The Legal Order of the European Community - A New Legal Typology

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Abstract: In order to fit the new European legal order on the legal map of the world, we intend to focus on the legal order of the European Union. The paper seeks to answer the questions: is the law of the European Union a new type of law with specific qualitative determinations? Can it be about integration into a supra-national legal order? How can the national values be interwoven with those of the European Union? We are witnessing great challenges in the European Union - we are talking about integrating into a supra-national legal order, about joining supranational interests. Although it is based on international treaties, the Community legal order has characteristics that are fundamentally different from the international legal order. In this paper we have analyzed how the relations of the Community law interact with the national law. These do not reduce to a single model, but we can distinguish several situations depending on the role assigned to the Community provisions and the consequences on the existence of the content of national law. We appreciate that only insofar as the European Union is founded on an autonomous legal will and on common legal principles and values, both for individuals and for nations, the "unity in diversity" is possible.

Keywords: legal order; Community provisions; European Union; legal typology

1. Introduction

Even though there have been discussions and papers on this subject, we believe that they have not exhausted the issue, leaving room for academic and scientific discussion. Moreover, researching the jurisprudence of the Court of Justice of the European Union in order to analyze the fundamental principles of European Union law is an innovative approach on this issue.

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The novelties also reside in the way the subject is analyzed, as well as the approach and explanation, from a different perspective, of the concept of "European Union law".

We believe that the inventory and analysis of the general principles of European Union law is an important and useful approach to the legal world, due to the overwhelming importance of this source of law in the European legal order, but also in the internal legal order of the Member States.

As a pillar of the European Union's legality, the general principles of law are imposed on the European institutions, being superior to the law deriving from the hierarchy of European Union rules. It should be emphasized that these principles also apply to the Member States, and to the extent that they act in the field of European law. As part of the legality of the Union, it is obvious that they must apply either at national or European level in any situation governed by European Union law.

Comparative law must go beyond merely observing the similarities and differences between legal systems to analyze the causes of the genesis and evolution of legal phenomena, as well as the crystallization of concepts.

Using the typological-classifier method, analyzing the history of law, we distinguish the existence of systems overlapped by law, which raises the question of the typology of these systems.

Due to globalization, there is now a tendency to harmonize or approximate the law in the world. The doctrine emphasizes that "the most sensitive" harmonization of law is that achieved at regional level, where the European Union is the best example (regulations and directives apply in 28 states). Legislative harmonization "should not be seen as a legal integration, but as a political cooperation. Legislative harmonization does not mean legislative identity, but it seeks to harmonize the legal principles and national legal norms organized by specialized fields."

We believe that the European Union, since it was not founded by a nation or a people, could not be assimilated to a nation state or a constitutional structure. It is an international organization, *sui generis*, created on the basis of treaties concluded between sovereign states that have decided it to exercise some common skills for an indefinite period of time. We also find it interesting to apply the European Union in the Staatenverbund category (German, "union of states") following the

October 1993 Maastricht[1] decision of the Federal Constitutional Court of Germany. In the Maastricht decision, it is emphasized that the objective behind the Union was to create a "union of states [...] as a union as close as possible to the people of Europe (organized as states) and not as a state founded on the people of a single European nation".

We emphasize that in order to be able to talk about a new legal typology, it is first necessary to have an autonomous will to command the Union's legal decision-making process, a will that is not simply a mere arithmetical sum of Member States' individual wills (Fuerea, 2006, p. 228), so States commit themselves to be subject to a distinct legal will of theirs. Apart from an autonomous will that commands legal creation, the new typology also implies the existence of general principles that command the essential directions of the construction and development of the European legal order (Popa, 2012, p. 63).

2. The European Union Law - A New Legal Typology

In order to demonstrate the existence of a new legal order - the European legal order, we have analyzed the original and the derived European Union law. From this analysis, we have noticed that the Union's normative process has evolved greatly, from predominantly economic regulations, nowadays new European legal regulations have "specific features" that enrich their signification and meanings.

