on p. 8 and the title: 1.1.1.3. "Can Anything New Be Said About Direct Effect?"

³ See authors which quotes Arnull, Dashwood, Ross and Wyatt, *Wyatt & Dashwood's European Union Law*, London, 2000, p 62, footnote 21, S. Prechal, *op. cit.*, p. 260, footnote 98.

⁴ See authors which cites S. Prechal, *op. cit.*, p. 260, footnote 85.

⁵ S. Prechal, *op. cit.*, p. 260.

⁶ Arnull, Dashwood, Ross and Wyatt, *op. cit.*, p. 61, J. Winter, 1972 *CML Rev.*, 425.

institutions of international law,⁷ such as the theory of self-executive norms,⁸ but rather by special community principles such as the principles of direct application and direct effect. Therefore, it is believed that direct effect is "essential characteristic of the Community legal order and without it Community legal order would not be the same."⁹ However, for others, direct effect is "an infant disease" of Community law and was "a highly political ideal."¹⁰ According to that opinion, the main purpose of the adoption of legal provisions is their enforcement and consequently, the applicability and effect of the law, for e.g. the direct application and direct effect, must be considered as an internal characteristic of every legal provision, without explicit emphasize.¹¹ Therefore, it would be meaningless to talk about law and legal provisions which are non-applicable and accordingly have no legal effect, or have no capacity to affect the rights and obligations of the respective subjects. According to this concept, the law is manifested and exhausted in its implementation and effects, and these phenomena are so closely related that it is pointless and immature to speak about direct application and direct effect as some special features of the Community law, because that should be non-disputable in every "healthy law".¹²

The Court of Justice itself has contributed to those confused interpretations of the concepts of direct application and direct effect and their interchangeable use by not making clear the distinction between those terms, or using them as synonyms in its decisions in some cases.¹³ There are some opinions that the

⁷ P. Eleftheriadis, The Direct Effect of Community Law, 16 *Yearbook of European Law* (1997) 205-221.

⁸ J. H. Jackson, Status of Treaties in Domestic Legal Systems: A Policy Analysis, *AJIL*, vol 86(1992) pp. 310-340.

⁹ D. Edward, Direct Effect – Myth, Mess or Mystery?, available on http://www.amicuria.org/library/Amicale_Edward_direct-effect_2001-12-05.pdf, accessed 26.06.2010), p. 1.

¹⁰ P. Pescatore, The Doctrine of Direct Effect: An Infant Disease of Community Law, *EL Rev.*, (1983) 8, 155, at p. 158. Answering on that qualification, judge D. Edward consider that "direct effect is not a disease but that is liable to become a virus infecting correct analysis of what are in reality separate though related problems." D. Edward, *op. cit.*, p. 1.

¹¹ Pescatore, *op. cit.*, p. 155.

¹² *Ibid*

¹³ See case 2/74 *Reyners* [1974] ECR 631, in which Court stated that Art. 43 of the Treaty is directly applicable; Case 17/81 *Pabst* [1982] ECR 1331, Case 104/81 *Kupferberg* [1982]

ECJ "has mystified a simple problem in order to confer a special sanctity on the Community legal order and therefore on the Court."¹⁴

There is also confusion in terminology within different languages of Member States. Different expressions are used in German (*unmittelbare Wirkungen* - plural), in French (*effets* and *effets directs immédiats* - plural) and in Dutch (*onmiddelijk effect* (singular) and *direct werking*). The Italian texts use fairly different terminology (*atto a produrre direttamente degli effetti sui Rapport* and [avendo] *precettivo valorem*).

For all those reasons, the concept of direct effect has become one of the most discussed and most important legal doctrines created by the ECJ.¹⁵

Leaving aside the details of this quite thought-inspiring discussion in abundant literature,¹⁶ the initial idea in this paper is the thesis that those two are different legal institutes and it is required to make distinction between them, no matter of the occasional overlap in their meaning and purpose owing to the fact that both of them are contribution to the effective and efficient implementation of EU law within the Member States.¹⁷

2. Conditions for direct effect

The notion or concept of direct effect was not mentioned in the founding treaties, but derived from the jurisprudence of the Court of Justice. While deciding about direct effect of concrete provisions in the procedure of interpretation, the Court of Justice first sought to determine whether the Community legislature intended to give only the character of the program's

ECR 3641). For comment see: Arnall, Dashwood, Ross & Wyatt, *Wyatt & Dashwood's European Union Law*, London, 2000; F. Becker & A. Campbell, Direct Effect of European Directives: Towards the Final Act?, *Col. J. of European Law*, Vol 13(2007), 401, at. 407.

