ASPECTS REGARDING THE EU MEMBER STATES COMPETENCE IN THE ENFORCEMENT OF THE EUROPEAN LEGISLATION[1]

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Abstract
During the EU's progressive consolidation process, the relation between EU and national law has turned out to be extremely complex, being subject both to a positive evolution, but also to a number of difficulties of assimilating EU norms and enforcing them in relation to national legal systems, an uniform regulation proves to be necessary. Still, the adequate and correct enforcement of EU legislation is essential when it comes to maintaining the EU's strong foundation and ensuring that European policies have the effect desired, by acting in favor of European citizens. The effectiveness of governance is menaced when Member States are not capable to enforce common rules correctly, enforcing EU legislation with delay or errors does nothing but weakening the European system, reducing the latter's possibility to achieve its objectives and deprives citizens, as well as enterprises, from various benefits.
At the same time, the enforcement of EU law is the duty of all Member States. Any state has the duty to enforce EU law, as well as the liability for its transgression, no matter which is the state authority, central or local, which committed the violation. The important role played by EU law – the observance of which must be insured both by Europeans institutions and national jurisdictions – imposes on every state the duty to order the most suitable methods of guaranteeing the observance of community law by its public collectivities.

***Keywords**: EU law, national law, enforcement of EU legislation, national competencies, autonomy*

Introduction

The present paper proposes to analyse one of the EU's law principal subjects, namely its enforcement by the national authorities of the Member States, in accordance with the latest case-law developments regarding this issue. We also take into consideration the fact that the Member States' role in the enforcement of the European legislation has a specific description in Treaty of Lisboa. For the first time, this treaty emphasis on the fact that the Member States' competence is a *principle competence*, thus EU could interfere if only a uniform regulation proves to be necessary . Equally, according to the constant case law of Court of Justice this competence is not only a simple prerogative but a genuine obligation which makes the Member States to be considered as titulars of the EU's executive function.

The Member States' cooperation regarding the enforcement of EU's law may consist in a normative, judiciary or an administrative action. It can be a legislative intervention in order to complete EU's law provisions, to ensure the European regulations' observance even under the compulsion of the judiciary system. But, most of the national measures bound on the EU's executive function involving the execution of the European decisions by the national administrative institutions.

Taking into consideration the complexity of the theme and the impossibility to be analysed exhaustively in a few pages paper, we are to point out, especially, the methods of enforcement of the

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EU law; we also analyse the institutional and procedural autonomy of the Member States regarding the enforcement of the EU law and the limitations which results from the necessity of ensuring an uniform application and of guaranteeing an effective protection of the rights deriving from the community regulations.

Thus, we propose to contribute to the actual considerations on this issue basing on a critical report of the European doctrine and case-law, especially French and Belgium doctrine and case-law, seeing that at the present moment, it cannot be discussed on a specific concern on this matter in the Romanian doctrine.

1. The EU Member States – as titulars of the EU executive function

Belonging to European Union involves, amongst other aspects, the necessity of conferring a full application of the European regulations. The legal order of the EU bases on a complementarity between the different levels of the authorities – the European authorities and the national ones[2]. EU's law does not deprive the Member States of the decision making authority but, on the contrary, these have an essential role in the enforcement of EU law.

EU's institutions and authorities dispose of enlarged competences regarding the enactment of measures which are compulsory for the Member States. The adopted measures have priority over the national provisions[3] and they also have a direct effect in the national law[4]; thus the derived law is autonomous in comparison with international and national law, at the same time. However, the enforcement of this law depends on the cooperation between the statal institutions.

In the complex system of the EU which has an important supranational character, the supranational bodies founded by the Member States' will have been charged with working-out the legislative acts. But, the Member States preserve an enlarged power of action in the enforcement of the adopted regulations[5]. This prerogative joined to the Union which is endowed with important attribution competences that are exercised by a dualist executive formed by the Council and by the Committee.

Generally speaking, it can be stated that the EU's law execution principally bases on the Member States competences which are exercised according to the institutional and procedural autonomy principles developped by the community case-law[6] but, at the same time respecting the cooperation and loialty obligations[7]. These competences can be subsidiarily

entrusted to the Committee which exercise them basing on the Council's delegation[8] and under the control of the Member States[9].

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[2] P. Pescatore, *L'ordre juridique des Communautes europeennes. Etude des sources du droit communautaire,* (Bruxelles: Bruylant, 2006), 199.

[3] Stated for the first time in 1964 in Costa/Enel Decision (Case 6/1964, Rec. p. 1141 and next).

[4] Therefore, private persons can directly invoke them in front of the national judge – CJCE, the 5th February 1963, Van Gend & Loss, Case 26/62, Rec. 1963, p. 1.

