INTERACTION OF THE SUBSIDIARY AND PROPORTIONALITY PRINCIPLES IN EUROPEAN UNION LAW"

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Abstract
The European integration history is placed now in a period of half a century, from the Treaty of Rome and reaching the recent stage of efforts for the adoption of the European Constitution. Since the beginning of the community, the vertical system of delegation of powers was based on the principle of attribution.
This principle was replaced by the principles of subsidiary and proportionality according to the Treaty of Maastricht. This paper will represent a recreation of two principles, primary considering the states or federal-type or those structured under plurality of public authority levels and to analyze later the experiences of member states in view of the principle of subsidiary and proportionality. After denying the idea of pure division of powers between the EU and member states, was aimed at the coordination of the exercise of competencies according to the criteria of subsidiary as provided in Article 5 of the Treaty of Rome. This provision was not accurate as the treaty did not précised the differences existing between exclusive and non-exclusive competences. The result is a vague discretion conferred to the institutions which has to decide to give priority to EU competence, or to acknowledge to member states freedom to exercise their powers. This fact has orientated to the need for a more clear specification of the conditions in which should be applied this principle, explicitly provided in the Protocol attached to the Treaty of Amsterdam, as a dynamic and bilateral concept.
Subsidiary principles was subject of analyze by many researchers and lawyers, as the principle of attribution lost much of its power, due to redirection from attribution criteria to those related with exercise of powers. This principle refers only to exclusive competence for which EU is called upon to intervene in Subsidiary way in case of insufficiency of the states. It is provided a broad discretion of the EU institutions to decide on the application of the principle of subsidiary. This issue is analyzed in Birmingham and the Edinburgh Council in 1992, in a Commission document of the same year, in an inter-institutional agreement of 1993 and finally in the Protocol attached to the Treaty of Amsterdam in 1997. The Protocol on the application of the principles of subsidiary and proportionality states clearly that subsidiary is a dynamic concept that allows extension as well as reduction in community action, according to the circumstances of each case.
The principle of proportionality is also of importance. This is understood as a principle that requires from the institutions of the EU to monitor the exercise of their powers so that the measures taken do not exceed what is necessary to achieve the goals of relevant institution. The Court of Justice in its decisions does not clearly express the principle of proportionality, but this does not mean that this principle is not fundamental for the decisions. In this field, a new regulatory system was born in the 90s when the Court accentuated the importance of proportionality, stating a clear reference on this principle.
Key words: Tractate of Maastricht, The proportionality and subsidiary principles, European Jurisprudence, The Role of EU Institutions, Internal Market: free movement of goods and services

Introduction

There have been a considerable number of protagonists who have contributed in the consolidation of the European building. The European integration history is placed now in a period of half a century, from the Treaty of Rome of 1957 and reaching the recent stage of efforts for the adoption of the European Constitution. Since the beginning of the community, the vertical system of delegation of powers was based on the principle of attribution. This principle was replaced by the principles of subsidiary and proportionality according to the Treaty of Maastricht. This paper will represent a recreation of two principles, primary considering the states or federal-type or those structured under plurality of public authority levels and to analyze later the experiences of EU member states in view of the principle of subsidiary and proportionality. In this framework, the issue appears complicated and fragile because of its particular structure. Because of the abnegation of the idea of separation the competences between the European Union and its member states, was aimed to a coordination of them according to the criteria of subsidiary authorized in the Article 5 of the Treaty of Rome. The Treaty does not give any crucial reference over the differences that exist between the exclusive and non exclusive competences. In this way the result is a faint discretion that is conferred to the institutions to empower the EU in order to give the right to the other states to exercise their jurisdiction. Based on this fact, is necessary to redefine in a clear way the conditions that this principle is explicitly provided in the protocol attached to the Treaty of Amsterdam, as a dynamic and bilateral concept.

Subsidiary and Proporionaly principles were subject of analyze by many researchers and lawyers, as the principle of attribution lost much of its power, due to redirection from attribution criteria to those related with exercise of powers. The principle of subsidiary refers only to the exclusive competence for which is necessary the intervention from the part of European Union in subsidiary ways, in those cases of insufficiency from the part of the states. In this case, the intervention of the European Union would be proper. These provisions give the right to the European Union institutions in order to efficiently apply the principle of subsidiary. This topic has also been discussed in the Council of Birmingham and Edinburgh in 1992, in a document of the Commission in the same year, in an inter institutional agreement of 1993 and lastly in the protocol attached to the Treaty of Amsterdam in 1997. However, there has not been recorded a progress. In the protocol of Amsterdam is explicitly expressed that the principle of subsidiary is a dynamic concept that allows an enlargement and diminution of the community action according to the circumstances. On the other hand, the principle of proportionality has played a minor role compared to the principle of subsidiary. This principle is perceived as a principle that obliges the

European Union institutions to supervise the exercise of the competences in order to fulfill its goals. The European court of Justice in its decision does not express clearly the principle of proportionality; however this does not mean that this principle is not part of their decisions. In 1990, the Luxemburg judges emphasized the importance of proportionality by referring clearly to this principle. There are two controlling mechanisms for the above-mentioned principles: political (ex ante) and legal (ex post). The council was considered as the "guard" for respecting the competences but the guarantee represented by the council has partially existed. In this paper, the political control serves as a general review in order to understand the tidings that the European Constitution would bring. Referring to the legal control is clearly expressed that the Tribunal has been discreet to its activity during these years. However, the difficulty that the judges of Luxemburg face related to the censorship of some of the decisions of the political institutions of the European Union is comprehensible. In this way, the critics and proposals for the modification of the European Constitution, that lead off to its disapproval are also comprehensible. As a result, will be analyzed a new mechanism of preventive control of political nature which aims to consolidate the control of principles from the parliaments of the respective states so called (*early warning system*) based on subsidiary which is an immediate instrument that influences the legislative process. Due to this mechanism the states are informed over every initiative of the Commission, which is obliged to analyze its proposal if third of national parliaments considers it in contradiction with the principle of subsidiary and other ones which are clearly provided in the European Constitution.