¹⁴D. Edward, *op. cit.*, p. 1.

¹⁵ See Prinssen, in: Prinssen, J.M and Schrauwen. A . (eds.), *Direct Effect: Rethinking a Classic of EC Legal Doctrine*, Europe Law Publishing, 2002, pp. 105-126..

¹⁶J. Winter, Direct Applicability and Direct Effect: Two Distinct and Different Concepts in Community Law, 9 *CMLRev.* 425, 1972; S. Prechal, *Directives in European Community Law*, Oxford, University Press 1995, pp. 260-4.

¹⁷ See F. Snyder, The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques, 56 *Modern Law Review* (1993) 19-56.

norms¹⁸ to those concrete provisions, to specify the imperative rule for the respective subjects, or to grant rights or impose certain obligations to individuals. Initially, the Court of Justice permitted direct effect only to the provisions of the EEC Treaty, which have been defined precisely enough for the court application and imposed unconditional obligations.

Hence, in the case of *Van Gend en Loos*,¹⁹ the Court has ruled that "Article 12 of the Treaty establishing European Economic Community produces direct effect and creates individual rights which national courts must protect."²⁰ Latter, the Court modified and refined the test of direct effect on three conditions:

- 1) the provision must be clear and unambiguous,
- 2) it must be unconditional,
- 3) its operation must not be dependent on further action being taken by Community or national authorities

As for the conditions or test for the recognition of direct effects, the first requirement relates to the nomotechnical formulation of legal provisions themselves, while the second one is concerned with its content or subject matter (the prohibition) which should not have been subjected to the existence of implementing measures (unconditional or unreserved). In the following practice of the Court of Justice, the second condition has been reworded into an unconditional obligation, but two additional requirements were inserted: the provision must establish a complete and legally perfect obligation and must not depend on the latter measures to be adopted by the authorities of the European Union or its Member States. Likewise, the Court of Justice later extended this test to the provisions of other provisions: regulations, directives and decisions, which led to liberalization and expansion of its application²¹ to all sources of Community law.²² Those tests

¹⁸ In that sense Lasok & Bridge, *Law and Institutions of the European Communities*, Butterworths, 2001, p. 343.

¹⁹ Case 26/62, *NV Algemene Transporten Expeditie Onderneming Van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1, para 5.

²⁰ *Ibid.*

²¹ D. Chalmers, C. Hadjiemmanuil, G. Monti & A. Tomkins, *European Union Law*, CUP, 2006, p. 368..

²² See, P. Craig and G. de Burca, *EU Law, text, cases, and materials*, OUP, 2008, pp. 277/279, R. Vukadinović, *EU Law (in Serbian "Pravo EU")*, 2006, pp. 162-175, T.

have led to the conclusion that not all directly applicable provisions of Community law were capable to produce direct effect. Some were formulated as incomplete legal norms, while others were of general nature and required the adoption of additional measures (implementing acts) for their implementation. In the first case the obstacles for direct effect of relevant provisions were deriving from the formal legal technical reasons. In the second case, such provisions could not produce immediate effect because of their content, the fact that there was no intention to be given that status.

Only directives were granted with direct effect by the Court, but just vertical direct effect, not horizontal one. Thus, in *Van Duyn* case the Court stated that the effect of the directive "would be weakened if individuals were prevented from relying on it before national courts and if the latter were prevented from taking it into consideration as an element of Community law."²³ Practically it means that direct applicability of regulations in turn does not exclude other legal instruments from having "similar effects."²⁴ Therefore it would be incompatible with binding effect attributed to directive to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned."²⁵

DIFFERENT MEANINGS OF DIRECT EFFECT

With regard to the content, the concept of direct effect was initially understood as conferring the rights to individuals which they could enforce in national courts. This concept was first stated in the judgment *Van Gend en Loos* in 1963²⁶ in which the Court ruled that "community law ... is intended to confer upon individuals rights which become part of their legal heritage." Correspondingly, the immediate or direct effect of Community law should mean the ability or capacity of the provisions of Community law to confer rights and impose obligations directly, and that such rights or obligations could be invoked by individuals, without intervention of administrative or

Opperman/Classen/Nettesheim, *Europarecht*, Muenchen, 2009, SS. 163-164. N. Foster, *Foster on EU Law*, OUP, 2006. pp.: 173-179. J. Fairhurst, *Law of the European Union*, Pearson&Longman, 2006, pp. 233-251.

