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Binding of Polish Courts by Interpretative Judgments in National and European Context

Związanie polskich sądów wyrokami interpretacyjnymi w kontekście krajowym i europejskim

ABSTRACT

The study is of a scientific and research nature, devoted to the most characteristic type of operative interpretation related to judicial interpretation. The subject of the research, carried out using the method of dogmatic analysis of law, is the verification of two problems: the binding of the court of first instance to the legal assessments made by the appellate court and the extent to which Polish courts are bound by the judgments of the Court of Justice of the European Union on the interpretation and application of EU regulations. The authors draw attention to the necessity of analyzing the interpretation of regulations, made in the justifications of court decisions. This is very interesting in the context of judicial independence and the great freedom of judges to interpret laws and phenomena. However, it also raises a number of doubts about the extent of the relationship with such freely interpreted content. The scope of the research and the results obtained are international in nature and can be of significant cognitive value to the science and practice of law application.

Keywords: judicial interpretation; the court's binding legal assessment; preliminary ruling

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INTRODUCTION

Judicial interpretation, in principle, is performed under conditions of judicial independence, which guarantees the lack of outside influence or externally established "interpretation policy". It is usually conducted upon request of a competent body in the situation of an actual "interpretation-related dispute", which allows for the presentation of different views and conclusions.

POLISH COURTS BOUND BY JUDGMENTS DELIVERED IN A GIVEN CASE

As it is rightly pointed out in the literature of the subject, the binding authority of judicial decisions of courts of second instance, provided for in Article 386 § 6 of the Civil Procedure Code,[1] is one of the fundamental principles of the civil procedure in Poland.[2] Thanks to this principle, the same errors are not repeated and the decision made by a court of higher instance in a given case is guaranteed to be certain and durable. The necessary guarantee of certainty of judicial decisions must be applied by all courts. Hence, no departures from this rule are allowed except for the ones provided for in the CPC. The binding authority referred to in Article 386 § 6 CPC means, among others, that the court of first instance is not allowed to make legal conclusions conflicting with the one previously expressed in the reasoning of the higher court, or even attempt to question or contest the legal conclusions it is bound by. The sole purpose of the limitations imposed by the superior court's decision is to prevent the repetition of the circumstances which had caused the defectiveness of the vacated judgment. The binding force of the appellate court's legal conclusions on the court of first instance refers both the determination which legal provisions should be applied and the interpretation of those provisions adopted by the court of second instance. The conclusions on points of law presented in the judgment delivered by a court of second instance which remands the case includes this court's interpretation of the applied law. What is particularly binding is this interpretation of the law whose logical consequence was the reversal of the lower court's judgment and sending the case back for a retrial.[3] It must be strongly emphasized that the higher court's conclusions of law remain to be valid. They cannot be contested even if there are serious doubts regarding their

[1] Act of 17 November 1964 – Civil Procedure Code (consolidated text, Journal of Laws 2021, item 1805, as amended), hereinafter: CPC.

[2] See A. Jakubecki (ed.), *Kodeks postępowania cywilnego. Komentarz do wybranych przepisów nowelizacji 2019*, LEX/el. 2019, commentary on Article 386.

[3] *Ibidem*.

correctness. What is more, they cannot be called into question by a lower court or by an appellate court retrying the case.

BINDING AUTHORITY OF A HIGHER COURT'S LEGAL CONCLUSIONS ON A LOWER COURT

While analyzing the issues related to the binding authority of judgments in the domestic legal order, one should consider the extent to which a court of first instance is bound by the instructions of a higher court in the situation when the case is reversed and remanded. The question is whether both the higher court's decision (the operative part of the judgment) and its reasoning cause legal effects. It must also be determined whether the court of first instance is fully bound by the higher court's conclusions at law, i.e. whether the court of first instance is allowed to make a different decision on questions of law, especially when there is no clear case law or doctrine applicable to the given case.

Pursuant to Article 386 § 6 CPC, the conclusions of law presented in the superior court's reasoning are binding both on the court to which the case was referred to and on the court of second instance if the case is reheard. It does not apply, however, when there has been a change in the legal or factual circumstances, or when, after a judgment was issued by a court of second instance, the Supreme Court ruled on a given question of law in a different way. Pursuant to Article 397 § 3 CPC, this rule applies also to second-instance court's orders made based on an interlocutory appeal. It should also be underlined that pursuant to Article 13 § 2 CPC, the above regulations are also applicable to non-contentious proceedings, including the proceedings conducted by courts of record.

