How Autonomy could lead to subordination

Aude Bouveresse

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By Aude Bouveresse[1]

Despite the many studies, words written and spoken on this topic, it is still difficult to pin down exactly what autonomy means and, ultimately, why it matters.

In a everyday sense, it is defined as the "the right of a group of people to govern itself or to organise its own activities" which is not far from the ancient Greek, meaning "self-legislation" or "self-governance".

However, this definition fails to capture the complexity of the EU legal order as a decentralised legal system based on an international convention aimed at creating an integrated system with the law of its Member States[2]. Until recently, the Court of Justice gave no definition of the concept, apart from associating it with both the concept of independence and the specificity of the EU legal order.

In its case-law, autonomy appears, indeed at first, as a statement of independence with regard to national laws, in the sense that the interpretation and effect of EU law cannot be determined by Member States. In that sense, the Court held in its judgment in *Van Gend & Loos*: "independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage"[3]. That finding echoes the observation of the Commission in the same case, which stated "that the effect of the provisions of the Treaty on the national law of Member States cannot be determined by the actual national law of each of them but by the Treaty itself"[4]. A new stage was reached in the judgment in *Costa,* in which the Court affirmed the independence of EU law from international law, highlighting the fact that: "By contrast with ordinary international treaties, the EEC Treaty has created its own legal system"[5]. Such statement refers, however, to a relative concept of independence.

It is well known that the EU legal order cannot be considered as independent from the international legal order from which it derives[6] and, in particular, from the internal legal systems, since the effectivity and even effectiveness of EU law relies on

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2 On the different meanings of the concept of autonomy: Klamert, M. (2017), "The Autonomy of the EU (and EU Law): Through the Kaleidoscope", *European Law Review*, Vol. 42, p. 815.

3 Case 26/62, *Van Gend & Loos*, EU:C:1963:1, p. 12.

4 ibid., p. 6.

5 Case 6/64, *Costa*, EU:C:1964:66, p. 593.

6 De Witte, B. (1984), "Retour à 'Costa': La primauté du droit communautaire à la lumière du droit international", *Revue trimestrielle de droit européen*, No 3, p. 425, at p. 432.

Member States[7]. In that respect, if we can admit the proposal that the EU is autonomous, we must not, however, confuse the autonomy of the EU with independence. Independence from Member States' internal law must be understood only in a relative perspective, namely, due to its applicability and direct effect.

By contrast, autonomy, understood as referring to the specificity of the EU legal order, seems to be more relevant. This latter meaning can be deduced from the judgment in *Costa* in which the Court held: "[this] *independent source of law* … [has a] special and original *nature*"[8]. From the latter, the *supremacy* and the *direct effect* of EU law, as stated by the Court, have been able to take on an independent meaning in EU law compared to that given in international law. In other words, the Court "adapted and transformed public international law principles such as direct effect and supremacy, and gave them a genuinely 'unionist' shape"[9]. *Saying that however is switching from one problem to another, since "specificity" is just as ambiguous as "autonomy".*

Thus, despite the fact that the Court refers to the concept almost from the very beginning of the building of Europe, it is only recently that it has provided some fundamental elements of definition. In this respect, it must be emphasised that the concept of autonomy results from a noteworthy case-law construction which has to be analysed from a global perspective and in abstract in order to underline the way in which the Court has exploited it to build bridges with Member States.

It will be demonstrated that, through the concept of autonomy, gradually the Court sets up and reveals the essential characteristics of the EU legal order. Doing so, the Court elaborates a constitutional framework of the European Union with normative, institutional and substantive dimensions. If this recent development leads to the progressive enclosure of the Member States in a constitutional framework based mainly on the institutional relationship developed between national judges and European judges, it could also lead to the autonomy of the concept itself which, detached from the Court, could in the long run, subordinate the Court itself and compel it to respect that principle.

