The Priority of European Law over National Law of EU Member States and the Direct Application of European Law

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Abstract: Objectives: Since the early nineteenth century juridical thought was concerned to determine the relationship between international law and national law and at the end of the twentieth century began discussions on the relationship between EU law and national law. This study aims to analyze European law enforcement in the EU Member States. The essay also examines interdisciplinary the correlation between the principle of direct applicability of European law with the principle of the precedence of European law over national law of Member States. **Prior work**: I've tried to find and debate hermeneutical decisions of European Court of and doctrinal opinions in this domain very important for those who practice European law and international public law. Results: In European Union and Member States, the enforcement of principles of law is viewed with great interest, being considered sources of law. **Value:** We think this article represents an important step in the disclosure of the problem raised by appliance of European reglementation on national level.

Keywords: European law; European Court of Justice; principles; applicability of law

1. Introduction

Priority of European law over national law of the Member States is a principle established by the case law of the European Court of Justice and which arise from the interpretation of the European treaties.

As described in the literature, "*since it was admitted that the European legal order in accordance with the national legal systems, and its provisions directly creates rights and obligations for individuals, on which national courts must ensure respect, it was inevitable that these judges to be in the presence of a particular issues between national law and Community law, for which the treaties do not contain any indication*." (Boulouis, 1995)

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2. The Analyze of Relation between European Law and National Law of EU Member States

In the judgment of the European Court of Justice in the cause Costa vs. Enel (1964) has defined the relationship between European law and national law of the Member States. As shown in the decision of the Court of 15 July 1964, "*By creating a community of unlimited duration, having its own institutions, its own personality, and his own ability to represent internationally level, and especially true powers coming just from a limitation of sovereignty of Member States or the transfer of powers from the Member States to the Community, the Member States have limited their sovereign rights and have thus created a body of law which unites both Member States and their citizens*"[1]. (Duculescu & Duculescu, 2002)

Commenting on the decision of the European Court of Justice, Jean Boulouis notes that "*what the Court calls <<preeminence>> of European law and which will become <<its priority>> was not founded on the primacy of international law, nor a hierarchical desideratum, as if it were the expression of a federal or national conception. The less it was not based on any specific provisions of the Treaty, which was invoked, and no other conclusive examples of a construction whose true fundamentals can be found elsewhere.*"(Boulouis, 1995)

In the author's opinion, the foundation of the Court's decision "*is found in the notion of common market, involving this time uniformity and homogeneity of law governing this market, just as the notion of Community implies submission by certain duties of solidarity and respect of an equalities that are inherent in the very nature of a community.*"(Boulouis, 1995)

The Court of Justice of the European Union pronounced and other decisions in which the priority of European law over national law of the Member States has been recognized. In Kupferberg cause (1982), the Court had to answer the question among others: what position have international treaties concluded by the European Union in the European legal order?

In fact, the Kupferberg firm imported in 1976 Porto wine from Portugal in Germany, where the Customs authorities have established that it must pay a tax particularly high. The company refused to pay the sum required, citing a free trade agreement between Portugal and the European Community in 1972, and the Convention that in article 21 prohibited the application of any internal taxes-

[1] Judgment of the Court of 15 July 1964 in the cause Costa vs. Enel.

directly or indirectly-would be affected in a discriminatory way the movements of goods. In its decision, the Court determined that "*the new Treaty becomes an integral part of the community legal order and therefore has a validity and direct applicability, provided that the provisions of the Treaty to have as object the unconditional, clear and unequivocal obligations evidence*".

Another important action in which the Court reaffirmed the primacy of European law over national law, is Simmenthal business, on 9 March 1978. In this case, the praetor in Susa (Italy) which had passed the dossier to the European Court of Justice, it had requested inter alia a clarification of the problem, and the mention of the standard to be applied in the event of contradictions between a European rule and a posterior provision of national law.

Arguing for the primacy of European law, the European Court of Justice has shown that "*would be incompatible with the inherent requirements in the very nature of European law any provision of a national legal order or any draft law, administrative or judicial project, which would have the effect of reducing the effectiveness of European law*".

On the other hand, she noted that "*the national judge has the obligation to ensure the protection of the rights conferred by the European legal order provisions without having to concern themselves with or wait the effective removal, by the national authorities empowered for this purpose, any national measures that would prevent the direct and immediate application of the European rules*"[1].

We can conclude, then, that the principle of priority of the European rules is one of the major principles governing the activities of the European Union and to ensure the uniform application of the provisions concerning the basic areas in which the Union has understood to pass international regulations.

The principle of direct applicability of European law closely correlate with the principle of the precedence of European law over national law of Member States. It should be noted that, originally, the only mention of a treaty from which the community could deduce the principle of direct applicability of the European rules was article 249 (former 189), which specify that the European regulations are directly applicable in all Member States".

[1] Documentation française, L'Union Européenne et les Communautés Européennes: le système institutionnel, p. 45.

Judicial practice has developed, however, this principle, and the European Court of Justice was the one who founded and in this regard as clearly the idea of direct applicability of European law.

An important decision of the European Court of Justice, whereby direct application of Community law was unequivocally based, was the known case Van Gend and Loos, during which the European Court of Justice pronounced a decision on 5 June 1963. In this case it was an action brought before the administrative court TARIEFCOMMISSE in Amsterdam by the company Van Gend and Loos, who had refused to pay a customs duty of 8% established for chemical substances imported from Germany. In this case, Dutch customs court formulated a question to the European Court of Justice, asking it to clarify whether article 25 (12) of the EEC Treaty, which provided that "*in their reciprocal trade relations, Member States shall refrain from introducing new import and export rights, or new charges having equivalent effect or increase the applicable duties*" may or may not confer on individuals ' rights to be taken into account by the national judge.

