The juridical nature of the European Court of Justice and the principles of its activity

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Abstract

The European Union is a reality closer and closer for Albania as well. The status Albania obtained as a candidate country, not only means a step forward towards the European Union, but it also sets forth a number of challenges to be solved such as, freedom, property, democracy, human rights, the fight against organized crime and corruption etc. Under these circumstances, the analysis of the issues that have to do with the European Union is of a great importance, as in the near future, Albania is designated to join the great European family.

The scope of this work is to analyze tow important aspects that have to do with one of the most important institutions of the European Union, such as the European Court of Justice. The first aspect of this work, which is also its first subject, refers to the juridical nature of the European Court of Justice. Analyzing this topic, we shall see that this Court, as per its nature, contains elements of different courts, thus, presenting similarities with the Constitutional Courts of Member States, civil courts, criminal courts, administrative and labour courts and with other international courts as well. However, despite the similarities it presents with other courts, the European Court of Justice is a court of a special kind, "sui generis", exactly as the European Union is, thus, an organization of a special kind.

The second aspect of this paper, which is also its second issue, analyses the fundamental principles where the European Court of Justice bases its activity. The most important principles are that of equality and non discrimination, the principle of protecting and guaranteeing the human rights, the principle of access before the court or the right to address the court, the principle of legality as well as the principles of proportionality and subsidiarity.

In this work, especially in the second part, there shall be presented several decisions of the European Court of Justice as well, that have to do with its interpretation on the dispositions of the establishing Treaties as well as the analysis of the above mentioned principles. At the end of this work, there will be given its conclusions as well as the bibliography where it is based on.

Keywords: european integration; juridical nature of the European Court of Justice; the principle of legality; the principle of proportionality and subsidiarity and the principle of respecting the human rights

Introduction

The Court of Justice of the European Union, considering its jurisdiction and competences, is one of the most important institutions as it serves for the implementation of control within the institutions. The controlling aspect of this Court appears in several directions, which also constitute a great part of its jurisdiction. Thus, for instance, when the Court reviews and gives rulings regarding actions brought before it that have to do with the legal validity of the acts issued by various EU institutions such as the European Commission, Council or the European Parliament, certainly, in these cases, it exercises important competences of control and balance, among the institutions. In addition, when this Court reviews claims regarding the failure to act of different institutions of the EU, in these cases, it exercises the competence of control on the way how different institutions of EU should act.

As far as the control of administrative acts of the institutions of the EU is concerned, we should be aware that the Court of Justice exercises that function in accordance with the legal norms anticipated by the Treates of the EU themselves, according to the competences it is given and consequently, it cannot act arbitrarily or subjectively. This implies that even the European Court of Justice obeys the rules and principles as all other institutions of the EU do. Those rules have to do with the cooperation, respect and reciprocal control towards each other.

Regarding the controlling functions of the Court, as we shall see below, we should take into account another important fact as well, which is related to the juridical order of the EU. From this point of view, the legal order of the EU consists of two important categories of juridical norms:

Firstly: The legal norms promulgated or sanctioned by the fundamental Treates, which are also known as primary or original sourses of the European Law and

Secondly: The legal norms issued by the institutions or organisms of the EU, which are are the so-called secondary or deriving sources of the law.

In reference to the Treaty for the EU and that for the EU Functioning, it results that the European Court has competences of control, thus, it has competence or jurisdiction to examine and consequently, to abolish or change only juridical acts that belong to the group of secondary sources of the European Law. Whereas, regarding the change or/ and abolishment of the legal norms that are part of the primary sources of the law, this Court has no jurisdiction, but, such a right has been given to the member states of the EU, as an international organization of a special kind called “sui generis”.

Despite the controlling role of the European Court of Justice in relation to the acts and norms issued by the institutions of the EU or even in relation to the entire juridical

activity of these institutions, it should be stressed that, according to the Founding Treaties and other treaties in force, this is not the main role given explicitly to this institution. To the contrary, since the establishment of the Founding Treaties, as well as the current treaties, it is anticipated that the main role of this court is *to guarantee the respect of law in accordance with the implementation of the Treaties*. Such a role is given explicitly to the European Court of Justice by the Treaty for the EU in which the organs that constitute this institution are defined.[1]

If we analyze the content of this legal norm we can notice that the European Court of Justice consists of three organs:

- The Court of Justice;
- The General Court and
- Specialized Courts that might be formed with the proposal of the Court of Justice by the Council and we should mention that until now only the Court of Civil Service has been founded and is functional.

The juridical nature of the European Court of Justice.