The principle of subsidiary and proportionality

The issue of the division of competences takes considerable part during the Constitution work proceedings. In the beginning this topic was discussed in general terms in the two parliamentary sessions in April-May 2002. Then were created two special working groups: the one over subsidiary and the other one over *complementary* competences and for which are prepared two reports. These reports were presented in September and October of this year[1]. The highlighting of the issued on "The division of the Competences in the European Constitution framework" should not surprise us. In every political structure with a plurality of the governance levels, the determination of the relative spheres of action takes an essential constitutional importance. When it refers to the EU, the situation appears a little bit special and complicated for reasons connected with its formation. In fact, the actual system of the division of competences between European Union and the member states has caused debates in the political and doctrinal field. In the two declarations of Nice in 2000 and Laeken in 2001, was found reasonable to clearly explain the system of competences and also to be treated as a crucial topic of the European Constitution. Since the beginning, the system of the vertical division of the competences was based over the "principle of attribution"[2] The above mentioned principle, in the Treaty of Maastricht was amplified from that of subsidiary and proportionality[3]. The sections of the article individualize the three principles that should carry on with the action of the community: the principle of attribution (the first section) the principle of subsidiary (the second section) and the principle of proportionality (the third section). The legality of every action is estimated based on these principles. The principle of subsidiary has always been controversial. This principle is now commonly used in the legal acts of the federal type states or the countries structured in base of plurality of public authority. For a better functioning is necessary the existence of a division of material competences of different levels and this should be expressed in different schedules authorized by the Constitutional provisions. In case that there will be interpretative problems for the determination of the limits between different competences, they should be resolved via mechanism of constitutional control. In the European Union, we are faced with different situations referring to the form and the content. Between the member states of the European Union, exist a close interdependence merged in the executive and legislative levels. In the articles 94, 95, 308 result as a functional competence that can act in every sector referred to member states, for example health and education. Through time, the attention is focused on the effective exercise of the competences. The evolution way is endorsed in the Treaty of Maastricht which lists in correlation to principle of attribution of competences also the principle of subsidiary and proportionality.[4] The first principle has played a significant role because of the revocation from the division of the competences between the European Union and its member states, and by this it's aimed their coordination. This derives from the subsidiary criteria's, included in the article 5 of the Treaty of Rome (27 of March 1957). This norm is deprived of simplicity and accuracy because of the simple fact that the treaties do not give clear instruction for distinction between the exclusive and non exclusive competences. A simple situation can only be resolved in interpretative approach. So the result is in discretion of the institutes to settle on the competencies if they will be excised by the EU or the member states themselves. So, it is necessary to precise the conditions for the application of this principle, clearly defined from the protocol of Amsterdam, as a dynamic and bilateral concept, that will permit the enlargement of the European Union action, but even a diminution, according to the circumstances and case by case. According to the principle of proportionality, the intervention of the European Union should be in accordance with its objectives. From a formal point of view, the two principles have a connection referred

1 The first group "Subsidiary" and the V "the complementary competences". The final reports are respectively represented in September and November of this year.

2 According to this principle "The European Union" acts according to its competences and the objectives determined by the current Treaties.

3 We refer to the article 2 B of the Treaty of Maastricht. Despite this, by moving from a common market in a economic and monetary union, which are the second and the third pillars of the EU institutions, the EU tasks are exercised in the sectors of foreign, internal, monetary and economic policies.

4 These two principles have been attached to the Protocol of the Treaty of Amsterdam.

to the article 5 of the Treaty of Rome. The same can be said even for the Protocol no. 30 of the Treaty of Amsterdam in 1997. The principle of proportionality has played a minor role focusing the attention to the other principle. As referred in the above mention provision, we face the same situation: its formulation confers large discretion to the EU institutions. Compared to the current system of the division of the competences, it is expected more criticism and debated and as the results there will be more proposals for further amendments. We will analyze in following the above mention, together with the new regulation during the works on EU Constitution, from another point of view.

The basis and the understanding of the principle of proportionality in the european union law

The Court continuously has emphasizes the major role of the principle of proportionality in the European provisions as an unwritten legal act of the administrative action, in order to realize a substantial equality in the social - economic reality of the European Union[5]. In framework of the Court of Justice, this principle is understood as a principle that obliges the European Union to preserve the exercise of their power till the moment that their obligation do not exceed what is considered necessary to accomplish by the authority in order to realize its objectives.[6] This kind of principle requires that the measures determined by the state and the European Union institutions should be adequate in order to realize the objectives and to not surpass the limits. The citizens, on the basis of this principle are asked to emplace only necessary obligations in order to achieve the supreme[7] public interest by authorizing a control over the discretion of the acting authority. This kind of authority, considers necessary to give precedence to that instrument which brings the minor limitation of the rights guaranteed by the Treaty. We can say the same thing even in the field of sanction: the authority should monitor a fair proportion between the violation of the right and the realization of the infringement. In case the obligation provided is disproportionate to the purpose to be achieved, the measure to be adopted can be canceled. Another contribution in the determination of the principle of proportionality has been given by the declaration of the jurisprudence, according to which a European Act should be cancelled only in case of the violation of the principle of proportionality. Then it's the Court that should give a definition for the principle by clarifying the need to appreciate if the measures correspond to the determined objectivity. In order to build up the notion of the principle of proportionality, as a legal order, it should be individualized the elements prescribed in the concerning report. Moreover, the Court of Justice in its decisions does not determine in a clear way the content and the application areas of this principle[8], which is very important in order to distinct this principle from the other ones, as those of equality and non discrimination or other notions that refer to that of proportionality, as rationality, necessary, balance and harmony.

The relationship of proportionality is established upon two essential principles: one durable and the other variable. The first is created by the existing relation between two or more parameters of reference and the second is created by the connectivity that exists between them. As a result of this, we can give different determinations, all bounded by elements that characterizes them, made of a set of values which may not be the same in different cases taken into consideration. As a result of this element, we can distinguish the principle of proportionality from the other analogue principles. In this way, the principle of proportionality takes an indirect role in the European order as a controlling instrument of the legitimacy of the activity of the European Union institutions and validity of the acts issued by them. This kind of control instrument acts in a pre-eminent level compared to them, as a limit for the action of their institutions, characterized by a discretional sphere. The principle of proportionality configures as an instrument to evaluate the legitimacy of the member states in order to adopt the necessary precautions for the execution of the European law and the exercise of the limitation provided in their favor by the Treaties[9]. This principle corresponds to the principles of the administrative law as an "excess of the powers" and as an "excessive act" and other likely definition, as legal tools to distinguish and stabilize the prohibited and un-prohibited behavior. From the perspective of some lawyers this kind of principle it is a kind of superposition of the principle of subsidiary that has become part of the European Law from the treaty of Maastricht in the article 3B, as a limitation of the discretion of the normative activity of the European Union, compared to that of the member states. Even there exists intercommunication between the two principles, provided together in the same norm, article 3B, and also in the protocol appended to the Treaty of Amsterdam. The above mentioned idea should not be accepted, as the principle of subsidiary is not in the paramets to evaluate the compatibility of the limitation of the individual rights guaranteed by the Treaty in view of achieving the public interest. However, the application of the two principles changes the cliché that that one state or a federal state, exercise based on their common interest those kinds of

5 Aristotle in his work Etica Nicomachea referred to the principle of proportionality as a concrete demonstration of the abstract principle of justice. The nation has been in use round the second half of the XVIII century by referring to that of the criminal sector.

