THE USV ANNALS OF ECONOMICS AND PUBLIC ADMINISTRATION | VOLUME 16, ISSUE 1(23), 2016

INTERNATIONAL AND EUROPEAN LAW PRINCIPLES

Lecturer PhD Student **Dumitriţa FLOREA**
"Ştefan cel Mare" University, Suceava, Romania
Faculty of Economics and Public Administration
dumitritai@seap.usv.ro

Lecturer PhD **Narcisa GALEŞ**
"Ştefan cel Mare" University, Suceava, Romania
Faculty of Economics and Public Administration
narcisam@seap.usv.ro

Abstract:
We live nowadays a posteriori establishment through institutional treaties and a well-built jurisprudence that set up some of the general treaties. The structure of the European Union as well as the particular nature of the community legal order led to the establishment of some general principles, such as the principle of the institutional balance, the principle of solidarity between member states, the principle of primacy, the principle of the immediate and direct effect of the European law. It is certain that the legal order of the community law has its basis in the legal order of the International public law from which it has continuously delineated. The European communities, as subjects of the International public law are obliged to comply with the general International law, its fundamental principles and its bases, leading to some obligations capable to produce effects in the community legal order.

The Court Of Justice of the European Union established as principles applicable in the European law the principles of the International public law, especially when it was called to assert regarding the International relationships of the Community as well as those of the 28 member states, confirming in the matter of the applicability of the treaties, the pacta sunt servanda rule, the principle of the good faith, the legitimate faith or the rebus sic standibus exception, all of them belonging to the custom International law.

Key words: international law, international relationships, sources, general principles, European law.

JEL classification: K 33

INTRODUCTION

From the historical point of view we can say that international law has emerged with states and between them implicitly. For a long time the states have been considered the only actors in the international community, but starting with the nineteenth century there have apperared other subjects of international law - international intergovernmental organizations - as a result of the technical progress and the development of cooperation between states. However, following the breakup of the colonial system it was outlined a new entity as a subject of international law, namely the peoples or nations striving for independence. The state remains at present the main topic, original and fundamental of international law, while international organizations are derived subjects, atypical of international law being created by states on the basis of their willingful agreement and the peoples or nations fighting for liberation are limited and temporary subjects of international law until the new states are created and then become the main topics.

As a sovereign entity, the state has a decisive role in the development of the international relationships. We remind that international law is created based on the willingful agreement of the states expressed by the treaty, custom and other sources of law for the purpose of monitoring the relationships between states. We conclude that states are not only international law favourite designers, but addressees of the rules created by the treaties and other sources of international law. By their conduct, states commit themselves to comply with and apply the rules thus created. The expression of the law is done in the specific norms recognized by the international society as sources of law. By international law sources it is understood those in legal means of expression of rules resulting from the willingful agreement of states. The practice of international relationships has created throughout history, and the science of law alledged several categories of tools whereby

certain norms of the human society receive the character of international law or throughout which new such rules are created.

A list of domestic sources of law was accomplished for the first time through the Status of the Permanent Court of Justice in 1920 and taken over subsequently by the Status of the International Court of Justice. Art. 38 of the Status states that, in solving the international disputes which are being submitted, according to the international law, the Court will apply: the international conventions, general or special, which set the rules expressly recognized by the disputed states, the international custom, as proof of a general practice rightly accepted, the general principles of law recognized by civilized nations, the legal decisions and the doctrine of most qualified specialists in the international public law of the nations, as auxiliary means for the determination of rules of law, to which one can add also equity (*ex aequo et bono*) which is not a source of law itself, but it represents an alternative source to the role of adapting the international legal norms to individual situations, of filling in some gaps. Equity can be also defined as a procedural means that allows the application of a set of principles and ideas which help to distinguish between just and unjust in in the international legal order.

The increased movement of current international scale of the events facing the international community today, the recent conflicts which erupted in the world (see conflicts in Tunisia - 2011 Egypt - 2013 Ukraine - 2014 Israel - 2015 Turkey, Syria - 2015) reveal a series of actions and require firm and urgent action in order to regroup forces, positions and common interests to ensure global peace and security. All these tensions and negative events developed under the form of conflicts already open extrapolated worldwide are likely to launch the question whether the international community is prepared to face the third scourge and if it is prepared to intervene to restore international peace and security. Precisely for this reason, the rules of international law, the principles and its mechanisms must act and require more power and efficiency, through diplomatic and peaceful means, giving up force for world peace and security of the states.

I. GENERAL PRINCIPLES OF EUROPEAN LAW

The study of Community law as a branch of public international law without taking into account the historical circumstances, the political and economic developments that have marked its evolution would be very difficult and, at best, would only lead to a limitted understanding of the subject. The historical approach provides the necessary perspective to highlight the features of the Community system. After the Second World War, it was obvious that the atrocities and chaos were not to be repeated. In addition, the distrust of Germany and the vulnerability of a divided Europe from the Soviet Union needed a solution for establishing the lasting peace between the European states (1). This solution, which flows from the idea of the European unity, proved to be the creation of the European Communities or the European Union of today, as the fruit of a complex and continuous process.