Understanding its nature as one of the institutions of the EU is difficult, as, observing its jurisdiction and competences, it shows elements of another kind of Court, depending on the concrete case it reviews. Thus, the European Court of Justice contains the elements of a Constitutional Court, in cases it reviews disputes within various institutions of the European Union or when it gives an opinion on whether an international agreement that is to be signed in the future by the European Union, is in compliance with the European law or the European legal order. On the other hand, this Court presents the elements of an international court when it examines the claims against Member States due to their failure to meet the obligations arising from treaties. It also presents the elements of an administrative court when considering lawsuits dealing with acts issued by other institutions of the European Union, whether or not they are compatible with EU law.

This Court has elements of a civil court, when it reviews the various claims for damages that may arise against the institutions of the Union or the Member States, as well as when interpreting the Brussels Convention "On the enforcement of judgments in civil and commercial field" or when it reviews issues relating to the free movement of persons and equal opportunities. It presents the elements of a criminal court, when it examines the decisions of the Commission imposing penalties against Member States, for failure to comply with the obligations arising from treaties.

[1] Point 1 of article 19 of the Treaty on the EU defines:*"The Court of Justice of the EU, includes the Court of Justice, the General Court and the specialized courts. It guarantees the respect of law in the interpretation and implementation of the Treaties".*

Despite the fact that the European Court of Justice displays *simultaneously*, elements of different courts, such as the Constitutional, administrative, civil and criminal Court, from the point of view of its nature, it can not be considered, that it meets complessively the elements of each court separately in the classic sense. Thus, this Court can not be considered a Constitutional Court of the European Union, not only because it has never been given such a status by the founding treaties and the European legal order, but also because the competences and procedures it applies have a fundamental difference with the competencies and procedure each Constitutional Court of the member states of EU follows. This Court can not be considered a Constitutional Court of the Union, for another basic reason as well; the fact that the European Union itself, does not constitute a federal or even a unitary state and therefore, not being a state in terms of international law, it can not have its own Constitutional Court.

The European Court of Justice can not be considered as an international court, despite several elements it contains, as it operates within a particular organization such as the European Union, which operates only within a certain number of states European, currently 28 countries and within a given legal order such as European law. In this regard, this Court, presents fundamental differences compared to international courts such as the International Criminal Court or the European Court of Human Rights.

At the same time, it can not meet all the features that represents an administrative court in order to be considered as such, as the subjects presented by it are different from the subjects or entities that appear before an admistrative court, where, a party in every case appears to be the state while before the European Court of Justice as subjects appear not only Member States, but also various institutions of the European Union, as well as the citizens of the Union. In addition, this Court does not fulfill all the qualities in order to be called a civil or criminal court, in the classical sense, given the quite different jurisdiction that it has in this case, compared with the criminal or civil courts of the Member States. A criminal court as an internal order includes in its jurisdiction the trial of offenses in order to conclude whether a person is innocent or guilty determining the degree and kind of punishment in cases where the person is found guilty, whereas the jurisdiction of the European Court of Justice, when acting as a criminal court deals with adjudication of the claims of countries presented to the European Commission, on the fines set amongst them.

The same conclusion can be drawn on cases where this Court acts as a civil court. Even in this case, it does not meet all the elements in order to be considered as such in the classical sense, as, the jurisdiction of a civil court as an internal order, proceeds with the review of civil disputes and other disputes that arise between or among different entities of the law, while the jurisdiction of this Court takes into consideration only a part of civil disputes and particularly those delegated to the European Union by the Treaties. In addition, the procedures and effects of the decision are completely

different as well, compared to the procedure and the effects of civil judgments given by the domestic courts.

Given the above analysis, we can conclude that the *European Court of Justice, is a special kind of court "sui generis". It constitutes the judicial organ of the European Union, whose jurisdiction is to ensure the respect of law through the interpretation of treaties, or in other words, to provide the European legal order and interpret EU law.*

Regarding the legal nature of this Court, by different authors we are given various opinions according to which this court except from being considered as one of the institutions of the European Union, it can also be considered as an international court, in cases when it settles disputes among states or among the EU and its member states.[2] This assessment, in my opinion, is not correct, because as explained above, I think, the European Court of Justice does not fulfill all the qualities to be considered an international court because it operates within the framework of a particular organization, such as the European Union, as well as within a given legal order, such as the European law.

Another feature that has to do with the nature of this Court is that, no special bodies responsible for the execution of the judgment decisions within the European Union are provided either in the treaties or other legal norms that make up the entire European legal order. The execution of the Court decision is anticipated to be a competence of internal organs of the Member States, which must take concrete measures for their execution.