An institutional right of the Union has been created, with all that this implies: sources of law, defining principles and regulations that outline a specific legal order. The Union's law regulates the legal relations within the European Union, but also between the Union and the Member States, it highlights the status of the Union's institutions, while defining its attributions and competences.

Various legislative instruments and the jurisprudence of the Court of Justice of the European Union have gradually created:

- the Institutional Union law encompassing all the legal norms governing the structure and functioning of the European Union bodies;

- a Union material law covering all the legal norms setting out the objectives of the Union and the measures by which they are carried out;

[1] The Maastricht decision of October 1993 pronounced by the Federal Constitutional Court of Germany, par. 89.

- the Procedural law that encompasses all the legal rules governing the procedures of European Union law. Thus, another argument for creating a new legal order would be that the institutional, material and procedural law of the European Union have created a specific legal order.

The diversity of legal relationships covered by Community law also leads to the diversity of the nature of disputes or actions to which the CJEU may be seized. (Mazilu, 2006, p. 55) It is therefore possible to distinguish between several types of proceedings, which are gradually forming a procedural law of the European Union, and which we are referring to a procedural law in the field of administrative law: the procedure for direct actions (ordinary law) before the Court of Justice; proceedings for preliminary rulings before the Court of Justice; special procedures before the Court of Justice; the appeal procedure before the Court of Justice; proceedings before the General Court; procedure before the Civil Service Tribunal.

Moreover, according to Article 20 of the CJEU Statute, the procedure before the CJEU involves two phases: the written and the oral phase. These phases are followed by the deliberation phase and the adoption of the judgment and the execution phase of the judgment. If we are before the Tribunal or the TFP, we add the appeal stage.

As any system of law, community procedural law sets out rules for the conduct of processes, among which we mention:

- Parties to the Community process (Article 19 of the CJEU Statute): Member States of the European Union, other subjects of public international law (e.g. States party to the Agreement on the European Economic Area, third countries), the institutions of the European Union, natural and legal persons whether public or private, including from third countries; a distinction is made between the nominated parties, who do not have to prove a subjective procedural interest, and the other parties who have to prove such an interest.

- the procedural representation and mandatory lawyer (Article 19 of the CJEU Statute, Articles 32-36, 38(3) of the Code of Procedure of the CJEU and Articles 38-42 of the Tribunal Code of Procedure);

- interventions in the Community process (Article 40 of the CJEU Statute);

- written procedure (for example, the terms of the call for action - Articles 37-38 of the Code of Procedure of the CJEU, Articles 43-44 of the Tribunal Code of Procedure, the plea - Article 39 of the CJEU Statute);

- Appointment of the rapporteur and the Advocate General (Articles 9 and 10 of the CJEU Code of Procedure);

- procedural language (Article 64 of the CJEU Statute, Articles 29-31, 104 of the Code of Procedure of the CJEU, Articles 35-37 of the Tribune Code of Procedure, Article 20 of the TFP Code of Procedure);

- Oral proceedings (e.g. administering evidence - Articles 24-32 of the CJEU Statute, Articles 45-54 of the CJEU Code of Practice, procedural exceptions - Article 91 (1) of the CJEU Code of Procedure);

- judgment - deliberation and decision (Articles 27 and 64 of the ECJ CJEU);

- execution of judgments (Articles 280 and 299 TFEU);

- procedural deadlines and their calculation (Article 80 of the Code of Procedure of the CJEU, Article 101 of the Tribune Code of Procedure);

- court costs (Article 38 of the CJEU Statute, Articles 63-75 of the CJEU Regulation, Articles 72-73 of the CJEU Code of Procedure);

- ordinary appeals (Articles 56-58 of the CJEU Statute, Articles 112-113 of the CJEU Code of Procedure);

- Extraordinary remedies (Articles 42 and 44 of the CJEU Statute, Articles 97-98 of the Code of Procedure of the CJEU, Article 125 of the Tribunal Code of Procedure).

We also point out that the procedural law of the European Union is not suspended, with the material right of the European Union, which is somewhat disparate, as it is not (yet) encoded. On coding is being discussed more and more often, and there is growing concern about the contractual side. The realities of the last century have led to the desire to unify the private law, thereby creating the European contract law.