In this sense, legal effects are caused both by the decision and the reasoning of the court of second instance. As a side remark, it is worth noting that, from the system perspective, a blatant misinterpretation of the law by a court of second instance should not be binding for the lower court.

It is also noteworthy that the only binding interpretation is the interpretation given in the appellate court's decision ruling that the lower court's judgment was incorrect and, in consequence, reversed and remanded, or that an issue on appeal was ungrounded. It must be clearly emphasized that in the situation when the higher court gives in their decision an interpretation of law which does not provide any logical premise to recognize or reject the grounds of appeal, or any possible errors that are considered *ex officio*, such an interpretation is not covered by the provisions of Article 386 § 6 CPC and does not become binding.

The principles described above are of fundamental importance. They limit judicial independence to a certain extent but, at the same time, they guarantee the necessary certainty of judicial decisions. Those principles must be observed by all

courts. There are no derogations from those principles except for the ones that are explicitly listed in the law, which provides only for three exceptions from the general rule that the court of lower instance is bound by the legal conclusions presented in the higher court's decision. These are a change in law, a change of factual circumstances or a situation when after a judgment was issued by the court of second instance, the Supreme Court ruled on a given question of law in a different way.[4]

As for the first premise, it must be stated that the change in law does not mean each amendment of a legislative act referred to in the appellate court's decision. It refers only to such changes in law which result in a completely different regulation of a certain issue.

The second of the above-mentioned exceptions, i.e. a change of factual circumstances, should be understood as significant changes of factual circumstances which are of vital importance for the determination of the case or for the course of proceedings. It is not about changes of any factual circumstances, which are not closely related to the essence of the case. The lack of binding effect of the higher court's decision for the lower court in the situation of a change in factual circumstances is justified because the higher court's decision is limited by the factual circumstances presented by litigants before the decision was issued.

As regards the third condition, the appellate court's conclusions on points of law have no binding force only if the legal opinion expressed by the Supreme Court in their resolution is directly linked to the conflicting conclusions of the appellate court. They must refer to the same issues of law. It should be noted that the grounds which first-instance courts give for not adhering to the guidelines and legal conclusions given by the higher court in such a situation are that only the operative part of the Supreme Court's judgment (resolution) is binding and not the views expressed in its other portions (in particular, the reasons for judgments or decisions). This third condition is a reasonable one. It would be illogical if the court of first instance was bound by a legal position which has been successfully challenged by the Supreme Court.

As a side remark, it must be pointed out that while making a decision the court of second instance should consider whether the Supreme Court has already spoken on the issues in dispute.

SUBSTANTIVE FORCE OF COURT JUDGMENTS

The provision of Article 365 § 1 CPC is referred to as, co-called, substantive force of court judgments. It refers to the scope of their binding authority. It must be emphasized that a final and non-appealable judgment is binding not only on

[4] See M. Manowska (ed.), *Kodeks postępowania cywilnego. Komentarz*, vol. 1, LEX/el. 2020, commentary on Article 386.

the litigants and the court which delivered the judgment but also on other courts, state authorities and public administration agencies. In certain cases, provided for in this law, it is also binding on other persons. The principle which results from this regulation has a significant impact on judicial decisions. There is no doubt that it enhances the uniformity and consistency of the case law. However, it can also infringe the independence of the individual judge deciding on a particular case. It is a controversial issue, which causes a clash between different values connected with the operation and functions of the judiciary. The Supreme Court's stance on the binding force of judicial decisions under Article 365 § 1 CPC is inconsistent. On the one hand, in some of their judgments the Supreme Court's standpoint is that only the operative part of the court judgment has a binding force while in others – that also the reasons for judgment have a binding effect. Thus, the Supreme Court's interpretation of Article 365 § 1 CPC is lacking in consistency. Clearly, the interpretation of this provision is an issue which should definitely be revisited.[5] It seems that it would be reasonable to determine the dogmatic grounds for such an interpretation. It should be clarified what the, so-called, substantive force of court judgments specifically refers to: only the final decision itself, or also the premises based on which the decision was made. A clear delimitation of the scope of such binding effect on the court is of vital importance – it is a priority. The Supreme Court's assumption that the force of the court judgment refers only to the decision and not the reasoning, where the evidence taken and the evaluation of its credibility is presented, i.e. that it refers only to the court's conclusions (and not their factual or legal premises), has led to the opinion that the court judgment is binding only as far as the recognition of the claim made in the suit is concerned. As a result, pursuant to this line of the Supreme Court's jurisprudence, the binding authority of court judgments does not include the conclusions of law or conclusions of fact, which are not present in the operative part of the judgment. As can be expected, the justification for such an approach is the guarantee of the court's independence. It has been emphasized that the court cannot be bound by the stance taken by another court.[6] For many years, the dominating approach in the Supreme Court's opinions was that "even the very possibility of the court's being bound by another court's conclusions is an infringement of judicial independence and a departure from the

[5] Cf. judgment of the Supreme Court of 13 January 2000, II CKN 655/98; judgment of the Supreme Court of 23 May 2002, IV CKN 1073/00.