It is true that the execution of the decisions of the European Court of Justice, which is done by the internal organs of the Member States is not left to the free will of the State against which a decision is made. In the case that addressed State in the decision does not apply it, the European Commission takes action against the state, setting a fine, until the execution of its decision. However, the lack of provision of executive bodies within the European Union, as special institutions responsible for the execution of the decisions of the Court,, can lead to a possible delay of the execution of its decisions and this fact constitutes one of the features that this Court presents, in comparison to the courts of internal order.[3]

[2] For more read: Pocar; Fausto; *"The European Communities Law"*, Publisher *"Logoreci"*, Tirana 1995, page 117.

[3] It should be emphasized that, the lack of provision of internal bodies of European Union that would deal with the execution of decisions of the European Court of Justice, is not a simple matter and has nothing to do with a legislative shortage or negligenceof the European legal order. The provision of specific bodies within the Union, which will deal with the execution of the decisions of this Court, is above all a matter of political will of member states and has to do with the withdrawal from this part of their sovereignty that has to do with execution of judgments of the European Court of Justice. Until now the European Union member states are not reluctant to give up this part of their sovereignty and therefore, the establishing Treaties or other legal norms of the European Union have not provided specific organs Union which have the competence to execute the decisions of the European Court of Justice (Author's Note).

Another issue related to the legal nature of the European Court of Justice, *is the question of the law it is obliged to implement.* Referring to the provisions of the Treaties establishing legal and other regulations in force, there is no exact provision, which shows the right or the law that should be applied by the judges of this Court, in the cases they might review a concrete dispute.[4] Article 19 of the Treaty on European Union provides only that the Court guarantees the respect of the law in the interpretation and application of the Treaties.

Despite the fact that, in the treaties, there is no specific provision to determine the right where, the European Court of Justice should base its decisions, w*e can conclude that the sources of law, or legal norms, where it must base its decisions are as follows:*

- the provisions of the Establishing Treaties that after the Lisbon Treaty which entered into force on 1 December 2009 are three; the Treaty on European Union, the Treaty on the Functioning of the European Union and the European Atomic Energy Treaty (EUROATOM);
- different protocols that were attached to the treaties, which have the same value as well as the Treaties themselves are their component parts ee;
- international agreements ratified by the European Union with third countries;
- normative acts of the institutions of the European Union;
- general principles of law and customary norms and morals, when lacking other sources mentioned above.

The basic principles of activity of the European Court of Justice.

a) The principle of legality

This principle constitutes the most important principle on which the entire activity of the European Court of Justice is based. The principle of legality, is associated with the function itself this court has, as one of the EU's institutions, as it is defined in Article 19 of the Treaty on European Union. This provision has explicitly provided that, *the European Court of Justice guarantees respect for the law in the interpretation and implementation of the Treaties.*

The principle of legality, should be analysed in two main aspects:

Firstly: As an obligation for all member states of the European Union, for all citizens of the EU, and the European Union institutions themselves to behave and act in accordance with the European legal norms or European law;

[4] For more read: Pocar; Fausto; *"The European Communities Law", Publisher "Logoreci", Tirana 1995, page* 119.

Secondly: As an obligation as well for the European Court of Justice itself, which, when reviews and adjudicates disputes that are within its jurisdiction, to base its decisions on the European legal norms and general principles of international law.

Given the fact that the principle of legality, is applied by the European Court of Justice in any case, a more comprehensive analysis of this principle, shall be presented in this article when each case within the jurisdiction of this Court is analysed separately. In this part of the paper, it is important to emphasize the fact that this principle constitutes the basic principle of the operation of the European Court of Justice, a principle that, not only is it sanctioned by the issued decisions, but is also expressed in the specific provisions of the Treaty on European Union.

b) The principle of devolution

This principle is among other basic principles which, the European Court of Justice bases its activities. The above principle is related to the legal nature of the European Union as a subject of law and therefore, should be taken into consideration by the Court during its activity.

Regarding this fact, it should be noted that, in order to clarify the legal nature of the European Union, it is not an easy task and it would take many pages of analysis, however, such analysis is not the subject of this topic. Nevertheless, regarding the juridical nature of it, we should mention that it is not a federal state, in the complete sense of the concept. On the contrary, by the way how it is organized and operates, the European Union can be considered an international organization, with elements of a federal state, especially when it comes to economic and monetary matters.