To clarify whether autonomy could lead to subordination, it is therefore important, first, to focus on the gradual and substantive development of the concept of autonomy by the Court.

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7 Bouveresse, A. (2018), "L'effectivité comme argument d'autorité de la norme", in Bouveresse, A. and Ritleng, D. (eds.), *L'effectivité du droit de l'Union*, Bruylant, pp. 63-85.

8 Case 6/64, *Costa*, p. 594.

9 Klamert (2017), op. cit., p. 823.

1 The gradual and substantive development of the concept of autonomy by the Court: the stones of the bridge

Some clarifications about the concept of autonomy are inferred from recent case law. In particular, it is shown how the Court has gradually revealed the grounds of autonomy of the EU legal order.

1.1 The custodian(s) of the concept of autonomy

This point should not become a debate and it is sufficiently rare for it to be noticed. The institutions vested with the task of guaranteeing the autonomy of EU law are, in the first place, the Court of Justice itself and, since Opinion 1/09, the national judges and the Court of Justice. The Court is crystal clear in its *CETA* Opinion: “In order to ensure that … the autonomy of the legal order [is] preserved, the Treaties have established a judicial system intended to ensure consistency and uniformity in the interpretation of EU law”[10].

In Opinion 1/91, the Court already emphasised “the autonomy of the Community legal order, respect for which must be assured by the Court of Justice pursuant to Article 164 of the EEC Treaty”[11].

It is interesting to note that as Article 164 EEC provided the legal basis for the Court’s powers, the addition of national judges, as custodians of the autonomy of EU legal order, could be presented as a logical and coherent approach. The substance of this article is repeated in Article 19 TEU. In this respect, the Court noted in Opinion 1/09 that “as is evident from Article 19(1) TEU, the guardians of that legal order and the judicial system of the European Union are the Court of Justice and the courts and tribunals of the Member States”[12] and that “the national court, in collaboration with the Court of Justice, fulfils a duty entrusted to them both of ensuring that in the interpretation and application of the Treaties the law is observed”[13].

Although this is not the main issue here, it may be noted that this finding was not that “evident” on a reading of the second subparagraph of Article 19(1) TEU, according to which “Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law”.

Furthermore, taking a closer look at the wording of the case-law, it must be noted however that the mission entrusted to the national judges, to ensure the preservation of the autonomy of the EU legal order, has a narrower scope, which is limited to ensure that in the interpretation and application of the Treaties the law is observed[14].

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10 Opinion 1/17, *CETA*, EU:C:2019:341, para. 111.

11 Opinion 1/91, *European Economic Area*, EU:C:1991:490, para. 35; see also Opinion 1/09, *European and Community Patents Court*, EU:C:2011:123, para. 67: “it is for the Court to ensure respect for the autonomy of the European Union legal order thus created by the Treaties”.

12 Opinion 1/09, *European and Community Patents Court*, para. 66.

13 ibid., para. 69.

14 This finding is confirmed in Opinion 2/13, *Accession of the Union to the ECHR*, EU:C:2014:2454; Case C-284/16, *Achmea*, EU:C:2018:158; Opinion 1/17, *CETA*; and most recently in Case C-619/18 *Commission* v *Poland*, EU:C:2019:531.

Autonomy covers, as will be developed later, a more extensive scope. This explains why, even in Opinion 1/09, after referring to Article 19 TEU in paragraph 66, the Court immediately reiterates in paragraph 67 that "it is for the Court to ensure respect for the autonomy of the European Union legal order".

1.2 The grounds of the concept of autonomy: essential characteristics

The spelling out by the Court of the essential characteristics of autonomy is a key improvement for the understanding of the concept, since the grounds of this concept are made explicit.

These grounds have been divided by the Court into two categories, namely, the "very nature of EU law" and the "constitutional structure of the EU". However, it is important to note that such classification was only drawn by the Court in 2014 in Opinion 2/13 relating to the accession of the EU to the European Convention for the Protection of Human Rights and Fundamental Freedoms[15].