6 The principle of economic necessity is mentioned in the treaty in the Article 235(now the article 308), where is emplaced as an order in order to complete one of the purposes of the common market.

7 The right determination of the public interest considered as a contradiction of the private interest, if there exist a proportional report between the medium and the purpose ''in which the public, the community at large, has some interest by which their legal rights or liabilities are affected. It does not mean by matters in questions. The term private interest describes a legal concern of an individual, or the position of being affected by something or a title or a right(in property) or an individual pecuniary stake''. Cfr Black's Law dictionary, publikim i 1891-1991.

8 This has happened in the sector of public agriculture or in the cases that the sanction is related to the primary obligation.

9 Regarding the decision of the 15 of December 1976, (the issue no 41/76) the Court has decides that every kind of administrative or restrictive precaution should not surpass the limits for the accomplishment of the objectives by the member states, with the aim of taking the commercial precautions as an efective measure and as a result forbidden by the Treaty.

interests that the local authority cannot exercise by itself. The public authority acts in a subsidiary way, by exercising those kinds of tasks that cannot be exercised by a direct and local level in a way that the decisions are achieved for the good of the citizens. This function should be exercised in a prudent way with the determined objectives. If the principle of subsidiary has to do with the legitimacy of the action taken by the entities of the European Union concerning the effectiveness and the need, the principle of proportionality relates to the intensity of the proper action and serves as an elective tool for the selection of the necessary means in function of the discretional power by making a control in accordance with the objectives confirmed by the Treaty.

The Court of Justice has been inspired by the German order in structuring and application of the general principles of the European Law. We can even say the same thing for the principle of proportionality. In this case, the special role of the European judge could not be forgotten by permitting in this way the intercommunion of the cultures and traditions. The same thing can be said even for the other institutions with which the court cooperates. In this way, the interrelation that is created between the European and the national judge creates an important element for the principle of proportionality. This principle was firstly affirmed in 1969, as a principle for the prohibition of the abuse of rights, existing in the public international law and in the European order. The violation of this prohibition brings the revocation of the act which is not in conformity with that. The introduction of this principle as an institute of law has permitted the elaboration of this principle according to the European order needs and to settle an autonomous provision in this filed. Another task of the Court has been to elevate this kind of principle from the different provisions of the treaty[10]. During the 60s there was made no question about the origin of such a principle. Later on the work of the distinguished lawyer Duitheillet de Lamothe it is permitted in a explicit way the individualism of the three alternative sources of the principle issued by the German Law, but has been reached to a conclusion that the German order cannot be considered as a source because of the simple fact that the legitimacy of the European Union actions should and must be evaluated only in the European Law, may be this written or un written one. The courts affirms that in the European order can only be addressed that kind of rights that are clearly reflected in the European Treaties and in the rights derived from them. In this period, is not emphasized the importance of the main principles in the internal order of the states, necessary for the creation of the mechanisms through which the court by itself could provide the defense of the principles. The Court still has not decided over the existence of the norms derived from different sources.[11] Then the court rebuilds the principle of proportionality over the basis of the main principles that exist in the national judicial orders. The lawyer Duitheillet de Lamothe personalizes the origin of the principle of proportionality in the unwritten norm, which was rebuilt by the European judge over the basis of a fair interrelation between the given sanction and the importance of the violation[12].

In this way, we are talking about a system of law that exists in the treaties and in the norms of the European Union. It is true that the European judge refers to the German order, but is also true that the application of the principle come as a consequence of the implementation of the Treaties and the provisions referring to this principle. Today, this problem is over passed because of the definition of the principle of proportionality in the article 3 B in the Treaty of Maastricht, also the Protocol over the principles of subsidiary and proportionality attached to the Treaty of Amsterdam of 1997 that determine the specific provisions for their application. The Court of justice has completed the proceeding of the principle in accordance with needs of the European system. A judicial parameter is built in this way in order to evaluate the legitimacy of the undertaken precautions. The Court also builds the principle of the interpretation of the whole European Law. Regarding the definition, there exist some problems because it is represented as a simple notion. It is also represented as a flexible notion that is created over a definite report by its componential elements. A judicial concept and a well-known and applicable legal standard was issued by the Court and was turned into an unwritten principle. It may be understood as a proportionality of the public authority powers, only in cases when it is provided the existence of a public interest that may be complemented only though the intervention in private sphere of the individual. The principle of proportionality cannot become part of the *soft law* because in case of violation, the application of the provided sanctions does not result so rigid. Lastly, the principle of proportionality is particularly in the facilitation of the decision taken by the judge related to the choices taken by the society compared to the different values.

The principle of subsidiary in the treaty of maastricht.

In the treaty of Maastricht, the principle of subsidiary raises to the level of that of a general principle of the European Law, which results from its ratification in the article 3 B of the first part of the second title of the treaty of CEE, with the respective title " Principles"[13]. The provisions that belong to the competences of the community give to it a subsidiary role compared to the member states.

This treaty marks a new era in the process of the creation of a union between the Europeans. The discussion over the principle of subsidiary proceeds in the article 3B. This

10 Refers to the article 6 (today article 12), article 36(today article 30), article 40(today article 34) etc.

11 The lawyer Lagrange had sustained the existence of unwritten norms in the European Union.

12 We emphasize the importance of these decisions: the decision of 29 of November 1956, the case 8/55, Fédéchar against the Supreme Audit, the decision of the 13 of May 1958, case 15/57.

13 The principle of subsidiary is not a general principle of the European right. Referring to this topic, a part of the decisions of the Court of First Instance of the European Community of 21 of February are meaningful (Verening van Samenwerkendre Prijsregelende Organisates in de Bouwnijvereid and others against the European Community). The plaintif pretends that a certain decision before the treaty of Maastricht entered in vigor derelicted the principle of subsidiary. Its necessary to highlight that the principle of subsidiary , before entering in vigor of the treaty of the European Union, a general principle of the right.

article reflects the only provision of the treaty with a general character. In the above mentioned paragraph we have dealt with three principles: the principle of attribution, the first paragraph), the principle of subsidiary (the second paragraph), and the principle of proportionality (the third paragraph). The article 3 B of the treaty of CE ratifies that:

The community acts in the margin of its competences as a result of its objectives determined by this Treaty. In the areas that do not exclusively belong to the community, the community acts according to the principle of subsidiary, in case that these actions cannot be fulfilled in a satisfactory way by the member states, because of the effect of the concerned intervention that should face in satisfactory way a common action in EU level.