One of the aspects that allow its character to be viewed more clearly as an international organization, is the principle of devolution. This principle is explicitly defined in paragraph 1 of Article 5 of the Treaty on European Union, which states: *"The limits of the Union competences are regulated by the principle of delegating".*[5]

The principle of devolution is very important and should be taken into consideration in each case by the European Court of Justice, because, precisely on the basis of this principle the jurisdiction or area of its activity is determined, as well as for all institutions other European Union. Every decision of this Court, should be made within the powers delegated to it by the Establishing Treaties and within the scope of its activity, otherwise, its decisions shall have no value and will not be obligatory.

Given that the principle of devolution is a very great importance, the Establishing Treaties themselves, have determined the meaning of this principle. The Treaty on European Union stipulates that, *according to the principle of delegation, the European*

[5] For more read article 5 of the Treaty on EU.

Union acts only within the limits of competence that the Member States have delegated to it by the Treaties and only for achieving objectives set by the Treaties, whereas, the competences not given by the Treaties to the Union, belong to the Member States remain.

Based on the principle of delegation of powers, referring to the Treaty on the Functioning of the European Union, we can distinguish three categories of competences of the European Union:

i. exclusive competence;

ii. common competences

iii. separate competences.

i. By exclusive competence we imply those areas or issues, in which only the European Union has the right to issue general obligatory legal acts, whereas, Member States can do so only if such a right is given to them by the European Union or in the framework of the implementation of acts issued by it.[6]

According to the Treaty on the Functioning of the European Union, the exclusive powers of the Union include the following areas:

- Customs union;
- Establishment of competition rules necessary for the functioning of the internal market of the European Union;
- Monetary policy for Member States whose currency is the euro;
- Preservation of the biological marine resources in the framework of a common policy for fishing;
- Common commercial policies tregtare.[7]

In addition to the above mentioned areas, the EU has exclusive competences on international agreements as well with one or several other international organizations outside EU, in case that one of these conditions is fulfilled:

- the accomplishment of an international agreement is provided by an legislative act of the European Union or
- the accomlishment of an international agreement is necessary to enable the European Union to exercise its internal competences or

[6] Point 1 of article 2 of the Treaty on the Functioning of European Union defines: *"When the Treaties give the exclusive competence at a certain area to the Union, only the latter can approve the legislation and acts with obligatory power, while the Member States can do such a thing only if this right is given to them by the Union or in order to apply the acts of the latter".*

[7] For more read: Point 1 of Article 3 of the Treaty on the Functioning of the EU.

- the accomplishment of an international agreement could affect or change internal norms of the EU.[8]

ii. By common competences we imply those areas or issues for which the right to issue obligatory legal acts is given either to the European Union or/ and the Member States, however, the legal acts can only be issued by Member States in the cases that the Union has not issued these acts or when it does not exercise its powers. As common authority, there may also be considered areas where the EU has competence to perform certain actions to support, coordinate and supplement the actions of Member States.

According to the Treaty on the Functioning of the European Union, the Union can perform supporting activities, coordinating and complementary to the Member States, in one or several of the following areas:

- The protection and improvement of human health;
- Industry;
- Culture;
- Tourism;
- Education, vocational training, youth and sport;
- Civil protection;
- Administrative Cooperation [9]

iii. By separate competences, we imply the areas or issues where obligatory legal acts, may be issued by both Member States and the European Union, however their disclosure is made in accordance with the right given to each of them in the establishing Treaties of the European Union and the internal legal order of each Member State for the Member States. According to the Treaty on the Functioning of the European Union, there are separate competences between the European Union and the Member States in the following areas:

- Internal market;
- Social policy aspects defined in the establishing Treaties;
- Economic, social and territorial cohesion;
- Agriculture and fishing, excluding the conservation of marine biological resources, which is an exclusive competence of the Union;
- Environment;
- Consumer protection;
- Transport;

[8] Point 2 of article 3 of the Treaty on the Functioning of the EU anticipates: *"The Union has also the exclusive competence for the conclusion of an international agreement when its connection is provided by a legislative act of the Union or the need to enable the Union to exercise its internal competence or to the extent of its connection can affect domestic norms or to change their object.*

[9] For more read: Article 6 of the Treaty on the Functioning of the EU.

