GENERAL PRINCIPLES OF THE EUROPEAN LEGAL SYSTEM IN TERMS OF THE TREATY OF LISBON

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Abstract:

Space widening European Community by joining several new states, reveals serious problems related to legal identity, social identity, sovereignty. The aim of this article is to explore some of the new principles created by the European law system, to show the necesity of creating an unique concrete system of law, in European community, with general principles.

Even if, all the states in their accession process, knows about their required concessions, we can observe the difficulty of a new member in adapting the European principles established by treaties.

Keywords: *European Law System, European principles, Lisbon Treaty, European Union, typology.*

1. Introduction

Reflecting the unity in diversity issue, the basic principle in the European landscape, we find that, as two drops of water aren't physically identical, there cannot exist two identical legal systems, and also no universally valid legislation, however, similarities exist between these systems, at the level of general principles and values.

Every state has enacted its law, in line with its own social and political demands, its legal traditions and with its eigenvalues. Each law system reinvents himself, according to its own identity, Savigny highlighting that "law is therefore not an absolute measure, which might be applied indiscriminately everywhere, as it is moral".

Creating a single European state, a United Europe, puts a delicate problem, namely that of the relationship between the national and the unique European identity, more specifically, congruence between national values and those of the European Union. The issue brought, is that states are ready or not to give up specificity elements and become a whole with common principles, whether or not, or could be, a European law system in the true meaning of the concept.

In order to succeed the alignment of the national law systems at a supranational law system, it is necessary to take into account the peoples socio-cultural variables.

Although we cannot talk about a universal timeless law system , we can conclude that there are a number of elements of continuity in law preceding ages and history.

Therefore, we can identify a number of legal principles and values, that are rooted in Roman law, and which survived. These principles will be listed and comparatively presented.

The existence of a single European law system, of a European law typology, can be built upon these principles and values, but they do not imply unification, but rather a harmonization of the national principles and values[1]. Therefore, in the content of the article, we will try to prove that European common values and principles can be the basis of a single law system and of the creation of new law types, the typology of European law.

In order to achieve the proposed objectives, in the following, we will start from the origin of the single European principles, we will determine their role in creating a new law system, we will try to prove the existence of a new law typology, and also we will try to show the Union current perspectives as a federal type state.

2. General Principles of the European legal system in terms of the Treaty of Lisbon

2.1.The European Union, a new legal typology

Integrating an over nationalized legal order, connecting to supranational interests, sovereignty reconfiguration, synchronizing the national values with those of the EU and harmonizing the legislation, are some of the topics that are on the discussion table at the European Community level. However, on the road to a United Europe, a delicate problem is raised – the compatibility between national values and those of the European Union. Therefore, the twenty-eight national identities are threatened by this process, so that we ask ourselves, on the other hand, if the European peoples are prepared to give up at their specific elements and embrace their "unity in diversity".

It is possible that European Union law, which is characterized by multilingualism and multijuridism, be considered a new type of law, emerged in the panorama of the world law systems?

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[1] Augustin Fuerea, *European Union Manua*l 3rd edition revised and added, Publisher. Universul Juridic, Bucharest, 2006, page. 228

We consider that only if the European Union is based on an independent legal will and on principles and values, that are within the legal eternal, for both the individual reason and as well for the national identity of the Member States, the "unity in diversity " is possible and so the existence of a new legal family.

The general law principles which are imposed to the European institutions, represent a legality pillar of the European Union, and are situated on a higher place in the hierarchy of secondary EU regulations. It should be noted that these principles are applied also to the Member States, when and to the extent that they act in European law.

In the discussion about the European Union law, as a new legal typology, first requires the existence of an autonomous will[2] which control the legal decision-making process of the EU, will that does not represent a simple arithmetic sum of individual wills of the Member States; thus, States shall undertake to submit separate legal demands of their own. Besides an independent will which controls legal creation, the new typology also implies the existence of some general principles that control the building and the development of the essential directions of the European legal order.

Regarding globalization, which is considered a new factor of the right configuration, currently it is observed a trend toward harmonization or approximation of the law in the world. Doctrinally, "the most sensitive" law harmonization is carried out at the regional level, where the European Union represents the best example (regulations and directives are applied in 28 states). Likened by Jacques Delors as an "unidentified political object", the European Union is largely a sui generis construction, borrowing from different types of institutional construction[3].

Referring us to the European Union, it can be noted that, since it was not founded by a nation or a people, it could not be assimilated to a nation, a State or to a constitutional structure. It is a sui generis international organization, created on the basis of some treaties concluded between sovereign States who have decided that this jointly exercise some competencies for an indefinite period of time. It is also interesting the classification pronounced by Germany's Federal Constitutional Court, the European Union being classified in the Staatenverbund category (from German, "union of states"), following the Maastricht decision from October 1993. In the Maastricht Decision, it is underline that the objective behind the Union was to create a "union of states ... as a union as close as possible to the peoples of Europe (organized as member states), and not as a state based on the people of a single European nation"[4].

International legal order is based on the states cooperation, without prejudice to specific powers of state sovereignty, the law of the European Union is a common right of the Member States, the Court of Justice of the European Communities interpreting that this right constitutes a "its own legal order, integrated in the legal system of the Member States"[5]. In the same decision, the Court emphasizes that under the rules adopted was established Community of indeterminate duration equipped with its own institutions, with its own legal personality, legal capacity, and the ability to representation and with powers international real springing from a limitation of powers or a transfer of powers of the Member States to the Community".

By analyzing the original and derived law of the European Union, I have noticed that the Union's regulatory process has evolved significantly, from the rules of mostly economic nature, at the present European new legal regulations have "specific features[6]", which enriching their meanings and their significations. It can be noted that an institutional law of the EU has been created, with all that this implies: sources of law, defining principles and regulations that outlines a specific legal order.

The union law is governing the legal relationships within the European Union, but also between the Union and the Member States, underlines the Union institutions' status, defining also its functions and competencies.

Through various legislative instruments and creative jurisprudence of the European Union's Court of Justice, gradually, have been created:

- An *institutional union law* that includes all legal reglementations governing the European Union components' structure and functioning;
- A *material union law* that covers all legal rules that secure EU's objectives and the measures by which they are carried out;
- A *procedural* union law *that covers* all legal procedures governing the European Union's law.