[6] For many years, the dominating view was the one expressed in decision of the Supreme Court of 3 June 2009, IV CSK 511/08, Legalis; judgment of the Supreme Court of 21 June 2007, IV CSK 63/07, Legalis; judgment of the Supreme Court of 13 January 2011, III CSK 94/10, Legalis; judgment of the Supreme Court of 15 November 2007, II CSK 347/07, Legalis; judgment of the Supreme Court of 3 October 2012, II CSK 312/12, Legalis; and decision of the Supreme Court 7 May 2019, VCZ 7/19, Legalis.

fundamental principles of civil procedure, i.e. the free evaluation of evidence and the rule against hearsay".

However, we can also find a contrary stance in the Supreme Court's judgments, i.e. that the binding force of the court judgment includes also its reasoning. In some judgments, the Supreme Court states that the reasons for judgment can serve as a supplementary or auxiliary source of reference. The binding force of such a "usage of the reasons for judgment" is limited only to the extent to which such a reference is necessary. According to the Supreme Court: "If the object of the court's conclusion cannot be precisely determined based on the operative part of the final and non-appealable court judgment, then the reasons for judgment can be used in order to specify the scope of the judgment's binding force".[7] In other rulings, the Supreme Court expresses a view that the scope of the binding force of the court judgment is wide. According to this position, pursuant to Article 365 § 1 CPC, the court is not bound by the findings presented in the reasons for judgment if such findings were not important for the conclusions made in the case. However, the court is bound by those findings presented in the reasons for judgment which influenced the final decision and, in particular, by the answers to preliminary references which resulted in a particular decision on the merits of the case.[8] It must be emphasized that according to this viewpoint, the binding force of the court judgment applies to the entire reasoning, in the substantive rather than formal sense. It means that the court must pay attention to what motivated and caused another court's decision.[9] The Supreme Court stated: "The binding effect of the final and non-appealable judgment provided for by Article 365 § 1 CPC entails a prohibition of re-litigation of issues of fact which have already been judicially tried and determined by the court".[10] It is of paramount importance in the situations when the plaintiff pursues in several proceedings a claim resulting from the same legal relationship.[11] Moreover, the Supreme Court has stated that "if there is a final and non-appealable judgment recognizing a part of the claim resulting from the same legal relationship, in the action regarding the remaining part of the claim the court cannot, under the same legal and factual circumstances, rule differently on the defendant's liability. It

[7] Resolution of the Supreme Court of 8 November 2019, III CZP 27/19, OSNC 2020, no. 6, item 48.

[8] K. Flaga-Gieruszyńska, A. Klich, *Nowy model uzasadnienia wyroku w procesie cywilnym*, "Prawo Mediów Elektronicznych" 2015, no. 1; J. Gudowski, *Normatywny, jurysdykcyjny i kulturowy kryzys uzasadnienia wyroku. Droga znikąd donikąd*, "Polski Proces Cywilny" 2020, no. 3.

[9] See judgment of the Supreme Court of 7 April 2011, I PK 225/10.

[10] *Ibidem*.

[11] Judgment of the Supreme Court of 29 September 2011, IV CSK 652/10, Legalis; P. Grzegorczyk, *Przedmiotowy zakres prawomocności materialnej wyroku w procesie częściowym*, [in:] *Aurea Praxis Aurea Thoeria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego*, eds. J. Gudowski, K. Weitz, vol. 1, Warszawa 2011.

would be a violation of the provision of Article 365 § 1 CPC, based on which a final and non-appealable judgment is binding not only on the parties and the court which delivered such judgment but also on other courts. The existence of a final and non-appealable judgment granting judicial protection with respect to a certain legal right precludes the possibility of a divergent assessment of the validity of the claim arising out of that right if the circumstances are the same".[12]