1.2.1 The very nature of EU law: the uniformity of EU law, a normative dimension of the concept of autonomy

This category appears expressly in Opinion 1/91. According to the Court, the essential characteristics of EU law correspond to "its primacy over the law of the Member States and the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves"[16].

These specific characteristics, presented as the main instruments to ensure the "homogeneity of EC law" in Opinion 1/91, deal, more fundamentally, with the principle of the uniformity of Community law. In that sense, in Opinion 1/09, the Court held that to confer on the Patent Court an exclusive jurisdiction in the field of the Community patent and "to interpret and apply European Union law in that field, would deprive courts of Member States of their powers in relation to the interpretation and application of European Union law and the Court of its powers to reply, by preliminary ruling, to questions referred by those courts, and consequently, would alter the essential character of [their] powers … which are indispensable to the preservation of the very nature of European Union law"[17].

Two main consequences, which are linked to each other, derive from the latter. First, as supremacy and direct effect arise from the very nature of EU law, it means that uniformity has to be understood as being in the very nature of EU law.

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15 See Contartese, C. (2017), "The Autonomy of the EU Legal Order in the ECJ's External Relations Case Law: From the 'Essential' to the 'Specific characteristics' of the Union and back", *Common Market Law Review*, Vol. 54, p. 1627.

16 Opinion 1/91, *European Economic Area*, para. 21.

17 Opinion 1/09, *European and Community Patents Court*, para. 89.

Second, it explains also why the preliminary ruling mechanism is presented as an essential characteristic to preserve the autonomy of the EU. Indeed, it must be emphasised that the uniformity of EU law is intimately linked to the preliminary ruling procedure as has been indicated by the Court since *Van Gend & Loos*[18] in settled case-law.

In that regard, the concept of autonomy already includes both a normative meaning (i.e. primacy and direct effect) and an institutional meaning (concerning the EU institutions and their competences, in particular, those of the Court of Justice and as regards the preliminary ruling procedure).

These characteristics, that the Court later grouped as corresponding to "the very nature of EU law", did not change deeply over the time, but have been refined as characteristics "intended to ensure consistency and uniformity in the interpretation of EU law"[19] and "its full effect"[20].

Moreover, these specific characteristics, based on primacy and the direct effect of EU law, lead ultimately "to a structured network of principles, rules and mutually interdependent legal relations binding the EU and its Member States reciprocally and binding its Member States to each other"[21].

In conclusion, the very nature of EU law confers, in this sense, a normative dimension to the notion of autonomy to which will be added institutional and substantive dimensions derived from the second group of essential characteristics.

1.2.2 The constitutional structure of the EU: the institutional and material dimension of autonomy

The "constitutional structure of the EU" as an essential characteristic of autonomy has been developed substantially since 2011 following Opinion 1/09 relating to the Patent Court.

It is important to keep in mind that was not originally evident that the European Community could have a "constitutional structure". It was a mere five years before Opinion 1/91 relating to the creation of the EEA that the Court held that the Treaties can be considered a "basic constitutional charter"[22].

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18 Case 26/62, *Van Gend & Loos*, p. 12: "… the task assigned to the Court of Justice under Article 177, the object of which is to secure uniform interpretation of the Treaty by national courts and tribunals".

19 Opinion 2/13, *Accession of the Union to the ECHR*, para. 174.

20 ibid., para. 176; and Case C-284/16, *Achmea*, para. 37.

21 Opinion 2/13, *Accession of the Union to the ECHR*, paras. 165 to 167; Case C-284/16, *Achmea*, para. 33; and Opinion 1/17, *CETA*, para. 109.

22 Case 294/83, *Parti écologiste "Les Verts"* v *European Parliament*, EU:C:1986:166, para. 23.

In this respect, in Opinion 1/91, the Court did not actually mention the constitutional structure of the EU, but merely highlighted that autonomy may be undermined if the "allocation of responsibilities"[23] is affected.