Thus, another argument for the creation of a new legal order is the fact that the institutional, material and procedural law, of the European Union outlined a specific legal order.

The Union's legal will represents the Union law's essence and it should not be seen as a simple

[2] Nicolae Popa, General Theory of Law , 4th edition , Publisher CH Beck, Bucharest, 2012, p. 63.

[3] Bruno Alomar, Sébastien Daziano, Christophe Garat,. Grandes questions européennes - 3e éd. - Concours administratifs - IEP Broché, page. 121.

[4] *Maastricht decision* in October 1993 issued by the Federal Constitutional Court of Germany , par. 89

[5] *Case 6/64 M. Flaminio Costa v. ENEL* [1964] . Is there a principle enshrined Costa essential in the relationship between Community law and national law of the Member States; where there is a conflict between a Community rule and a national rule contrary , the Community rule will always take priority , so a higher legal force. See Dan Vătăman , *European Union Law* , university course , Publisher Universul Juridic, Bucharest, 2010, page 24.

[6] Dumitru Mazilu , European integration . Community law and European institutions , Bucharest , Publisher Lumina Lex, Bucharest,2006, p.55

arithmetic sum of the individual wills of the states, but as a separate legal will. This fact is normal, because we are talking about a Union, so the typical features' problem arises, even if there are special features.

Within the complex process of implementation and application of the European law regulations, the general law principles occupy a very important place. The majority of the general law principles are not enshrined in the European Union's legal order, but in some cases we have encountered references in the Treaties. The reference to these principles can only be made where the Union's law is lacunar, because if there are provisions in this respect, their application is mandatory.

Also, general law principles acquire authority within the Union law through jurisprudential practice, "but it is always based on their consecration in a legal system organized either at the Member States' level, either common to Member States or resulting from the European Union's nature "[7].

2.2 General principles of Community law

2.2.1 Particularities of creating general law principles specific to the community law

Even if, in the ECSC Treaty, are not mentioned the general principles as a source of community law, the European Court of Justice has considered that it would be able to rule the existence of applicable general principles, based on the fact that these principles were already recognized within the Member States' legal systems. Thus, in Algera[8] business, the European Court of Justice stated that it was necessary to recognize the principles from Member States' national legislation, but also from their doctrine and their jurisprudence (12 July 1957), by using as a basis the rules imposed by those legislations, in order to establish the existence of a principle in terms of unilateral acts, which creates rights. In Article 215, of the EEC Treaty, is mentioned the use of common general principles common to the Member States' law, in order to establish the non-contractual rules of the community. However, the Court extrapolated, because the use of these principles should not be limited to this area, this type of principles being use in various fields. Subsequently, the court has established a distinction between principles, qualifying some of these general principles as "fundamental rights".

General principles applicable to the Community law come, therefore, from a jurisprudential construction. The Court has qualified at the beginning of its career, also a good rule extracted from treaties provision, or their global interpretation.

As a source of law, the general law principles have their authority from the fact that they are common to the Member States' rights and are noted in this manner by the Court, as indicated in the Hoechst decision: a general principle "will be essential in the community legal order as a common principle rights of Member States", (21 September 1989).

It is not necessary to gain authority in Community law as a general principle to exist within the legal systems of all the Member States. The Court did not proceed, in fact, never to an exhaustive examination of national rights and was bounded to establish (sometimes just to affirm) that the principle is contained in a certain number of national legal systems.

But, not at all insignificant differences between legal systems constitute an obstacle to a principle consecration as a general principle, which will be imposed in the community law (Hoechst decision).

As we have underlined above, in the European Court's existence, there are a number of general principles Member States that have been overlooked by it, in the sphere of the fundamental rights. Today they constitute the most important part of the general principles.

The jurisprudence had as start the International decision Handelsgesellschaft (17 December 1970), where the fears expressed by the German jurisdictions, which had indicated that they may not apply community law where it would not be compatible, with the persons' fundamental rights guaranteed by the German Constitution. The Court of Justice stated that "the respect of fundamental rights is an integral part of the fundamental law principles which compliance is ensured by the Court of Justice"[9]. At the same time, the guarantee of that these rights had "to be ensured within the structure and the objectives of the Community". The Court shall not be considered, therefore, being related to the compliance with National Constitutions prescriptions, but it's "being inspired from the constitutional traditions common to all Member States".

Another additional step has been consumed through Nold[10] decision, in which the Court has indicated that, in order to affirm that general law principles existence, it could be based, not just on the domestic law of the Member States, but also on other international instruments, to which the Member States have cooperated or acceded (14 May 1974). Therefore, the European Convention of Human Rights and Fundamental Freedoms was obviously the main international instrument targeted. Through a joint declaration (5 April 1977), the Assembly, the Council and the Commission underlined 'the paramount importance they attach to fundamental rights, as reflected in the Member States' constitutions, as well as from the European Convention mentioned.

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[7] Dan Vataman, , *European Union Law* , university course, Publisher Universul Juridic, Bucharest, 2010, p. 18.

[8] R. M. Chevalier, J. Boulouis, *Grands arrêts from Cour de justice des Communautés Européennes' (1994)* Dalloz 6th edn. 84 - Cleanup operation. op. , page 59

[9] J Boulouis et RM Chevallier, *Grands arrêts from Cour de justice des Communautés Européennes' (1994)* Dalloz 6th edn. 84, Page 124

[10] Clarence J. Mann, "*The function of Judicial Decision in the European Economic Integration* ",BRILL, 1972, page 275

The posterior jurisprudence of the Court of Justice has shown that this Convention constitutes the primary reference tool in terms of fundamental rights (15 May 1986, Johnston). In fact, the Court doesn't hesitate to make reference to the European jurisprudence of the Human Rights Court.

Subsequently, through Maastricht Treaty is confirmed what was resulted from the Court's jurisprudence, the Article F2 states that "the Union respects fundamental rights as guaranteed by the European Convention of Human Rights, signed in Rome on 4 November 1950, and as they result from the constitutional traditions, common to the Member States, as general principles of Community law".

Thus, fundamental rights have acquired a double foundation: The treaty which obliges the Union to respect them and a double external source, the European Convention on Human Rights or constitutional traditions common to the Member States.

