THE LEGAL ORDER OF THE EUROPEAN UNION AND CONSEQUENCES IN THE IMPLEMENTATION OF THE EUROPEAN NORMS IN THE NATIONAL LAW OF THE MEMBER STATES

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Abstract
This article analyses the specifics of the legal order of the European Union, which creates a complex and original system of law, being more of a supranational law than an international law. In other words, original Community law is international in creation and supranational in application.
The research highlights the most important features of the legal order of the European Union, in the sense that EU law is immediately applicable, has direct applicability and is applied with priority over any national rule. At the same time, we believe that the characteristic features of the legal order of the European Union have their origin in the partial ceding of some attributes of sovereignty to atypical supranational bodies, to which the Member States resorted when they established the European Union.
Finally, we specify that European legislation creates a specific legal order that integrates into the national legal order. From this integration arises the impossibility of prevailing a subsequent national norm contrary to European law. Any other solution would deprive European law of its uniform application, as it would vary according to the subsequent national law of each Member State. A differentiated application by each Member State would lead to discrimination based on nationality / citizenship, discrimination which is prohibited by express provisions of European law.

Key words: European Union legal order, the immediate applicability of European legal rules, direct applicability of European Union law, the priority of European Union law, implementation of European legal norms.

JEL Classification: K31, K33, J81, J83

I. INTRODUCTION

Throughout its history, the European Union has become an increasingly complex player, both in terms of the relations between its members and the way it reports to the international system. The European Union is considered the most important European organization and the most sophisticated regional institution created to date, due to the complex process of European unification that began at the end of World War II. On the 70th anniversary of the creation of the first European Community - the European Coal and Steel Community, by the Treaty of Paris from 18th April, 1951, the European Union no longer resembles what it was then. As successive enlargements have taken place, the European Union has lost its original homogeneity, both economically and politically. If until 1st of December, 2009, the European Union was defined as a sui generis entity, with emerging legal personality, relying, in its existence, on the three pillars established by the Maastricht Treaty: *European Communities, the common foreign and security policy, justice and home affairs*, then by the Treaty of Lisbon in art. 47 (TEU) expressly enshrines, for the first time, the legal personality of the European Union: "The Union has legal personality". Thus, starting with December 1, 2009, a new subject of international law appears, the European Union, with all the prerogatives that are specific to it. Therefore, having its own legal personality, the European Union has its own legal order.

For our study it is relevant to clarify what is the legal order of the European Union, which in doctrine is defined as "an organized and structured set of legal rules having its own sources, equipped with bodies and procedures capable of issuing them, he interpreted them so that he could ascertain and sanction, if necessary, the violations brought to such norms" (Guy Isaac, 1983; Jean-Victor Louis, 1993).

In the opinion of another author (Fuerea Augustin, 2016), the legal order of the European Union, in a broad sense, includes "the totality of legal norms governing the legal relations in which the European Union participates". In a narrow sense, the legal order of the European Union includes "all the rules, material and procedural, applicable within the European Union".

From the definitions presented, we find that the legal order of the European Union is a new type of legal order, which regulates the institutions to which it assigns powers and between which relations are established, while achieving a division of powers between the institutions of the European Union, in favour of which Member States have limited their sovereign rights in the ever-expanding domains and whose subjects are not only states

but also their nationals. In this regard, we note that EU law is a complex and original law, being more of a supranational law than an international law. In other words, the original Community law is international in creation and supranational in application. Being a relatively recent legal system, EU law is incomplete in some matters, which is why the interpretation of a Community rule, in the absence of written Community rules, often uses some legal principles as legal sources.

II. CHARACTERISTIC FEATURES OF THE LEGAL ORDER OF THE EUROPEAN UNION

On many occasions, the EU Court of Justice has shown that institutional treaties have not lost their character as public international law, but through specific supranational elements, a closed legal system has been created, with its own legal order. Thus, according to the Court of Justice of the EU, the legal order of the European Union represents:

- a "legal order of its own, integrated into the legal system of the Member States" (Flaminio Costa v./E.N.E.L., 6-64, ECLI: EU: C: 1964: 66),
- a "legal order of international law, in favour of which States have limited their sovereign rights, albeit in a limited number of areas, and the subjects of which are not only the Member States but also their nationals" (Decision NV Algemene Transport - en Expeditie Onderneming van Gend & Loos v. / Netherlands Inland Revenue Administration, 26-62, ECLI: EU: C: 1963: 1).

From the wording of the EU Court of Justice we can deduce the characteristic features of the Community legal order, namely:

- the Community legal order is an organized and structured set of legal rules, having its own sources, endowed with bodies and procedures capable of issuing, interpreting and ascertaining and, where appropriate, sanctioning infringements;
- the autonomy of the Community legal order in relation to the international legal order, as well as the strong degree of centralization of the creation and application of EU law through the intervention of the European institutions;
- the most important feature of the EU legal order is that it is integrated into the legal systems of the Member States, in the sense that EU law has immediate applicability, has the power of direct applicability and is applied as a matter of priority to any national rule (Burian Alexandru, Chirtoacă Natalia, et.al., 2019).

