THE ORIGINS OF THE PRINCIPLE OF SUBSIDIARITY IN THE EUROPEAN LAW FROM THE BEGINNINGS OF THE EUROPEAN UNION UNTIL THE TREATY OF MAASTRICHT

Diana-Ionela ANCHEŞ*

* Lecturer univ. PhD., "Vasile Goldiş" Western University, Faculty of Legal Sciences, Arad, Romania

Abstract. *In the present text we chose to present some of the main aspects concerning one of the key principles of the European law – the principle of subsidiarity. Hence, we centered our attention on the general aspects concerning the concept of subsidiarity, on the process of transforming the concept of subsidiarity into a principle, and in the end, on presenting the principle of subsidiarity in the European law until the Treaty of Maastricht that consecrated it as a principle of the European Law. In this last part of the paper, we presented the principle of subsidiarity in comparison with other two key principles: the principle of conferring competences and the principle of proportionality.*

Keywords: subsidiarity, principle of subsidiarity, principle of conferring competences, principle of proportionality, Treaty of Maastricht

1. General aspects concerning the principle of subsidiarity

Among the principles that are destined to give a new vision over the capacity of humans to build their history, to engage traditional instruments for the achievement of a new function and to fabricate "new political formulas" there is the principle of subsidiarity[29].

[29] Liviu-Petru Zăpârţan, *Construcţia Europeană*, Ed. Imprimeriei de Vest, Oradea, 2000, pp. 19-20.

The concept of „subsidiarity" has many senses. At its origin, the term has its roots in the Latin word "subsidium" which, in a military sense denoted the reserve line and the reserve troops. Starting from these senses, other senses of the word have developed, namely the ones of: help, support, sustentation, assistance, place of refuge or asylum. As a consequence, within the research literature there are authors who consider that the term of subsidiarity covers two ideas: it is subsidiary all that is secondary or accessory; and it is subsidiary all that is additional[30].

French literature in the field of subsidiarity remarked that the notion of subsidiarity has maintained over the centuries the senses of: support when needed, of surrogate force, of remedy of deficiencies, all of these with reference to an actor which actions independently, but which can need, at a certain moment, a subsidiary intervention. As a consequence, the idea of subsidiarity existed long before the appearance of the term because, only over time the idea and the term of subsidiarity will transform into a principle of philosophy and of law.

So, the principle of subsidiarity represents a starting point for the determination of the social relationships between a society and its organizational structures, having at its basis a "principle of the common sense" which, normally should structure the behaviors of the people, of the institutions and of the international and European communities.

The great philosopher Aristotle believed that the real balance between the "public authority" and "society" can be accomplished only when politics aims to govern society, to lead people towards their fulfillment, namely to help them to achieve together what they could not achieve alone, the "common good". Hence the role of different groups, formed of people, is to help people with the resolution of the problems that they cannot solve individually, through a principle of

[30] *Ibidem*, p. 20.

complementarity of the human action that a superior level of organization is asked to manage[31].

We must also highlight the contribution of Althusius to the enrichment of the Christian vision on the subsidiary authority and on the understanding of the nature of relationships within a society. The principle of subsidiarity described form many points of view the medieval society, but it was theorized in a systemic manner only at the beginning of the 17th century in the work "Politica methodice digesta" of Johannes Althusius[32].

Medieval thinking slowly made way to the autonomy of the groups which followed their own purpose: "In the Medieval Age society was sometimes conceived as an organism and as an organization of the independent members"[33].

At the basis of the social and political life there are the "simple and private communities": families and corporations; the next level is occupied by the "mixed and public communities": cities and provinces. At the top of the pyramid there is the State, "the superior and universal public community, which is self-sufficient and sovereign"[34]. So, the State is the totality of groups and organisms created and ordered in a hierarchical way[35].

The State is conferred by the totality of constitutive bodies, by the people, through explicit delegation, only limited competences. Each social group has an identity that it protects in relation to others, even though they develop and then, they enter into social relationships. More such groups compose a superior common unity that assumes coordinating functions. Hence, the integration of a social

---

[31] *Ibidem*, p. 22.