[5] Considering this specificity, the doctrine has qualified the EU's legal system as being „an incomplete and imperfect one". It is stated that although EU has enlarged competences, it still remains bound on its Member States regarding two aspects: these complete the EU's regulations and lay at its disposal their administrative bodies and besides there are states which have to use their legal power in order to ensure the execution of the EU adopted regulations - Loïc Azoulai, „*Pour un droit de l'execution de l'Union Europeenne"*, in *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, ed. Jacqueline Dutheil de la Rochere, (Bruxelles: Bruylant 2009), 2-3; Jacqueline Dutheil de la Rochere, „*Rapport de synthese"*, in *Droits nationaux, droit communautaire: influences croisees. En hommage a Louis Dubuis*, (Paris: La documentation Francaise, 2000), 198.

[6] Which are to be detailed on the following point of the paper.

[7] On the strength of these obligations, their competences of execution must not diverge from the common rules.

[8] Under the reserve of specific cases when the Council exercises directly these competences. Treaty of Lisboa reforms the delegation legal proceedings, article 29 TFUE empowers the Parliament and the Council to delegate to Committee the power of to adopt general and non-legislative acts which complete or modify certain unessential

The method of enforcement the European legislation reasserts a fundamental descentralization principle, establishing an "executive federalism"[10] – as it has been stated in the doctrine. On the strength of it, if the legislative function is prevailingly controlled by the institutions, then the legislative acts' executions falls on the Member States, on the ground of a self-competence or a delegated one (it concerns an exclusive community competence)[11].

The Member States' cooperation regarding the enforcement of EU's law may consist in a normative, judiciary or an administrative action. It can be a legislative intervention in order to complete EU's law provisions, to ensure the European regulations' observance even under the compulsion of the judiciary system. But, most of the national measures bound on the EU's executive function involving the execution of the European decisions by the national administrative apparatus. It comes to an indirect administration which interferes in the absence of an European descentralized administration, the EU Member States have the responsibility to ensure the administrative genuine execution of EU's law by taking individual decisions and working out material acts[12].

Doctrine evokes even the existence of an indirect administration principle, officially proclaimed (but without a binding force) in the 43th Declaration attached to Treaty of Amsterdam; according to it the enforcement of the community law, on an administrative plan, it devolves upon the Member States, in the main. Even more, on the background of the distinction between direct and indirect administration as an expression of the competences division which works in the EU and also considering the intensification of the cooperation between national and European authorities regarding the enforcement of the European policies – in the judicial practice – it is stated about the existence of a "*co-administration*", a *compound administration*[13] or a *divided (shared) execution*[14], some authors stating the existence of a new model[15].

Anyway, direct administration represents the exception[16]. Concerning the indirect administration rule, besides the absence of a community field administration the indirect administration bases on the proximity principle stated in the 1st article EUT. According to it, EU's decisions must be adopted as close as possible to the citizens ; thus, giving effectiveness to the principles of subsidiarity and proportionality, at the same time and in the Member States' favour. By this system of enforcement the European legislation, the Member States preserve a right of control regarding the enforcement of the EU law.

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elements of a legislative act. Non-legislative acts adopted by the Committee are named „delegated acts". In the new treaty it is made a distinction between „delegated" acts and „execution" acts (stipulated in the article 291), the first corresponding to quasi-legislative measures and the latter to the execution measures stricto-sensu. These two types of acts have different significations and they exclude each other, an act adopted on the ground of article 290 is excluded from the domain of application of article 291, according to definitions and viceversa.

[9] Article 291(3) EUFT.

[10] Taken from the federal structures (for instance, Germany and Switzerland) where the local administrative authorities are charged with the enforcement of the measures adopted by the federal state.

[11] Dominique Ritleng, „L*'identification de la function executive dans l'Union",* in *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, ed. Jacqueline Dutheil de la Rochere, (Bruxelles: Bruylant 2009), 40.

[12] Idem.

[13] E. Schmidt-Assmann, „*Le modele de l'administration composee et le rol du droit administratif europeenne"*, *RFDA* (2006) : 1246.

[14] Jacques Ziller, *Execution centralisee et execution partagee*, in *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, ed. Jacqueline Dutheil de la Rochere, (Bruxelles: Bruylant 2009), 114.

[15] Jacques Ziller, „*Les concepts d'administration directe, d'administration indirecte et de co-administration et les fondements du droit administratif europeenne",* in *Droit administratif europeen*, ed. J.- B. Auby, J. D. de la Roche (Bruxelles, Bruylant, 2007), 235; Cl. Franchini, „*Les notions d'administration indirecte et des co-administration ",* in *Droit administratif europeen*, ed. J.- B. Auby, J. D. de la Roche (Bruxelles, Bruylant, 2007), 245.