The principles have emerged and developed in the relationships between states with the evolution and development of international law, along different historical periods, reflecting the socio-economic conditions and requirements corresponding to those periods. Both the number of principles, their content and their scope of application are in a constant development (2).

We know as belonging to the Community law the following types of sources: primary sources - represented by the institutional treaties and modifying subsequent documents; derived sources - regulations issued by the Community institutions within the powers they have been assigned, i.e. regulations, directives, decisions, recommendations and opinions; complementary sources - derived atypical acts such as acts concerning agreements with third countries or international bodies and some treaties concluded by Member States with third countries; sorces resulting from international agreements to which the EU is a party; unwritten sources - general principles of Community law, Community custom and methods of interpretation emerged from the jurisprudence of the Court of Justice of the European Union.

We consider that the expression of the normative jurisprudence is given by the general principles of law that are generally unwritten rules of law to which the Community judge recognizes a general normative value, and consequently, he/she applies even in the absence of an expressed text (3).

We mention that, obliged to comply with the general principles of law are the European institutions under the penalty of nullity of the documents issued, the Member States in their decisions falling within the scope of European law and national jurisdictions. Enshrining the principles of European law, the ECJ draws on the recognized rules of law, the doctrine and the jurisprudence of the Member States (4). The Court of Justice has ruled over time clear expressions of such principles and has therefore drawn so many general principles of law which it applied, including: the principle of effectiveness in matters of the interpretation of treaties, the contradictory character of the court, the conciliation of the proper administration of justice and the security of legal relations, the rules of the intertemporal law, the conditions of the unilateral withdrawal, the unjust enrichment concept of an undertaking or the general conditions of ownership etc .. All of these principles are ordered in an uniform body of law in what it is called community law.

II. CLASSIFICATION OF THE PRINCIPLES OF THE EUROPEAN LAW

Compliance with the body oprinciples hereby constituted binds both on Community institutions and bodies and Member States, the latter when the national regulations are placed under Community law. In the specialised literature, the body of principles was classified according to several criteria which differ not by content but by name. One of the classifications identified by Augustin Fuerea is as follows:

- principles arising from the very nature of the Communities;
- principles of international law;
- principles deduced from the law of the Member States (5).

According to other experts, the principles were classified as follows: principles regarding the division of powers, the institutional balance, in choosing the legal basis; general principles of law which include the principles inherent in any organized legal system, the general principles common to the national laws of the Member States and the principles derived from nature of the Communities (6).

In another order, they have been identified and named by some Romanian specialists as follows:

- principles governing the institutional activity;
- the General principles common to the laws of the Member States;
- the principles regarding the nature of the Communities;
- the principles of Community law relating to the integration in the international legal order;
- the General principles concerning the powers of the European Communities.

Another author (Roxana Munteanu) classifies the general principles of law integrated in the Community law as follows:

√ principles inherent in any organized legal system, which include the classic general principles: the principles of procedural fairness and the principle of legal certainty;

√ the general principles common to the laws of the Member States, including: the principles regarding the revoking of the administrative acts generators of subjective rights, the principle of equality before economic regulation, the principle of unjust enrichment, the principle of hierarchy of norms, to the extent that it underlies the distinction between rules and implementing measures, the principle of confidentiality of correspondence between lawyers and clients, the principle of the law of the enterprises on the secrecy of their business;

√ the principles derived from the nature of the Communities, which are divided into: (a) principles of institutional order, such as the general principle of solidarity of the Member States,

the general principle of constitutional balance and (b) principles inherent in the concept of the market, such as the principle of the non-discrimination, of the equal treatment, of the proportionality, of the the Community preference (7).

Another author (Ovidiu Manolache) classifies them into: general principles of law in the protection of fundamental human rights, respect for the rights of defense of res judicata, the principle of legal certainty, equality, proportionality, loyalty. The principles derived from the nature of the communities are also called constitutional principles, because they follow from the interpretation of the treaties, to specify and supplement them.

III. PRINCIPLES OF INTERNATIONAL LAW

The principles of international law have found their way into the Community law all through the jurisprudence of the Court of Justice, but only those compatible with the Community legal order. The principles deduced from the law of the Member States represent the most substantial category of general principles underpinning the law of the Member States. Being also established by the jurisprudence of the UECJ and the Court of First Instance these principles require a more detailed explanation.

The first category of principles, resulting from the nature of the Communities is made up of:

- the principle of solidarity and equality between Member States;
- the principle of institutional balance;
- the principle of the respect for the powers and competences conferred by the Treaties;
- the principle of free movement;
- the principle of free competition;
- discrimination;
- the principle of the Community preference.

The second category that the principles of international law, includes:

- the principle that opposes to the fact that a state refuses to its own citizens the right to return and to live on its territory;
- the principle of territoriality.

The other category of principles (principles deduced from the law of the Member States) is made up of: the principle of legal certainty; the principle of legitimate expectations; the principle of acquired rights; the principle of proportionality; the principle of equality; the principle of good administration; the General principles of procedure.