[32] See Pierre Jeannin, "Althusius", in vol. J. Touchard, *Histoire des idées politiques*, Tom I, Puf, Paris, 1959, pp. 293-298.

[33] Chantal Millon – Delsol, *L'Etat subsidiaire*, Puf, Paris, 1992, p. 44.

[34] As J. Althusius said, „Community is not justified but through the fact that the family needs it. The City does nor justify its existence but through the fact that its inhabitants need it. So do the province and the state. - Pierre Jeannin, "Althusius", op. cit.

[35] J.S. Montgrenier, "Johannes Althusius et L'Etat subsidiaire", in vol. *Regard Européen trimestriel*, Ed. Letizia, no. 9, Janvier 1999, p. 58.

body within a superior unity can be accomplished only through the development of the integrated groups, so that they increase their welfare; and if the superior authority would breach their autonomy, they would disappear as entities. So, this is why, between the different levels of authorities there are established certain relationships, according to some clear and precise rules[36].

Today, the center of interest is represented by the human person who must fulfill herself with responsibility, but because she is by her nature a social being, she needs an organized frame of life, a state, a public authority capable to help her to fulfill herself in the wholeness of her individual universe, but at the same time, together with her fellows. As a consequence, people have built, for the accomplishment of their purposes, different social bodies with their own autonomy. Each social body must fully exercise the competences it was invested with, without resorting to the help of a superior level and without breaking down another inferior level of authority. The intervention of a superior authority to the inferior levels cannot be justified but with a subsidiary title, in case of some deficiencies of the latter[37].

According to this vision, the principle of subsidiarity becomes a guiding principle of the organization of the society and granting the maximum autonomy to the "basic" communities, it allows each person to accomplish her social function, avoiding this way power concentration.

The real justification of the principle of subsidiarity is of allowing each type of community to reach, depending on their possibilities, their own finalities because no community can reach all finalities that are desired by the members of a certain type of community. In this case, they will orient themselves towards the superior authority for the accomplishment of their goals. The principle of subsidiarity is introduced in practice through a series of conventions

[36] Liviu-Petru Zăpârţan, *op. cit.*, p. 25.

[37] *Dictionaire historique de la papauté*, Ed. Fayard, Ph. Levillain (red.), Paris, 1994, p. 1599.

which guarantee the autonomy of the signatory communities and which define the area of the granted powers.

2. Theorizing of the principle of subsidiarity

For theorizing the principle of subsidiarity Millon-Delsol starts from the opinions expressed by two authors, G. de Ketteler and L. Taparelli. The first uses the notion "subsidiary law" for designating the freedom of the villages in the autonomous resolution of their social problems. According to him, it is the State's duty to grant material support, but also to elaborate and impose a certain legal framework to this extent, and all the more so for the resolution of the general problems of the society. Ketteler believes that the intermediary social groups are the ones which keep the proximity towards the citizen, towards his actions.

In turn, Taparelli nuances Ketteler's vision, ending by stating the degrees and the intensity of the State's intervention. First, it would be ideal that the State to not intervene at all, being only the creator of the framework conditions of the individual action. Then, if this attitude appears to be insufficient, the State will intervene providing a punctual intervention. Finally, the State can intervene only in relation to certain activities which cannot be supported by the private field and only for obtaining the desired result. Hence, the idea of subsidiarity appears to be in opposition not only to the "nefarious" intervention of the State, but also to the discrepancy between the institutions and the real needs of their addressees. So, subsidiarity means a positive action of the State, of ensuring human dignity and freedoms, and also a restriction of its intervention in the human life but to the extent to which this is needed for their "happiness"[38].

The term of subsidiarity imposed due to the writings of one of the inspirers of the social Catholicism, namely the Bishop Mayence Wilhem Emmanuel von Ketteler. Then, in the Encyclical Quadragesimo anno (1931), Pope Pius the 11th settled the principle of subsidiarity in the center of his social vision: "The purpose of the social

[38] Liviu-Petru Zăpârţan, *op. cit.*, p. 30.

intervention is to help the members of the social body, and not to destroy and annihilate them"[39].