Since January 1981, the Council of Europe has stated a favorable position, for joining the European Convention of Human Rights, which supposed in any case an adaptation of this Convention, but the Court of Justice, notified with a request for an opinion, has estimated that in the present status of the treaties, the community was not competent to dictate it rules in the matter of human rights or to conclude international agreements in this area[11]. Subsequently, in Nice, in December 2000, has been solemnly adopted the U. E's fundamental rights Charter, moment from which the Court started to have as bedside book the fundamental human rights. Today, the European Court of Justice, the fight assiduously to protect fundamental rights.

2.2.2. The general principles content

The European Convention contains fundamental rights within the meaning of Community law, rights that give a sense to its general principles.

But, other general principles are or will be applicable in Community law only because they are common to the States' constitutional traditions (fundamental rights) or common to their fundamental legal systems, applicable in Community law:

- The equal treatment principle ;
- The property's respect ;
- Free exercise of economic and professional activities
- Respect for private and family life , home and correspondence (26 June 1980, National Panasonic; 5 October 1994 /Commission);
- Freedom of association;
- Respect right to defense[12] (13 February 1979, Hoffmann-La Roche (205), Roche);
- Religious freedom;

However, at institutional level, we identify other principles:

Principles underlying the organization and functioning of the European Union institutions

-The principle of legality

-The autonomy of the European Union toward internal legal order

-The principle of subsidiarity

-The principle of conferral

-The principle of proportionality

-The principle of institutional unity or single institutional framework

-The principle institutional balance

2.2.3 Principle of legality

The principle of legality is unanimously considered as one of the fundamental principles of the legal European civilization, being included for a long time ago under the legal systems of all European states and in the international criminal matters treaties, fact that explains the very low volume of judgments of the Court that target this fact. Part of *ius congens, the* legality *principle* has an absolute character, statement that cannot be contradicted by the paragraph's 2 provisions.

Aborted to the judge appreciation, the punishment has become indefinite and random. This uncertainty was even more worrying as the punishments were of a very wide variety and, for serious offenses, of a high cruelty. First affirmed by Montesquieu, reloaded by Beccaria, the idea has found consecration once with its inclusion in the Declaration for human rights, in 1789, and French Criminal Code in 1810, after which it was integrated in the legal systems of all European states. The principle was also adopted by Romanian criminal law, with the criminal legislation from 1864, since then being permanently present in our criminal regulations, except for the period during the communist regime. Nowadays, in the Romanian law, the legality principle is guaranteed both by the provisions of Article 23 of the Constitution as well as by those of Article 2 of the Criminal Code.

The existence of this principle is based on both justifications related to the criminal policy of the states, as well as for reasons of criminological nature. The legality of criminalisation is one of the essential guarantees of the right to the liberty and legal security. At the same time, if the penalities are determined only by law, the legality principle is justified by the fact that social values protected by criminal law can be determined only by the social exponents of society from which it become.

To determine the concept of "criminal punishment" we must refer to of Article 6. The concept of "criminal matters" is determined by three criteria: the internal qualification, the nature of criminal act and of the nature of punishment, the Article 7 shall apply only to those sanctions are punishments in the normal sense of the term, excluding

[11] Philippe Manin *Les Communautes europeennes: L'Union europeenne : droit institutionnel (Etudes internationales) (French Edition., 1999. page 275*

[12] I. P. Filipescu, A. Fuerea, *Private international law*, Universul Juridic, Publishing House, 2012, page 49

any other measures to be taken in criminal matters, as well as for parole.

The principle of legality can be summarised in the formulation, which was launched by Beccaria: *nullum crimen sine law, nulla poena sine lege. As a result*, the principle of legality imposes obligations also to the legislator and to the legal power.., However, we should highlight that the principle of legality is viewed as a fundamental right of the person. As a result, there is no breach of the principle of when apparent infringement of the rules which involves creates the relevant person a more favorable situation.

To understand the principle of legality that we must start from definition of law, in Court vision, must be distinguished between a formal aspect and one material involved in European concept, stand-alone, the "law".

When we think of concept of formal law, the Court emphasizes the fact that it corresponds to that is used in other texts of the Convention and enclose both legislative law of origin, as well as the origin case law. From several points of view the solution of the Court is logical, in the first place, one of the aims of this COURT is to ensure uniform interpretation and application of the provisions of the Convention on Human Rights. In Europe there are countries in which the main source of law is the precedent, as well as the United Kingdom or Ireland. Furthermore, in almost all member Continental Europe's there are various categories of judicial decision which are sources of law, and binding on all courts.

In the process of creating law, are involved both components of executive power, as well as those laws, in addition, by interpretation carried out in the court rooms are developing the bill abstract, adding, in many cases, whole new. Case-law of the Court has been folded to this new reality. The Court has avoided to prioritize these powers of the state, refusing to impose only formal law, adopted by legislator, as well as source of law. Therefore, the Court said that it is not possible requires Member adoption of legal rules which does not need to be a certain degree of interpretation specialized, so that they can be applied to concrete situations. But, under the circumstances in which this interpretation shall be carried out by[13] courts of law and in a good measure of doctrine reduction concept of law from those laid down by supposing it would lead to the need to reduce, to a large extent, the role of judge. Thus, the cancellation of his posibilities to interpret the law contravenes legal tradition of European states, and the Court may not compromise such traditions.

From the formal point of view, the term "law", within the meaning of Article 7, shall be able to understand not only the law in the strict sense of the word, but the applicable law in a given situation, including the law created by judicially way.

The Court considers that, in the fields covered by the law writing, "the law" is the text in force, such as it was interpreted by competent courts.

The principle of legality requires, in the first place, a limit on the exploiting of criminal law as regards both acts by which they incriminate certain facts, as well as with respect to acts by which shall be determined and imposed.

The Court accepts that and sources of law only the law and judicial decisions, stating that the latter may have, in principle, only the role of interpreting the law. The idea Court comes from its general attitude as to limit the maximum role executive power, suspected of the temptation standing different kind.