[16] It has been noticed a partial renationalization even in domains as the competition, as a consequence of the enactment of the 1st Regulations/2003 - D. Ritleng*, op. cit.*, p. 40.

The great role of the Member States in the enforcement of the European legislation did not have a specific description in the texts of the community treaties with the exception of some precise regulations, especially concerning the directives[17] and legal frame-decisions [18] transposal and the provision of article 10 ECT (the former article 5 CEE) which stipulates: "The EU Member States take all general or special measures that are necessary to ensure carrying out the obligations which derive from the present treaty or result from the acts of the community institutions. EU Member States facilitate EU's carrying out its mission. They abstain themselves from taking measures which could endanger the achievement of the present treaty's goals".

In the absence of rigorous and exact regulations regarding the Member States' role in the community law execution, the Court has brought a series of explanations which converge on the fact that this competence is not a simple prerogative but a genuine obligation[19]. Thus, the Court has stated that "in accordance with the general principles which are the basis of the EU's institutional system and which regulates the relations between the EU and its Member States, the execution of the community regulations appertains to the Member States in order to ensure the observance of the regulations in their jurisdictions, on the strength of article 5 EEC"[20]. Furthermore, in its latest case-law[21] the Court has stated that the national authorities must understand their own powers in a mode which ensures the most proper execution of the EU law.

Treaty of Lisboa, taking over the corresponding stipulations from the constitutional Treaty Project, it brings a series of precise information regarding this issue. Thus, it ponts out for the first time that the Member States' competence is a *principle competence*, EU could interfere if only an uniform regulation proves to be necessary[22]. On the one hand in article 4 EUT is pointed out the principle of loyal cooperation which is compulsory for the Member States, on the other hand article 291 EUFT states the following: *"(1) The EU Member States take all legal measures in their domestic law that are necessary for the enforcement of the compulsory acts of EU. (2) In case that unitary conditions are needed in order to enforce the compulsory acts, then these acts give the Committee the execution competences or they give* to *the Council such competences in special and solid grounded cases and also in the cases stipulated in article 24 and article 26 from Treaty of Euroapean Union".*

2. The EU Member States' autonomy in the enforcement of the European legislation

The national authorities which interfere in the EU law enforcement always act "as bodies of a Member State"[23]. On the strength of their statal character, they are not submitted to a hierarchic power of the European institutions. Therefore, the latter ones cannot send them instructions, they cannot replace them and also they cannot modify or repeal the decisions adopted by the national authorities[24].

In the enforcement of EU law, the Member States preserve an institutional and a procedural autonomy which is acknowledged even by the Court of Justice[25]. This autonomy involves, in the

[17] Article 249 ECT.

[18] Article 34 EUT.

[19] Laetitia Guilloud, *La loi dans l'Union Europeenne. Contribution a la definition des actes legislatifs dans un ordre juridique d'integration*, (Paris, LGDJ, 2010), 119.

[20] Decision EECJ – 21th September 1983, case *Deutsche Milchkontor* (conjunct cases 205-215/82), Rec. p. 2633, point 17. Similar arguments can be found in other decisions of the Court: EECJ, 2nd February 1989, *Pays-Bas/Comision*, Case 262/87, Rec. 225; TPI, 4th February 1998, *Bernard Laga*, Case T-93/95, Rec. II 195, p. 33.

[21] EECJ, 13th March 2007, *Unibet*, Case C-432/05, Rec., p.2271, point 44.

[22] Abdelkhaleq Berramdane, Jean Rossetto, *Droit de l'Union Europeenne. Institutions et ordre juridique*, (Paris,. Montchrestien, Lextenso editions, 2010), 373.

[23] EECJ, 9th March 1978, Case *Simenthal*, 106/77, Rec. p. 629 and following. The mention is made regarding the national judge.

[24] L. Guilloud, *La loi dans l'Union Europeenne...*, 119.

[25] Even if it has tried to limit it by time.

main, the fact that the protection of the rights acquired by the justiciables as a consequence of the community direct invoking regulations it is also ensured within the national legal systems by the domestic juridical instruments. As a consequence, national law is the one which decides the types and the powers of the authorities entitled to interfere.

Thus, the institutional and procedural autonomy of the Member States represent an "expression of a preserved sovereignity"[26]. The concrete signification of this autonomy is that the Member States have to lay their means by which they carry out their executive mission at the disposal of the EU. But, they have the right to choose both the bodies charged with the execution and the proceedings and legal forms that are applicable for the enforcement of the EU law.