The European Union intervention should not excess the necessary reasons in order to accomplish the objectives of this Treaty.

The community, today known as the European Union, differently from the states does not has the general competence but should act according to the limitation of the powers and to follow the objectives determined by the Treaty. The European competence is an exception; the national one constitutes an order according to the principle of attribution. The rigidity of the principle of attribution means for the EU an unrestricted field of actions so that the EU can act only when it is provided by the treaty[14] in precise and clear terms, according to this supposition the legitimacy of the action of the European Union is engrained, which is based in the individualization of the judicial instruments, also in the procedure that the other institution should follow for the exercise of the other powers[15]. The EU institutions are competent to act in an exclusive way related to the common politics, especially agriculture, transport, commercial relations, etc. We can say the same thing for the realization of the internal market, represented by the four fundamental rights: the free movement of people and goods, services and capital. This sector plays a great role for the member states, because they should also adopt the necessary measures in order to complete the process of liberalization. The scheme of the described competences has evolved due to the decisions of the Court of Justice that has expanded the concrete area of such competences, referring to the article 308 (now 235) a sanction that attributes to the Counsel the opportunity of the unanimous adaption according to the proposals of the Commission and the Council of the Parliament, the recommendations in the case that the European actions are not provided by the treaty and is necessary to accomplish one of the objectives of the European Union.

The second paragraph of the article declares the principle of subsidiary that means the criteria that determine the specific boundaries of the European Union in the area where its competitive competences meet them of the member states. We can respond to the problem of the application of the principle by taking in consideration the norm, which results different from the issued provisions, which excludes such applications in the sectors of exclusive European competences. We have affirmed that the European Union does not have its own competences, but has attributes given by the Treaty in order to undertake certain decisions or to achieve its objectives. In any case the states, the member states "compete" with the European Union for the continuance of the actions provided by the Treaty. The above-mentioned competences are competitive. In these sectors where the European Union intervenes, this is determined as "exclusive competence". According to the article 3B, a European Union intervention for legitimacy, should result as necessary and proportioned. This paragraph determines the criteria's in order to verify the necessity of the action in European Union level. The European Union action are submitted to two kinds of condition, so to verify the compatibility with the principle of subsidiary, which belongs to the capacity of action of the member states and consist in a verification of the chance to exercise the probabilities, in order to exercise their task through the available measures (the national and the local legislation), the administrative and financial instruments (the eventual agreements between the social parties). The insufficiency of the member states is *condito sine qua non* for a legitimate intervention of the European Union in the area of competitive competences. Even when the intervention of the member states is totally sufficient, the European Union can also act if this is justified by the efficiency of actions. Today, the cooperation of two or more member states should be taken in consideration in order to analyze the sufficiency or insufficiency of an action. In case that the incapacity of the member states to fulfill the determined objectives is demonstrated , is necessary to prove that good results can be achieved if the activity will be addressed to the European Union level. The Sections V or VI of the Treaty of Maastricht includes important aspects of the process of the European Integration, which is related to the concept of national sovereignty: foreign policy of joint security (Section V) and the justice in the internal affairs (Section VI). The European Union, created with the treaty of Maastricht means the European Community, but does not coincide with it.

The third paragraph of the article A of this Treaty decides that: The Union is founded over the European Communities, integrated by the politic and the forms of cooperation established by this Treaty. So, these can be configured as "two centralized centers", where the first The European Union intends the second, the sectors provided by the Sections V and VI. In these sectors, a decisive role is attributed to the Council of the European Community and the Council of Europe[16] , to the prejudice European levels[17]. The Court of Justice does not play a role in this field because the competences are restricted and are the member states that take the control in these sectors. Variability of the rules for the above mentioned sector brings

14 As modality of the application of the article 3 B of the European Community Treaty, are taken in consideration the Commission and two European Counsels: of Birmingham and Edinburgh.

15 Referring to this subject, the decision 16 of March 1987, the case 45/86, has been affirmed that in the field of the division of the European competences, the selection of an act cannot be based on the inclusion of only one institution.

16 The intervention of this institution is clearly predicted in the Heading V.

17 The Commission of the European Community results as fully participant , in the sectors mentioned above

to the prohibition of the level of integration aimed in the foreign policies and public security, which are more extensive that those of justice and internal affairs. The limits of the integration as above mentioned are provided in the articles J 4 § 4 dhe K 2 § 2 that among others does not limit the member state to collaborate with each other more closely that the one defined in Council Level. At the end, the conditions provided in the article K 3 § 2 *LEET* B for the adoption of joint measure from the part of the Council for the field of application provided in the article K 1, result to be inspired by the article 3B, even partially. Such actions are performed in the limits in which the objective of the EU could be realized through a communitarian action, better than through individual actions of each member state. The clear declaration of the principle of subsidiary in the Treaty of Maastricht and the expansion of the application has transformed many relationships between the level of the European Union and that national, by evaluating in this way the traditional rapport of the exercise of the adequate competences especially in the competitive sectors by obligating in this case the commission to restructure in a innovative way its tasks and aims. The principle of subsidiary continues to determine in a direct way the exercise of the competences in two sectors: that of environmental politics and that of the research and development politics. By analyzing the first, the principle articulates regulations that determine the exercise of the power. In the environmental politics the national precautions are considerable and guarantee the implementation of the adequate measures in European level. This kind of principle is interpreted in a way that can secure the optimal allocation of the efforts and to guarantee a level of corporative between the forces that work in this field of action. Regarding the necessary precautions that should be taken in the environmental field, the European Union institutions or the member states have no right, but these precautions include the local and regional entities, the public and private entities and every citizen. In this way, the respective principle should not be considered the same as the one of the divisions of responsibilities that would decide for a common participation of the different actors without influencing the division of the competences between the European Union, the member states, the administrative, local and regional states. Regarding what has been said about the role of the regions and the local autonomy, now we can also add the order that it is provided in the Treaty of Maastricht.