The principle of subsidiarity is put in relationship with the principle of autonomy, Erney Gillen proposing the keeping of the subsidiarity's action for the actions of the state, and the autonomy for its divisions. Hence, subsidiarity is a principle based on which the State leaves autonomy to its subsystems, allows a decentralization of its actions, which accomplish depending on the local interests. The state intervenes in the materialization of those actions in a subsidiary manner, having always in mind the maintenance of the whole's identity that it will organize and lead as a whole. The state is not autonomous, but sovereign. In the case of the European construction, the action of the state expresses the will to defer a part of the sovereignty, together with and at the same time as the other partners, towards a new structure that preordains the limits of the autonomy. Sovereignty intervenes into this relationship of the State with the international organizations, while autonomy is rather the art of the State of stimulating the creative action of the local unity[40].

The attempt to define the principle of subsidiarity was much weighted by the ambiguities of this concept. This ambiguity is also augmented by the various conceptions over this principle, and especially over the consequences that arise from its different interpretations. On the one hand, subsidiarity is from above and it is profitable for the superior level which has competences in the fields in which its intervention is considered necessary for the accomplishment of a precise purpose. On the other hand, there is a bottom-up subsidiarity that does not confide to the superior level all the actions, except the ones that cannot be executed at the inferior level.

The freedom of the individual must be wide, but in case of the incapacity of action at the inferior level, the superior level will intervene. The latter will have the obligation to intervene, but will do it

---

[39] Pierre Téquis, *Condition des ouvriers et restauration sociale, lettres encycliques*, Paris, 1991, p. 105.

[40] Liviu-Petru Zăpârţan, *op. cit.* p. 34.

carefully when the inferior level has the capacity to action. At the same time, the superior level will incite and support the inferior one in the process of accomplishing its own actions[41].

So, the superior level intervenes within the inferior structures in two situations: when they are incapable to action with their own means for the general interest or when their action is contrary to this interest. In the first case, it is debated the action capacity of the social groups of proximity that is observed by themselves, asking for the intervention of the superior bodies, in which case, in the name of the general interest they intervene for supporting the action.

According to the research literature, the principle of subsidiarity presents a certain complexity which can be seen when the principle is presented in the light of its relation to the fields of the social life. Hence, the subsidiary competence expresses the idea of the need for "the proximity" of the levels of decision-making to the subjects they refer to. The inferior level must be granted, first of all, the possibility of self-helping, through the accent on the senses of subsidiarity (help, subsidy). Also, we must not forget the fact that, for keeping the coherence, the structures of a certain order must always be seen through the angle of the exigencies of the subsidiarity, replacing the old elements.

From a legal point of view, the principle of subsidiarity puts at work the attributes of the sovereignty of the Member States of the European Union. In the research literature we find that there is a difference between popular sovereignty and national sovereignty. The first is based on the idea of the citizens' universalism. Hence, in this case, the people are the titular holders of the sovereignty, and the Government leaders are awarded, by suffrage, not the sovereignty which is inalienable, but its exercise. On the other hand, national sovereignty belongs to the State as an abstract entity, made up of its citizens. So, the Nation has its own will which cannot be directly

[41] Patrick Santer, "Le principe de subsidiarité dans le Traité de Maastricht" – étude de l'article 3B du Traité CE, D.E.S.S., "JURISTES EUROPEENS", 1993-1994, pp. 9-10.

expressed, but through its representatives[42]. Confirming these ideas, The Constitution of Romania states in Article 2 that "(1) National sovereignty belongs to the Romanian people, who exercise it through its representative bodies, created through free, periodical elections, and also through referendum. (2) No group and no person can exercise sovereignty in their own name"[43].

Analyzed in a negative sense, sovereignty means the absence of any exterior dependence and of any interior enclosure. In its positive sense, it means the quality of the "State power" to be supreme[44].