Even though many specialists have objected to the possibility of unification, there are many projects that have contributed to this objective: the European Contract Law principles drafted by the Lando Commission, the Draft of the European Code of Contracts (Gandolfi Code) proposed by the Academy of European Private Institutions in Pavia, Joint Reference Document drawn up by the Study Group on a European Civil Code, Common Contract Terminology and Common Contractual

Principles developed by the Comparative Legislation Society and the Henri Capitant Association.

3. The European Union - between Multilingualism and Multilingualism

Another issue that we have focused on is multilingualism and multi juridism characteristic of the Union's order. Contrary to the provisions of the ECSC stipulating that French is the only genuine language, the European Union (as well as the European Communities) is based on the principle that at least one official language of each Member State[1] becomes an official language of the Union. If at the beginning, there were only six Member States and four official languages (French, German, Italian and Dutch), we are currently talking about twenty-eight Member States and twenty-four official languages (almost each Member State[2] having its own official language).[3] Thus, any of Member State has its own legal system, which can be classified according to René David's typology as belonging to the family of Roman-German or Anglo-Saxon law.

The legal will of the Union is the essence of Union law and should not be regarded as the simple arithmetical sum of individual states' wills, but as a legal will distinct from theirs. This is normal, because we are talking about a Union, so there is the problem of typical features, even if there are peculiarities. The sources of European law are indeed the architect of the new regional legal order, that of the European Union.

The different forms of expression of law have as a common purpose the creation of a legal order, a single type of formal legal source not enough for the complex legal regulation imposed by contemporary realities. Moreover, their roles are not kept in time, so we notice that their share changes according to several variables. But, in the end, these origins subsist, complementing each other or subordinating

[1] There are multilingual national systems within the European Union: Belgium (French, German and Dutch language) and Malta (Maltese and English language).
[2] In a more particular situation, Ireland, which until 2007 was an authentic language in accordance with the Union treaties, was not included in the list of official and working languages within the European Union.
[3] In 1973 the official languages were English, Irish and Danish, in 1981 Greek, Spanish and Portuguese in 1986, Finnish and Swedish in 1995, Czech, Estonian, Hungarian, Lithuanian, Latvian, Maltese, Polish, Slovenian and Slovakian in 2004, Romanian and Bulgarian in 2007, and in 2013 Croatian.

themselves from the point of view of legal force. Such an example would be the pre-eminence of international or European law over the national law.

The formal origins of law are in close connection, forming together a unitary system. As pointed out in the doctrine, "the judge cannot be indifferent to doctrine and practice when applying the law; the legislator in his turn cannot ignore the doctrine and judicial practice, which leads to the conclusion that the different sources of law exert an inevitable influence on each other". (Popescu, 2000, pp. 172-173)

If the Court of Justice has to send or enforce general principles of law under the national legal order of the Member States or the international legal order in a case, the referral or enforcement can only be made if the principles are 'compatible with Community principles and with the specificity of the legal order enshrined in the Community texts" (Cotea, 2009, p. 463). The general principles of law gain authority in EU law through jurisprudential practice, "but they are always based on their consecration in a legal system organized either at Member State level or jointly by the Member States or as a result of the nature of the European Union."

The problem of knowing the European law is a serious issue from a double perspective: the accessibility of European legal norms and multilingualism. Moreover, even a jurist has problems in understanding European law, especially as a young law, constantly evolving, he did not have time to settle down, so two major problems arise at this stage: originality and superiority of the European law. And in the European law, the issue of legal norms is questionable.

Although the European law follows the national legal regime, we note that more and more frequently there are written the European rules on this issue (e.g. the Convention concluded under the auspices of the Council of Europe on the obtaining of information and evidence in the field of administration abroad of 15 March 1978, E.C. Regulation No 1206/2001 of 28 May 2001 on cooperation between the Member States' jurisdictions in the field of obtaining evidence in civil or commercial matters, the Convention concluded under the auspices of the Council of Europe on the Prevention of Terrorism of 16 May 2005).