In this treaty is mentioned the commission of the regions that deserves to be marked as the "guard of the principle of subsidiary" because of the nature of its representatives and for the special attention that is dedicated to this principle. The Council of the European Communities is made of representatives of the member states[18]. Every government delegates one of its members by excluding in this way every possibility for the regions representative to be part of the national delegation regarding this order, by giving in this way to every member state the possibility to decide to accept or not the regional representatives in the Council sessions. From the other part, the community has recognized to them a kind of role, without the intervention of the state, especially regarding the regulations over the integral Mediterranean programs of 1985, and regarding the reform for fund restructuring purposes[19] by favoring in this way the regional inclusion. Referring to the initiative undertaken by the regions, is necessary to be reminded the opening of the offices in Brussels, initiated by some Lände German and Italian.

The principle of proportionality and subsidiary in relation to the internal market.

In the European competition law are introduced strong elements of subsidiary, above all in the subject of separation of powers between the EU and member states. The Treaty of Rome provides in Article 3 that competition in the internal market should not be artificial - by setting a true and proper regime that ensures the pursuit of such objectives through the creation of complex mechanisms. The competition policy is configured as a fifth freedom of the market based on the principle of freedom that is referred more to states than enterprises, through the application of the provisions that often refers to the principle of proportionality. Such examples are the limits placed on the actions of the European Commission when are sanctioned by a fine the violations committed by enterprises. The European judge has declared many times over the implementation of the principle of proportionality by refusing the measures adopted on the basis of Articles 85, 86, 90, and 92 of the EC Treaty, affirming in the terms of the principle that Europe should exercise its own power in the perspective of the internal market goal. Meanwhile the measures that do not serve should be avoided: will be legitimized all the final measures to eliminate the competition services in the extent to which they will be respectively proportionate to the services in question and will be treated with the intention of eliminating them in the frame of the extension of the Treaty. In fact, the principle of proportionality requires the adoption of the necessary measures in order to guarantee a regime of healthy competition in the internal market, due to prejudice as little as possible the promotion of a harmonious and level-headed economic activity in the European entirety. The application of the principle of proportionality is found in Article 85 of the Treaty which provides the excess of the prohibition of agreements and practices reached by the enterprises, with the condition of the existence of the positive and negative elements.

On the basis of such provisions is established a casual connection between the restriction of the competition and its facilitations: after been specified the existence of the above mentioned connections, it is imposed the assessment of the existing proportionality between the restrictive measures caused by the obtained advantages. The court, in '66-, has

18 One minister has the right to represent its only government.

19 The integration European programs are previsied by the order no 2088/ 85 of 23 the of July 1985, referring to the fond with structural purpose, today are in vigor the orders no 2080,2081,2082,2083,2084 and 2085 of 20 July 1993.

found reasonable to limit its controlling interests in the field of material facts and the economic consequences of the assessments made by the competent authority.

The Commission distinguishes between the restrictive competitive measures that do not violate the principle of proportionality and the restrictive measures that are excessive, and that calculates the illegitimacy because of the violation of such a principle. The former are replaceable by the some factors or by agreements between enterprises, although they brings a certain bias of the competition, by ensuring the maintenance of a certain level of freedom over the market: the latter are reflected in some cases as disproportionate and should be limited in order to achieve a fair proportionality.

Subsidiary in such sectors is translated into an institution of effective cooperation between the national antitrust authorities and the Commission with an appropriate decentralization applied on behalf of the Treaty. For a long time, the EU has favored the decentralization in terms of European competition orders, through a delegation of powers, introduced by the willingness of the institution of the Commission, according to the requirements and the methods established by the same. The Commission has followed rigorously the objective of coordination of functional integration between the national and the European system[20]. Recently, the Commission based on the need to find a solution to the serious problems arising from excessive work , has adopted the White Paper on modernization of norms with the purpose of the application of Articles 85 and 86 of the EC Treaty[21], in which has hypothesis the full decentralization of the application of competition rules.

The proposal for the reforms provides the abolition of the system of notification and exemption from the adoption of a regulation that would directly make applicable the provisions of the Article 81 of the EC Treaty. If the system of legal exclusion (the radical change of direction in the implementation of Article 81 paragraph 3 of the EC Treaty) is the point of arrival of a possible process, it is initiated with the decentralization of some competences that performs the division of these competences between national and European authorities, determined by objective and automatic criteria. So the Commission's intervention is limited: *ex ante* in determining the objectives of the competition, through processing of the most importance provisions and by the adoption of atypical acts; *ex post* by a control of the agreements that concerns a sufficient European interest and that really dominates the trade between the member states. The legal exemption represents the final objective for defining the principle of subsidiary. Such a principle, at first, has made the simple transfer of the competences to the European level, while maintaining, at the head of the Commission, the possibility of revocation at a later time, by building a perfectly complementary rapport between national and European entities. To the Superior level was charged the difficult task to avoid conflicting orientations, through: identifying the common objectives, of the appropriate tools to be followed and the separation of tasks. The efficient function of the system described above assumes a perfect coordination between national and European competences. Both responsible systems charged with the implementation of competition law (administrative authorities, which have the task of supervising the competition law on behalf of European or national public interest and that may be concerned about issues that refer to the competition at the private sectors aiming the protection of individual rights) are called to exercise their power in their reasoning of their competences and to the extent of the respective decisions.

The previsions must act in the interest of each area and will differ in their content to the extent of coordination of the activity exerted by the administrative authorities or the jurisdictional entities. In the case the Commission concludes that the effect of a particular case correspond to a member state, according to the new regulation, it transmit the respective practice, including the informing process by the competent authorities of the State concerned, in order that it might pursue the investigation by using as evidence tool the information obtained. On the other hand, when a national authority, after ascertaining and carry out the necessary verifications, concludes that a particular case belongs to the European authorities and requires an intervention by the Commission, it transmit the practice to the latter. The use of the information is very important, especially by introducing a practice that tends to exclude double sanctions and distinct settlement, in the form of duties carried out by the comparisons of enterprises or of a national authority or the Commission. Considering the overall objective, which is at the basis of the Article 86 of the Treaty, according to which the competition in the European market must not be artificial, the judge claims that the Commission, in its discretion practice, may decide not to follow a denunciation in which have been noticed abusive practices, already interrupted, the continuation of which will not respond to the overall objectives settled by the article above. The principle of proportionality is also used by the Court in the field of the application of Article 86 of the Treaty, related to the abuse of the dominant position. The Court of Justice affirms that an enterprise, having a dominant position cannot be denied from the rights of regulating its commercial interests, for the sole fact that has such a position, because than the latter is prejudiced. If the enterprise shall have the opportunity to perform all the appropriate acts in order to protect its interests, it will be denied from all acts that are referred to the enforcement or the abuse of dominant position.