In the exercise of their mandate, the members of the Parliament are not in the service of the Nation, but of the People. Along with the fact that sovereignty is inalienable, it is also indivisible because it cannot be divided and distributed to "any group and to any person". The people expressed its sovereignty not only through the Parliament, but also through "its representative bodies"[45].

So, sovereignty is the quality of the State power based on which it has the power to decide, without any interference in its internal and external business, but with the respect of the sovereignty of the other states, and also of the principles and other norms generally admitted in the international law. It is correctly supported the idea that there is an "interior and an exterior" sovereignty because we can talk about the "sovereignty between states" and about the "sovereignty of the state" – inseparable components which condition each other. "The sovereignty of the State" represents the right of the State power to make decisions, without any interference from the part of the social powers, in all the aspects of the economic, social, political and legal life. The independence of this power expresses the fullness of the same prerogatives on the external level. Both "the sovereignty of the State" and the "sovereignty between states" are limited, on the one hand, by

---

[42] Ion Deleanu, *Instituţii şi proceduri constituţionale – tratat*, Ed. Servo-Sat, Arad, 2001, p. 181.

[43] *Constituţia României*, updated and republished in Monitorul Oficial no. 767 since the 31st of December 2003.

[44] H. Capitant, *Vocabulaire juridique*, Puf, Paris, 1936, pp. 458-459.

[45] Ion Deleanu, *op. cit*., p. 182.

the aspirations and decisions of the individuals in their relationship to the power, and on the other hand, by the fact that on the external level, the State is nothing more but an integrated element of the international system. The solution proposed by the research literature is congruent with the principle of subsidiarity: "independence within interdependence"[46].

The German chancellor Helmut Kohl underlined the need for respecting the individual diversity of the States which participate to the process of the European construction: "we do not desire a centralized Europe, but a Europe of diversity. Europe nurtures with the cultural wealth and with the plenitude of traditions and national and regional particularities"[47].

By reading the Treaties that stand at the basis of the European Communities we can see that their authors were not concerned with the principle of subsidiarity. Their main concern was the practical accomplishment of the objectives for which the European Communities were created. Still, along the consolidation of the European construction made way the idea of subsidiarity, an idea that ultimately became the center of all legal, political and institutional debates of the Union, due to the implications that its acceptance as a principle of the European construction would have.

3. The principle of subsidiarity in the Treaty of Maastricht

Article F1 from the Treaty of Maastricht states that: "The Union respects the national identity of the Member States" whose governing systems are founded on democratic principles. The maintenance of the national identity must obviously be extended, being a reference to the interstate character of the European Union, composed of States that remain sovereign despite the limitations of sovereignty to which they are exposed[48].

---

[46] *Ibidem*, p. 183.

[47] Patrick Santer, *op. cit*., p. 44.

[48] Joël Rideau, *Le Droit des Communautés Européennes*, Que sais-je?, Presse Universitaire de France, Paris, 1995, p. 20.

Article A from the Treaty of Maastricht also refers to this aspect stating that it is "a new stage in the process of creating a Union closer to the peoples of Europe, where decisions are made as close as possible to the citizens". It also indicates that "the Union is founded on the European Communities completed by the policies and forms of cooperation created by the present Treaty", recalling that "its mission is the organization in a coherent manner of the relations between the Member States and their population". So, any federal reference is, at this moment, excluded from the used formulas, as a consequence of the compromise between the states which were in favor and the ones which were hostile to such federal orientation. And even if the Union enrolls into a process with federal vocation, this diversity that exists in Europe could be entirely respected contrary to the allegations of the euro-skeptics who militate for a Europe of the sovereign states. A federal Europe does not mean a European super-State, or an absolute smoothing.

It was generated the belief that a European construction cannot be accomplished but through well thought out progression towards some institutional structures that will not bring prejudice to the independence and sovereignty of the participant states. Hence the particular significance awarded to the principle of subsidiarity, which demands to the European Community to action only to the extent to which the followed objectives will be better accomplished at a community level than at the level of the Member States[49].