Although the Court took a broader approach in Opinion 1/00 concerning the establishment of a European Common Aviation Area, by holding that "preservation of the autonomy of the Community legal order requires … that the essential character of the powers of the Community and its institutions as conceived in the Treaty remain unaltered"[24], it appears that until 2011 the autonomy of EU legal order was mainly justified by, and reduced to, the judicial monopoly of the Court. In this respect, its powers[25], its jurisdictional order[26], and even its case-law[27] have been presented as the core of the autonomy to be preserved.

This is not surprising in the light of Opinion 1/91 in which the Court concluded that a system of courts which conflicts with EU judicial system conflicts "more generally, with the very foundations of the Community"[28].

A decisive move towards the definition of autonomy was made in 2011 in Opinion 1/09, by including both the preliminary ruling mechanism and Article 19 TEU, not merely as elements preserving EU autonomy but also as operating directly within the essential characteristics of the EU[29].

It is very important to understand the crucial relevance of this institutional dimension, since, for the first time, the institutions of the Member States and especially the national judges are included in the definition of autonomy and considered to be an integral part of the judicial system of the European Union as "'ordinary' courts within the European Union legal order"[30]. Consequently, autonomy could no longer be seen as a simple tool to protect the Court's jurisdiction against Member State interferences. Of particular significance are the findings by the Court that "national courts … are closely involved in the correct application and uniform interpretation of European Union law and also in the protection of individual rights conferred by that legal order" and that "tasks attributed to the national courts and to the Court of Justice respectively are indispensable to the preservation of the very nature of the law established by the Treaties"[31]. The final step was taken in Opinion 2/13 relating to accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms in which the Court pointed out, expressly, that the concept of autonomy, based on "the constitutional structure of the EU", does not rely only on

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23 Opinion 1/91, *European Economic Area*, para. 35.

24 Opinion 1/00, *European Common Aviation Area*, EU:C:2002:231, para. 12. Consequently, in that opinion, the Court examines also if the powers of the Commission are not affected by the agreement.

25 Opinion 1/91, *European Economic Area*.

26 Case C-459/03, *Commission* v *Ireland*, EU:C:2006:345, para. 154.

27 Opinion 1/92, *European Economic Area II*, EU:C:1992:189, paras. 23 and 24 "… decisions taken by the Joint Committee under that article are not to affect the case-law of the Court of Justice. That principle constitutes an essential safeguard which is indispensable for the autonomy of the Community legal order".

28 Opinion 1/91, *European Economic Area*, para. 71.

29 Opinion 1/09, *European and Community Patents Court*, para. 83.

30 ibid., para. 80.

31 ibid., paras. 84 and 85.

its institutional framework but also on common values enshrined in Article 2 TEU[32] and, in particular, on the respect of fundamental rights being "at the heart of the legal structure of the EU"[33]. The addition of values, fundamental rights and principles was pivotal in giving substance to the constitutional recognition of the EU legal order, which is no longer a mere discursive statement of the Court.

Ultimately, this approach, which we could refer to as the substantive dimension of autonomy, completes the representation of the relationship between the EU and its Member States in a comprehensive constitutional structure which increasingly resembles a federal system that binds the Member States. From this perspective, the Court could not have been clearer when it held that: "[the] essential characteristics of EU law have given rise to a structured network of principles, rules and mutually interdependent legal relations linking the EU and its Member States, and its Member States with each other"[34]. It is striking to note that the same reasoning was developed by the Court in its judgment in *Kadi*[35] to assert the independence of EU law from the international system.

We are far away from the simple assertion, made in the judgment in *Les Verts* v *European Parliament*[36], that the Treaties have to be seen as "a basic constitutional charter". At that time, no one could identify exactly what the critical elements of this new legal order were. Through the concept of autonomy, the Court has gradually been able to characterise them. Indeed, the definition of the concept of autonomy, enriched by normative, institutional and material dimensions, gives a real substance to the constitutional structure of the EU, with which it tends to be confused.