In that case, the European Court has pronounced a judgment in which it founded the ample rightful problems. Thus, it was noted that "*The objective of the EEC Treaty to establish a common market, whose functionality is also the stakeholders in the community, assume that this Treaty is more than just a contract that creates mutual obligations between the contracting States. This opinion is confirmed by the Treaty's preamble, which refers not only to the Member States and their citizens. It is also confirmed by the establishment of institutions endowed with decision making rights, whose exercise affects Member States and their citizens*" (Duculescu & Duculescu, 2002)

Based on an analysis as relevant, the Court has developed the idea that "*Independently of the legislation of the Member States, Community law not only imposes obligations on citizens, but gives them their rights which become a part of their legal status. These rights do not arise only where they are expressly granted by the Treaty, but also as a result of obligations which the Treaty imposes in a clearly defined way, on the citizens and the Member States*." (Duculescu & Duculescu, 2002)

Important elements related to the direct effect have been also made by the Court in Simmenthal business, judged in 1978. As showed by the specialists in Community law, in this case the Court has spun off three particularly important ideas: the idea that the rules of European law must carry "*wholeness its effects in a uniform*

manner, in all Member States"; that they constitute "a source of rights and obligations for all those to whom they relate, regardless that it is Member States or individuals", and "any judge ... that was referred to in the framework of its competence, as an organ of a Member State, the mission to protect the rights conferred upon individuals by the European law"[1].

French authors Guy Issac and Marc Blancquet (Issac & Blancquet, 2001) believes that direct applicability has three effects:

- a positive effect, in favor of litigants who guarantees the possibility to defend their rights in front of the judges in the Member States;
- an effect of the sanction against Member States not taking enforcement measures required for the implementation of European law;
- an effect what envisages taking effect even in the presence of a national contrary rule, what European law provides a "*force of irresistible permeation in the legal order of the Member States*".

The aspects mentioned above are valid not only in terms of the European treaties, but also the so-called "Derived European Law" (regulations, directives, decisions etc.).

In connection with regulations, we mention an interesting cause settled by the European Court of Justice in 1994, in the case concerning the "*regulation of the bananas market*". In this case, Germany introduced an action against the Council, asking the Court to rule on the legality of a regulation (404/93) issued by the Council, which had been introduced a unique system of organization for the bananas market, in which German traders of bananas have been affected since they have never been able to bring sufficient quantities of bananas from countries outside the European Union.

Examining the case, the Court rejected Germany's opinion "*stating that cannot replace the measures taken by the Council, since they are not based on an erroneous appreciation of notoriety". At the same time, the Court rejected Germany's support that the regulation "would contravene the principle of proportionality to be reported so often in community process the actions of bodies or the Member States*".

With regard to international agreements, the doctrine has emphasized the idea that the classical rules of international law does not apply in this matter, being

[1] Decision from 9 March 1978.

necessary to examine any situation, case with case, the parties being free to determine the effect that an agreement may produce it in national law. Illustrative in this regard is Demirel case, on trial in 1987. In the case in question, Ms. Meryem Demirel, Turkish citizenship, is married to a Turkish citizen who lived in Germany since 1979, where he has a job. Mrs. Demirel, who only have a tourist visa obtained in 1984, becoming the mother of a second child after the expiry of the visa, refused to return to Turkey. She challenged the deportation order issued by the German authorities. At the same time she showed that her husband still has not eight years of residence in Germany-as is required for family unification, according to German law-but invoked in her support the Treaty of association between Turkey and the EEC in 1963, which provide that the parties undertake not to hinder more than the free movement of workers and the unification of families.

Declaring itself responsible, the Court, referring to the provisions of the international treaties concluded by the Community, showed that the provisions of such treaties are directly applicable in the Member States if they meet certain criteria, i.e.-if taking into account the text, the meaning and purpose of the Treaty-shows that it contains unequivocal obligations whose fulfillment and whose effects do not depend on the ratification of normative acts to come. The Treaty of Association, however, according to the structure and its contents, is characterized in that it defines the overall goals of the association and the means of action to achieve them. The provisions of this Treaty, for the most part, have a pragmatic character, not being clear enough to be able to regulate directly the free movement of workers and, consequently, they have no direct effect in the internal legal order of the Member States.

3. The Provisions of Romanian Constitution concerning the Applicability of European Law

Article 148 of Romanian Constitution provides that Romania's accession to the founding Treaties of the European Union, for purposes of transferring certain powers into the hands of community institutions, as well as for exercising in common with the other Member States the competencies stipulated in such Treaties, shall be under a law adopted in a joint session of the Chamber of Deputies and the Senate, by a majority of two-thirds of the number of Deputies and Senators.

Following accession, provisions in the founding Treaties of the European Union, as well as other binding regulations under community law shall prevail over any contrary provisions of domestic law, while observing provisions in the accession instrument. These provisions shall also apply accordingly for the accession to any instrument purporting a revision of the founding Treaties of the European Union. The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that any obligations arising from the accession instrument are put into effect. The Government shall send the draft for any binding regulations to the Chambers of the Parliament prior to submitting such for approval to the European Union institutions.

4. Conclusions

Due to the regulation and historical development, the European construction develops contradictions as well, given that through its declared and recognized character by the rest of the subjects of public international law it is seen and remains an international organization, while the pursued objective and the actions undertaken behave as a whole (Cocoşatu, 2012). Actors and institutions of supranational and national forms an integrated decision-making system, which means that national actors are everywhere in the negotiation and decision-making process at the European Union level, but both they and supranational actors have an important role in the implementation of taken decisions at supranational level. Also, the decisions of European Court of Justice represent important instruments that hept to solve different situations between states and European Union.

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