Various previsions of the constitutive Treaties of the European Community encompass indications which allow the establishment of a connection between it and the profound finalities of subsidiarity, sometimes understood as a justification of the community action, and other times as a limitation of this action. Even the community practice, animated by a reason supported by the need to enhance the community action for the fulfillment of the obligations entrusted to the

[49] Liviu-Petru Zăpârţan, *op. cit.*, p. 44.

Community by the Treaties, disclose a relation with the principle of subsidiarity[50].

So, subsidiarity did not represent an unknown aspect of the community law. It would be fake the belief that only through the Treaty of Maastricht, and more precisely through Article 3B, the principle of subsidiarity was present in the legal order of the Community. In fact, subsidiarity existed even in the Treaty of Rome, in a default manner. The perfect example in this sense is represented by Article 5 from E.C.C.D. which stated that "The Community fulfils its mission, according to the conditions provided in the present Treaty, with limited interventions", and that "the institutions of the Community exercise their activities with a reduced administrative apparatus, in a tight cooperation with the interested ones". So, even though the principle of subsidiarity was not expressly provided, still E.C.C.D. did not want to have a steering policy in the field of carbon and steel, but to intervene only when circumstanced demand such intervention. Then, Article 203 from the E.E.C.A. stated that "if an action of the Community must be necessarily accomplished, within the functioning of the Common Market, for one of the objectives of the Community, and the present Treaty did not foresee the action power demanded for this purpose, the Council, deciding unanimously over the proposal of the Commission, and after consulting the European Parliament, can get the necessary attitude". In the research literature it was considered that this would be the most obvious manifestation of the principle of subsidiarity in the community law from that period of time[51].

The project of a Treaty on the European Union or the Spinelli Project adopted by the European Parliament on the 14th of February 1984 mentions the principle of subsidiarity on several occasions. On the one hand, at the end of the Preamble it stated that "it is

[50] Joël Rideau, *Droit Institutionnel de l'Union et des Communautés Européennes*, 4e édition, vol. III, LGDJ, Paris, 1994, p. 520.

[51] C. Philip, C. Bautayeb, *Le principe de subsidiarité, Dictionaire de droit communautaire*, Puf, Paris, 1993, p. 1027.

understandable the entrust towards the common institutions, according to the principle of subsidiarity, of the competences that are necessary for the well fulfillment of the tasks that they will be able to accomplish in a more satisfactory manner than the states, in an isolated manner". On the other hand, according to Article 12, paragraph 2, "even if the Treaty assigns a concurrent competence to the Union, the action of the Member States is exercising in those fields where the Union did not intervene. The Union does not action but for the fulfillment of the tasks that can be accomplished in common in a more efficient manner than if they would be accomplished by the Member States through a separate action, especially of those tasks that demand for the intervention of the Union because their dimension or effects overpass the national frontiers"[52].

In Article 66 from the Spinelli Project it was stated that in the field of international relations the Union can action through cooperation in case the isolated action of the Member States is not as efficient as the one of the Union. For that matter the principle of subsidiarity is applicable especially in the field of concurrent competences, the Union being able to intervene only if it proved that its action is more efficient than the individual action of the states. So, in the absence of the justification of the increased efficiency of the community intervention and depending of the dimensions and effects of the action, that do not exceed the national framework, the Member States will be able to action separately. Consequently, Article 12, paragraph 2 from the Spinelli Project, in the same way as the German fundamental law, establishes the conditions in which a community intervention can be initiated[53].

The approach of the European Parliament over the principle of subsidiarity changed in the Resolutions adopted in 1990, and especially in the Giscard d'Estaing Report from the 12th of July 1990 – regarding the principle of subsidiarity and in the Martin Report from

[52] Patrick Santer, *op. cit*., p. 30.