The evidence is provided in the *CETA* Opinion in which the Court affirms: "that autonomy accordingly resides in the fact that the Union possesses a constitutional framework that is unique to it"[37]. But does it lead to subordination?

2 The concept of autonomy as an argument of authority

Autonomy has to be read in conjunction with specificity, uniformity and effectiveness of EU law. The crucial objective of the Court, in these judgments and opinions, remains the prevention of threats to the unity of the EU legal system. According to that aim, the Court has to consolidate its power, which was the condition for strengthening the authority of the EU legal order in a manner that builds institutional bridges with the Member States. If this permits a form of subordination of the domestic legal orders, the Court takes the responsibility to place this relationship with the Member States in a constitutional order which henceforth goes beyond the Court and to which it is likewise subject.

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32 Opinion 2/13, *Accession of the Union to the ECHR*, para. 168.

33 ibid., para. 169.

34 ibid., para. 167.

35 Case C-402/05 P, *Kadi*, EU:C:2008:461, paras. 282 to 285 and para. 316.

36 Case 294/83, *Parti écologiste "Les Verts"* v *European Parliament*, para. 23.

37 Opinion 1/17, *CETA*, para. 110.

2.1 Autonomy as an argument to protect the authority of the Court's jurisdiction

It must be recalled that the European Economic Community was set up to create a single economy among the Member States. Without uniformity, EU law would be deprived of its Community character. In that regard, the Court observes, in a leading judgment, that the full effect, autonomy and particular nature of EU law derives from uniform interpretation[38]. Put in simple words: the single market entails uniformity which entails autonomy.

From this, omnipotence on the part of the Court of Justice can be inferred. Since uniformity is consubstantial with the Union's legal order, and since uniformity is preserved by the Court[39], its judicial monopoly appears to be an essential characteristic of the autonomy, for which the Court must ensure respect. Thus, as was held in Opinion 1/91, the Court is placed at "the very foundation of EU law"[40]. There is definitively a circular aspect to the reasoning.

Moreover, until Opinion 1/09 was delivered, one could highlight that the essential characteristics of autonomy corresponded mainly to the Court's own creation (i.e. direct effect, supremacy of EU law) or related to its own jurisdiction (judicial monopoly). In this perspective, it is also worth noticing that the Court, as an interpreter of the constitutional provisions of the Treaties, has been able to interpret its own powers. The Court appears to be the main actor, but also the main author of the legal system. Furthermore, in all circumstances, the Court is still the one who chooses when and what must be seen as an essential characteristic of the EU legal order or not.

Ultimately, the Court alone embodies the concept of autonomy and, to a certain extent, also the EU legal order.

This perception explains the reasoning of the Court, which considers that any impairment of its jurisdiction undermines the EU legal order. Indeed, it could be perceived that the reasoning of the Court behind the concept of autonomy is entirely devoted to preserving its jurisdiction. Its judgment in *Achmea* and Opinion 2/13 on accession to the European Convention on Human Rights could be subjected reasonably to this criticism.

However, that would not be a fair statement. It is essential to go back into time and to take into consideration recent developments in the concept of autonomy.

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38 Case C-284/16, *Achmea*, para. 37; and Opinion 2/13, *Accession of the Union to the ECHR*, para. 176.

39 Case 26/62, *Van Gend & Loos*, p. 12 "the task assigned to the Court of Justice … is to secure uniform interpretation of the Treaty".