- Trans-European networks;
- energy;
- The area of freedom, security and justice;
- Common safety concerns on public health issues.[10]

According to the principle of devolution, we should mention that the European Court of Justice has jurisdiction and can only decide on matters which are part of the exclusive competences of the European Union, common competences and separate competences, however in the case of separate competences, only for those areas where the estavlishing Treaties recognize the right to issue obligatory legal norms to the Union. While, for separate competences, which according to the establishing Treaties and the local law of the Member States, the right to issue legal obligatory norms, is given only to Member States, while the European Court of Justice, has no jurisdiction and competence to decide on these fields, but such a right is exercised by the domestic courts of member states.

c) The principle of proportionality

This is another important principle on which the European Court of Justice bases its activities. Given the importance that represents this principle is provided explicitly in the treaties, where it is defined that, every act and deed of the European Union and its institutions should not exceed the limits that are necessary to achieve the objectives of Union. Thus, according to the principle of proportionality, there should be a line between the means used to achieve certain goals and the intended goals themselves.[11]

The principle of proportionality means that every action of the European Union itself and its institutions, in terms of both, the form and content, should be within the limits that are necessary to achieve the objectives that action is taken for. In this case, not only the content the action is important, by which the rights to certain subjects might be violated, but also its form, because in some cases, the rights may be affected not only by the content of the action but even by its form.

The principle of proportionality presents special characteristics in its application and therefore there is no general rule to determine whether this principle is respected or not. The verification of the fact of the application of this principle is made by the European Court of Justice, case by case, depending on the specific case.

Given the specifics that this principle represents, according to the special protocol for its implementation, where, in the establishing Treaties themselves it is defined that

[10] For more read: point 2 of Article 4 of the Treaty on the Functioning of the EU.

[11] Point 4 of the article 5 of the Treaty on the EU: *"According to the principle of proportionality, the content and form of the action of the Union should not exceed the limits of what is necessary to achieve the objectives of the Treaties".*

the European Union institutions apply the principle of proportionality, as it is provided by the Protocol on the application of the principles of subsidiarity and proportionality. According to this protocol, all draft legislative acts, must be analysed whether they are in accordance with the principles of proportionality and subsidiarity. For this purpose, every draft act should contain a detailed *Declaration* which enables the assessment of compliance with these principles.

The Protocol also establishes that the above Declaration should contain certain estimations in connection with the financial effects of the proposal, as, for instance, in the case of a Directive it should contain its effects regarding the approval of legal norms by Member States, including where necessary the local legislation as well. *In compliance with the principle of proprocionalitetit, the reasoning that leads to the conclusion that a certain goal can be better achieved by a legislative act of the European Union than with the legislation of the Member States should be based on qualitative and quantitative indicators. In addition, the draft legislative acts need to take into account the need to minimize and keep in proportion to the target any financial or administrative burden that falls either on the European Union or the Member States, the regional and local authorities or the economic operators or even the citizens of the Union Evropian.*[12]

The principle of proportionality, as one of the basic principles on which the activity of the European Court of Justice is based, when it reviews cases belonging to its jurisdiction, except from the fact that it is anticipated by the establishing Treaties and by a special protocol, it is also sanctioned within its judicial practice, the decisions it has taken for the review of concrete issues. From these decisions it is worth mentioning the *case no. 114/76 Bela-Mühle vs. Groës Farm (1997) ECR 1211,* where this Court in relation to this principle, among others has concluded that: *"... it should be sure whether the means used are appropriate for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it. Further... if a measure is manifestly unsuitable for the object the competent institution seeks to pursue, this may affect its lawfulness.... "..*[13]

d) The principle of subsidiarity.

Another important principle that should be taken into account by the European Court of Justice during its function, is the principle of subsidiarity. The meaning of this principle is defined in the establishing Treaties themselves*, according to which, based on the principle of subsidiarity if an issue is not included in the exclusive area of the European Union, the latter acts only if the objectives of the proposed action can not be be sufficiently achieved by the Member States or when these objectives can be better*

[12] For more read: Article 5 of Protocoll (nr. 2) *"On the impòementation of the principles of subsidiarity and proportionality".*

[13] For more read: Desicion of the European Court of Justice, case nr. 114/76 Bela-Muhle vs Grous Farm (1997) ECR 1211

achieved at the level of the European Union taking into consideration the scale or the consequences of proposed action.[14]

Referring to the meaning of the principle of subsidiarity as given by the European Union, we can conclude that, in order to apply this principle, certain conditions must be met:

Firstly: the specific case should not be part of the exclusive area of the European Union, as, if a certain issue belongs in the exclusive area of the Union, this principle is not applied since the case is fully regulated with legislative acts of the European Union, by excluding the laws of the Member States, in the central or local level;

Secondly: the European Union acts with a concrete action only if the objectives of the proposed action can not be sufficiently achieved by the Member States' actions;

Thirdly: the Union acts only if the objectives of the proposed action can be better achieved at European Union level, rather than the Member States level, taking into consideration the scale or effects of the proposed action.