It is difficult to find a compromise when the Supreme Court takes two contradictory approaches. Also in the doctrine of civil procedural law, there are two mutually exclusive views. According to the first of them, while considering a case, the court is not bound by any conclusions made by another court in another case even if they refer to a different part of the same claim.[13] It is emphasized in the literature that the pursuit of harmony, uniformity or consistency of case law may result in the persistence of incorrect judicial decisions.[14] The solution to this dispute might lie in the analysis of the term "judgment". The legal principle expressed in Article 365 CPC refers to the court judgment which consists of an operative part (a decision on the parties' issues in controversy – Article 325 CPC) and reasoning (incorporating the findings of fact the decision was based on – Article 327 (1) CPC). As emphasized in the doctrine of civil procedure, the reasoning constitutes an integral part of the judgment, connected with the decision on the matter presented in its operative part.[15] The decision and the reasoning are inextricably linked as there can be no judicial decision without reasons. The reasons for judgment exist already at the moment when the decision is made, whether or not they take a material form, and, as such, they constitute a component of the judgment.[16] The same applies to all court decisions. It leads to the conclusion that the reasons for judgment are its integral part and the term "judgment" cannot be used to denote only its operative part. Article 365 § 1 CPC does not refer to the operative part of the judgment, i.e. the pronouncement of the decision, but to the judgment in its entirety. As shown above, there are no grounds to limit the notion of judgment only to its operative part. The reasoning is an integral element of each judicial decision. Thus, the court judgment should be treated in a uniform way and it does not matter which of its portions (the decision or the reasoning) includes a certain conclusion.

[12] Judgment of the Supreme Court of 24 October 2013, IV CSK 62/13, Legalis.

[13] M. Dziurda, *Wyrok w procesie częściowym a prawomocność materialna*, "Monitor Prawniczy" 2018, no. 23, pp. 1266–1267.

[14] P. Grzegorczyk, *op. cit.*, p. 195.

[15] T. Wiśniewski, *Przebieg procesu cywilnego*, Warszawa 2009, p. 256.

[16] S. Dąbrowski, A. Łazarska, *Uzasadnienie orzeczeń sądowych w prawie cywilnym*, "Przegląd Sądowy" 2012, no. 3, pp. 14–17.

THE BINDING EFFECT OF THE COURT OF JUSTICE OF THE EUROPEAN UNION JUDGMENTS FOR POLISH COURTS

With the accession of Poland to the European Union, another aspect of judicial interpretation binding on Polish courts has emerged – the judgments of the Court of Justice of the European Union (CJEU) on the application and interpretation of EU law.

The observations on the extent to which courts are bound by interpretative judgments of the CJEU are directly related to the coexistence (concurrent application) of the EU and national law in an EU Member State.[17] Particularly important are the consequences of abiding by generally accepted rules, most of all, the principle of the primacy of the EU law and the dynamic nature of this law.

One of the competences of the CJEU is to give preliminary rulings on the application or interpretation of EU law in cases brought before national courts of Member States.[18] Different terms are used in the Polish literature for this mechanism such as, e.g., the preliminary issue, the preliminary question, the preliminary reference, and the reference for a preliminary ruling. These terms, which do not exist in the Polish language of the law or legal language, are specific to Community law (now – EU law).

There is a widely-held belief that the preliminary ruling procedure, which is now provided for in Article 267 of the Treaty on the Functioning of the European Union,[19] has its equivalents in the provisions of domestic laws of the Member States.[20] There is no doubt that it is similar to the procedure of the questions of law, which exists in the Polish law. These are questions of law referred by courts to the Constitutional Tribunal under Article 193 of the Polish Constitution,[21] questions of law referred to the Supreme Court by ordinary courts under Article 390 CPC and questions of law submitted to the Supreme Administrative Court sitting in an extended chamber pursuant to Article 269 of the Law on proceedings before administrative courts.[22]

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[17] For example, see M. Svobodová, V. Šmejkal, *ECJ´s New Role – Guardian of Open but not Socially Inclusive Europe?*, "Eastern European Journal of Transnational Relations" 2018, vol. 2(2), p. 13.

[18] For example, see B. Paziewska, *Problematyka ochrony zdrowia publicznego na tle regulacji prawa Unii Europejskiej i orzecznictwa TSUE dotyczących nowej żywności*, "Studia Iuridica Agraria" 2018, vol. 16, p. 141.

[19] Consolidated version, OJ C 202/47, 7.6.2016, hereinafter: TFEU.

[20] For example, see A. Arnull, *The European Union and Its Court of Justice*, Oxford 1999, p. 49.