40 Opinion 1/91, para. 71.

2.2 Autonomy as an argument to establish the authority of the EU legal order

First, it must be emphasised that the Court has to face an imperfect decentralised system where the effectivity and effectiveness of EU law depend on the Member States. Advocate General Geelhoed was crystal clear in his observation that: “In a general sense the Community legal order, although it is autonomous, is a dependent legal order to the extent that, in most fields, it depends on the efforts of the Member States to ensure full compliance with the obligations it imposes … . Where enforcement effort in the Member States is inadequate, it will be impossible to attain the objectives of the relevant Community provisions in a more or less uniform fashion throughout the Community”[41].

To counter that original weakness and strengthen the authority of EU law, the Court had to find the best way to build a bridge with the Member States. The most obvious and relevant way was to establish a link with its equivalent within the Member States: the national courts and tribunals because they use similar language, they share the same function of interpreting and applying the law and, finally, they address their decisions to the same citizens.

In that perspective, the Treaties offer the Court a solid foundation for this “bridging” process in Article 267 TFEU. The preliminary ruling mechanism is the foundational stone of the bridge.

In its judgment in *Schwarze*, the Court already underlined “the special field of judicial cooperation under Article 177, which requires the national court and the Court of Justice, both keeping within their respective jurisdiction, and with the aim of ensuring that Community law is applied in a unified manner, to make direct and complementary contributions to the working out of a decision”[42]. In that respect, Article 19 TEU, as interpreted by the Court, codifies the *Schwarze* ruling. The Court summarises it perfectly in Opinion 2/13 by holding that “… the judicial system as thus conceived has as its keystone the preliminary ruling procedure provided for in Article 267 TFEU”[43].

Indeed, and from the outset, the Court understood that the effectiveness of EU law depends on the link that it would be able to create with the national judges. In this perspective - and this is the second stone of the bridge - the consequences of recognising the direct effect of EU law are fundamental. It provided national judges with an opportunity to become autonomous in relation to their own legal system.

Accordingly, the Court provides support to national judges against any infringement of their competence to refer questions to the Court. This is indeed essential for the

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41 Opinion of Advocate General Geelhoed in Case C-304/02, *Commission* v *France*, EU:C:2005:274, point 29. See Bouveresse (2018), op. cit.

42 Case 16/65, *Schwarze*, EU:C:1965:117.

43 Opinion 2/13, *Accession of the Union to the ECHR*, para. 176

effectiveness of the EU legal order[44]. It stems clearly from the judgment in *Rheinmühlen* in which the Court highlighted "the requirement of giving Community law its full effect within the framework of the judicial systems of the Member States". According to the Court, "any gap in the system so organized could undermine the effectiveness of the provisions of the Treaty and of the secondary Community law"[45].

But real progress was realised with Opinion 1/09 which marked a turning point by including, within the autonomy concept, the national courts and tribunals at two levels. It saw them both as an essential characteristic of the EU legal order relating to its constitutional structure and as custodians (together with the Court) of autonomy. It results from the latter that preservation of autonomy is now ensured within the framework of an integrated jurisdictional system.

2.3 Consequences in the light of subordination

Due to the developments in the concept of autonomy it can be said that the courts and tribunals of the Member States acquire somehow a constitutional status which follows the constitutional status of the Court, accordingly to Article 19 TEU.As the Court highlighted in Opinion 1/09, "the tasks attributed to the national courts and to the Court of Justice respectively are indispensable to the preservation of the very nature of the law established by the Treaties"[46].

Indeed, the direct cooperation established by Article 267 TFEU between the Court and the national courts is now evolving within the framework of a constitutional relationship within Article 19 TEU, which strengthens the federalisation of the EU legal system. The concept of autonomy provides a means to secure the cooperation of national judges in a constitutional framework by inserting them as an element of the constitutional structure of the EU and as guardians of it. In that sense, autonomy could be seen as a tool for the subordination of national judges. There can be no doubt, however, that the bridge was built to be crossed and is, in fact, a mandatory passage. A closer look at the wording in Opinion 1/09 confirms that point. First, the Court reminded the national judges of the principle of sincere cooperation to which they are subject. Second, the Court gave a clear signal to the national judges, by its express reference to the judgments in *Köbler*[47] and *Traghetti*[48], that any breach of EU law, including its case-law and, in particular any breach of their obligation to refer a preliminary question, will be penalised[49].