The case law of the Court of Justice on the general principles of European law is of utmost importance. Firstly, it is an example of the creating role of law of the European jurisprudence, which contributes to the development of Union law as a new legal order. Secondly, the evolution of the general principles demonstrates the interaction between the laws of the Member States and the law of the Union. The

attitude of the Court of Justice on the general principles of law has evolved greatly over the last 60 years. If at first the Court was hesitant, since 1960 it can be noticed that the European Court has referred to principles in many areas. Of course, since the 1970s, their importance, flexibility and dynamism have been recognized by European judges, who have recognized them as rules of Community law.

Thus, over the years, general principles have become very important, often being invoked by the parties, by the general advocates or even by the European judges. Today, they are an indisputable part of European Union law, along with primary or derived law. The role of the principles is to guarantee the cohesion of Union law and its adaptation to changes in the European realities.

It is interesting that although the legal order of the European Union is governed by general principles of law, the Court of Justice has not always defined or applied them in the same way, but they are very broadly conceived. Thus, we can see that, depending on the situation of the cases, the principles play different roles in the legal system of the European Union. Despite these differences, there is still a balance - the desire to ensure the uniformity of Union law and to ensure the achievement of the objectives enshrined in the Treaties. Although the origin of the general principles of EU law remains the domestic law of the Member States, the CJEU has some freedom in their choice. For example, with regard to contractual liability, the Court "created an autonomous system of liability, while the Treaty expressly refers to the general principles common to the Member States" (Gheorghiu, 2004, p. 185). Without being constrained by the results of a comparative analysis, the Court sets out the trends without being bound by the majority trend, examples being those in which it recognized as general principles of the European law principles which "were expressly enshrined in only one state membership, such as proportionality or legitimate trust.". (Gheorghiu, 2004, p. 185)

The principles of the European Union are mandatory for its institutions and the adopted acts or measures, whether are of administrative or legislative nature, which violate one of the abovementioned principles, are illegal and they may be annulled by the Court of Justice.

We emphasize that these principles are applied to avoid denial of justice, to fill the gaps in the European Union law and to strengthen the coherence of this right. (Kaczorowska, 2011, p. 205)

4. Integrating the Community Law into the Internal Legal Order

Since the Communities are international organizations with the legal personality distinct from the Member States, there is the issue of the relationship between Community and domestic law arises. The adoption of the rules of Community law is particularly an important issue, but not sufficient. They need to be effective, not to remain at the abstract level, but to produce legal effects. As Community law is an autonomous system, there is a need to integrate it into the law of the Member States. This integration implies that it is part of the national law of each EU state, so it applies directly. The direct applicability of Community law therefore requires a basic principle, from which it derives a second principle linked to the hierarchy of the two systems, which is the priority (the supremacy) of Community law over the national law. (Manolache, 2006, p. 24)

The Principle of Direct Applicability

The principle of direct applicability finds a confirmation in art. 189 CE, but only as regards the regulations, which are stated to be of direct applicability in all Member States. For the rest of the Community normative acts and for C.E.CO, the Court of Justice has been given the role of stating this principle when solving certain causes.

Thus, in Van Gend en Loos (05.02.1963, 26/62.1), the Court found that the Treaty had as object the establishment of a "common market", which implicitly encompasses all Community justices, the Treaty was applied, and it was not adopted only to regulate the relations between Member States. It has also been shown that the Treaties constitute a new legal order of international law to which the States have transferred their competence, and the subjects of law and obligations are not only the States, but also their nationals whose national jurisdictions must guarantee their exercise rights and to ensure the fulfillment of their obligations. (Kaczorowska, 2011, p. 212)

Later, by COSTA/E.N.E.L. (15.07.1964, 6/64) decision, the Court returned to the formations in the aforementioned judgment, replacing the wording "legal order of international law" with "own legal order" and "independence" of Community law was replaced by its "integration" into the legal system of the Member States.

The replacement of "international legal order" with "own legal order" is justified in terms of the differences that exist between them. Thus, the "legal order" of the Communities has as its source the conventional law adopted by the states, as well as the unilateral acts, respecting the derived right, although they are recognized as

fundamental sources and principles, each having a well-established position in the legal hierarchy, and its norms address mainly the private individuals.