[21] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 22.8.2024).

[22] Act of 30 August 2002 – Law on proceedings before administrative courts (consolidated text, Journal of Laws 2019, item 2325, as amended). For example, see also A. Wróbel (ed.), *Stosowanie prawa Unii Europejskiej przez sądy*, Kraków 2005, pp. 770–771.

The procedure of referring questions of law to the CJEU is regulated by the treaties and the secondary law. It was already provided for in the initial versions of the founding treaties of the Communities – it was introduced by Article 41 of the Treaty establishing the European Coal and Steel Community.[23] Pursuant to this provision, the then European Court of Justice had sole jurisdiction to decide questions of law regarding the validity (legality) of acts of the High Authority and of the Council when such validity was in issue brought in proceedings before a court or a tribunal of a Member State. In the subsequent treaties, the legal basis for the preliminary reference procedure was provided by Article 150 of the Treaty establishing the European Atomic Energy Community[24] and Article 177 of the Treaty establishing the European Economic Community.[25] These articles did not include any express mention of the questions of law regarding the validity or interpretation of the provisions of the Treaties or legislative acts adopted under the principle of conferral. However, the European Court of Justice allowed questions of law referred on their basis.[26] The Court of Justice received its first preliminary reference in 1961,[27] but in the early years the number of preliminary references was very limited (only 75 references till 1969).

A more developed legal regulation was included in the provisions of the modified Treaty Establishing the European Community.[28] Pursuant to the key provision in this respect, Article 234 TEC, the Court of Justice was competent to give preliminary rulings concerning the interpretation of the TEC, the validity and interpretation of acts of the institutions of the Community and of the European Central Bank and the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide. The currently binding legal basis for the CJEU to deliver judgments in response to questions referred by national courts is Article 267 TFEU, which states that the CJEU has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties and the validity and interpretation of acts of the institutions, bodies or organizational units of the Union. The purpose of the CJEU preliminary reference proceedings is to ensure that the interpretation and application of the EU law are uniform across all Member

[23] Paris, European Coal and Steel Community, 1951. The original text of the Treaty is published in French.

[24] Treaty establishing the European Atomic Energy Community (Euratom) and connected documents, Brussels, Secretariat of the Interim Committee for the Common Market and Euratom, 1957.

[25] Treaty establishing the European Economic Community and connected documents, Brussels, Secretariat of the Interim Committee for the Common Market and Euratom, 1957.

[26] See judgment of the Court of 12 May 1964 in case 101/63, *Albert Wagner v Jean Fohrmann and Antoine Krier*, ECLI:EU:C:1964:28.

[27] Judgment of the Court of 6 April 1962 in case 13/61, *Bosch*, ECLI:EU:C:1962:11.

[28] Treaty on European Union, together with the complete text of the Treaty establishing the European Community (OJ C 224/1, 31.8.1992), hereinafter: TEC.

States. The guarantee of a consistent application of the EU law is necessary both when a national court refers to a question on the interpretation of an EU law and when the Court of Justice is reviewing the legality of an act of an institution, a body or an organizational unit of the Union. It is closely related to the particular nature of the EU law, the specificity of its application and the particular character of the EU judicial protection.[29] The EU institutions and bodies can act only on the basis of and within the limits of the competence conferred upon them in the Treaties. In a more basic and much wider scope the exercise and application of EU law belongs to Member States. Therefore, to be effective, EU law must be interpreted and applied consistently in all Member States. That is the objective of the procedure of cooperation between national courts and the CJEU, which is mentioned in Article 267 TFEU. The solutions adopted in the Treaties can be considered as compromise – they institutionalize the necessary coordination and cooperation between the CJEU and national courts without making the CJEU a court of higher instance with respect to national courts (or an appellate court or a court of cassation). The CJEU is not competent to assess the correctness of judgments delivered by national courts of the Member States, to overturn or modify them.[30]

What results from the objectives stipulated in the TFEU is that the interpretation of EU law must belong to the CJEU. The Court has often underlined that a consistent interpretation of EU law across all Member States is one of the fundamental pillars of the EU legal order and cannot be questioned based on the provisions of domestic legislation of the Member States. It must be remembered that the consistent interpretation and application of domestic laws of the Member States is ensured, most of all, by the system of control provided by court instances. The purpose of the procedure under Article 267 TFEU is to prevent national courts of the Member States from interpreting EU law based on the interpretation principles and directives stemming from the national legal tradition of a given country.[31] The application of different rules and methods of interpretation would inevitably lead to particular Member States giving different meaning to the provisions of EU law. Thus, the adoption of the CJEU preliminary ruling mechanism in the TFEU guarantees a uniform interpretation of EU legislation by national courts, which is necessary for its consistent application across all Member States. This mechanism contributes to a creative development and supplementation of EU law (which is,

[29] It must be remembered that the system of the EU judicial protection is dualist – it consists of the CJEU (an EU court in the strict sense) and national courts of the Member States (EU courts in a functional sense).