²³ Case 41/74, *Van Duyn v. Home Office*, [1974] ECR 1337, para 12.

²⁴ Case 41/74, *Van Duyn v Home Office*, 1974 ECR 1337, 1348.

²⁵ *Ibid.*

²⁶ Case 26/62, *NV Algemene Transporten Expeditie Onderneming Van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1, para 5.

judicial bodies. This understanding can be called as "*subjective direct effect*." In addition to this effect, the principle of direct effect creates *procedural effects* respectively.²⁷

In terms of procedure, direct effect imposes obligation for national courts to provide required judicial protection to individual rights established. In other words, the ultimate rationale of direct effect of Community acts can be found in the "effective implementation of Community law in the Member States".²⁸ Hence, the direct effect means at the same time "the obligation for the court and other authorities to implement the relevant provisions of Community law – either as a norm that regulates the case, or as a standard for legal review."²⁹ In other words, the core of direct effect is an obligation to apply. In this definition based on "*invocability*" of a EC/EU provision before the national courts the direct effect was understood as "the technique which allows individuals to enforce a subjective right, which is only available in the internal legal order in an instrument that comes from outside that order, against another (state or private) actor."³⁰

In this capacity principle of direct effect can be, also, used as standard for review of the legality of the member states measures and actions. "The standards for a legal review" assume that provisions of the Community law granted with direct effect, establish criteria for assessment of the legal validity of national regulations or in the broader sense, their conformity or non-compliance with Community law. If discovered that certain provisions of national regulations had not been in accordance with the provisions of the community law granted with direct effect, the member state has obligation to prevent their application and have them either suspended or harmonized by competent authorities. In that sense, the Court ruled that the legal status of a conflicting national measure was not relevant to the question whether

²⁷ See. Winter, *op. cit.*, pp. 425-438; Dashwood, *The Principle of Direct Effect in European Community Law*, 16 *JCM Stud.* (1977) pp. 229-246; Pescatore, *The Doctrine of "Direct Effect": An Infant Disease of Community Law*, 8 *ELRev.* (1983) pp. 155-177; B. de Witte, *Direct Effect, Supremacy, and the Nature of the Legal Order*, p. 187. in: P. Craig and G. de Burca (eds.), *The Evolution of EU Law*, Oxford, 2011.

²⁸ M. Ruffert, *Rights and Remedies in European Community Law: A Comparative View*, 34(1997) *CML Rev.*, 307, at p. 316.

²⁹ S. Prechal, *Directives in European Community Law*, OUP, 1995, p. 276.

³⁰ Lenaerts and Corthaut, *Towards an internally consistent doctrine on invoking norms of EU law*, research paper for the Binding Unity and Divergent Concepts in EU Law, Utrecht, 12-13 January 2006, at point 39. available at www.tilburguniversity.nl/budc-conference.

Community law should take precedence.³¹ The procedure for review or annulment of legislative and administrative measures can be initiated by individuals as well.³² Given the fact those provisions which set standards for the review does not necessarily assign individual rights, this *procedural legal aspect* of the concept of direct effect has been more emphasized in legal theory.³³

The fact that possibility of making claims (*invocability*) is directly connected with the material content of specific provision or regulation does not have an impact on this procedural legal aspect of direct effect. Therefore, such entitlement is not limited only to the provisions of Community law which confer rights, but it relates to the provisions "which can be relied upon and must be applied by the courts."³⁴ In other words, the direct effect means that persons (individuals) and legal entities (companies) have a right to refer to the Community law before national courts and ask for the enforcement of their subjective rights, or can oppose to some measures which are inconsistent with Community law. This feature of direct effect of Community law can be described as *invocability*³⁵ or the ability of provisions of Community law to be referred to in the judicial proceedings. In that sense, the concept of direct effect is a broader idea than the concept of subjective rights.