Another difference is that the settlement of disputes arising between the subjects of this right is not left to the parties involved. The Court has held that the principles of domestic law apply to the extent that they are not incompatible with the Community legal order.

Differentiation of Rules

The Court has established that, according to this principle, the Community law is directly integrated into the law of the Member States, without allowing states to choose between dualist or monistic theories, as the mechanism must be applied without the need for internal measures to enforce the Community law (03.04.1968 Malkerei Firm, 28/67, 211).

As a result of this situation, the private individuals (physical or moral) can invoke Community law before the national authorities, including tribunals, both for the recognition of their rights and for the annulment of the effect of the domestic legal acts which are contrary to the Community law.

The direct application of Community law has a number of differences depending on the category of Community rules that are invoked, as well as the nature of the direct effect and the possible exceptions that exist. In this respect, analyzes made by the literature are distinguished[1] either by the criterion of direct effect force and conditionality, or by the categorization of the sources of Community law, although each of these classifications does not always cover all the essential elements that result from the application of the criterion.

The Direct, Unconditional and Complete Effect

The sources of Community law that have this effect can be invoked without any condition by any physical or moral entity, both vertically (in disputes with state bodies) and horizontally (in disputes with other physical or moral persons). This category includes:

- Regulations, which are community acts specific to direct applicability, creating rights and obligations for all. This can be argued with art. 189 of the EC Treaty. Which states that the regulation is "directly applicable".

[1] Hugues Dumont, *Présentation générale des changements induits par le Traité de* Lisbonne, in (de Sadeleer, Dumont, Jadoul, & Drooghenbroeck, 2011, p. 42).

- Decisions that are not directly applicable, but it was considered that those decisions addressed to individuals in certain areas (competition) may be sources of rights and obligations for them, being assimilated in these cases to the regulations. The effect of the other decisions will be analyzed later.

- The general principles, which are of direct applicability, as by their generality they have to be respected in all cases and unconditionally.

The Direct, Conditional and Complete Effect

This category includes community acts that can be invoked in any litigation, but it is necessary to meet the conditions for this purpose. There are included here the conventional documents, namely community-building treaties and international treaties.

Constitutive Treaties

In Van Glend en Loos, the Court ruled that Community law stemming from the constituent treaties has no direct autonomous applicability. However, there are two general indications that the provisions conferring rights and express obligations for private individuals are directly applicable, as well as those which impose well-established obligations on Member States or Community institutions.

If these conditions are met, those provisions are directly applicable without the need for further enforcement, specific procedures or complementary measures.

Their self-exertion enables the private individuals to invoke these provisions directly before the national courts. The scope of this direct effect was subsequently extended by the case law of the Court, including, besides the State's obligation not to do (not to make reservations to subordinate the application of the treaties to any internal normative act, not to require the adoption of normative provisions internal implementation of treaty provisions) and obligations to do (not to leave any margin of appreciation to states in fulfilling their obligations) (Ziller, 2003), as well as to situations in which the necessary additions have not been made by internal law (the application of the principles of non-discrimination in employment or pay, even if the internal law did not take them). Within the constitutive treaties, the direct effect of some provisions coexists with its absence in other provisions. It is the case of the provisions which determine the obligations of states with a very general feature, as well as under conditional or insufficiently specified provisions.

The obligations laid down in very general terms refer to general policies: improvement of the working conditions of workers (Article 117 EC), exchange rate policy (Article 107 EC) which cannot be invoked by individuals as having direct effect in the case of the conditional or insufficiently specified provisions, as stated by the Court, in the case of art. 90 C.E. on the possibility that some companies managing a public service may be exempted from the general rules of the treaty, that this is a strict interpretation, and that the important role, in this respect, remains to the national judge; in the case of art. 92 and 93 C.E. on state aid granted to some companies, they also have no direct effect, since the incompatibility of such aid with the Common Market is not absolute, but subject to notification by the Commission under the control of the Court.