The principle of legality implies an obligation on Member to adopt rules of grief set out in terms that are sufficiently clear to ensure predictability. If determinations which it entails the obligation of clarity we've presented by analysis potentiality matter. For instance, in the case law French it was considered that a rule which penalize them *contrary to the provisions of Article 16 of the social security code, it is not sufficiently* clear, whereas it is impossible to be deducted exactly what type of infringement of those provisions should be penalized. European Court for Human Rights in the case law, with the same qualification that has been discussed in relation to the Greek law to prosecute "proselytism", without determine exactly what acts shall enter into this concept. The Court was based on its findings and on the fact that there was a Greek courts fluctuating case-law in respect of certain acts - as well as distribution of religious literature - which does not have anything abusive in them. However, the European court considered the law inside have a sufficient degree of predictability.

Case-law of the Court has rarely been confronted with the retroactivity of criminal law. Because this area is covered by any manual of criminal law, we will be limited to Court presenting solutions in a few situations, that you had, to solve them. Thus, the Court found a breach Article 7 when a person has been penalized for an omission continues, which has been incriminated only at a certain point in the course was committed.

Article 7 (2) provides: This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.. All doctrine is convinced by conjectural origin of this provision, driven by the desire to editors Convention cannot be called into question convictions promulgated by the Nuremberg Tribunal, given that this court has ignored the principle of legality, sanctioning unpunished acts of legislation German from the time they were committed. Recently, the Court applied the same mood and disputes in relation

[13] Costica Voicu, a general theory *of the right*, university course, Publisher Universul Juridic, Bucharest, 2006, page 145.

to the former Yugoslavia Criminal Court, which confirm the ordinary term of the clause.

2.2.4. The autonomy of the European Union toward internal legal order

By changing the Lisbon Treaty, Article 2, paragraph 5 of Treaty on European Union, EU is hereby established an obligation to fulfill the requirement set out in international law.

By amendment to the Treaty of Lisbon, Article 2, paragraph 5/TEU becomes an key article in the interests of small and medium-sized countries which have the status of EU member "one of the legal guarantees established by the Treaty of Lisbon to the observance of national identity not only Member States but also the national, sovereign, unitary, independent and indivisible nature of those Member States which, like Romania, are enshrined in the Constitution those national legal character of their state.

When EU expressly assumes, through Article 2 (3), Parag.5/T[14]EU in the Lisbon Treaty modification , the obligation to " strictly comply and develop international law, including to respect the UN Charter's principles " shall mean a recognition by the Union (as original political entity[15], with *some state elements*, but endowed with legal personality and becoming so, *a subject of international law*, although a *derived one*, born out of the Member States' will) of the coordinator and interstate character, of contemporary international law[2] (where the state is the only topic of international, sovereign and originating law), but also a fundamental principle of the state's sovereignty[16] , inscribed in the United Nations Charter , on which it is based the international legal order.

An explicit reference to "strict observance of international law" is, according to art. 2 / TEU, paragraph 5 is a direct obligation of the Union to refrain from any action which would harm the rights of states as reflected in international law and as protected by the principles of the UN Charter. Even though art. 2, para. 5 / TEU refers to relations between the EU and the "wider world" (ie third countries, regardless of their status, the candidate countries for EU membership, the countries that have started accession negotiations, to countries that do not have vocation, according to the Copenhagen criteria / 1993 to become EU member states), we consider it necessary, by applying legal argument a fortiori, a respect for international law and the principles enshrined in the UN Charter, the Union and in its relations with EU Member States.

Thus, art. 2, paragraph 5 / TEU, the amendment introduced by the Lisbon Treaty, should be seen as a logical continuation of a legal relationship initially (in connection with Art. 3.a and art. 3.b / TEU) between the EU and Member States based on specific legal principle of European integration, namely the principle of conferral (plus, according to art. 3.b/TEU the principle of subsidiarity and proportionality). But this legal principle "integration" (as the legal foundation of progressive failure of powers by the states of the EU institutions) should not be considered a legal principle opposed to the principle of state sovereignty. In other words, even if ECJ case law sees "Community law" as a distinct orders both in relation to national legal orders of the Member States[17], but also in relation to the international legal order, this should not be interpreted as a "isolation" of the Community legal order (now by the Lisbon Treaty, an "order of law Union") to international law.

On the contrary, the two types of legal systems remain interconnected, since the quality of EU membership does not exclude participation, as a sovereign state, these states, international legal relations nor make them disappear quality sovereign subject of international law and that the original EU Member States have in relation to international law. Moreover, we believe that the existence of a "Community law" can not exclude international law relations established between EU Member States and between them and third countries (not EU membership).

The existence of the EU as a legal entity under the Lisbon Treaty of, we cannot speak of a disappearance of nation - states or a loss of their national character and sovereign. Moreover, the Union implies forms (CFSP, for example, police cooperation, intergovernmental cooperation, cooperation in civil matters, energy) the member states are the primary decision holding role, but also in terms of implementation of the measures established. In addition, article. 3 parargraph a /TEU in the Lisbon Treaty change, it makes clear that the decline hypothesis national - state sovereignty and the principle is rejected. Even in areas subject integration (or empowerment Union exclusively or shared), Member States that have freely decided to give a series of sovereign powers to the Union. The very existence of the Union as such is due to the free and sovereign Member States that have completed the realm of international law, a multilateral treaty to that effect.

Far from being a historical concept, obsolete, sovereignty remains the foundation of modern international law and its consequence (legal equality of all states) is a legal guarantee to protect fundamental states (in particular SMEs) in relations with other states. As stated Titulescu (the "diplomatic documents", Bucharest, Ed. Politics, 1967), "the abolition of sovereignty is not only impossible to predict a solution but if we embarked on this path, take

[14] Treaty of European Union
[15] Luciana- Alexandra Ghica (coord.), *The European Union Encyclopedia*, (Bucharest: Ed. Meronia, 2005), page 25.
[16] Ludovic cling, Martian.I. - Leads, *public international law*, (Bucharest: Ed. Educational and pedagogical), pages 33- 35.
[17] Augustin Fuerea, *European Union Manua*l 3rd edition revised and added , Publisher. Universul Juridic, Bucharest, 2006, page. 164-165

the world into chaos and anarchy ".The essential character of sovereign equality for all international law emerges from the opinions of experts who believe that "denying the sovereign state is to deny international law" between the international legal order and the principle of state sovereignty there is a mutual conditionality[18]. Permanent Court of International Justice highlight the fact, in the interwar period, the importance of sovereignty to international law, stating that "we must recognize and apply this principle that underpins international law itself."