[53] F. Capotorti, M. Hilf, F. Jacobs, J.-P. Jacqué, *Le Traité d'Union Européenne, commentaire du projet adopté par le Parlement Européen*, Ed. de l'Université de Bruxelles, 1985, p. 71.

the 22nd of November 1990 – referring to the inter-governmental conference concerning the strategy of the European Parliament. Inspired by the Spinelli project, and re-engaged later in Martin Report, Giscard d'Estaing Report proposes the insertion of a new Article 3 in the Treaty, according to which "the Community does not action but for the fulfillment of the tasks conferred by the Treaty, and for the accomplishment of the objectives established by it. In case the competences are not completely or exclusively conferred to it, the Community actions to the extent to which the accomplishment of the objectives demands its intervention, because their dimensions and effects overpass the frontiers of the Member States, or they can be accomplished in a more efficient way by the Community than by the Member States acting separately"[54].

The first phrase imposes to the Community an action limited to the accomplishment of the tasks conferred to it by the Treaties, and also to the fulfillment of the objectives imposed by them. Except the cases in which the Community has exclusive competences of action, it intervenes only if the States are obsolete by the effects of the objectives or if they could be better accomplished by the Community than by the Member States. Still, in comparison with the Spinelli Project and with the Giscard d'Estaing Report which stated that "the Union does not action except for the fulfillment of the tasks …", Martin Report prefigures a positive draft of the principle of subsidiarity: "The Community actions insofar as …"[55].

Unfortunately Spinelli Project did not enjoy the best perceptiveness from the part of the Member States, the latter seeing their competences hacked as a consequence of the adoption of the principle of subsidiarity. Along with the disappearance of this reticence there was also gone, at least until the negotiations of the Treaty of Maastricht, the possibility to see the principle of subsidiarity consecrated in the community legal order, as a key principle in the field of concurrent competences. Still, even before the Treaty of

[54] Patrick Santer, *op. cit*., p. 32.
[55] *Ibidem*, p. 33.

Maastricht, subsidiarity influenced the community law and practices, and as a consequence of the accumulated experience in the field, the principle of subsidiarity has proved its utility, so that it had to be consecrated in the legal order of the Community, as it was prefigured by the Spinelli Project.

From the Preamble of the Treaty on European Union it can be detached the main desire of the authors of the treaty, namely "the beginning of the process of creating a Union closer to the peoples of Europe, within which the decisions to be made as close as possible to the citizens, according to the principle of subsidiarity"[56].

The enrolment of the principle of subsidiarity in the Treaty on European Union was not accidental because it was necessary to answer the vehement critics expressed in relation to community integration. The dynamic character of subsidiarity which emphasizes its contradictory valences facilitated its introducing in the Treaty of Maastricht. Hence, for some, subsidiarity protects Member States from an excessive ampleness of the Community within its actions for the accomplishment of the objectives established by the Treaties. For others, subsidiarity is the path towards the extension of the Community's competences when Member States will be incapable to accomplish in a sufficient manner the objectives of the considered action. Hence a conclusion very well reflected in reality: "Each with its own subsidiarity"[57].

It is about choosing the angle from which it is desired to approach subsidiarity – "subsidiarity from above or bottom-up subsidiarity". In this analysis we must not forget the reason from behind the decision to introduce this principle in the Treaty, namely that it must play a role in favor of the Member States, that it was the desire to comfort them that stood behind the negative compilation of the principle in Article 3B (2) from the Treaty of Maastricht. So, the

---

[56] Article A from the *Treaty of Maastricht, Treaty on European Union*, Maastricht 7 February 1992, p. 5, http://www.eurotreaties.com/maastrichteu.pdf

[57] J. C. Juncker, "Contribution au Parti Populaire Européen, élargissement, democratization", in *Journal d'études Londres*, 7-11 septembre, 1992, p. 28.

reason for which we can state that introducing the principle of subsidiarity in the Treaty of Maastricht has marked a fundamental stage of the European construction is exactly the purpose of the principle of subsidiarity to eliminate any fear regarding a European super-State, which through the legal texts would annihilate the diversity between the different parts of Europe.