International Agreements

As regards the international agreements, the Court has decided that their provisions may be invoked directly if they confer rights on the States, but also on private persons, or whether the application of such treaties to the domestic legal order is based on the clear depositions, which do not require other internal normative acts.

The Direct Conditional and Limited Effect

They are considered to have a direct, conditional and restrictive effect on directives and decisions addressed to the Member States. There are, however, opinions which argue that they would not have direct effect, as the Treaties do not mention the rules in this regard, which implies, *per a contrario*, that they do not recognize this effect. It is recognized at the same time that the reasoning is not determined, the direct applicability must be precisely determined. It is also argued in the same way the fact that the decisions that are not of general applicability need to be notified, which is why they are considered to impose only a result obligation, implying the adoption of national legal regulations, which is why they are not of direct applicability, any obligations which they prescribe should result from internal regulations.

However, the Court has ruled on the principle of direct applicability, according to which the national courts must apply the directives, and the mandatory nature of the directives implies that individuals may invoke them. It was thus considered that the provisions contained in the directives were invoked, if they had not been transposed or had been misapplied upon expiry of the period of application. States therefore have the possibility to determine what measures are to be taken. Although the directives do not impose them, they are bound to comply with those directives,

and they cannot prevent individuals from complying with the obligations laid down in the directives. The direct effect of the directives is the absolute condition for the national judge to exercise his powers in this respect. In other cases, the Court has ruled that directives do not have direct effect unless they result from all their provisions that they are likely to produce direct legal effects between Member States and private individuals.

The Court also found that the unconditional and sufficiently precise provisions are likely to produce direct effects. This possibility for States to choose the means they deem appropriate to comply with the provisions of the directives may be inconsistent with the actions of individuals who may use their rights before the national courts, whose rights may be determined precisely on the basis of the provisions of the directives. It has also been stressed that the directives do not create obligations for individuals so that individuals cannot rely on them in disputes between them, and the state cannot invoke them against private individuals. This effect of the directives stems from the case-law of the Court, which ruled that a directive cannot create obligations for an individual and cannot be invoked against it. The decisions are assimilated to the directives in terms of direct effect, in which case the same arguments are valid for justifying the applicability of this principle, except that they do not necessarily imply the adoption of national regulations for their application either because they are not addressed to States, or because the obligations they impose are not addressed to individuals.

The Court has established the same jurisprudence for decisions as in the case of directives, although the number of cases is much lower.

The Consequences of Applying the Direct Effect Principle

The principle of direct applicability of Community law has implications for both member states of the communities, as well as individuals and national judges.

The Member States are in a position of not to being able to change the addressed Community provisions, which are binding on the Member States concerned (obviously taking into account the category of legal rules in question as discussed above). Individuals have the opportunity to invoke the Community law at any time under the conditions laid down by Community regulations.

The national judges are bound to apply the Community law, but when judges are faced with a situation that requires internal competence, they will apply the right of

each state. If the national judge asks for an injunction, the Court may indicate to him the elements of Community law on which to solve the case. (Dony, 2012, p. 32)

It recognizes a direct vertical applicability (invoking community provisions towards the state and its bodies) and horizontal applicability (between private individuals).

The Primacy of Community Law

The treaties establishing communities do not contain provisions on the primacy of Community law over the internal ones, together with the direct effect, the primacy being the two pillars of the Community legal order. The issue of the primacy of Community law over the domestic law of the Member States can be regarded as an expression of the issue of the relationship between public international law and domestic law. According to theory and practice in this field, there are two doctrines on the relationship between the two systems: monist and dualist doctrine.

Unlike this situation in the public international law, in the system of Community law, Member States are obliged to recognize the primacy of Community law over domestic law. The basis for this situation is the agreement of the states to be members of these communities and to accept the special jurisdiction created in accordance with the constitutive treaties that have been negotiated and to which the consent of each state was expressed according to the provisions of the treaty and the internal regulations, respectively by referendum in the last instance. By accepting the principle of the integration of the Community legal norms into the national law of each state and the fact that rights and obligations derive from any subject of law, in any situation where the question of the jurisdictional recognition of these rights and obligations is raised, the court will have to decide when the treaties do not contain express provisions, being bound to decide between the application of Community law and the national law.