Both narrow and broader understanding of direct effects exists in legal theory.³⁶ According to the broader definition, the concept of direct effect describes the capacity of provision of EC law to be *invoked* before national courts. This idea is occasionally described as "*objective direct effect*."³⁷ According the more restrictive definition, direct effect assumes the capacity of

³¹ Case 11/70 Internationale Handelsgesellschaft GmbH [1970] ECR 1125.

³² W. Van Gerven, Non-contractual Liability of Member States, Community Institutions and Individuals for Breaches of Community Law with a View to a Common Law for Europe, *Maastricht Journal of European and Comparative Law*, 1994, Vol. I, No 1, p. 9.

³³ Vid. C. Timmermans, Directives: Their Effect Within the National Legal System, *CMLRev.* 16(1979), 537; B. de Witte, Direct Effect, Supremacy, and the Nature of the Legal Order, str. 187. u: P. Craig and G. de Burca (eds.), *The Evolution of EU Law*, Oxford, 2011. , p. 323, specily p. 329.

³⁴ S. Prechal, *op. cit.*, p. 267

³⁵ S. Prechal, *op. cit.*, p. 266.

³⁶ See S. Prechal, Does... , p. 1047.

³⁷ W. Van Gerven, Of Rights, Remedies and Procedures, 37(2000) *CMLRev.*, 501.

a provision of EC law *to confer rights* to individuals who are permitted to enforce them before national courts (*subjective direct effect*).³⁸

The concept of direct effect can be analyzed *in terms of differences that exist between public and private enforcement*. Beside the fact that such distinction is significant for separation of the concept of direct application and the concept of the direct effect, it is also vital for the content of the conception of direct effect itself. In both cases it is essential to identify who is responsible and accountable for the enforcement of community law: public or private subjects. In the first situation, public authorities possess power "to bring infringers to the court," either through a public arm of government or through actions taken by private individuals.³⁹ In contrast with that approach to the enforcement of community law, the aim of introduction of direct effect is to give legitimacy to its private enforcement by granting individuals with the right to refer to the Community law in order to protect their individual rights or challenge inconsistent national measures. In other words, this concept of direct effect originating from jurisprudence refers to the ability of individuals to derive their individual rights directly from Community law. This type of private enforcement of Community law places control over the process in the hands of ordinary individuals making it clearly distinctive from public enforcement mechanism. In that sense, the distinction between the principle of direct application and the principle of direct effect of Community law could be based on "the distinction between remedies in public and private law and the issue of *locus standi*. Is this dispute a matter for judicial review of executive action or for a private legal remedy under the civil law?"⁴⁰

In the same way, it is possible to make so-called theoretical distinction between provisions or instruments and norms, as the key for understanding the difference between concepts of direct application and direct effect.⁴¹ Direct applicability is a characteristic of the instruments that constitute legal order, while direct effect is the internal feature of provisions contained in those instruments. With direct effect, it is the "internal" legal effect of Community provisions that is manifested in the ability or capacity of EU law

³⁸ P. Craig and G. De Burca, *op. cit.*, p. 270.

³⁹ *Ibid*, p. 269.

⁴⁰ D. Edward, *op. cit.*, p. 2.

⁴¹ J. Bengoetxea, Direct Applicability or Effect, in: *A true European: essays for Judge David Edward*, eds. David A. O Edward, Mark Hoskins, William Robinson, Hart Publishing, 2003, p. 354

to create individual rights, which could be enforced before national courts by any person concerned.⁴² However, there are some opinions according to which not only does the principle of direct effect include the foundation of individual rights and obligations, but it also includes creation and protection of legitimate interests.⁴³

If the direct effect was observed in terms of its functionality, from the position of a task or function accomplished by its appliance, the following features could be identified: the integrative function, the function of maintenance of unified legal system of the EU which is closely connected to the function of securing the supremacy of Community law over the national laws of the Member states, and finally the function of efficient or effective protection of the interests of individuals.