The principle of subsidiarity is expressly mentioned in Article B (2) from the Treaty on European Union according to which: "The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3B of the Treaty establishing the European Community"[58]. Hereinafter, Article F (3) from the Treaty of Maastricht stated that: "The Union shall provide itself with the means necessary to attain its objectives and carry through its policies"[59]. This text makes us believe that absolutely all the previsions of the Treaty, including Article 3B (2) must be fulfilled, and the Community will have to find the best methods through which to do so.

Even though it was presented as establishing *expressis verbis* the principle of subsidiarity, Article 3B refers to three different legal concepts, which are in a very tight relationship to each other: the principle of conferring competences, the principle of subsidiarity and the principle of proportionality[60].

Hence, Article 3B states that: "(1) The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. (2) In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and so far as the objectives of the proposed action cannot be sufficiently achieved by the

---

[58] *Treaty of Maastricht*, Treaty on European Union, Maastricht 7 February 1992, op. cit., p. 5.
[59] *Ibidem*, p. 6.
[60] *The Maastricht Treaty*, Previsions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, Maastricht 7 February 1992, p. 3, http://www.eurotreaties.com/maastrichtec.pdf

Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. (3) Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty"[61].

Even though in the research literature there are opinions according to which some of the functions that must be attributed to the principle of subsidiarity are the ones of distributing competences between the Community and the Member States, they are few and unimportant. From the text of the Treaty (Article 3B (2)) it clearly results that the principle of subsidiarity does not have the function of conferring competences, this function being the object of article 3B (1) from the Treaty of Maastricht.

With reference to the competences, they are regulated by the community Treaties depending on the object of activity of the Community. For establishing the competences of the Member States and of the European Community there must be taken into consideration the basic elements of the European construction[62].

The previsions of Article 3B (1) from the Treaty of Maastricht do not present innovations in the field, but they confirm a preexisting situation of the community law. So, the principle of subsidiarity is not a principle of conferring competences, as this complex function belongs to the constitutive and modifying Treaties.

Also, by reading Article 3B (2) from the Treaty of Maastricht we can see that the principle of subsidiarity does not apply but in the fields that do not represent the exclusive competence of the Community. This Article basically fixes the two main conditions for the Community's intervention. On the one hand, given an objective established by the Treaties, it is necessary that the Member States cannot attain this objective in a separate manner or in mutual collaboration. On the other hand, community intervention must be really capable to repair this deficiency of effectiveness seen at the level

---

[61] *Ibidem*, pp. 3-4.

[62] Jean Boulouis, *Droit Institutionnel des Communautés*, 4e édition, Montchrestien, Paris, 1993, p. 113.

of the Member States[63]. The Community has the task of proving the accomplishment of both of these conditions. It must show, above all, that the action of the Member States is not sufficient for the accomplishment of the objective provided by the Treaties. It also must show that its intervention will cover this deficiency[64]. On the other hand, this intervention must complement the action of the Member States. It cannot be justified but "only if and so far as" an objective was not achieved in a satisfactory manner. The fact that the Member States could not entirely achieve such an objective does not authorize the Community to completely substitute to the Member States, but only to accomplish what they could not[65].

Article 3B (3) submits community intervention to the principle of proportionality, also named the principle of "forbidding the abuse" because the means used during the community intervention must be proportional to the followed objective, and the intensity of the intervention must be limited to the effective achievement of the considered objective.

The principle of subsidiarity must not be, not by any manner of means, confused with the principle of proportionality, even though at the first glance they may be similar. At a close analysis of the differences between them, it can be noticed that, in fact, the principle of proportionality complements the principle of subsidiarity, especially regarding the influence of the latter over the ampleness of the Community's action[66].

The consequences for breaching this principle of subsidiarity are drastic, in the sense that, in this case the Community is out of its conferred competences, and the measures of intervention should be canceled as a consequence of over passing these competences.

---

[63] Philipe Brault, Guillaume Renaudineau, François Sicard, "Le principe de subsidiarité", in *La Documentation Française*, Paris, 2005, p. 93.