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44 Case 166/73, *Rheinmühlen*, EU:C:1974:3; Case C-210/06, *Cartesio*, EU:C:2008:723; Case C-173/09, *Elchinov*, EU:C:2010:581; Joined Cases C-188/10 and C-189/10, *Melki & Abdeli*, EU:C:2010:363; Case C-64/16, *Associação Sindical dos Juízes Portugueses*, EU:C:2018:117; and Case C-619/18, *Commission* v *Poland*.

45 Case 166/73, *Rheinmühlen*, para. 2.

46 Opinion 1/09, *European and Community Patents Court*, para. 85.

47 Case C-224/01, *Köbler*, EU:C:2003:513.

48 Case C-173/03, *Traghetti del Mediterraneo*, EU:C:2006:391.

49 See Opinion 1/09, *European and Community Patents Court*, para. 83: "the national courts have the most extensive power, or even the obligation, to make a reference to the Court" see also paras. 86 and 87 and for a recent application: Case C-416/17, *Commission* v *France*, EU:C:2018:811.

Despite the fact that the Treaty refers to a relationship of "cooperation" and the Court presents it as a "dialogue between one court and another"[50], the conjunction of the principle of autonomy and Article 19 TEU moves the cooperation towards an integrated jurisdictional system with a vertical axis of authority. In that respect, the Court mentions expressly in the *CETA* Opinion that "in order to ensure that those specific characteristics and the autonomy of the legal order thus created are preserved, the Treaties have established a judicial system intended to ensure consistency and uniformity in the interpretation of EU law. In accordance with Article 19 TEU, it is for the national courts and tribunals and the Court to ensure the full application of that law in all the Member States and to ensure effective judicial protection, the Court having exclusive jurisdiction to give the definitive interpretation of that law"[51].

As a final point, it must be stressed that the development of autonomy now goes beyond the Court itself. It includes national jurisdictions as well as values and principles in such a way that autonomy reflects the new constitutional legal order of the EU. This means that the bridge is not a one-way street and, as such, it is also more difficult for the Court to justify the concept of autonomy solely as a means of defending its monopoly of jurisdiction. Autonomy is gradually becoming detached from the Court and it may even subordinate the Court itself.

The recent case-law referring to Article 19 TEU is enlightening on this issue. The judicial system established by the Treaties ensures the preservation of the autonomy of the EU (not only EU law). Since the introduction of Article 19 TEU by virtue of the Lisbon Treaty, this is a mission ensured not only by the Court, but also by national judges. The Court has gone further, however, and indicated that Article 19 TEU has to be read as giving "concrete expression to the value of the rule of law stated in Article 2 TEU, [and] entrusts the responsibility for ensuring judicial review in the EU legal order not only to the Court of Justice but also to national courts and tribunals"[52]. Consequently, the Court is no longer the only guardian of autonomy, but has to share this task with national courts and tribunals. Moreover, as a part of the notion of fundamental rights based on common values, Article 19 TEU gives to the concept of autonomy another recipient: individuals[53]. In this respect, *Kadi* and Opinion 2/13 already stressed the importance of fundamental rights within the concept of autonomy. There is no doubt that such requirements will require the Court also to submit to the concept of autonomy which, like Frankenstein, could evolve beyond the intentions of its creator.

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50 See Case C-284/16, *Achmea*, para. 37; and Case C-619/18, *Commission* v *Poland*, para. 45.

51 Opinion 1/17, *CETA*, para. 111.

52 Case C-64/16, *Associação Sindical dos Juízes Portugueses*, para. 32.

53 See also Case C-619/18, *Commission* v *Poland*, paras. 47 to 50.