20 The Coordination between national and European authority is based on a subsidiary of each object as for the norms pertaining to legislative instruments, and pre bodies for their .In fact, the two systems charged with the application of competition law – administrative authorities, which have been given the task to supervise the observance compliance of the competition law, in the name of national public-interest or European, national or European jurisdictions that may be invested as interrogatives in the field of competition and private instance, acting in the defense of the individual rights-are called to exercise their powers in their respective sectors, due to their suitability and respective scope of the decisions.

21 We recall that the application of centralized European competition rules by the Commission has been operating in a satisfactory way in the past. In fact, has favored the creation of an organic corpus, each member state institutions guarantee European competition from the part of the administrative and judicial authorities.

The European jurisprudence tends to submit the power of the concession and the exclusive rights to the general duties that should be respected from the part of the states, in addition to the essential objectives of the Treaty and the principle of proportionality, which is used in some cases to ensure equal ruling of the different values expressed in the Treaty. The European judge, affirms the compatibility in the Articles 30-36 of the Treaty - concerning the eventual exclusive rights of the product sales - that configure such illegal measures, where results disproportionate to the objective of health protection of the consumers.

The Court of Justice considers that the authorization given to states deriving for the reasons of public interest (non-economic), in some activities where the competition is in stake, do not have an absolute field, but a relative one, according to the modalities of the exercise of the monopoly that may be in conflict with the provisions relating to the free movement of goods, services and competition. In the monopoly sector, despite of their nature and scope - in the presence of a noneconomic public interest, recognized by the European law – the proportionality test allows the assessment of the legality of a measure taken with regard to internal imperative needs of such interests towards the pursued objective in order that the competition in European market should not be false. At the end the European judge applies the principle of proportionality in the frame of Article 92 (3) of the Treaty, which allows the Commission to limit the prohibition of state aid to the enterprises, to declare in certain conditions, on the basis of the criterion of compatibility with purpose of indicating in general terms of the Treaty itself. According to the jurisprudence on the application of the Article 92 of the Treaty, the Commission owns a wide range of discretional power that implies general evaluation of the economic and social order, in respect of which the union of proportionality is limited to displaying error in assessing the factors and avoidance of powers, given that the judge cannot substitute the legislator in the solution process. Regarding the regional aid and the objective justification of the concession, there are opposed by two fundamental principles, the principle of free competition, the foundation of the internal market, and the principle of European solidarity settled by the Treaty on the foundation of the market. The commission's task is to moderate and to regulate the two superposed interests in full respect of the principle of proportionality.

Internal market: the freedom of movement of goods, services and other sectors

The jurisprudence of the Court of Justice has felt the change in relationships between Member States and the EU, activated by the codification of the principle of subsidiary, with specific reference to the sector of free movement of the goods. In recent years, this has been a trend. The court had noted before - so as jurisprudence was used by the 'Dassonville formula'[22] - that constitute measures having equivalent effect as barriers to free movement. In the beginning, by the submission of goods to the norms that dictate further demands, was considered that the restrictions was justified by the objective of common interest, such that prevail over the needs of the free movement of goods. In addition, any normative applied to national products and those imported, had to undergo a preparatory analysis for verification of compliance with the provisions of the Treaty (Article 28 of the EC Treaty), in order to determine if it will exceed area of residual powers that were allocated to the states. In this way any State action resulted as Subsidiary with those of the EU, which legitimizes only a visible interest tutelage of common interest. The new trend of the Court of Justice begins with the decision of Kock & Hunermund[23], in which it expresses a position fundamentally innovative, highlighting those resulting from the scope of application of Article 28 of the EC Treaty, the national measures that are limited to the discipline of the modalities of selling products without applying a discrimination between domestic and European products. In fact, the action of European provisions was limited to prohibitions that impose quantitative restrictions.

The Court claims that should be evaluated case by case, if the provision is important at European level and if it causes a tightening effects, disproportionate compared to the objective pursued, which can be considered equivalent to a quantitative restriction imposed by Article 28 of the Treaty EC.

New jurisdictional addressee finds confirmation in subsequent statements[24] where the court confirms the Keck formula, assuming that national existence of law provisions issued within the remaining powers of state and as such do not fall under the prohibition of Article 28 of the EC Treaty. It is necessary to consider that the application of such provision to the reason of political and economic regulation, corresponding to national and regional characteristic, could justify the reservation of powers in favor of the states. Although in the free movement of goods, the demand for collaborative instruments can provide a solution every time it is performed in those gray areas consisting of provisions that imply effect on importers, but for which is hard to put obstacles in European exchanges.

In conclusion, the EU, after having established rules to respect the guarantee of good functioning of the internal market, should restrict the exercise of its powers in the sector of intervention, which should be those essential for European integration, and to identify forms of action.

Customs Union, established by the EC Treaty of 1957, was carried out by *two values:* a set of internal double prohibition of the establishment of customs duties or measures having equivalent effect and quantitative restrictions on trade inter-communitarian; another of external, represented by external customs tariff, the same in relation to third countries.

22 Refers to the note on affirmation, kept unchanged over time, 'any commercial provision of member states that may hinder directly or indirectly, in action or in force, the international trade, should be considered as a measure with equivalent effect " quantitative restrictions. (the Judgment of 11 July 1974, Case 8/74). The jurisprudence of the Court of Justice has confirmed many times its open orientation to this point, as stated in the decision of 10 July 1980, Case 152/78; 14 July 1983, the issue is 174/82; 13 May 1984, Case 16/83; 14 July 1988, Case 298/87.

23 Refers to the decision of 24 November 1993, issue joint C-267 and C-268/91 and 15 December 1993, case C-292/92.

24 Referring to the decisions of 2 February 1994, Case C-315/92; June 2, 1994, issue joint C-69/93 and C258/93; 14 December 1995, Case C-387/93.

Deployment of ban duties of any kind that counters the exclusion is set as a requirement that is against the current of a service performed individually by an economic operator. For the "Measurement of equivalent effect" the jurisprudence means any obligation in cash, even a minimum, established in uniformity which strikes goods for the reasoning of border crossing, though not dangerous to the state.

Where such obligation is included in a list of a service made effective to importer and if his service appears proportionate to such service, the measure is to be considered legitimate in the light of the objectives of the Treaty.