We must consider the principles of Community law applicable in the relations between the Union and the Member States (cf. Art. 3.a, para. 1, para. 3 / TEU, Art. 3.b, paragraph.1-4 / TEU, amendment Treaty of Lisbon) like legal principles laid down by Member States (and not the Union, which is a sovereign state) by international treaties (although with a specific aspect of integration) under their own free and sovereign. Therefore, these principles of Community law are not only superior (not required, not relativize and does not remove the application) principles of sovereignty and equality of states, but I can not even make the existence and the scope in any way.

3.5. The principle of proportionality.

Proportionality principle acquires multiple meanings, these are identified in legal doctrine and especially in the Romanian legal doctrine in modern and contemporary period, emphasizing the idea of continuity in understanding this principle. The main connotations of this principle found in doctrine, ideas are expressed through fair balance, proper ratio, reasonableness, fairness and logical plan through dialectical reasoning of proportionality. Analysis of doctrine reveals the importance of this principle, whose purpose is to translate legal rules to substantiate the concept of legitimacy in law and to constitute as an essential criterion that allows the boundary between legitimate manifestations of state power and on the other hand excess power in the activity of the state.

Argues that the doctrine of proportionality is not only a simple legal instrument but also a principle of law.

Proportionality is seen a modern synthesis of classical principles of law. This principle is right outside the home and won the state and legal system rather late. As a principle of proportionality law involves ideas reasonableness, fairness, tolerance, and appropriateness of the measures necessary to state the facts and the legitimate aim pursued.

That principle appears enshrined in EU law legal instruments in the constitutions of states, and the Constitution explains research increasingly common concerns and especially the identification of its size. Proportionality is not only a principle of rational law, but at the same time, it is a principle of positive law, a principle with normative value. The proportionality is a legal criterion which considers the legitimacy of state power interference in the exercise of fundamental rights and freedoms.

This principle is explicitly or implicitly enshrined in international legal instruments[19], or most constitutions of democratic countries. Constitution expressly governing principle in art. 53, but there are other constitutional provisions that it involves. In constitutional law, the proportionality principle also applies in particular to protect human rights and fundamental freedoms. It is considered as an effective criterion for assessing the legitimacy of state intervention by limiting certain rights situation. The principle of proportionality is present in the public right of most EU countries. However, some distinctions must be made:

a) countries which establish the principle was made explicit in the constitution and legislation (Portugal, Switzerland, etc.), and

b) countries where it is not expressly mentioned in legislation or case law. The latter can include: Greece, Belgium, Luxembourg etc;

c) countries where this applies to public law as a whole (ex. France and Switzerland), on the other hand

d) the countries in which its use is limited to the scope of EU law. Moreover, even if the principle of proportionality is not expressly enshrined in the constitution of a state doctrine and jurisprudence considers as part of the concept of rule of law.

The principle of proportionality is applied not only constitutional law but also in other branches of law. Administrative law is a criterion that allows delineation of discretion, the administrative authorities in respect of the excess power that is made judicial review of administrative acts of abuse of power. It is also expressly provided by law as a criterion for individualization of administrative sanctions Application of the principle of proportionality exists in criminal law or civil law.

In European Union law, the principle of proportionality is expressly provided by Article 5 para. 4 of the Treaty on European Union and regulated, along with the principle of subsidiarity "Protocol on the application of the principles of subsidiarity and proportionality", in the sense necessary adequacy of resources and decisions of European institutions to the legitimate aim pursued.

Case law has an important role in analyzing the principle of proportionality, applied in concrete cases. Thus, the European Court of Human Rights is

[18] Raluca Miga-Beşteliu, *International law , Ch. All beck, publisher, 2007, page* 90-91

[19] Article 29 , paragraphs 2 and 3 of the Universal Declaration of Human Rights , Article 4 and 5 of the International Covenant on Economic, Social and Cultural Rights; Article 5, paragraph 1, article 12, paragraph 3, article 18, article 19, paragraph 3 and Article 12 paragraph 2 of the International Covenant on Civil and Political Rights; Article 4 of the Convention - Framework for the Protection of National Minorities; The AVA art.G European- revised Social Charter; Articles 8, 9, 10, 11 and 18 of the European Convention on Human Rights and Fundamental Freedoms.

designed as a ratio proportional fair, equitable, between the facts, means limitation on the exercise of rights and legitimate aim pursued or that a fair between individual interests and the public interest. Proportionality is a criterion that determines the legitimacy of interference Contracting States in the exercise of rights protected by the Convention.

Therefore, it is necessary proportionality increasingly more as a universal principle enshrined in most modern legal systems, explicitly or implicitly found in constitutional and recognized by national and international jurisdictions.

As a general principle of law, proportionality requires a considered fair relationship[20] between legal measures adopted social reality and the legitimate aim pursued. Proportionality may be considered at least as a result of the combination of three elements: the decision, its purpose and the facts to which it applies. Proportionality is correlated with the concepts of legality, opportunity and discretion. In public law, breach of the principle of proportionality is considered excess freedom of action left to the authorities, and, ultimately, abuse of power. There is interference between proportionality and other general principles of law, namely: the principles of legality and equality and the principle of fairness and justice.

The essence of this principle is considered fair relationship between the components. The question then is whether the phrase "fair relationship" is synonymous with that of "appropriate relationship" doctrine sometimes used. We believe that there are some differences, because the concept of "just" can have a moral dimension, while "adequate" and not necessarily mean this.

Summarizing, we can say that proportionality is a fundamental principle of law enshrined explicit or inferred from constitutional regulations, laws and international legal instruments, based on the values of rational law, justice and equity and expressing the existence of a balanced and appropriate, between actions, situations and phenomena limiting measures taken by government authorities to what is necessary to achieve a legitimate aim in this way are guaranteed fundamental rights and freedoms, and avoid abusive litigation.