2.1. The principle of institutional autonomy

Although it is absent from the community treaties, this principle is considered by the doctrine as fundamental principle of the community legal order[27]. The institutional autonomy of the Member States which involves their free choice regarding the bodies charged with the enforcement of the EU law, it is the result of the community case-law that identified this principle in *International Fruit Company decision*[28] and reiterated it many times, stating its importance. Thus, the Court considers that "in case that the provisions of the treaty or of the regulations give powers to Member States or they impose them obligations of enforcement the community law, then the matter to know in an explicite manner if their exercise of these powers and execution of these obligations can be entrusted to determined bodies by the member states, it is a problem that regards exclusively the constitutional systems of each member state"[29].

Therefore, it does not matter for the EU if the execution of the acts adopted by European institutions appertains to the executive or legislative member states' authorities or if it is entrusted to the central or local agencies or to offices more or less autonomous in comparison with the state or to the local colectivities. The member states cand even entrust the execution to private persons or to legal private law entities, but under the condition of disposing of means in order to ensure that they carry out their missions observing the EU law[30]. It is considered that "ensuring the obervance of the community norms in their jurisdictions appertains to the member states' authorities, whether it comes to central statal power authorities, to federal authorities or to other territorial authorities"[31]. The Court stated that this principle is applicable inclusively in the case of exclusive competences of the community[32].

Not only the appointment of the national competent authorities but also the selection of the national competent jurisdictions is submitted to the principle of institutional autonomy[33]. In this respect, the Court stated that "the appointment of the competent jurisdictions to settle the litigations that involve individual rights derived from the community juridical order belongs to the legal order of each state, but, however it is established that the member states have the responsibility to ensure an effective protection of these rights, in every case"[34].

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[26] R. Mehdi, *L'autonomie institutionelle et procedurale et le droit administratif*, in *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, ed. J.- B. Auby, J. D. de la Roche (Bruxelles, Bruylant, 2007), 687.

[27] Laurent Malo, *Autonomie locale et Union europeenne*, (Bruxelles, Bruylant, 2010), 349.

[28] EECJ, 15th December 1971, *International Fruit Company*, Cases 51-54/71, Rec., p. 1116 and following.

[29] 3rd point from *International Fruit Company* Court's decision, mentioned above.

[30] Jacques Ziller, *Execution centralisee et execution partagee*, în *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, sous la direction de J. D. de la Rochere, Bruxelles, Bruylant, 2009, p. 126.

[31] EECJ, 12th June 1990, *RFG/Commision,* Case C-8/88, Rec. p I-2321 and next, point 113.

[32] EECJ, decision *Sukkerfabriken*, case 151/70, Rec., p. 1.

[33] EECJ, 19th December 1968, *Societe Salgoil/ Ministere du comerce exterieur de la Republique italiene*, Case 3/68, Rec., p. 661.

[34] EECJ, 9th July 1985, *Piercarlo Bozzetti/ Invernizzi SpA*, Case 179/84, Rec., p. 2301, point 17.

2.2 The procedural autonomy of the EU member states

The autonomy of the member states concerning the exercise of their EU law execution function is not only an institutional one but also they are acknowledged a procedural autonomy which consists in the fact that the domestic legal bodies charged with the execution determine the acts which must be adopted and the enforcement legal proceedings.

So as the institutional autonomy, procedural autonomy's founding and establishment derives from a case-law work. At the beginning of the case-law the community judge limited to offer a minimal level of orientation in this matter[35] and he stated that the mode of protection of the rights belonging to a person unfavourably affected by the infringement of the community law appertains to the national legal system[36]. Later on, the community judge has given a series of explanations, stating that the enforcement of the EU law is made by the member states with the observance of the legal proceedings and forms stipulated by their national law[37].

Procedural autonomy enforces equally to domestic jurisdictions charged with the enforcement of the EU law insofar as the member states are the only competent concerning the legal solutions determination. On the basis of their national law, they have to establish the competent jurisdictions, the means of attack and the rules of writing summons and of development in front of the instances. The Court stated that the national judge has to select "from the different proceedings of the juridical domestic order those which are proper for the protection of individual rights conffered by the community law"[38]. Recently it considered that the national judge must ensure the full effectiveness of these regulations, removing if necessary any application of a national contrary provision[39] (inclusively a procedural norm[40]) without requesting or waiting the elimination of that provision by a legislative method or by other constitutional proceedings.