As it can be concluded from what was explained above, the principle of subsidiarity, implies a mandatory cooperation among the institutions of the European Union and its Member States, in cases when the European Union, would issue different legal acts included in implementation of this principle. The way of implementation of the principle of subsidiarity is defined in a separate protocol, which is mentioned above and that is precisely the Protocol (no. 2) *"For the implementation of the principles of subsidiarity and proportionality".*

According to this protocol, before the proposal and change of legislative acts, the Commission must consult widely, and shall submit the proposal to the national parliaments of the Member States, at the same time that it passes them to the European Parliament. In addition, the European Parliament and the Council, should send their draft legislations and/ or changes to the national parliaments.

Each national parliament, within eight weeks from the date of delivery of a legislative draft, may send to the President of the European Parliament, the President of the Council and the Commission, a reasoned opinion, in which it expresses the reasons why, the draft in question, is not in accordance with the principle of subsidiarity. If the draft legislation is proposed by the European Court of Justice, the European Central Bank and the European Investment Bank, the President of the Council, sends a reasoned opinion to the national parliaments and those institutions.

[14] Point 3 of the Treaty on the EU defines:*"according to the principle of subsidiarity, in areas which do not belong to its exclusive competence, the Union acts only if and insofar as the objectives of the proposed action can not be sufficiently achieved by the Member States at central level or at regional and local level, but they can be better achieved at Union level given the scale or effects of the proposed action".*

The European Parliament, the Council and the Commission should take into consideration the reasoned opinions issued by national parliaments. If, reasoned opinions of national parliaments, where each national parliament is represented by two votes, on disaccordance of a legislative act of the European Union with the principle of susbidiarity, represent at least one-third of all the votes that have been assigned to national parliaments, the legislative draft is rejected, and therefore, it can not be approved by the European Parliament. The minimum limit which rejects a legislative act of the European Union, is a quarter of the votes of national parliaments, if, the draft is related to the areas of freedom, security and justice.

Applying the principle of subsidiarity by the institutions of the European Union in the case of issuance of legislative acts, presents a great importance. This because, if, the principle of subsidiarity is not respected by their side, the European Court of Justice has the right to revoke this legislative act for not respecting the procedure of its issuance and thus, the act shall remain without legal value.[15]

d) The principle of protecting and promoting human rights and fundamental freedoms.

This is one of the most important principles on which the European Court of Justice bases its activities. This principle is expressed in Article 2 of the Treaty on European Union, which stipulates that the Union is founded upon respect of human dignity and human rights and fundamental freedoms. Also in paragraph 5 of Article 3 of the Treaty, it is defined that the European Union, in its relations with other non-member states and other international organizations, protects and promotes respect for human rights and fundamental freedoms, especially the children's rights.

Protecting and guaranteeing human rights, is a principle that has led the European Union since the beginning of its establishment, when it was divided into three international organizations. Furthermore, it must be said that one of the main reasons that has urged the states to its establishment, except from the intention to provide peace and cooperation among them, it has also been the recognition and guarantee of human rights and fundamental freedoms.

However, in the framework of the European Union, the principle of respecting human rights, rose at a constitutional level with the adoption of the Charter of Fundamental Rights of the European Union on 7 December 2000, which was adapted in Strasbourg, on 12 December 2007. In this international act of value to all Member States of the European Union, the individuals, thus, people as social beings, are placed in the

[15] The first paragraph of article 8 of Protocoll (nr. 2) *"On the impòementation of the principles of subsidiarity and proportionality", anticipates that: "The Court of Justice of the European Union has jurisdiction over claims that have as an object the violation of the principle of subsidiarity by a legislative act, which are presented by States members in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union or which are made known by their legal order, on behalf of their national parliament or its chambers"*

middle of its activity and the obligation of states to recognize and guarantee the rights of individuals is sanctioned as well.

The importance of the Charter of Fundamental Rights of the European Union, except from its content, it also lies in the fact that the establishing Treaties of the Union have given it, the same legal force as they themselves have. The establishing Treaties also provide the obligation of the European Union to respect human rights, as they are envisaged in the Charter of Fundamental Rights.[16]

An even greater value is given to the principle of respect for human rights within the European Union, the fact of the membership in the Union, the European Convention for the Protection of Human Rights, signed in Rome on 4 November 1950 and entered into force on 3 September 1953. This Convention, signed in the framework of another international European organization, which is the European Council, is the first international european act, where officially, the rights and freedoms fundamental human were declared as well as the obligation of the Member States to respect the human rights of any person who is in their jurisdiction.