The Court specifies that the legality of the measures should be evaluated on the basis of proportionality ratio between the financial obligation, supported by the economic operator and the services rendered, thus applying the proportionality in a strict sense, on the basis of a true and mathematical ratio between the two key elements. Proportionality assessments always adhere, not only on the quality field, as some elements are quantified and may as well facilitate the assessment of the situation that is subject to union jurisdiction. European judge, in order to assess the legality of measures having equivalent effect, applies the principle of proportionality in expressing its "negative"' disproportion. The introduction of measures with equivalent effect by the Member States continues to finalize protector, sometimes taking configurations that make it difficult the assessment and individuality. Such measures can be applied directly to national products and to those imported, without a discriminatory character and to be finalized in consumer tutelage.

The Commission implements a differentiation between distinctively applied measures and indistinctively applied measures to national products and to those imported. Meanwhile the first measures aim to bring to an end the discrimination. The latter, after accepting destroying effects from those manufactured, results inherent in the inequality of national provisions. Restriction made to the member states is of general importance and not constrained by an effective reduction of exchanges, but is imposed only for what the measure represents, even only potentially, a disproportionate deterioration, and for the importers is considered as barrier to free trade. However the restriction imposed to members states not to prevent trade between EU countries is not absolute. There are permissible restrictions under conservation provisions laid down by Article 36 of the EEC Treaty, or in the presence of imperative needs expressed by the jurisprudence, aiming the safeguard of major national interest.

The free movement of goods may incur restrictions, when it is in game the supervision of major interest. The European jurisprudence confirms, in the light of proportionality, the conditions justifying strict measures adopted by states such as: compatibility of constraints required for the target to be achieved: the applicability of constraining measures for national products and those imported: the adoption of such measures by the public authority of a member state. The principle of proportionality functions as a type of transaction used by Court in order to qualify as a measure of equivalent effect, any additional request that illegally prevent the free movement of goods. In addition, the European judge calls disproportionate any measure that it is applied only for certain imported products, referring as discriminatory and configured as an unjustified measure of equivalent effect. Thus establishes a direct link between the principle of legitimacy, appearing as prohibition of discrimination, and the principle of proportionality. Restrictions on the free movement of goods, resulting as unequal in various commercial and technical regulations, are eligible to be considered as proportional with the aim pursued only if it is necessary or not excessive, in meeting imperative needs; Finalization to satisfy a general interest with imperative nature is necessary to pursue such a goal, as the most convenient and least harmful of those who are available for the free movement.

Another sector where it is evidence the importance of two above mentioned principles is the free movement of people. EC Treaty stipulates in Article 48 the freedom of movement of persons, which implementation is based on the prohibition of discrimination on nationality grounds and thus resulting in inequality of any legislative provision, by regulation or by administrative field that leads to a direct or indirect discrimination workers, considered as citizens of the EU. The rights enshrined in Article 48, in particular entry and residence at the "occupied" state, are subject to protection clauses that authorize justified limitations on grounds of public order, public safety and health. Such a clause seen as derogation from the general principle of freedom, have a restrictive and rigorous interpretation. The State of "residence" may adopt appropriate sanctions for the aim pursued by the European law on the preservation of the principle of proportionality. Sanctions introduced by the State can not constitute an obstacle to the exercise of fundamental freedoms guaranteed by the Treaty, unless it is affected the safeguard of national security. The notion of public order should be understood in the limited sense and cannot be defined unilaterally by each Member State, without the control of European institutions. In particular, the Court is called to verify the correlation of proportionality between the restrictions and the purpose of maintaining public order. Meanwhile, the European Court should extend control over the measures adopted by the Member States when applying the necessary measures to maintain public order and national security in the presence of a major and real threat. With regard to sanctions, they should be evaluated in terms of the nature of the offense conducted which from the other side should result as a real risk to public order and national security. The Court considers the proportionality of sanctions in relation to the penalties imposed to member states for similar behavior. The European judge is of the opinion that a member state must adopt restraining measures to residence rights, limited to one side of national territory, against citizens of other member states, only under the conditions in which these measures can be applied for nationals of the member states represented before the court. In this case, the principle is also applies with a restriction on discrimination. In addition, the Court recognizes that the justification of restraining measures to the freedom of movement and residence is based on the gravity of the offense committed, without

being qualified as a lack of the respect of the format with administrative character. The restraining measures needs to be proportionate to the time in which a serious threat to the internal public order is committed, despite the fact that the observed activity is also prohibited for the citizens of the state: national authority need only to demonstrate that the measures is justified by the provision of public order.

Title I (Section 61-699), entitled 'Visas, asylum, immigration and other policies together with the free movement of people', provides a limited European competence to adapt controls related to the external borders, concerning the rights of asylum, immigration and other cooperation in civil-legal field. Difficulties that have accompanied the transformation of the sector and the relevant discipline, to Europe system, have left deep marks, especially in the implementation of European traditional mechanism. For a transitory period of 5 years, the Council is appointed to decide by unanimity, on a proposal from the Commission or on the initiative of a Member State, while Parliament does not participate directly in the decision-making process, but is consulted. In other words, *soft* change during transitional period reflects the concern of some states for the Europeanization of this sector. In the field of civil judicial cooperation, European action is strictly limited to what is necessary as far as the correct functioning of the internal market concerns. For this reason, there are adopted two proposals for regulation concerning the recognition and enforcement of decision in the field of marriage and parental power. These proposals are justified in the light of the principle of subsidiary, having in consideration also the need to improve and enhance the free movement of jurisdictional and measures in civil area and the purpose to create an area of freedom, security and justice, but these are not objectives to be pursued individually or collectively by the member states, except at European level.

The jurisprudence has report a new orientation concerning the sector of free exercise of duties. The Court, in *Veronica* case decision has significantly modified its orientation on the delicate topic of separation of powers between member states and EU[25]. Times before such a decision issued in the interest of the state, they were destined to surrender if the measures taken for the protection of interests would produce discriminatory effects: once again the Court sacrifices some national needs for the implementation of the common market, which is primary and of fundamental importance[26]. On the other hand, through *Veronica* decision – the court has recognized the state interests in different cultural order, listing such interests between the general interest objectives strictly necessary to the state to legitimately follow, organized an apriori functioning of its broadcasting bodies. It was a achieved a balance between national purposes on cultural policy and the full application of fundamental freedoms specified by the Treaty. Given the recent Court's directives in the field of free movement of services and goods, it is noted a major implication of the principle of subsidiary: it must gain ground, not only in the preliminary choices of national or European discipline that might be more convention in a particular area, but also as imperative criteria necessary to resolve eventual conflicts between state measures and European ones, in cases when state regulations are incompatible with the principles set at European level. In respect of the principle of subsidiary, the Court must first of raise the question on the permissibility of European intervention and the lawfulness of its judgment about a sector which is exclusively under European competence and where the state level is considered inappropriate.