However, procedural law of the member states is not harmonized so that a competence of the EU should be necessary. Considering all these, the Court had to give up the approach in case that community regulations in this matter do not exist, then the responsibility to determine the conditions of protection of the rights deriving from the EU regulations appertains to the member states. Thus, the Court has imposed two "community" legal requests concerning the national conditions[41]: the request of equivalency and the request of the national means effectiveness regarding the enforcement of the EU law. Under the condition of carrying out these requests, the EU member states must determine the competent authorities and the procedural methods to ensure the protection of the justiciables' rights conffered by the community law[42]. The EU member states are not obliged, in the main, to set up other legal measures to ensure the observance of the national law[43] than the existing ones, under the condition that these measures mustn't affect exercise of law in the legal practice[44].

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[35] Paul Craig, Grainne de Burca, *EU law. Comments, case-law and doctrine*, (Bucharest, Hamangiu, 2009), 382.

[36] Decisions *Humblot/Belgium* (Case 6/60, ECR 559) or *Societe Salgoil* (mentioned before).

[37] EECJ, 11th February 1971, *Norddeutsches Vieh und Fleischkontor/Hauptzollamt Hamburg St. Annen*, Case 39/70, Rec. p. 48.

[38] EECJ, 4th April 1968, *Gebruder Luck/ Hauptzollamt Koln-Rheinau,* Case 34/67, Rec., p. 359.

[39] To be seen in this respect decision on 9th March 1978, *Simmenthal*, 106/77, Rec., p. 629, point 24 and also decision on 19th November 2009, *Filipiak*, C-314/08, unpublished in the summary of case-law.

[40] Court's decision on 5th October 2010, case *Elchinov*, C-173/09, unpublished.

[41] P. Craig, G. de Burca, *EU law...*, 384.

[42] To be seen in this respect, EECJ, 16th December 1976, *Rewe-Zentralfinanz și Rewe-Zentral*, Case 33/76, *Rec*. p. 1989, point 5; EECJ, 14th December 1995, *Peterbroeck*, Case C-312/93, *Rec*. I-4599, point. 12; EECJ 13th March 2007, *Unibet*, Case C-432/05, *Rec*. p. I-2271, point 39 and EECJ, 12th February 2008, *Kempter*, Case C-2/06, *Rec*. p. I-411, point 57.

[43] Thus the enforcement of EU law does not "overturn" the national law system but it brings to it a series of adjustments - Claude Blumann, Louis Dubouis, *Droit institutionnel de l'Union Européenne*, (Paris, Litec, 2007), 578.

[44] EECJ, 2nd February 1988, *Barra/Belgium*, Case 309/85, Rec. 355; EECJ, 11th July 2002, Marks&Spencer/Commissioners of Customs and Excise, Case C-62/00, ECR I-6325.

3. Limitations of the institutional and procedural autonomy of the EU member states

The necessity of ensuring a unitary application and of guaranteeing an effective protection of the rights deriving from the community norms, especially because of the increasement diversity of the national systems as a consequence of the successive accessions, it has determined the progressive introduction of some case-law limitations regarding the institutional and procedural autonomy of the member states. As it is stated in the doctrine, "the dialectics autonomy/uniformity represents the essence of the juridical integration process"[45].

The recourse at the national institutions in order to ensure the enforcement of EU law makes that its efectiveness depends on the efectiveness of the statal authorities. Under these circumstances, the pronouncement of contrary solutions in the enforcement of EU law seems to be predictable. These solutions are contrary to the principle of the law rule and of the uniform enforcement of the EU law and they justify, on the one hand the limitation made by the Committee as a "guardian of treaties" and on the other hand the limitations made by the European judge concerning the enforcement methods[46]. Thus, the rules of conduct which are compulsory for the member states in the exercise of their execution competences are clearly defined[47].

Concerning the principle of the institutional autonomy of the member states, its limits result from the fact that no matter the independence degree of the legal bodies charged with EU's law policies execution, the state is responsible for the effectivity of this execution and for the observance of the principles and provisions stipulated in the treaties, in the Court of Justice case-law and in the derived law[48]. At the same time, member states are responsible for the injuries caused to private persons as a consequence of the EU law infringement, no matter the statal body that infringed it[49]. This responsibility was stated by Francovich decisions[50] and also in the later case-law based on it[51].

The EU member states have a sovereign competence to establish the legal bodies charged with the enforcement of EU law and their powers. But, member states do not have a complete freedom of appreciation. Their autonomies are directed and controlled in order to avoid the deviations which may lead to the infringement of EU law.

The European Committee is the one that guards the legal and correct enforcement of the community law by the member states. This competence of "guardian of treaties" is stipulated in the article 17 from EUT ("…The Committee supervises the enforcement of EU law under the control of the European Court of Justice.") and it was completed by the Court's case law which stated the existence of a "general supervision competence" which allows it to guard the manner the member states observe their obligations which result from the treaties and their decisions taken in order to enforce them[52].