The autonomy and originality of EU law are highlighted by its sources, which are complex and have no equivalent in classical international law, being characterized by diversity and hierarchy, including in their core: - *main sources*, consisting of instruments that have created constitutional rules for the European Union, on the basis of the agreement of the Member States, signed and ratified by them (the founding and amending treaties), all other rules being subordinated to them; and - *secondary sources*, which are based on the original treaties but are adopted by the EU institutions (regulations, directives, decisions, recommendations and opinions) for the application of the basic treaties, and to the extent that they are binding and directly applicable.

To this central core of the sources of EU law are added other sources considered in a broad sense, such as: EU international agreements; agreements concluded between Member States for the application of the original Treaties; unwritten sources; general principles of law (principle of legal certainty, principle of the right to defence, principle of equality, principle of proportionality, protection of fundamental human rights, etc.); the case law of the Court of Justice of the European Union; internal regulations; interinstitutional acts; the statements and resolutions of the EU institutions, considered by the doctrine as "complementary sources" of EU law (Gornig Gilbert, Rusu Ioana Eleonora, 2007; Fuerea Augustin, 2016).

Compared to the above, we mention that the foundations of the legal order of the European Union are the treaties, often being called the "Constitution" of the Community legal order. In this respect, the Court of Justice has called the EC Treaty "the constitutional act of a legal community" (ECJ Opinion No 1/91, ECLI:EU:C:1991:490). Therefore, the Member States are considered to be masters of the Treaties establishing the European Union, and their basis is the consent of the Member States. By establishing the European Union, the Member States have not lost the power to decide to amend or terminate these treaties of public international law, this right being limited only in terms of the procedure to be followed, procedures which are provided by art. 48 of the TEU on the revision of the treaties and art. 50 of the TEU on voluntary withdrawal. The founding treaties directly create rights and obligations for the Member States, and have effect for individuals only if the rules in question are directly applicable, without the need to issue national implementing or transposing acts. In this regard, the Court of Justice stated that the provisions of the Treaties in the field of fundamental rights and freedoms directly confer on the individual rights which can also be invoked before national courts (Decision Yvonne van Duyn v Home Office., 41-74, ECLI:EU:C:1974:133).

In the literature (Philipp Manin, 1993; Jean Boulouis, 1993; Marcu Viorel, Diaconu Nicoleta, 2002), the opinion was expressed that the acts adopted by the institutions of the European Union are the most important source of European Union law. The institutions of the European Union adopt legal acts for the application of the

Treaties and for the exercise of Union powers. Thus, According to Declaration no. 24 annexed to the Treaty of Lisbon, by virtue of its legal personality, the Union is not authorized "in any way to legislate or act outside the powers conferred on it by the Member States by the Treaties" (http://eur-lex.europa.eu). In terms of competences, the basic rule is that states do not lose their competences by assigning competences to the European Union, but there are some changes in their exercise. In the case of assigning a competence to the European Union, the states no longer have their own competence, autonomous in that field, being obliged to respect the norms issued by the European Union, to adopt internal normative acts compliant with them.

Being an autonomous legal system, with its own characteristics, European Union law is implemented in the legal order of the Member States according to new rules, being governed by the principles of immediate applicability of European law, direct effect and priority of European law to Member States' law.

The rules of European law have a distinct place in the national law of the Member States, so that they are not confused, overlapping or identifiable with national law, and national judges are obliged to apply them predominantly over national law. The very notion of integration at European level necessarily implies a transfer of competence from the bodies of the Member State to the institutions and bodies of the European Union. In this respect, the rules of European law are immediately applicable in the national legal order from the date of their issuance and throughout the period in which they are in force, without the need for any special procedure in this respect.

Direct applicability is a principle formulated by the Court of Justice of the European Union, according to which the provisions of treaties or acts of the Community institutions which meet certain criteria may be invoked by litigants before their own national jurisdictions and are likely to create rights and obligations for individuals. These rights arise not only from an express attribution of them, but also on the basis of obligations clearly imposed on both individuals and the Member States and the EU institutions. The principle of direct applicability is confirmed in the provisions of art. 288 para. 2 of the TFEU, but only as regards the regulations, which are stated to be directly applicable in all Member States. The jurisprudence of the C.J.E.U. distinguishes between direct vertical and horizontal applicability. Vertical direct applicability mainly means the possibility of invoking the provisions of a directive in relation to a state or its authority. Horizontal direct applicability allows a private litigant to invoke a Community provision against another private individual.