There are significant concerns contemporary Romanian doctrinarians to establish proportionality connotations[21]. The author noted that proper proportionality is the phrase "right balance". It expresses the idea that "proportionality or the right balance is as cutting objective in concreto legal situation determined. It can appear and in the abstract, but such remains essentially or exclusively formal requirement without practical effect "Answering the question what are the structures constituting the proportionality same author stresses the idea of" respect "that is specific proportionality. Unlike mathematics, law, proportionality is not a problem of quantity but also qualitative, "expressing the requirement of adequacy between a legitimate aim ... means employed to achieve this objective and the result or effect produced by the installation of these means . Proportionality transition from a judgment based on binary logic to a logic-based gradual reasoning ".[22]

So we can talk of a "dialectical reasoning, consubstantial proportionality" or as we called us "proportional reasoning" based on a comparative report of a qualitative nature, specific legal value of a syllogism formalism designed to overcome specific abstract and impersonal dimension of legal standard and thus raise the particular to the universal concrete. For example, the principle of equality enshrined as one of the foundations of any democratic society and law, the proportionality which performs a logical relation, value of different elements in their concreteness, exceeds its abstract nature and inevitable trend smoothing, being found as universal concrete dialectical relationship between legal norm and diversity abstract reality. Applying "proportional reasoning" can be said that the principle of equality, looked quantitative dimension is only a particular case of the principle of proportionality.

At the end of this brief analysis on the principle of proportionality mention doctrinal conclusion that Professor Ion Deleanu to subscribe: "Thus said and briefly, the installation of proportionality - contextualized and circumstantial - the shift from rule to metarule from normativity to normality, the the legal norm hypostasis before the discovery and appreciation of its meaning and purpose. Benchmark in such reasoning which is, above all, the ideals and values of a democratic society, as the only political model considered by the Convention (Convention "European" Human Rights and Fundamental Freedoms) and, otherwise, only one compatible with it ".

3.6. Principle of institutional balance

It is assumed that each institution must act in accordance with the powers conferred on it by the Treaties, so as not to affect in a negative manner tasks other EU structures.

Brings together institutional balance on the one hand the separation of powers and competences on the other institutions and collaboration and cooperation between the same institutions of the Union.

With the Lisbon Treaty classic institutional triangle, Council, Commission, Parliament, undergoing a comprehensive reform.

If in 1951 the Treaty of Paris which established the European Coal and Steel Community brought to the fore the High Authority (now the Commission), and since 1957 the Rome Treaties debut long period

[20] M.Guibal, *De la proportionnalité,* în L'Actualite juridique Droit administratif, nr.5/1978, pg.477-479.
[21] Ion Deleanu, The fundamental rights of parties in civil, Universul Juridic Publisher, Bucharest, 2008, pp.365-406
[22] Ion Deleanu, The fundamental rights of parties in civil, Universul Juridic Publisher, Bucharest, 2008, pp.366

prevalence of the Council, as last treated to increase successive powers of the European Parliament are at present, with the Treaty of Lisbon, the exponential growth of these powers. PE peer adopted EU legislation with the Council. Mr Jerzy Buzek, EP President emphasizes that the function runs "advantage of the new powers received in a serious, responsible and constructive". Moreover, voters and political controls the European Commission has an important role in adopting the EU budget and conflicts including the High Representative for Foreign Affairs and Security Policy of the Union on organizational setting new institution.

All this translates into a lobby and increasingly powerful interest groups in addition to PE. But after the scandal MEPs receiving money for amendments, institutional transparency and the need for a correct relationship between lawmakers and lobbyists should be emphasized more than ever. Given the new institutional dynamics Lisbon instituted based on a delicate relationship between Parliament and Council, the scandal may affect the inter-institutional balance and their relationship with the European Commission on the quality of European legislation. This relationship fragile egos threatened by political and institutional suspicions, was affected by the scandal "money for amendments", as he called in the press, and worsened to Member States and cooperation between representatives of Parliament.

European Union Council was unbalanced but even its internal operation. Thus, there Councils have a permanent president (CAGRE and ECOFIN) and there Councils who rotating presidency. There was no political will at the time of Lisbon for the establishment of permanent presidents of all Councils of Ministers, thus rotating presidency now has a more symbolic value and lead to tensions between state representatives and delegates of the permanent representatives of the Union.

The delicacy of the new institutional balance it best reflects the position of the European Union High Representative for Foreign Affairs and Security Policy. The relations that it will establish its surrounding institutions depends on the success of this function.

In describing the institutional balance after the Lisbon Treaty Araceli Mangas argues that "there is a new constitutional model. Basic coordinates are maintained even if evolve in the same way that previous reforms have added or changed and held balances[23], 2005. In practice the last two years, however, how the Council and European Parliament relate to each other has changed considerably. The decision process was difficult and the task of reaching a consensus has become a real art. In this process, considerably increased role of Parliament rapporteurs and informal meetings attended by representatives of the Commission. Council remains first violin in the legislative process and the Union's decision, while Parliament is the political message wearer.

The Lisbon Treaty unfinished process? Conclusions can only be preliminary and only time will prove whether the current perception of the legal and institutional ambiguity Union is just a step to be exceeded or the premise of a new treaty.

3.7. Principle of subsidiarity

Under the shared competence between the Community and the Member States, the principle of subsidiarity as set by the Treaty establishing the European Community, defines the conditions under which the Community has a priority for action in relation to the Member States.

General spirit and purpose of the subsidiarity principle lies in providing a degree of independence of an authority subordinate to a superior authority, especially a local authority to the central power. There is, therefore, a division of powers between the various levels of government, institutional principle is the foundation of states with a federal structure. When applied in a Community context, the principle serves as the criterion governing the sharing of competences between the Community and the Member States. On the one hand, it excludes Community intervention when a material can be regulated effectively by Member States at central, regional or local level. On the other hand, the Community exercises its powers when Member States are unable to sufficiently fulfill the objectives of the Treaties.

For the purposes of art. 5 par. (2) EC, intervention by Union institutions principle of subsidiarity requires fulfillment of three conditions:

a. not be a subject under exclusive Community competence;

b. the objectives of the proposed action can not be sufficiently achieved by the Member States;

c. the action can be better achieved its scale or effects, through a Community intervention.