The Committee has preventive competences such as the right of information which result from various provisions of the treaty completed by enlarged verification competences or even repressive ones (as it happens in the competitional law concerning the state aids (grants)).

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[45] Denis Simon, *Le sisteme juridique communautaire*, (Paris, PUF, 2001), 157.

[46] L. Guilloud, *La loi ...,*125.

[47] A. Berramdane, J. Rossetto, *Droit de l'Union Europeenne* …, 376.

[48] Jacques Ziller, *Execution centralisee et execution partagee...,* 127.

[49] EECJ, 5th March 1996, *Braserie du pecheur şi Factorame*, Conjunct cases C-46/93, şi C-48/93, Rec., p. I-1029.

[50] EECJ, 19th November 1991, Francovich şi Bonifaci, Cases C. 6/90 şi C. 9/90, Rec, I-5402.

[51] The principle of states' responsibility for the infringement of the community law has been admitted since 1960, EECJ stating conclusions regarding the redress obligation. In decision Humblot/Belgium (Case 6/60, ECR 559), the Court considered that if she states in a decision that a legislative or an administrative act deriving from the authorities of a member state is contrary to community law, then that state is obliged to repeal it and to repair its illicit effects, on the ground of article 86 CECO.

[52] EECJ, 5th May 1981, Commission/Olanda, Case 804/79, Rec. p. 1045.

Regarding the procedural autonomy of the member states, the Court has stated that the reference to the national legal rules works in the absence of stipulations which should harmonize national law procedure existing in the community law. National judges cannot apply to the actions based on the infringement of the community law norms more severe legal rules than those applied to national actions with the same object (the principle of equivalency/of national treatment)[53] and in all cases the protection ensured for the justiciables must be effective (the principle of effectiveness)[54]. As a consequence, national jurisdictions must ensure the enforcement of the EU law with the same effectiveness and rigour as they do it for the enforcement of the national law[55].

Concerning the principle of equivalency, we mention that according to a constant case-law all the legal rules applicable to actions should be applied without a distinction both to actions derived from the infringement of EU law and to actions derived from the non-observance of the domestic law[56]. However, this principle does not oblige a member state to enlarge its most favourable legal treatments concerning all the actions introduced in a certain law domain[57].

4. The procedural autonomy of the member states concerning the European judicial framework

In a general point of view, the enforcement of the EU law hasn't brought great alterations in the national legal system. Despite the absence of the community procedural norms the member states have procedural autonomy on the condition of the observance of the principles of equivalency and effectiveness (analysed before). The enforcement of Treaty of Amsterdam has created a particular situation concerning the European judicial framework. Article 29 from EUT (and article 61 ECT) stipulates the target of establishing a framework based on liberty, security and justice with the observance of the fundamental rights and of the different law systems and their juridical customs. But, by introducing article 65 in ECT the processual law – as it was stated in the doctrine – it became a self-objective of the community construction[58]. This text is resumed in Treaty of Lisboa (article 81 EUFT) and it stipulates the enactment of measures in the civil juridical cooperation with cross-border implications. The 2nd paragraph, letter f) provides that it comes to the "elimination of the obstacles regarding the normal developpment of civil procedural rules enforced in the member states". The main objectives in this domain are the juridical security and the free access to justice equality which involves various aspects: an easier identification of the competent jurisdiction, a clear indication of the enforceable law, the existence of fast and equitable trials and also the existence of effective execution proceedings. Legal proceedings must conffer to private persons the same guarantees thus

[53] To be seen, EECJ, 12th September 2006, Case *Cauza Eman and Sevinger/ College van Burgemeester en Wethouders van Den Haag*, C-300/2004, ECR I-8055.

[54] EECJ, 9th July, *Case Bozetti*, mentioned before.

[55] In the decision pronnounced in case Rewe, the Court states that "any type of action provided by the national law must be used to ensure the observance of the community norms which have a direct effect in the same conditions of admissibility and procedure which ensure the enforcement of the national law" - Case Rewe Handelgesellschaft Nord MBH and others, Aff. 158/80, Rec. p. 1805.

[56] To be seen in this respect decision from 15th September 1998, *Edis*, C-231/96, Rec., p. I-4951, point 36, decision on 1st December 1998, *Levez*, C-326/96, Rec., p. I-7835, point 41, decision on 16th May 2000, *Preston and other*, C-78/98, Rec., p. I-3201, punctul 55, Decision on 19th September 2006, *i-21 Germany and Arcor*, C-392/04 and C-422/04, Rec., p. I-8559, point 62 and also Decision on 26th January 2010, Transportes Urbanos y Servicios Generales, unpublished, point 33.