In the sector under consideration, the proportionality principle allows to avoid arbitrary intervention by public authority in the exercise of such freedoms by individuals. In fact, the principle was referred to as freedom in the performance of services in the mid '70s, when the Court affirmed that certain services are not compatible with the Treaty under certain conditions, motivated by the application of professional rules: such as rules on organizing, training, control and responsibility. According to case law, free exercise of professional activity can be legally limited only under justified provision on general interest, considering certain social effects of these freedoms. The Court then clarified what is the meaning of the conditions “justifying the public interest to ensure the respect of professional rules”: insufficiency to regulate the public interest by the rules set by the state; necessity to set conditions on above mentioned interest, with the view that the general interest is not achieved through restrictive provisions. Consequently, a restrictive measure to the freedoms of services can be legitimate only when it is determined on the basis of those public needs indicated by the European judge. The Treaty provides that the person may exercise temporary his activity in that member states where his service are destined under the same conditions applied for the citizens of the concerning state. In order to assess the legality of restrictive measures, it is necessary to clearly distinguish the clearly applicable measures from not clearly applicable measures: the first are consistent only if are expressly provided as restrictions of the safeguarding provisions of the Treaty; the latter, even when they are not discriminatory, are configured absolutely as exceptional on the basis of cumulative conditions, indicated by the jurisprudence. According to the Court, restrictive measures against foreigners who are Europeans are not material discrimination and may lawfully admitted for reasons of general interest only in case that such reason are not protected by the state where the service is designated to. Recently, the jurisprudence has a significant application of this principle in order to guarantee the enjoyment of freedom of services, which results also in the opinion of the Court, apart from the principle of equal treatment of securities. In the sector of freedom of services, the principle of actions by states takes a relative value, for the simple

25 Decision of 3 February, Case C-148/91.

26 We recall that the Court was pronounced on the issue of the compatibility of Dutch norms in the field of television with the Treaty’s provisions on freedom of services; in particular with its two decisions Mediawet, July 1991, (cases C288/89 and C353/89) the Court had recognized that cultural needs could constitute an imperative need on the general interest justifying a restriction on the freedom of services, but concluded that the provisions applied for the actors placed outside Dutch territory to abide by these provisions which were applied to internal actors, was not conducted by a cultural purpose rather than by economic nature purpose.

reason that the "contact" with territorial community and national system where the service is supplied, is a mere casual contact, and above all temporary and the so called the treatment by states is configured as a minimal parameter of the legality of the restrictions applied.

The Social policy is another sector which will analyze in view of the principle of subsidiary and proportionality. The requirements of Articles 136-143 of the EC set in action by the Amsterdam Treaty, several provisions contained in the Agreement on social policy annexed to the Treaty of Amsterdam, express reference to social rights as defined by the European Social Charter and European Charter of fundamental rights of workers[27] have modified previous European discipline in the sector. In particular, was acknowledged a wider field in the area of values, principles and fundamental rights, through which it is raised and protected the social cohesion: EU takes over to protect them and put its instruments under their service. In the area of social policy, the application of the principle of subsidiary has acted and acts as an incentive to the spirit of cooperation and with greater intensity. Meanwhile to the EU, in consistence with its goals, was provided certain powers to support the member states. Further, there are defined the instruments of action that the Commission may use to facilitate the coordination of national interventions in order to realize all social policies. In such sector, the main rule is the cooperation between the authorities concerned, as the social dimension is characterized by the diversity of the systems, the culture and the practices of countries and the most important role is played by collective contracting[28]. There are frequent conflicts of a political nature that hide many aspects of social policy from the discipline between the authorities and the social parts.

Establishment of European powers, to choose the most appropriate method in relation to individual needs and potential added value of European intervention, seemed possible and necessary only to settle some goals to be pursued. Once again the EU is charged to lead and coordinate, in order to avoid abusive social practices and possible distortions of competition and to promote empowerment of social cohesion, contributing to job creation as an absolute priority purpose.

It is a reference to the safeguard of fundamental rights, that since the 60s, the European jurisprudence was pronounced for the evaluation of the proportionality principle, rebuilt as a limitation of interference by the High Authority in the exercise of the rights guaranteed in the constitutions of Member States for their citizens. To determine the requisites for the application of the proportionality principle in the sector in question, it is necessary to distinguish in the field of fundamental rights or fundamental principles, those that are closely referred to human, regardless of the concerned legal order, from those indicated by the European order as such. Since the relationship existing between the European order and the rights of such nature is undirected, the jurisprudence underlines the essential role performed by an imperative function of the Court, referring to "constitutional traditions of the Member States', called by the Treaty and by introducing strongly innovative elements for individualization of rules to be applied. The Activity developed by court is configured as a true normative function and is the same European system that provides reference parameters to independently justify restrictions on freedoms and rights guaranteed by the Treaty.

The Court establishes the obligation to respect the rights, since it has control over the European laws, over the enforcement measures for such acts by the Member States, over the exercise of the limitations imposed by the Treaty, over the states in relation to the application of the freedoms guaranteed by them. The union for the legitimacy of European acts in the light of the principle of proportionality, leads the Court to individualization and determining the importance of the scope of such rights in the European order, either by calling the constitutional traditions of the Member States or by international treaties, and, above all, by the Rome Convention of 1950. The principle of proportionality, as an expression of the most extensive and complete reasoning rules, is not limited in verifying that the pursuit of the goal has provided a less harmful restriction in the interest of privates, but allows the court to assess the legality of the exercise of limitations provided in favor of the member states in accordance with the Treaty, in the presence of specific requirements. In light of correlation between the sacrifice settled and the purpose to be followed, the principle of proportionality is considered as a tool that allows the continuance of the evaluation of measurement of the interests in line, imposed as a general criterion of interpretation for the states. The Proportionality, built by the judiciary as a general principle at the European level, acts within the system of each member states as a tool for the safeguard of the so-called core of fundamental rights. In fact, "a national measure must show a fundamental right, recognized by European law, more by what is not proportional"" in order to represent a violation of the very essence of this right, as it will not recognize its essential function.

27 The Social Court was signed in Turin on 18 October 1961, the European charter of fundamental social rights of workers was signed in Strasbourg on 9 December 1989. Specifically, the latter establishes the basic rights of workers in the field of: freedom of movement; freedom of choice and the exercise of a profession; living conditions and employment, social protection, health, etc.

28 The importance of such a contracting is mentioned by the Commission's action program to give importance at the European level, in sectors under its competence.

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