

1. THE COURT THAT NOT ONLY BARKED BUT BIT

Μέσο: INTERNATIONAL NEW YORK TIMES_KATHIMERINI

Ημ. Έκδοσης: . . .09/05/2020 Ημ. Αποδελτίωσης: . . .10/05/2020

Σελίδα: 3

Innews AE - Αποδελτίωση Τύπου - <http://www.innews.gr>



The court that not only barked, but bit

COMMENTARY | BY VASILIKI POULA *

The supreme national courts are the domestic source of legal authority. This absolute authority of theirs was, though, challenged upon the formation of the autonomous legal entity of the European Union, guaranteed by the Court of Justice of the European Union (CJEU).

The CJEU often emerges as a rival force of the supreme national courts and the national law they represent, due to EU law's demand for "supremacy."

The German Federal Constitutional Court is one of the national courts that often resists CJEU's jurisprudence, and in particular, the absolute and unlimited version of supremacy that it has, at times, tried to establish.

Undoubtedly, the relationship between the two judicial authorities has been turbulent. However, despite its strong threats, the German court has managed to prevent an open conflict with the CJEU so far, due to a series of retreats – and that is why it is described as the court that barks but does not bite.

However, this narrative changes with the decision issued by the German court on May 5. The decision addresses the quantitative easing program implemented by the European Central Bank over the past five years and the extent to which it exceeds the ECB's responsibilities. Regarding this issue, the CJEU has explicitly stated that it is completely justified and that there is no reason to question it. However, the judges of Karlsruhe rejected the CJEU decision as ultra vires, that is, as being outside its jurisdiction, and as a result, the German court refused to be bound by it.

As the judges overturned the legal basis of the program, they themselves examined its legality and ruled that the ECB went beyond its jurisdiction. As such, they called on the ECB to justify the need for the program within 90 days.

The epilogue of this five-year history raises a number of controversial consequences, which are profoundly problematic for those embracing the vision of European integration.

The fact that the German Federal Constitutional Court considers itself as having the authority to denounce the ECB, an independent EU institution, but also the European Court of Justice, is a blow to the EU's legal, political and economic activity. And



Germany's constitutional court on Tuesday ruled that the European Central Bank exceeded its powers with its asset purchase scheme.

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in fact, it is a threat from within, given Germany's central role in the EU.

The following statements of the European authorities might purport to confirm that the supremacy of European law has not been shaken, but the language of the decision reveals a more intense, albeit not unprecedented, arrogance on the part of the German judges.

As long as Germany, a member-state at the core of the EU, does not seem to be complying, the ubiquitous Euroskeptic voices, inside and outside the bloc, are vindicated.

On the one hand, other member-states that disagree with the CJEU's findings may take advantage of the developments to break free from the requirements of the EU's common normative and regulatory framework. The fact that the

deputy minister of justice of Poland – a state in constant conflict with European principles on democracy, judicial independence and the rule of law – hastened to congratulate the German judges on their decision, speaks for itself.

On the other hand, the German decision seems to vindicate one of the strongest arguments Brexiteers had in their quiver, that the EU had gained too much power over British law, undermining British national sovereignty.

We shall bear in mind that this decision is being issued at a critical juncture for the EU. Expectations for economic solidarity and political initiative are high. If the legal instruments that could meet these expectations are challenged and strong reactions arise, the competent European authorities will be reluctant to take the necessary measures, putting a brake on the dynamics of the EU. And inevitably, the price will be paid by the weakest member-states.

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