Within the first listed function, the use of direct effect together with direct application aim to provide direct and uniform application of Community law in all member states, enabling the Community to achieve goals that are primarily focused to further legal, economic and political integration of the member states. According to the principle of direct effect and the principle of loyalty,⁴⁴ national courts and administrative authorities of Member States are obligated to apply provisions of the Community law directly (not through the national implementing measures), which enables foundation and preservation of the established uniform legal system of EC/EU law. The uniformity of Community law/EU law and the uniform application of Community law would be jeopardized if national courts were entitled not only to interpret the community law, but also to decide about their application voluntarily.

Procedural capacity of the direct effect obliges national courts of member states to fully implement relevant provisions of EU without any intervention or referring to the national legislation. By direct application of Community law or its particular provisions, the individuals are granted with efficient,

⁴² See for instance Case 57/65 *Lüttike v. Hauptzollamt Saarlouis* [1966] ECR 205; Case 41/74 *Van Duyn v. Home Office* [1974] ECR 1337. In cases concerning directives, the ECJ uses a different formula, i.e. 'that the provisions may be relied upon by an individual against any national provision...' See Case 8/81 *Becker v. Finanzamt Münster-Innenstadt* [1982] ECR 53.

⁴³ S. Prechal, *Directives in European Community Law*, OUP, 1995, p. 267.

⁴⁴ See Article 10 of the EC Treaty or Art.4 (3). Lisbon Treaty on European Union.

effective and comprehensive legal protection at national level. Therefore, the recognition of the principle of direct effect enables achievement of both macro objectives on the Community level (EU level) and the protection of micro or individual interests. Finally, the consistent application of the principle of direct effect virtually acknowledges the primacy or superiority of the Community law or its specific provisions over the national legislation, independently and without reference to the established principle of supremacy. This is because the fact that procedural capacity of the provisions that are being granted with the direct effect, obliges national courts to apply them totally, leaving aside all national regulations no matter of the solution they contain. In case those national regulations contain conflicting solutions, using direct effect means effectively the same as the application of the principle of supremacy.

By virtue of the doctrine of supremacy of EC law, provisions of Community law with 'direct effect' take precedence over domestic laws.⁴⁵ The rationale for attributing direct effect to directives was to secure the 'useful effect' (*effet utile*) of the EU legislation. Since EC law was a new transnational legal order capable of conferring rights on individuals.

In addition to the direct effect, it could be discussed about other instruments for maximizing the effects of Community law,⁴⁶ which are directly associated with direct action. Those instruments include indirect effect and incidental horizontal direct effect.

PRACTICAL SIGNIFICANCE OF THE PRINCIPLE OF DIRECT EFFECT

The reasons for the expansion of appliance of the principle of direct effect to all sources of Community law and particularly for the liberalization of the conditions used for testing the possibility of direct effect of the concrete provision by the Court of Justice of the EU, could have both theoretical and practical explanations. In practical terms, it is evident that the Court intended to expand the useful effect (*effet utile*) of the principle to the other subjects as well. Theoretically, it could be justified by the Court's efforts to pass on to the individuals the enforcement and use of individual rights by entitling them to refer directly to the provisions of Community law, and even to the provisions which enforcement assumed the adoption of implementing measures which

⁴⁵ *Flaminio Costa v. ENEL*, Case 6/64, [1964]). ECR 585.

⁴⁶ M. Horspool and M. Humphreys, *European Union Law*, OUP, 2006, p. 166.