[57] Decision *Levez*, mentioned before, point 42, decision Transportes Urbanos y Servicios Generales (mentioned), point 34.

[58] Mathias Audit, *Autonomie procedurale et espace judiciaire europeen*, în *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, ed. Jacqueline Dutheil de la Rochere, (Bruxelles: Bruylant 2009), 254.

the legal treatment shouldn't be unequal amongst the different jurisdictions. The rules may be different but they must be equivalent one to another.

The doctrine states with good reason[59] that once with the European judicial framework the principle of procedural autonomy is redefined; this principle is "diluted" in this legal framework because of the intrinsic incompatibility between the common procedural norms and the preservation of the national processual laws. Basing on the stipulations mentioned above, a common procedural law is wanted to be developped in order to replace the national provisions enforced in this matter (inclusively regarding the competence, the procedure or the effects of the judicial decisions)[60].

The Court of Justice has brought its contribution to the unity of the European procedural law. The Court considered that a certain uniformity or at least an equivalency between the domestic procedural laws is required[61].

In any case, at the present moment it can be discussed only about a minimal approach in the procedural domain for cross-border cases and not about a material law, at least for the moment. It's obvious that certain domains are very sensitive and some of the EU member states insist on the fact that the EU should not exceed its competences in these domains. On the other hand, the judicial cooperation based on the mutual recognition involves the existence of a mutual trust which can be realized only by a minimal harmonization of the procedural and enforcement legal rules. As a overall view, the principle of procedural autonomy in the domain of the European judicial framework is being seriously discussed, national procedural laws must be subordinated to this framework formation. According to the doctrine, a possible "fracture" of the processual law could interfere, which could also involve a complication both for the judge and for the justiciables. Thus, two processual laws would coexist in front of the national judge: a specific one which is enforceable in intra-community litigations and it is common to all member states and a national law enforceable to any other types of litigations[62].

5. Conclusions

A proper and a correct enforcement of the EU legislation is essential for the maintenance of a solid basis of the EU and it also important for the achievement of the exepcted European policies impact. The construction of an autonomous legal order of the EU completed with the national legal orders and with an extremely complex and coherent case-law hadn't been enough in order to ensure the effective enforcement of the EU law. In this respect, there are necessary more combined efforts of the EU institutions and of the member states in order to achieve this goal.

Nowadays, the enforcement of the EU law has to cope with great challenges. For a long time, the Community and the Union performed in their legislative competence, they increased their normative production and they offered it a binding force in the member states' territories; thus, they hoped to get closer to carryout the fixed goals. At the present moment it is considered that this legislative abundance has complicated the acknowledge and the enforcement of the European norms, thus the legal system became complex and to a certain extent it becam unenforceable. Under these circumstances, working out of some operational enforcement criteria and creating new enforcement instruments prove to be necessary in order to offer effectiveness to EU legislation. It comes to limit

[59] M. Audit, *Autonomie procedurale et espace judiciaire europeen...*

[60] The enactment of various instruments which institute a series of European proceedings is explanatory; for instance: the European executory title (Regulations 805/2004),, the proceeding of European writ of debt (Regulations 1896/2006) or the regulations of little conflicts (Regulations 861/2007).

[61] To be seen, EECJ, 8th May 2003, *Gantner*, Case C-111/01 or EECJ, 27th April 2004, *Turner/Grovit*, Case C-159/02, Rev. 654.

[62] M. Audit, *Autonomie procedurale et espace judiciaire europeen...*,260-261. According to the author, the solution would be a determined uniformization of the member states processual laws basing on the EU law which could become a standard law for the procedural law of the member states.

the legislative production and to improve its effectiveness thus charging the member states with enlarged obligations in concordance with the EU law[63].

Generally speaking, it can be stated that the EU's law execution principally bases on the Member States competences which are exercised according to the institutional and procedural autonomy principles developped by the community case-law but, at the same time respecting the cooperation and loialty obligations. It comes to an indirect administration which interferes in the absence of an European descentralized administration, the EU Member States have the responsibility to ensure the administrative genuine execution of EU's law by taking individual decisions and working out material acts. The method of enforcement the European legislation reasserts a fundamental descentralization principle, establishing an "executive federalism" – as it has been stated in the doctrine. On the strength of it, if the legislative function is prevailingly controlled by the institutions, then the legislative acts' executions falls on the Member States, on the ground of a self-competence or a delegated one (it concerns an exclusive community competence).

As a consequence of the explanations brought by Treaty of Lisboa (article 291 EUFT) it can be stated that the member states are the titulars of the EU executive function. This competence of the member states represent a general principle. The intervention of the European institutions can be only subsidiary because they have a limited competence. The very necessity of an uniform execution of the EU acts justifies and imposes the entrusting of these obligations to the European echelon[64].