[30] H.G. Schermers, D.F. Waelbroeck, *Judicial Protection in the European Union*, Kluwer Law International 2001, p. 219.

[31] For example, see P. Dąbrowska-Kłosińska, *Skutki wyroków prejudycjalnych TS w postępowaniu przed sądami krajowymi w świetle orzecznictwa i Traktatu z Lizbony*, "Europejski Przegląd Sądowy" 2010, no. 12, pp. 4–15.

to a great extent, underspecified) by the CJEU, which leads to the transformation of EU legislation into a complete and coherent legal system.[32]

The preliminary reference procedure is incidental. The referral of such a question has a suspensory effect for the main proceedings pending before the referring court in the Member State. The court which raised the question has the sole jurisdiction to decide the case at hand based on the provisions of EU law. The competence of the CJEU is limited to explaining the provisions of EU law which are to be applied in the proceedings pending before a national court, or to determining whether EU legislation is applicable to a given case. The CJEU does not assess the facts of the case that has come before a national court. What is more, according to the settled case law, the CJEU is not authorized to interpret the domestic laws of the Member States or to determine applicability (or inapplicability) of such legislation. Thus, the CJEU is not competent to rule on the conformity or non-conformity of domestic law of a Member State with EU law.[33]

The preliminary ruling procedure is generally recognized as a key competence of the CJEU. On the one hand, we have significant legal consequences of the presented interpretation, on the other – significant political and legal consequences related to, among others, making the EU system of judicial protection more precise and specific.[34] It was under this procedure that the CJEU developed, i.a., the basic principles of EU (previously – Community) law, often guided by nothing more than the "spirit" of the Treaty. An example of that is the principle of direct effect or the supremacy principle.

A CJEU judgment regarding the interpretation or application of EU law comes into force on the day it is handed down. What results clearly from the objectives of the preliminary reference procedure is that the CJEU ruling is legally binding for the Member State national court which referred the question.[35] Thus, the bind-

[32] For example, see K. Lenaerts, *Federalism and the Rule of Law: Perspectives from the European Court of Justice*, "Fordham International Law Review" 2011, vol. 33(5), pp. 1338–1387; M. Broberg, N. Fenger, *Broberg and Fenger on Preliminary References to the European Court of Justice*, Oxford 2021, pp. 399–424; P. Dąbrowska, *Skutki orzeczenia wstępnego Europejskiego Trybunału Sprawiedliwości*, Warszawa 2004; J. Maliszewska-Nienartowicz, *Prawo dziecka do kontaktów z osobami bliskimi w sytuacjach transgranicznych – uwagi na tle unijnych regulacji prawnych oraz orzecznictwa TSUE*, "Białostockie Studia Prawnicze" 2022, vol. 27(3), p. 189.

[33] Judgment of the Court of 8 November 1990 in case C-231/89, *Krystyna Gmurzynska-Bscher v Oberfinanzdirektion Köln*, ECLI:EU:C:1990:386, paras 21 and 22.

[34] See D. Anderson, *References to the European Court*, London 1995, p. 21.

[35] Judgment of the Court of 3 February 1977 in case 52-76, *Luigi Benedetti*, ECLI:EU:C:1977:16, para. 3 (the purpose of a preliminary ruling by the court is to decide a question of law, and that ruling is binding on the national court as to the interpretation of the community provisions and acts in question). See also, e.g., *ibidem*, para. 26; judgment of the Court (Grand Chamber) of 16 June 2015 in case C-62/14, *Gauweiler and Others*, ECLI:EU:C:2015:400, para. 16; judgment of the Court (Grand Chamber) of 5 April 2016 in case C-689/13, *PFE*, ECLI:EU:C:2016:199, para. 38; judgment

ing force of such a judgment cannot be the issue of another preliminary reference made under Article 267 TFEU. It means that the court which issued a preliminary reference regarding a point of law is obliged to apply the provision of EU law as defined by the CJEU to the findings of fact made in the pending case, or not to apply the provision of the EU law which the CJEU found inapplicable to the specific factual circumstances of the case at hand.