The European Convention of Human Rights, has a distinctive value compared to all other international acts that treat the issue of human rights and fundamental freedoms because this Convention, for the first time, unlike all other international acts, has provided a special body, the European Court of Human Rights, which has the mission, the protection of these rights by any violation that a member state or their bodies might do. On the basis of this Convention and its Additional Protocols, which are part of the Convention, every citizen of a country that has signed the Convention, has the right to submit an application before the European Court of Human Rights, after having exhausted all local remedies for violation of human rights and fundamental freedoms provided by the Convention by the concerned State or its organs.

The decision of the European Court of Human Rights, in case it finds that a member of the Convention has violated one of the rights and freedoms set forth in the Convention, is mandatory for the internal organs of the member states. During its activity this Court, has taken several decisions even against Albania, which signed the Convention in 1996, where Albania was punished by the European Court of Human Rights, on the basis of the submission of applications presented by Albanian natural persons for violation of human rights and fundamental freedoms such as the violation of property rights, the right to liberty and security, presumption of innocence, etc.

The European Union membership in the European Convention for the Protection of Human Rights, means that members of this Convention, currently, are not only

[16] Article 6, point 1 of the Treaty on the EU defines that: *"The Union recognizes the rights, freedoms and principles enshrined in the Charter of Fundamental Rights of the European Union, dated 7 December 2000, as adapted in Strasbourg, on 12 December 2007, which has the same legal force to the Treaties".*

European countries, about 50, but also an international organization such as the European Union. At the same time, the access of the European Union in this Convention entitles every citizen of the European Union, as a citizen of the Union to submit an application before the European Court of Human Rights after having exhausted domestic remedies legal within the Union, for breach or violation of human rights and fundamental freedoms for by the European Union and its institutions.

Observing this matter from the point of view of the implementation of the principle of human rights protection within the European Union in a historical basis, we can say that, before the adoption of the Charter of Fundamental Rights of the European Union, in 2000, the European Court of Justice in the beginning of its activity, declined to review an act of the European Community, where it allegedly violated fundamental rights and freedoms. Such reluctance of the Court was not only due to the fact that, at the time it lacked a Charter of Fundamental Rights, which, now exists, but also because the establishing treaties, did not recognize explicitly, the right of the European Court of Justice to review a Community act, which violates human rights.

However, despite the fact that, at the time it lacked a Fundamental Charter of Human Rights and despite the establishing Treaties did not recognize explicitly, the right of the European Court of Justice to abolish an act issued by the Community that violates the human rights, the Court, interpreting the spirit of the treaties, considered human rights as a general principle of community. Such an argument was presented for the first time by the Court in a preliminary matter, set up by a German judge, known as issue *Stauder vs. Ulm.*

In this case, the European Court of Justice argumented that *"fundamental rights are embodied in the general principles of communitary law and therefore they are protected by the court"* [17] In another case known as *Nold vs. European Comision,* this Court advanced further by accepting the influence of international treaties on human rights, stating, among others: *"... As previously expressed by the Court, fundamental rights form an integral part of the general principles of law, the respect of which it provides. In order to protect these rights, the Court based on the inspiration of common traditions of the Member States, cannot therefore support measures that are inconsistent with the fundamental rights recognized and protected by the constitutions of those States.*

Similarly the international instruments for the protection of human rights to which Member States have participated or have adhered can provide guidelines which should be followed within the framework of communitary law kominitare.... ". [18]

e) The principle of equality before the law and non-discrimination.

[17] For more read: Desicion nr. 26/69, (1960), ECR 423, of the European Court of Justice, case Stauder vs Ulm;

[18] For more read: Desicion nr. 4/73, (1974), ECR 491, of the European Court of Justice,, case Nold vs European Comision;

The principle of equality before the law and non-discrimination, without objective reasons, is another important principle that applies to the activities of the European Court of Justice. This principle has been enshrined in the earlier establishing Treaties and is currently anticipated by the Treaty on European Union and the Treaty on the Functioning of the European Union. Thus, namely, the European Community Treaty stipulated that the Council, acting unanimously on a proposal of the European Commission and after consulting the European Parliament, has the right to take concrete aimed at the prevention and avoidance of any discrimination which is based on race, sex, ethnicity, age, religion, sexual orientation and health state.[19]

Also, the European Community Treaty, provided a number of provisions according to which, discrimination was prohibited in various fields, such as:

- Prohibiting discrimination on the basis of citizenship, which was stipulated in Article 12 of this Treaty;
- Prohibiting discrimination between producers and consumers, according to Article 34 of this Treaty;
- the right to equality of labor remuneration or salary, among men and women, banning the discrimination based on sex, under Article 141 thereof.