The fact that the Treaties do not contain express provisions in this respect is considered a political precaution of the initiators of the European Communities by which the anti-federalist feelings of founding states could be preserved, which could not have accepted the conditionality of the community construction. It has been proven that the practice has raised a number of issues that the Court of Justice has to solve (in many situations, following national court requests). Thus, the role of the Court of Justice has been to establish the primacy of Community law over the domestic law.

Establishing the Principle

The foundation of this principle has been established by the Court, through the global interpretation of the Community legal norms. That principle is also found in the Van Gend En Loos judgment (referred to above in the examination of the direct effect principle), but it is also stated in the Costa c.E.N.E.L. (July 15, 1964, 6/64), in which the Court summarizes the original features of the European Communities: institutions with a legal order, integrated with the national legal system of the Member States, with their own personality and legal capacity, represented on the international relations and with its own powers conferred by the transfer of competence agreed by the Member States, as well as the existence of a Community normative framework applicable to the Member States and their citizens. This is where the legal foundations of the principle of primacy of Community law stemming from constitutive treaties and other sources have been established, which must be integrated into the internal legal order of each Member State and which have as a corollary the impossibility for all states to prevail over the unilateral legal norms against the common legal order, accepted on the basis of the expression of consent.

The Application Domain

The principle of primacy refers to the totality of sources of Community law, which therefore have all a legal force superior to domestic law, regardless of the category to which they belong. The internal law of all Community states must be in full compliance with Community law, irrespective of the internal hierarchy of those rules. In other words, the state cannot even invoke its constitutional provisions in order not to apply a community norm. This is all the more obvious in the case of contractual rules between private-law matters. (Druffin-Bricca & Henry, 2011) This primacy is properly applied in the case of revising institutional treaties or acts that are subject to the approval of states, on the basis of constitutional provisions, that in these situations it is the introduction of new, different Community rules, subject to specific adoption procedures. In court jurisdiction, contradictory situations may arise in which national judges will be tempted to apply domestic provisions - and the judges of the Court of Justice will not have legal texts for the annulment of such rulings contrary to Community law. The action for failing to comply with Community obligations may be used in this respect.

For these reasons, the Court sought to impose the principle of primacy of Community law by limiting the autonomy of national law. It has thus been ruled

that the act of a state of not withdrawing from its legislation a provision contrary to Community law constitutes a breach of Community obligations. The action for non-fulfillment of the obligations does not lead to the invalidation of the non-compliant internal legal rules, but only to the obligation of the state to take the necessary measures for the cessation of the respective situation. In other judgments of the Court of Justice (Simmenthal 09.03.1978, 106/77, RTDE 1978, 381) it has been ruled that a national judge has the duty to respect the Community law and to remove the application of any contrary provision in the domestic law. Regarding the application of sanctions, especially the criminal ones, they are devoid of the legal basis if they are contrary to the Community law, and they should rule on the annulment by higher courts. It has also been recognized the interpretation of any confusing provision in the spirit of Community law.

Once the European Communities and subsequently the European Union have been established, the Member States have entrusted a part of their sovereignty to supranational bodies, either by renouncing or by transferring some national attributes. These attributes cannot be returned to the authorities of the Member States. That is why the transfer of power to the Community institutions is considered to have an irreversible nature. The appreciation of the nature of the power transfer can be made with regard to the integrity and unity of the granted powers. It is not permissible for one or more Member States to be able to give up less of the attributes in question while other states have to accept important renunciations in order to reach subordination or inequality.

The principle of equal treatment must be fully respected. Member States cannot achieve any advantages other than those which can be achieved through the equitable sharing of rights and duties and through the correct application of Community legal acts. When, owing to the inaction of a Community authority in the application of a legal provision, it can be inferred that the latter is no longer present and some national rules may become more and more harmful; the Member States cannot retain freedom discretionary action, and the Community does not lose its authority, although some of its organs are guilty. The national rules must not be incompatible with Community principles.