As results from the well-established CJEU case law, a preliminary ruling is binding also for national courts of other instances examining the case in the course of which a question of law was submitted. It includes the courts of higher instance competent to consider an appeal from the judgment delivered by the referring court.[36]

On the other hand, the binding force of preliminary rulings delivered in earlier cases should be considered in a wider context. The *acte éclairé* doctrine means that a national court which otherwise has a duty to make a preliminary reference can refrain from doing so, if the Court of Justice has already clarified the question in an earlier decision. The CJEU case law appears to be particularly consistent. The Court quite rarely departs from their previous decisions, especially in an open way.[37] The question whether other domestic courts of the Member States are bound by a delivered preliminary ruling has often been referred to the CJEU. The judgment issued on 13 May 1981 in the case 66/80 seems to be the crucial one in this respect.[38] While declaring the act invalid, the Court emphasized in the judgment that although it is addressed directly only to the court which referred the question, it is sufficient reason for any other court to regard that act as void for the purposes of a judgment which it has to give (and, thus, rely on a previous preliminary ruling of the Court). That assertion does not mean, however, that other national courts are deprived of the power to refer a similar question of law. It rests with a national court to decide whether there is a need to raise once again an issue which has already been settled by the Court. On the other hand, if the Court of Justice declares an act of the EU void, the courts of the Member States are obliged not to apply such a legal act.[39]

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of the Court (Grand Chamber) of 5 October 2010 in case C-173/09, *Elchinov*, ECLI:EU:C:2010:581, paras 29 and 30; judgment of the Court (Fifth Chamber) of 14 December 2000 in case C-446/98, *Fazenda Pública*, ECLI:EU:C:2000:691, para. 49; order of the Court of 5 March 1986 in case 69/85, *Wünsche*, ECLI:EU:C:1986:104, para. 13.

[36] See judgment of the Court of 21 February 1991 in joined cases C-143/88 and C-92/89, *Zuckerfabrik Süderdithmarschen AG v Hauptzollamt Itzehoe and Zuckerfabrik Soest GmbH v Hauptzollamt Paderborn*, ECLI:EU:C:1991:65.

[37] For example, see judgment of the Court of 17 October 1990 in case C-10/89, *SA CNL-SUCAL NV v HAG GF AG*, ECLI:EU:C:1990:359.

[38] Judgment of the Court of 13 May 1981 in case 66/80, *SpA International Chemical Corporation v Amministrazione delle finanze dello Stato*, ECLI:EU:C:1981:102.

[39] See judgment of the Court (Fifth Chamber) of 29 May 1997 in case C-26/96, *Rotexchemie International Handels GmbH & Co. v Hauptzollamt Hamburg-Waltershof*, ECLI:EU:C:1997:261.

Another reference regarding a legal act that has already been declared void by the Court of Justice is inadmissible.

In the opposite situation, if the CJEU declares an EU act valid, the judgment is not binding *erga omnes*, but only with reference to the proceedings where a question was raised. It is because the CJEU's ruling refers always to declaring the applicability of an EU act in under the specific factual circumstances. It might happen that a court deciding another case will take into account some new circumstances, arguments or complaints, which, when a new reference for a preliminary ruling is made, will cause the CJEU to take a different stance.[40]

Also the binding *erga omnes* effect of CJEU judgments interpreting EU legislation is dubious. On the one hand, national courts are obliged to apply EU law as construed by the CJEU in the preliminary rulings made under Article 267 TFEU. However, at the same time, should they have any doubts regarding the correctness of the CJEU's interpretation, the courts are allowed to make a new reference seeking the interpretation of such legislation.[41] In consequence, it may be assumed that the CJEU's interpreting judgments have a limited *erga omnes* effect.

Finally, there is another aspect of the CJEU's interpretation of a provision of EU law. The CJEU clarifies and defines the meaning and scope of the provision, i.e. how it should be understood and applied from its entry into force. Thus, the CJEU's interpretation has *ex tunc* effect. However, this principle that the preliminary ruling determines the correct interpretation of EU rules *ex tunc* does not prevent the application of national rules on the enforcement of previous decisions of national courts, even if they are based on an interpretation of the law that was subsequently overturned by the preliminary ruling. This follows from the principle of *res judicata* recognized by the Court of Justice. Once all rights of appeal have been exhausted, judicial decisions are final and cannot be challenged – both to ensure the stability of the law and legal relations. According to the CJEU's line of case law, a national judgment is upheld even if it is based on an understanding of the law that is subsequently overturned by a subsequent preliminary ruling, and even if it follows from the subsequent preliminary ruling that the result reached in the national case is incompatible with EU law. The only conditions for the application of national