The scope of the subsidiarity principle has not been clearly defined, he continued to lead to divergent interpretations. However, the Community aims to clearly limit its action to the Treaties' objectives and providing new measures at a level as close as possible to the citizen. Also, in the preamble of the EU Treaty are a particular focus on the links between the subsidiarity principle and rule closer to the citizen. Once in force, the Lisbon Treaty should put an end to differences of interpretation regarding the scope of the principle of subsidiarity. In fact, the new Treaty defines the areas falling within the exclusive competence and shared competence of the Union. Art. 4 Parag. (2) TFEU contains the following list belonging shared competence: internal market; social policy; economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of

[23]Araceli Mangas, *La Constitucion European*, 2005,pag. 98.

marine biological resources; the environment; consumer protection; transport; trans-European networks; energy; area of freedom, security and justice; common safety concerns in public health.

The subsidiarity principle applies to all EU institutions. The rule has practical significance, especially for the Council, Parliament and Commission. The Lisbon Treaty enhances both the role of national parliaments and that of the Court of Justice in controlling the subsidiarity principle.

Treaty of Lisbon introduces an early warning mechanism, whereby national parliaments have eight weeks to submit the opinions on draft legislation, which sent them necessarily at the same time with the European Parliament and the Council. If a third of national parliaments challenges the conformity of a draft legislative act with the principle of subsidiarity, reasoned opinions, the Commission must review its project and motivate potential to maintain (procedure "yellow"). This threshold must be one quarter of national parliaments, if it is a legislative draft act on the area of freedom, security and justice. In addition, if a simple majority of national parliaments challenges the compliance of a draft legislative act with the principle of subsidiarity ('orange card') and the Commission maintains its proposal, the matter shall be referred to the Council and the European Parliament, which shall act in a first reading. If it considers that the proposal is not compatible with the subsidiarity principle can reject a majority of 55% of the Council or a majority.

3.8. Principle of award of powers in the European Union

The principle governing the award of delimitation of competences in the European Union, according to art. 5 paragraph. 1 TEU. The principle of conferred powers has its counterpart in public international law principle of specialty called international organizations. The principle of conferred powers was established, initially, by the Treaty establishing the European Economic Community (CEECs), later confirmed by the Treaty establishing the European Community (TEC) in art. 5, which was translated by the Lisbon Treaty in the European Union's Treaty on (TEU).

Under the principle of conferral, the Union shall act only within the powers that have been assigned by the Treaties Member States to achieve the objectives set out therein (Art. 5 TEU). Therefore, Member by their willingness to transfer skills Union objectives. Still the same article provides that ,, competences not conferred upon the Union in the Treaties remain with the Member States "(Art. 5 TEU). From this last provision means another principle, that the jurisdiction is not conferred upon the Union by the Member States treated as a residual jurisdiction3. With special reference to the power of attribution of Union institutions are provisions art. 13 TEU, which provide that each institution ,, act within the powers conferred by the Treaties, in accordance with the procedures, conditions and objectives set by them. " The Court of Justice, confers jurisdiction - according to art. 5 TEU (Art. 5 TEU) - has the nature of an irreversible transfer, further stating that it is "a community room with own tasks and more specifically, with real powers arising from a limitation of competence or transfer powers from the States to the Community; transfer that occurs in states of their legal, internal Community legal order for the benefit of the rights and obligations corresponding provisions of the Treaty and drives (...) a final limitation of their sovereign rights ". Irreversible transfer the concept of the Lisbon Treaty, however, should be viewed subject to the provisions under which any Member State may decide ,, (...) to withdraw from the Union "(Art. 50 TEU). Therefore, the transfer is irreversible, possibly during the State of the Union is a member.

Prerogative powers are divided according to several criteria.

1.According to TFEU and the Court of Justice, as the scope and nature of the powers conferred Communities / Union that are unprecedented in international law, prerogative powers are divided into: a) control skills and competencies of action; b) international skills and competencies internal type state.

2. Depending on the relations established between national competence of Member States and Union (institutions), Treaties confer on: a) an exclusive competence of the Union; b) a shared competence with the Member States.

3. After the award of technical skills in doctrine emerged following classification task skills:

a) express powers (explicit);

b) subsidiary skills (complementary);

c) implied powers (by extension).

Powers of control resulting from the fact that every time treaties binding on the Member States, they granted simultaneously Union institutions, mainly the Commission, the general power to control their execution (Art. 258 TFEU). Also, the Court of Justice of the European Union Commission supervises, it fulfills its function of supervising the application of EU law (Art. 17 TEU). In a number of cases, special institutions of the Union Treaties confer jurisdiction derived authorization, which authorizes, approves or denies the acts adopted by Member States (Art. 428, 1309, 1310, all TFEU). In particular, the Commission has the responsability to implement the safeguard clause authorizing states to derogate from their obligations. Power control is exercised through non-binding acts (eg the Committee which draws attention to the risks for the offenses or conduct recommendations suggesting complies with applicable law) or mandatory (Commission decisions in matters of authorizations or derogărilor13).

Powers of action.

In certain areas and under the Treaties, the Union shall have competence to carry out actions to support,

coordinate or supplement the actions of Member States, without thereby superseding their competence in these areas (art. 2 para. 5 TFEU).

The Union shall have the following competences:

- to carry out activities in research, technological development and space, in particular to define and implement the programs, the exercise of those powers may have the effect of preventing Member States to exercise its jurisdiction (art. 4 par. 3 TFEU);

- to take action and conduct a common policy in the areas of development cooperation and humanitarian aid, the exercise of those powers may have the effect of depriving the Member States of the opportunity to exercise its jurisdiction (art. 4 par. 4 TFEU);

- to carry out actions to support, coordinate or supplement the actions of Member States (Art. 6 TFEU).

At European level, these actions relate to the following areas:

a. to protect and improve human health;
b. industries;
c. culture;
d. tourism;
e. education;
f. civil protection;
g. administrative cooperation.

A construction element of originality Community / Union led and it determines the exercise of international type and type of internal - state.

International Union competence is brought to light by:

- the power of information and consultation. For example, according to art. 337 TFEU (ex 284 TEC) "to the tasks entrusted to them - so in a general way - the Commission may request and receive information and carry out all necessary checks" and in T EURATOM are considered those provisions specific obliges Member States to inform or consult the Community institutions, especially before adopting measures which they consider to be taken (article 34);

- the power of coordination of policies and behaviorsof the Member States. Thus, according to art. 5 paragraph. 1 TFEU, Member States shall coordinate their economic policies within the Union. In this Union:

1. take measures to ensure coordination of the employment policies of the Member States' labor, in particular by defining guidelines for these policies;

2. may take initiatives to ensure coordination of Member States' social policies.