The principle of Community solidarity must be taken into account in order to ensure a balance between the Community's partners. The basis of the Communities and the Union will be a new legal order, which will have to be imposed in addition to, or within, the national legal order. The question here is whether the Community

law can have a stand-alone existence independent of national legal systems or will need to be integrated into these systems or a hierarchical efficacy system. (Dominique, 2004)

The Community Acquis is the set of common rights and obligations that apply to all Member States. It includes:

• the content, principles and policy objectives of the Treaties establishing the European Communities as well as of all agreements that have altered them over time, including the Treaties on the Accession of New Members;

• The mandatory acts are adopted to implement treaties (directives, regulations, decisions);

• The recommendations and opinions adopted by the institutions of the European Union;

• Other acts adopted by the institutions of the European Union (declarations, resolutions, framework decisions, etc.);

• Joint actions, common positions, signed conventions, resolutions, declarations and other acts adopted on the Common Foreign and Security Policy;

• Joint actions, common positions, signed conventions, resolutions, declarations and other acts adopted on justice and home affairs;

• International agreements concluded by the Communities and those concluded by EU Member States on the activity of the latter;

• the jurisprudence of the Court of Justice of the European Communities.

The Community Acquis is synonymous with Community law in a broad sense and it is in a continuous development and transformation, as some legislative acts have been repealed and others are adopted.

5. Conclusions

The European Union is an important global actor, representing a great commercial power and a significant donor in the humanitarian assistance. Described sometimes as civilian or normative power, this "reflects the fact that its means are – necessary due to its lack of military capacity - of an economic, diplomatic and political

nature, rather than coercive. In other words, the EU relies mainly on "soft power" worldwide. (Craig & Gráinne, 2009, p. 210)

"Regional and voluntary integration is the only one capable of allowing nations to flourish without reneging on and reinforcing material dimensions without threatening," (Constantinesco, 1997, p. 39) said Leontin-Jean Constantinescu, considering that the best example is the European Communities (today's European Union).

It is interesting the approach of the Union from the perspective of sociology (Baltasiu, 2007, pp. 365-367): the Union as a social community. The society is a network of communities, not the sum of people, but a network of social interactions.

The future of the European Union is closely linked to the capacity to function under the Treaty of Lisbon, the possibility of attracting and co-opting new Member States, and eliminating discrepancies between them.

Although considered to be a unique institutional and functional model in the world, Jacques Delors highlighted that the European Union would represent "a necessity and an ideal to reach our philosophical and cultural roots" and through which "we will participate in a collective adventure, uniting peoples for good, not evil." (Alomar, Daziano, & Garat, 2010, p. 121)

Questions on the future of European Union law are common. However, the functioning of the Union's institutions must be ensured, the institutional balance must not be abandoned, and the separation of powers must still be guaranteed. Europe will not be created all at once. The European project will continue to pull itself from the force of immediate action on limited but decisive elements of integration. The Common Foreign and Security Policy will be endowed with a "security-defense" dimension. The European Security and Justice Area is progressing considerably. Europe's success will depend on its heterogeneity, where cultural diversity is the most valuable asset.

In relation to the international legal order, the specificity of the European Union lies in the fact that it was born after the treaties concluded by the Member States and the normative acts issued by the Union institutions on the basis of and in the application of the Treaties.

Although challenged by the fact that it is an "incomplete law by its nature" (Bergé & Robin-Olivier, 2011, p. 43), unable to "pass either as a national law or as an

international law", this "incompleteness" has led to the finding of original solutions and methods allowing the Union's rules and principles to interact with the national and international environment. Some authors have found that "domestic law, European law and international law mix, overlap, complement, consolidate, compete with one another or cancel one another." The permanent tension between the three major legal levels - national, regional and international - shows in any case today that the quasi-absolute autonomy of European law is a myth and that its dependence on international and national law has increased considerably during the European construction. (von Ihering, 2002, pp. 6-7) Moreover, in order to be able to apply the European law, you need to integrate its specificity into the wider ensemble created by the international and national law.

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