have not been adopted by the state. Nevertheless, the effect of this principle is not exhausted only in conferring the individual rights and obligations, but also in imposing the obligation of the national courts and the related Member States to ensure their effective implementation. Consequently, within the concept of direct effect, the individuals should be granted with the efficient system of legal protection by entitling them (giving them the active capacity or *locus standi*) to initiate proceedings before national courts in cases when their individual rights granted by the Community law have been violated, or to refer to those provisions before "other authorities", so called administrative direct effect.⁴⁷ Individual rights could have been violated in two ways: by preventing their creation and hindering their protection if already created. The creation could have been prevented by not implementing or incomplete implementing the directives. Since directives by definition have no direct application, they become part of the national law of Member States only by the adoption of implementing measures which may contain provisions that grant rights and impose obligations to the individuals. Otherwise, individuals could not be able to exercise their rights due to the fact that administrative and other authorities do not recognize direct effect of the respective Community regulations. In case that the Court of Justice has approved direct effect to the specific provision of Community law, but the authorities of the member state do not recognize it, the individuals whose rights have been violated this way can initiate proceeding before national court and, referring to the principle of direct effect, ask for legal protection. Such situations may arise either in case when concrete subject-matter was regulated in a different way by national regulations comparing to the relevant provisions of Community law with direct effect recognized by the Court, or in the case when such subject-matter has not been regulated by internal regulations at all, but the state authorities or private individuals refuse to recognize the direct effect to the provisions of the Community law. In both cases national courts are obliged to apply provisions of community law, but with regard to the first one, they will set aside conflicting internal regulations, i.e. to initiate proceeding for that. In the case when individual rights granted by community law have been violated by conduct of the state or public authorities, judicial protection will be justified by recognition of vertical direct effect. In case that those rights have been violated by individuals, national courts are obliged to provide required judicial

⁴⁷ De Witte, *op. cit.*, p. 188.

protection only if violated rights are incorporated in community provisions granted with so-called horizontal direct effect.

On the other side, without recognition of direct effect to certain provisions of Community law as invocable rights and obligations, in cases of their violation, individuals would be required to address the Commission, which would strive to compel the state to cease with such behaviour in a separate, complex and lengthy procedure.⁴⁸ However, individuals affected by such actions would not be able to get compensation for damage, the return of over-paid duty for example. It is irrelevant for them whether the states or other entities would be prohibited from continuation of the same practice. What matters for them is to be able to use the rights established by the Community provisions with direct effect recognized by the Court of Justice effectively.

Finally, the understanding and enforcement of principle of direct effect relates on international law and process of harmonization.⁴⁹ Coupled with international law, the principle of direct effect should be understood as "implementing as balancing of constitutional principles such as international cooperation, democratic government, or subsidiarity."⁵⁰ As concerning of process of harmonization, one of the consequences of direct effect is an increasingly pressure to harmonize different national laws

⁴⁸ Easson, *Legal Approaches to European Integration: The Role of Court and Legislator in the Completing of the European Common Market*, u: *European Community Law*, Vol. I, Ed. by F. Snyder, Dartmouth, Hong Kong, Singapore, Sydney, 1993, p. 318

⁴⁹ A. von Bogdandy, *Pluralism, direct effect, and the ultimate say*, *I CON*, July/October, 2008, Vol. 6:397, pp. 404-405.

⁵⁰ *Ibid.*, p. 398. On direct effect of international law in EU law see: A. von Bogdandy and A. Smrkolj, *European Community and European Union Law and International Law*, Max Planck Encyclopedia of Public International Law www.mpepil.com; in particular the WTO, in: T. Cottier, *International Trade Law: The Impact of Justiciability and Separation of Powers in EC Law*, NCCR Trade Regulation, Working Paper No 2009/18, April 2009, available on www.nccr-trade.org

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POJAM I OBLICI NAČELA DIREKTOG DEJSTVA EVROPSKOG KOMUNITARNOG PRAVA

Rezime

Pitanje direktnog dejstva komunitarnog propisa, odnosno prava EU, predstavlja jedno od složenijih pitanja čije je rasvetljavanje značajno podjednako i za pravnu teoriju i za praksu. Složenost načela direktnog dejstva se ogleda u tome što nije jasno povučena razlika u odnosu na sličan institute direktne primene i zbog toga što se pod njim podrazumevaju različite stvari, tj. značenja. U radu se polazi od uobičajenog shvatanja prema kome se pod direktnim dejstvom podrazumeva sposobnost normi (odredbi) prava EU da neposredno dodele subjektivna prava ili nametnu obaveze komunitarnim subjektima čiju zaštitu su dužni da obezbede nacionalni sudovi u državama članicama. Međutim, pored ovog nespornog materijalno pravnog značenja, u radu se navode i druga značenja ("lica"), kao što su utuživost ili suprematija nad konfliktnim nacionalnim propisima.

Ključne reči: komunitarno pravo, pravo EU, direktno dejstvo, direktna primena, pravna zaštita, Evropski Sud pravde..

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