This power is exercised through recommendations, which calls for a certain behavior, but "not binding" of the Member States (Art. 288 para. Last TFEU). Another example is that the Commission, in specific cases provided for in the Treaties, shall adopt recommendations (art. 292, last sentence, TFEU). Also, the Council adopted the recommendations (according to Art. 292 para. 1TFUE, or under Art. 168 TFEU).

Coordination can take and binding form, for example, in the form of a directive, Member States of destination linking the outcome to be achieved, leaving to the national authorities in respect of form and methods.

The Directive is therefore a specific instrument for coordinating national laws (under Art. 50 TFEU, the European Parliament, Council and Commission, and Art. 53 TFEU, the European Parliament and the Council). Another example of coordination is achieved proficiency in some cases, through the Member States' decisions to the Council (art. 126 § 9 TFEU). Through internal type powers, the Union has, in particular, the power that it exerts direct impact on citizens of Member States. They shall be performed by:

• Regulation, which is obviously the legislative power of the Union. Has general, impersonal, is directly applicable in the Member States, giving rise at the same time, the rights and obligations not only for Member States but also for their citizens (art. 288 para. 2 TFEU);

• decisions (Council or Commission) that "binds" addressed by individuals (Art. 288 para. 4 TFEU);

• Court open to individuals who may act under the action for annulment (Art. 263 TFEU);

• international agreements which the Union may conclude with third countries or international organizations, through which creates legally rights and obligations for individuals on the Member States territory of the (according to Art. 216 TFEU).

• Special agreements with neighboring countries, according to art. 8 paragraphs 1 and 2 TEU, the Union develop a special relationship with them, in order to establish an area of prosperity and good neighborliness, founded on the Union's values , characterized by close and peaceful relations based on cooperation. These agreements may contain reciprocal rights and obligations and the possibility of undertaking activities jointly. Their implementation is subject to periodic consultation.

3. Conclusion

European Union as a state, as a political and legal construction, will be a subject of controversy doctrinal level. This controversy revolves around the idea of the existence of a new typology, legal, namely European Union law. Legal identity of the European Union is a reality, maturity are general principles, principles adopted and brought together in each member state.

In creating a legal order, the order European Union law, are required more formal sources of law, while they exist, are subject to the social context and realities.

Thus, general principles have become essential parts being used in processes being put forward by general advocates but also European judges. General principles represent any derivatives with primary law

or the European Union. The role is to ensure cohesion principles of Union law and adaptation to change European realities.

Treaty of Lisbon was a step forward in terms of Union constitutionalization, the European Union has gained a valences of a federal state[24] with a constitution and supranational institutions.

The general principles of law U.E. ensure the functioning of Union institutions generating, also, the separation of powers. They will easily lead easily to a homogenization of the law, homogenization, which debuted at security and justice.

References

- Augustin Fuerea, *European Union Manual*, 3rd edition revised and added, Publisher. Universul Juridic, Bucharest, 2006, 228
- Nicolae Popa, *General Theory of Law* , 4th edition , Publisher CH Beck, Bucharest, 2012, p 63.
- Dumitru Mazilu, *European integration. Community law and European institutions*, Bucharest, Publisher Lumina Lex, Bucharest, 2006, p.55
- Dan Vataman, *European Union Law*, University course , Publisher Universul Juridic, Bucharest, 2010, p. 18.
- R. M. Chevalier, J. Boulouis, *Grands arrêts from Cour de justice des Communautés Européennes* (1994) Dalloz 6th edn. 84 - Cleanup operation. 59
- Clarence J. Mann, *The function of Judicial Decision in the European Economic Integration*, BRILL, 1972, page 275
- Philippe Manin *Les Communautes europeennes: L'Union europeenne : droit institutionnel (Etudes internationales)* French Edition, 1999. 275
- P. Filipescu, A. Fuerea, *Private international law*, Universul Juridic, Publishing House, 2012, 49
- Costica Voicu, *A general theory of the right, university course*, Publisher Universul Juridic, Bucharest, 2006, 145.
- Luciana- Alexandra Ghica (coord.), *The European Union Encyclopedia*, (Bucharest: Ed. Meronia, 2005)
- Ludovic Cling, Martian.I. - *Leads, public international law*, (Bucharest: Ed. Educational and pedagogical), 33- 35.
- Raluca Miga-Beşteliu, *International law* , Ch. All beck, publisher, 2007, 90-91
- M.Guibal, *De la proportionnalité, în L'Actualite juridique, Droit administratif*, nr.5/1978, 477-479.
- Ion Deleanu, *The fundamental rights of parties in civil*, Universul Juridic Publisher, Bucharest, 2008, 365-406.
- Araceli Mangas, *La Constitucion European*, 2005, 98.
- Jean-Sylvestre Bergé, Sophie Robin-Olivier, *Introduction au droit européen*, ediţia a II-a, Themis/ Droit, PUF, 2011, 43.
- Treaty of European Union
- *The Universal Declaration of Human Rights,*
- *The International Covenant on Economic, Social and Cultural Rights ;*
- *International Covenant on Civil and Political Rights* ;
- *Framework for the Protection of National Minorities* ;
- *European Convention on Human Rights and Fundamental Freedoms* .
- Bruno Alomar, Sébastien Daziano, Christophe Garat, *Grandes questions européennes* - 3e éd. - Concours administratifs - IEP Broché, 121.
- *Maastricht decision* in October 1993 issued by the Federal Constitutional Court of Germany , par. 89
- *Case 6/64 M. Flaminio* Costa v. ENEL [1964]. Is there a principle enshrined Costa essential in the relationship between Community law and national law of the Member States; where there is a conflict between a Community rule and a national rule contrary, the Community rule will always take priority , so a higher legal force.

[24] Jean-Sylvestre Bergé, Sophie Robin-Olivier, Introduction au droit européen, ediţia a II-a, Themis/ Droit, PUF, 2011, p. 43.