[40] For example, see judgment of the Court (Fourth Chamber) of 21 July 2011 in case C-14/10, *Nickel Institute*, ECLI:EU:C:2011:503; judgment of the Court (Second Chamber) of 20 November 2008 in case C-375/07, *Heuschen & Schrouff Oriental Foods Trading*, ECLI:EU:C:2008:645; judgment of the Court (Third Chamber) of 11 December 2008 in joined cases C-362/07 and C-363/07, *Kip Europe*, ECLI:EU:C:2008:710; judgment of the Court (Grand Chamber) of 16 December 2008 in case C-127/07, *Arcelor Atlantique and Lorraine*, ECLI:EU:C:2008:728.

[41] Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 14 May 1998 in joined cases C-10/97 to C-22/97, *Ministero delle Finanze against IN.CO.GE.'90 Srl, Idelgard Srl, Iris'90 Srl, Camed Srl, Pomezia Progetti Appalti Srl (PPA), Edilcam Srl, A. Cecchini & C. Srl, EMO Srl, Emoda Srl, Sappesi Srl, Ing. Luigi Martini Srl, Giacomo Srl i Mafar Srl*, ECLI:EU:C:1998:228.

rules on the upholding of national court decisions in the above situation are that the principles of equality (equal treatment of claims based on national law and EU law) and the effectiveness of EU law are respected (national rules must not in practice prevent the exercise of rights conferred by EU law).[42]

CONCLUSIONS

The conclusions of law presented in the higher court's reasons for judgment are – as a rule – binding both on the court to which the matter was referred and on the court of second instance if the case is reheard. In this sense, both the operative part of the higher court's judgment and the reasoning cause legal effects.

In certain cases, such as a change in the legal or factual circumstances, or when the court of second instance takes a stance that differs from the Supreme Court's resolution, the conclusions of law made by the court of second instance cannot be considered as binding.

If a doubt arises in proceedings before a Polish court as to the application or interpretation of EU law and the national court applies to the CJEU for a preliminary ruling, such a ruling is binding on all courts deciding the case by court instances. As a result of the adopted principle of *acte éclairé*, preliminary rulings contribute to ensuring unity of interpretation and application of EU law in the Member States, as well as to developing and supplementing that law.

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[42] For example, see judgment of the Court of 13 January 2004 in case C-453/00, *Kühne & Heitz*, ECLI:EU:C:2004:17, para. 21; judgment of the Court of 30 September 2003 in case C-224/01, *Köbler*, ECLI:EU:C:2003:513, para. 38; judgment of the Court (First Chamber) of 16 March 2006, in case C-234/04, *Kapferer*, ECLI:EU:C:2006:178, paras 19–24; judgment of the Court (Grand Chamber) of 18 July 2007 in case C-119/05, *Lucchini*, ECLI:EU:C:2007:434, paras 59–63. See also N. Półtorak, *Ratione Temporis Application of the Preliminary Ruling Procedure*, "Common Market Law Review" 2008, vol. 45(5), pp. 1357–1381.

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ABSTRAKT

Opracowanie ma charakter naukowo-badawczy i poświęcone jest najbardziej charakterystycznemu rodzajowi wykładni operatywnej związanej z wykładnią sądową. Tematem badań, przeprowadzonych przy użyciu metody dogmatycznej analizy prawa, jest weryfikacja dwóch problemów: związania sądu pierwszej instancji ocenami prawnymi dokonanymi przez sąd odwoławczy oraz zakresu związania polskich sądów wyrokami Trybunału Sprawiedliwości Unii Europejskiej na temat wykładni i stosowania przepisów unijnych. Autorki zwracają uwagę na konieczność analizowania wykładni przepisów dokonanej w uzasadnieniach orzeczeń sądowych. Jest to bardzo ciekawe w kontekście niezawisłości sędziowskiej i dużej swobody sędziów do interpretowania przepisów i zjawisk. Budzi to szereg wątpliwości co do zakresu związania z takimi swobodnie zinterpretowanymi treściami. Zasięg badań i otrzymane wyniki mają charakter międzynarodowy oraz mogą stanowić istotną wartość poznawczą dla nauki i praktyki stosowania prawa.

Słowa kluczowe: wykładnia sądowa; związanie sądu oceną prawną; orzeczenia wstępne