Some of these principles could be explained as follows:

- the principle of superiority of Community law - basically implied by the nature of the Communities –on the national law of the Member States means that in a conflict of inconsistency or incompatibility between Community law and national law, the former prevails to the second;
- the principle of legal certainty - inferred from the law of the Member States - is based on the idea that the law has a certainty for all: Community institutions and bodies, Member States and individuals. For this cause, the component rules must be clear, precise, predictable for the litigants, effective and reliable. Entering into this retroactivity principle can be noticed for instance in the administrative provisions or principles of good faith;
- principle of the legitimate trust is based on the trust that those administered have in the legal standard, in maintaining a regulations whose change would affect them.

In practice, these principles are to be found most often together.

- the principle of proportionality requires that there is a proportionality between the interventions of the Community or national authorities which should be limited to the pursuit of the Community objectives. In other words, it must be respected "a fair proportion" between the aims pursued by the Community institutions or the Member States and the means used to obtain them. This principle requires, for example, that a sanction of a Community obligation does not exceed

the necessary limits to the objective sought and the free movement of persons, not to be put disproportionate conditions for exercising the right to housing, and the like;

• a principle which finds its formulation in clear terms in a treaty, in this case in the 1992 Maastricht Treaty entered into force in 1993, is that of subsidiary (Articles 313 B1). According to this principle, the European Community acts only to the extent that the objectives will be better achieved at the Community level than at Member State level. In other words, only what can not be done at Member State level or can not be *better* done at this level should be made at Community level.

The meaning attributed to the subsidiarity principle was that decisions should take place at the lowest possible level, in other words, higher levels should support lower ones to their responsibilities. The Maastricht Treaty gave a major role to this principle, under two aspects: substantive and procedural. The 2007 Lisbon Treaty completes the meaning of the subsidiarity principle in art. 3b al. 3 stating that: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action can not be sufficiently achieved by the Member States either at central level or at regional and local level, but given the scale and the effects of the proposed actions, they can be better achieved at Union level " (8). The Union institutions apply the principle of subsidiarity in accordance with the Protocol on subsidiarity and proportionality. The national Parliaments ensure compliance with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol.

CONCLUSIONS

The Lisbon Treaty legally reiterates enhanced by some elements existing in the European law and codifies the principles recognized in the EUCJ practice, bringing also some innovative elements. The Treaty redefines many of the principles governing the proper functioning of the Union such as the principle of the conferred powers, the principle of subsidiarity and proportionality, the principle of the prevalence of Community law over national law. This last principle operates under its recognition by the EUCJ compared to other principles that were established by the Treaties. On the other hand, there are stipulated by the treaty of the member states the shared values underpinning the European Union and there are also equipped the principles which Member States say they will prevail in their own national legal systems.

ENDNOTES

(1) Tudorel Ștefan, Beatrice Andreșan-Grigoriu, *Community Law,* C.H. Beck Publishing House, Bucharest, 2007, p. 1
(2) Dumitra Popescu, Florian Coman, *International public law*, The Minister of Internal Affairs Publishing House, Bucharest, 1993, p. 61.
(3) Raluca Bercea, *Community Law. Principles,* C.H. Beck Publishing House, Bucharest, 2007, p. 2.
(4) ECCJ, February 1957, Algery c. Common Assembly of ECCA, af. 7/1956. By making reference to the same principles, the Court uses expressions such as: „ General principles common to the Member States", „ the general principles generally recognized by the Member Stats law", „ the common principles of the legal systems of Member States".
(5) See, Augustin Fuerea, *European Community Law. General Part*, All Beck Publishing House, Bucharest, 2003, p. 141-142.
(6) Jean Boulouis, *Droit institutionnel des Communautes europeennes*, Paris, 3-e edition, 1991, 4-e edition 1994.
(7) Roxana Munteanu, *European Law*, Oscar Print Publishing House, Bucharest, 1996, p.131.
(8) http://www.consilium.europa.eu/uedocs/cmsUpload/cg00014.ro07.pdf, Lisbon Treaty.

BIBLIOGRAPHY

[1] Augustin Fuerea, *European Community Law. General Part*, All Beck Publishing House, București, 2003

[2] Dumitra Popescu, Florian Coman, *International public law*, The Minister of Internal Affairs Publishing House, București, 1993
[3] Jean Boulouis, *Droit institutionnel des Communautes europeennes*, Paris, 3-e edition, 1991, 4-e edition 1994.
[4] Raluca Bercea, *Community Law. Principles*, C.H. Beck Publishing House, Bucharest, 2007
[5] Roxana Munteanu, *European Law*, Oscar Print Publishing House, Bucharest, 1996
[6] Tudorel Ștefan, Beatrice Andreșan-Grigoriu, *Community Law*, C.H. Beck Publishing House, Bucharest, 2007, p. 1.
[7] www.consilium.europa.eu/uedocs/cmsUpload/cg00014.ro07.pdf, Lisbon Treaty