In the enforcement of EU law, the Member States preserve an institutional and a procedural autonomy which is acknowledged even by the Court of Justice. This autonomy involves, in the main, the fact that the protection of the rights acquired by the justiciables as a consequence of the community direct invoking regulations it is also ensured within the national legal systems by the domestic juridical instruments. As a consequence, national law is the one which decides the types and the powers of the authorities entitled to interfere.

Thus, the institutional and procedural autonomy of the Member States represent an "expression of a preserved sovereignity"[65]. The concrete signification of this autonomy is that the Member States have to lay their means by which they carry out their executive mission at the disposal of the EU. But, they have the right to choose both the bodies charged with the execution and the proceedings and legal forms that are applicable for the enforcement of the EU law.

The necessity of ensuring a unitary application and of guaranteeing an effective protection of the rights deriving from the community norms, especially because of the increasement diversity of the national systems as a consequence of the successive accessions, it has determined the progressive introduction of some case-law limitations regarding the institutional and procedural autonomy of the member states. Thus, the rules of conduct which are compulsory for the member states in the exercise of their execution competences are clearly defined, their autonomy is directed and controlled in order to avoid the deviations that can lead to the infringement of the EU law.

A particular situation has been noticed in the European judicial framework. This domain has registered the greatest evolutions in the last years. It is also an important uniformization of the procedural law of the member states, existing the possibility to turn it into a common processual law which should replace the national legal rules applicable in this matter. The problem which interferes in this case is that of a national processual law halving which involves the existence of two categories of laws: some of them enforceable to intra-unional litigations which is common to all member states and other laws enforceable to other types of litigations which could overturn the national judicial system. A solution that should be taken into consideration is that of a determined uniformization of the processual law of the member states; thus the EU law could become a standard law for the

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[63] L. Azoulai, *op. cit*., pp. 4-5.

[64] D. Ritleng, *op. cit*., p. 49.

[65] R. Mehdi, *L'autonomie institutionelle et procedurale et le droit administratif*, in *Droit administratif europeen*, ed. J.- B. Auby, J. D. de la Roche (Bruxelles, Bruylant, 2007), 687.

procedural law of the member states[66]. However, it's obvious that such a proposal is subordinated to the future developments in this matter and we should take into consideration that these evolutions depend on the political will of the member states, in a great extent.

6. References

- P. Pescatore, *L'ordre juridique des Communautes europeennes. Etude des sources du droit communautaire.(* Bruxelles: Bruylant, 2006),
- L. Azoulai, *Pour un droit de l'execution de l'Union Europeenne*, in *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, ed. J. D. de la Rochere, (Bruxelles, Bruylant, 2009),
- D. Ritleng, L*'identification de la function executive dans l'Union,* in *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, ed. J. D. de la Rochere, (Bruxelles, Bruylant, 2009),
- E. Schmidt-Assmann, *Le modele de l'administration composee et le rol du droit administratif europeenne*, RFDA (2006),
- J. Ziller, *Execution centralisee et execution partagee*, în *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, ed. J. D. de la Rochere, (Bruxelles, Bruylant, 2009),
- J. Ziller, *Les concepts d'administration directe, d'administration indirecte et de co-administration et les fondements du droit administratif europeenne* in *Droit administratif europeen, ed.* J.-B. Auby, J. D. de la Roche,(Bruxelles, Bruylant, 2007),
- L. Guilloud, *La loi dans l'Union Europeenne. Contribution a la definition des actes legislatifs dans un ordre juridique d'integration*, (LGDJ, Paris, 2010),
- A. Berramdane, J. Rossetto, *Droit de l'Union Europeenne. Institutions et ordre juridique*, (Paris, Montchrestien-Lextenso editions, 2010),
- R. Mehdi, *L'autonomie institutionelle et procedurale et le droit administratif*, in *Droit administratif europeen, ed.* J.-B. Auby, J. D. de la Roche,(Bruxelles, Bruylant, 2007),
- L. Malo, *Autonomie locale et Union europeenne*, (Bruxelles, Bruylant, 2010),
- C. Blumann, L. Dubouis, *Droit institutionnel de l'Union Européenne*, (Paris, Litec, 2ème éd., 2007),
- M. Audit, *Autonomie procedurale et espace judiciaire europeen*, en *L'execution du droit de l'Union, entre mecanismes communautaires et droits nationaux*, ed. J. D. de la Rochere, (Bruxelles, Bruylant, 2009).

[66] For this proposal, to be seen M. Audit, *Autonomie procedurale ...,*. 260-261.