In order to demonstrate the priority of the rules of European law, the C.J.E.U. started from a series of arguments. It is primarily about the specific nature of the European Union, its unlimited duration, its endowment with its own powers, personality and legal capacity, with a capacity for international representation and, in particular, with real powers resulting from the limitation of competence or the transfer of powers Member States to the Union. Thus, with the creation of the European Communities / Union, the Member States have limited their sovereign rights and set up a system of law applicable to nationals and to the states themselves. It follows from the transfer of responsibilities that Member States no longer develop legislation in the areas subject to transfer, because they no longer have the necessary competence. The rules of EU law apply with priority in the legal order of the Member States, so that subsequent national acts cannot amend or repeal provisions of European Union law, and subsequent EU law rules can amend or make national legal rules inapplicable. The priority application of the rules of European law is not the result of a hierarchy between national and Community authorities, the states retaining their sovereignty, but is due to the agreement between the Member States. Otherwise, the norm ceases to be common, being emptied of content and finality. An exception in this case is the treaties amending, supplementing, acceding and associating which are subject to ratification, as in the case of international treaties, according to national law.

In summing up the above, we emphasize that both the Treaty of Lisbon and the law adopted by the institutions of the Union in the exercise of the powers conferred upon it take precedence over the law of the Member States, and the latter must take all the general and specific measures necessary to ensure the fulfilment of the obligations arising from the Treaties or from acts of the institutions of the European Union.

In general, regarding the application / implementation of European Union law, we must distinguish between the application of European law by the European Union institutions and its application by the Member States, the first situation being the exception and the second rule. According to art. 291 para. 1 of the TFEU is a matter for the Member States to implement European Union law in the sense that they are required to take all necessary measures of national law to implement legally binding Union acts. Here we must distinguish between the direct application and the indirect application of European Union law by the Member States. In the case of *direct application* by Member States, we mention the rules resulting from primary law, regulations and decisions, acts that can be applied directly. In this respect, the general rule is the uniform application of European law in all Member States, excluding the different treatment accorded to the same categories of persons. In other words, a national provision cannot unduly complicate or make impossible the application of the European rule, at the same time the provisions of national law governing the procedure for the application of European law cannot be more disadvantageous than those governing national cases. *Indirect application* is made by internal regulatory acts implementing the directives, the procedure being that provided for by the national law of each Member State, but even in this case the principle of priority of European Union law must be respected.

According to art. 52 (1) of TEU, the Treaties apply in the Member States listed in this Article, and the territorial scope of the Treaties covers, in principle, the territory in which the Member States exercise their sovereignty (http://eur-lex.europa.eu). The scope of the Treaties may be reduced when a Member State withdraws from the Union. In this context, we can mention the case of the United Kingdom, which decided in a national referendum on 23 of June, 2016, to withdraw from the European Union, leaving the European Union on 31st of January, 2020. At the same time, an extension of the scope of the Treaties by the accession of new Member States to the Union can be made. In this respect, each acceding State is obliged to transpose into national law the regulations resulting from the founding treaties, as well as those from the secondary legislation of the European Union. Upon accession to the European Union, States shall adopt legal, constitutional or other provisions, which favour this application by granting a specific regime to European Union law, so that national courts may apply the rules of European law without restriction.

Finally, we specify that European legislation creates a specific legal order that integrates into the national legal order. From this integration arises the impossibility of prevailing a subsequent national norm contrary to European law. Any other solution would deprive European law of its uniform application, as it would vary according to the subsequent national law of each Member State. A differentiated application by each Member State would lead to discrimination based on nationality / citizenship, discrimination which is prohibited by express provisions of European law.

III. CONCLUSIONS

Following the analysis, we highlight the fact that the legal order of the European Union is distinct from the legal order of the Member States and the international legal order, being autonomous, original and with its own characteristics. The most important feature of the EU legal order is that it is integrated into the legal systems of the Member States, being governed by the principles of the immediate applicability of European law, the direct effect and the priority of European law over the law of the Member States.

We also note that the autonomy and originality of the legal order of the European Union does not exclude collaboration with national legal systems, which is expressed mainly through the participation of state authorities in the implementation of European Union law.

The Community of European Union law and the legal order on which it is based can survive as long as the two pillars on which it is based, namely the direct applicability of Union law and its supremacy over national law, ensure that this legal order is respected and defended. These two principles, the existence and maintenance of which is constantly upheld by the Court of Justice, ensure the uniform and priority application of Union law in all Member States. To that end, the Member States are required to repeal the national rule incompatible with European law and, until then, to leave that provision inapplicable.

For States that subsequently accede to the European Union, the principles governing the relationship between EU law and the law of the Member States are binding in accordance with the provisions of the Accession Treaties and, after accession, as a result of the founding treaties to which they are signatories.

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