Currently, the principle of equality and non-discrimination is evidented in some provisions of the Treaty on the Functioning of the European Union, where special emphasis is given to the issue of equality between men and women. Thus, Article 8 thereof, has defined that the European Union in all its activities, aims to eliminate inequalities and promote equality between men and women. Also, in a separate provision of the Treaty, it is determined that, in all its activities and in all areas, the European Union, aims to combat discrimination which might be based on sex, race, origin ethnicity, religion, age, sex orientation of health condition.[20]

Special attention is paid to the prohibition of discrimination on the basis of nationality, as the European Union, currently consists of 28 countries, namely, the citizens of 28 different nationalities. For this purpose *the Treaty on the Functioning of the European Union, has explicitly provided that, any kind of discrimination based on nationality is prohibited, giving the European Parliament and the Council right to take any necessary measure for the prohibition of this discrimination.*

[19] Article 13 of the Treaty on European Community, anticipated that: *"Without prejudice to other provisions of this Treaty and within the limits of the powers conferred by the Community, the Council, acting unanimously on a proposal from the Commission and after consultation with Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".*

[20] Article10 of the Treaty on Functioning of the EU, anticipates that: *"During the settlement and implementation of its policies, the Union has as a purpose the fight against discrimination because of the gender, race or ethnic origin, religion or belif, limited abilities, age or sexual orientation".*

Regarding the principle of non-discrimination, this Treaty, as well as the EC Treaty, have provided a general provision, by which it entitles the Council to take the necessary measures to combat any kind of discrimination. Specifically, Article 19 of the Treaty provides that the Council decides unanimously by a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate measures to combat discrimination on grounds of gender, race, ethnicity, religion, disability, age or sexual orientation.

In addition its provision in the establishing Treaties, the principle of equality and non-discrimination has been elaborated by the jurisprudence of the European Court of Justice or its decisions. Thus, in its decision of 1978, case *Royal Scholten-Honing vs. IBAP,* the European Court of Justice, said *that the principle of equality is one of the general principles of Community law. This principle by this court, requires that similar situations must not be treated differently, unless different treatment is objectively justifikueshëm..*[21]

In another issue, called, *Weiser vs Caise Nationale des Barreaux Français*, this Court gave a much wider sense to the principle of equality and non-discrimination. In this case it was stated, among others, that the principle of equality of treatment is a fundamental human right, which is required to be implemented by all authorities of the Community.[22]

Conclusions

According to the analysis of the above matter, it can be concluded that:

- The European Court of Justice is one of the most important institutions of the European Union, appointed by the Constitutional treaties with powers of control and balance;
- From the way it has been anticipated by the establishing Treaties, the exercise of powers by the institutions of the European Union, it turns out that, as much as possible, the famous principle of the separation and balancing of legislative, executive and judicial power has been respected;
- By its legal nature a fair hearing European Court of Justice has elements similar to constitutional courts of the Member States, international courts, civil courts, criminal or employment, but because of the features it presents, it can not be classified as any of these courts;

[21] For more read: Decision nr. 145/77, (1978) ECR 2027 of the European Court of Justice, case Royal Scholten-Honing vs IBAP;

[22] For more read: Decision nr. 37/89, (1990) ECR 2395 of the European Court of Justice, case Ueiser vs Caise Nationale des Barreaux Français.

- By the regulation and status the establishing Treaties have given to the European Court of Justice, we can say that it is a judicial authority of a special type, "sui generis", which includes elements like those of national courts, as well as the international courts, however, it remains a special institution, "sui generis", as the European Union itself;
- Due to the historical evolution of the European Court of Justice, from its establishment until today, this judicial body has evolved from a single body to three: the Court of Justice, the General Court and the Court of Civil Services;
- One of the basic principles of the operation of this Court is the principle of guaranteeing and protecting human rights, the principle which, although it was not explicitly foreseen in the Constitutional Treaties, recently sanctioned by them with the approval of the European Union Charter of Fundamental Rights in 2000, along with the changes of 2007, and the ratification by it of the European Convention of Human Rights;
- One of the greatest merits of the European Court of Justice is the fact that this Court, through its decisions, some of which are cited in this paper, has further developed European law, it has contributed to the strengthening of Union legal order, as well as it has strongly emphasized that the guarantee of human rights constitutes one of the fundamental pillars on which all EU institutions are based, including the European Union;
- The principles of subsidiarity and proportionality are two important principles of operation of the Court, because, ultimately, they also determine that it has jurisdiction in the review of cases issued before it;
- The principle of equality before the law and non-discrimination also constitutes one of the basic principles of operation of the European Court of Justice and is closely linked with the principles of freedom, security and democracy, without the application of which it cannot be concepted that the EU and its institutions exist.

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