[64] Jean-Luc Sauron, "La mise en oeuvre retardée du principe de subsidiarité", in *Revue du Marché commun et l'Union européenne*, no. 425, Paris, novembre-décembre, 1998, p. 646.

[65] Philipe Brault, Guillaume Renaudineau, François Sicard, *op. cit.*, p. 93.

[66] K. Lenaerts, P. Van Ypersele, "Le principe de subsidiarité et son contexte" – étude de l'article 3B du traité C.E., *Cat. Dr. Europ*., 1-2/1994, no. 78, p. 5.

From the entering into force of the Treaty of Maastricht, the European Commission wanted to highlight the fact that it already considered this principle of subsidiarity. Hence, it showed that it had replaced many of the elaborated regulations with Directives, also introducing the method of "mutual recognition" within the "Cassis de Dijon" jurisprudence.

Bibliography:

1. Boulouis, Jean, *Droit Institutionnel des Communautés*, 4e édition, Montchrestien, Paris, 1993.
2. Brault, Philipe, Renaudineau, Guillaume, Sicard, François, "Le principe de subsidiarité", in *La Documentation Française*, Paris, 2005.
3. Capitant, H., *Vocabulaire juridique*, Puf, Paris, 1936.
4. Capotorti, F., Hilf, M., Jacobs, F., Jacqué, J.-P., *Le Traité d'Union Européenne, commentaire du projet adopté par le Parlement Européen*, Ed. de l'Université de Bruxelles, 1985.
5. *Constituţia României*, updated and republished in Monitorul Oficial no. 767 since the 31st of December 2003.
6. Deleanu, Ion, *Instituţii şi proceduri constituţionale – tratat*, Ed. Servo-Sat, Arad, 2001.
7. *Dictionaire historique de la papauté*, Ed. Fayard, Ph. Levillain (red.), Paris, 1994.
8. Jeannin, Pierre, "Althusius", in vol. J. Touchard, *Histoire des idées politiques*, Tom I, Puf, Paris, 1959.
9. Juncker, J. C., "Contribution au Parti Populaire Européen, élargissement, democratization", in *Journal d'études Londres*, 7-11 septembre, 1992.
10. Lenaerts, K., Ypersele, P. Van, "Le principe de subsidiarité et son contexte" – étude de l'article 3B du traité C.E., *Cat. Dr. Europ.*, 1-2/1994, no. 78.
11. Millon – Delsol, Chantal, *L'Etat subsidiaire*, Puf, Paris, 1992.

12. Montgrenier, J.S., "Johannes Althusius et L'Etat subsidiaire", in vol. *Regard Européen trimestriel*, Ed. Letizia, no. 9, Janvier 1999.
13. Philip, C., Bautayeb, C., *Le principe de subsidiarité, Dictionaire de droit communautaire*, Puf, Paris, 1993.
14. Rideau, Joël, *Le Droit des Communautés Européennes*, Que sais-je?, Presse Universitaire de France, Paris, 1995.
15. Rideau, Joël, *Droit Institutionnel de l'Union et des Communautés Européennes*, 4e édition, vol. III, LGDJ, Paris, 1994.
16. Santer, Patrick, "Le principe de subsidiarité dans le Traité de Maastricht" – étude de l'article 3B du Traité CE, D.E.S.S., "JURISTES EUROPEENS", 1993-1994.
17. Sauron, Jean-Luc, "La mise en oeuvre retardée du principe de subsidiarité", in *Revue du Marché commun et l'Union européenne*, no. 425, Paris, novembre-décembre, 1998.
18. Téquis, Pierre, *Condition des ouvriers et restauration sociale, lettres encycliques*, Paris, 1991.
19. *The Maastricht Treaty*, Previsions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, Maastricht 7 February 1992, http://www.eurotreaties.com/maastrichtec.pdf
20. *Treaty of Maastricht*, *Treaty on European Union*, Maastricht 7 February 1992, http://www.eurotreaties.com/maastrichteu.pdf
21. Zăpârţan, Liviu-Petru, *Construcţia Europeană*, Ed. Imprimeriei de Vest, Oradea, 2000.