

**PhD. THESIS**

**PRINCIPLE OF SUBSIDIARITY**

**FUNDAMENTAL PRINCIPLE OF LAW IN THE NEW EUROPEAN REALITY**

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**- PhD THESIS SUMMARY -**

This doctoral thesis aims to be ambitious and aims to discover, deepen, to understand and explain the essential concepts of one of the newest principles of law which defines the guideline of the current legal system of the European contemporary society namely Principle of Subsidiarity . By all theses and interpretations published in the literature, Subsidiarity is a principle that, because of how singular it is viewed, can intrigue, but at the same time it is able to create a "new" world. Even if lawyers sometimes find reasons to challenge, there are not so many other concepts of law that can create such debates, especially in contemporary society always in speed and in search of new things.

Ether admired or challenged throughout the period since the emergence of the principle of subsidiarity in the Maastricht Treaty there have been many opinions published in multiple books and articles with the most diverse points of view.

The main proponents of the principle stated repeatedly that "subsidiarity is the word that saved the Maastricht Treaty and thereby enabled the birth of the European Union". In contrast, opponents of the idea have categorically condemned the same solution: "(...) the introduction of

the principle of subsidiarity in the Maastricht Treaty was a step back. Without offering a cure for Community shortcomings, he risks destroying the hard-won achievements. Community weaken and slow down the integration process. Will satisfy those who would like to see Community is not approaching a true federal structure, but away from it. "

Whence these differences and explanations that they survive even after a relatively long period, which should have clarified especially in the conditions in which the Subsidiary has received a very important role in the Lisbon Treaty?

Even more than that, what is the principle of subsidiarity, why was introduced in the constituent treaties of the European Union, becoming a fundamental principle of the current European construction? And especially how it was and is applied in practice, legislative and case law in all EU member countries?

Therefore we believe that an approach and a deeper understanding of this new yet old concept of subsidiarity would be an important scientific process, especially for a society like ours, emerging from the transition from communism doctrine, passed through the period of wild capitalism and moving towards a role and a position of influence in the European Union, but also among the nations of the world, a society that has no time and interest in understanding concepts that we take sometimes with eyes closed, but that usually marks and shapes irreparably our existence.

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The thesis is divided into three parts. The first part deals with the historical evolution and how it has evolved over time subsidiarity principle. We also tried an identification of mechanisms and ways in which subsidiarity acting on communities, but also on society as a whole.

The second part deals with the importance and how the Subsidiarity influenced the European construction process, since its emergence in the Maastricht Treaty and to the new provisions laid down in the Lisbon Treaty. We tried to offer a succinct picture of the evolution and importance of principle in the complicated process of European construction. Besides the work as a whole, thesis has three important objectives, namely to follow the progress of the historical concept of subsidiarity, to investigate the fundamental role played by this principle in

the process of building Europe, being one of the important principles deduced and promoted by CURIA - Court of Justice of the European Union, to finally consider the principle of subsidiarity as a general principle and a fundamental right in the new European geopolitical context.

In the third part of the thesis we treated the importance of the principle of subsidiarity in shaping of contemporary European society and we focused on how the principle is applied in the Romanian legislation. The paper ends with an attempt to conclusions based on analyses performed.

The first part of the thesis studies the concept of principle and how it has evolved over time, and how Subsidiarity, a relatively new concept has succeeded to become a fundamental principle of law. In theory and practice of law are frequent references to the concept or category of "principle". As generic term "principles" are not unique to law. In any intellectual or practical rational human activity, no matter which one - philosophy, morality, science, logic, art, technology, economics, labour generally referred to certain "principles".

In essence, the principles are abstractions and generalizations of knowledge and human experience which reflects the spirit and orientation of human thought in a particular field. Formulated as a higher synthesis of thought and practical experience also constitutes principles and criteria of maximum reference or reporting of judgment, behaviour, action or conduct in their concrete human experience. The strength of principles is often axiomatic arising from synthetic expression of a self-evident truth itself. In the broadest sense of their benchmarks or criteria for maximum reference, judgment, behaviour, action or human experience, the principles have been and still are a constant, in all forms of manifestation of human essence in any of the existing fields and spiritual activity, material or social practice. In this universe of principles a distinct role have the principles of law.

We can also classify the principles of law and we talk primarily about general principles of law rules relating to the maximum level of generality. These standards are recognized and accepted through doctrine legislation into national law of the countries or international treaties of particular importance, as enshrined in constitutions and having legal force superior to all other laws. Thus the "general principles of law are fundamental prescriptions aggregating creation of law and its application ... In conclusion the action principles of results confer certainty right - the

guarantee given to individuals against unpredictable rules enforcement - and congruence legal system, i.e. compliance laws, their social , verisimilitude, their opportunity." <sup>1</sup>

In this category we identify the principle of subsidiarity, a newer principle added to the general principles of law. Although originally a principle more socially outside the law, it has evolved, and as a principle of law received multiple applications in the legal field. We believe that Subsidiarity by enshrining its normative, expressed or implied, and through the ideal way in the application of case law has become one of the general legal principles of contemporary society, one of the essential pillars of the construction of European law at EU and state.

Principle of Subsidiarity tends to be a rule of action of civil society in decision making, it is reported values of efficiency, freedom and justice. Free to define the purposes of the action, the concept is attached rules of the institutional organization of society, applying the first relations between the individual and society, and the relations between society and institutions to achieve, in the end, the division of competences along the ladder institutional between the base and the top.

The idea of subsidiarity is opposed to excessive centralization and unnecessary predatory instinct of political power. This does not preclude protection of interests of the community expanded, or higher order; this protection does not mean the destruction of social responsibility or individualism, but signifies an aid or promote and stimulate individuals, groups or institutions. The main role of Subsidiarity is to revitalize authority structures making them closer to individuals. The modern concept of subsidiarity principle does not refer only to public authorities, to limit their interventions or the distribution of competences, but might apply to the entire state political organization. Basically, Subsidiarity regulate individual relations with the State, society and the State and even the internal structure of the state entirely, being linked to "the principle of vertical division of powers", favouring the development of pluralism. Even its etymological meaning shows the derived and secondary character of the higher levels of power and at the same time the complementary character.

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<sup>1</sup> Nicolae Popa, Teoria generală a dreptului, Ed. Actami, București, 1999

In the second part of the paper we tried to touch the importance and how the principle influenced European construction process, since its emergence in the Maastricht Treaty and to the new provisions laid down in the Lisbon Treaty.

The Maastricht Treaty heralded the foundations of a new Europe, which represents more than a homogeneous economic area. Perhaps the most important change in approach was that Member States have agreed to abandon progressively the national dimension and delicate sectors such as foreign policy and security. In these circumstances we can talk about a legal construction that can be a source generator for a new typology that meets legal criteria formulated typological in the theory and sociology of law<sup>2</sup>. The Maastricht Treaty is the result of the evolution of ideas of unity and constitutes an important milestone in the evolution of European integration. The main functions resulting from application of the principle of subsidiarity in the Maastricht Treaty are preparing Community actions, financial management and control of EU policies and other community activities. The problem of the subsidiarity thus lies in the central structure of EU where we can discuss about federal structures, international organizations, the distribution and duplication of skills.

Their implementation of those measures is not necessary an increased powers at the expense of member states of the European Union, but a better use of the tools provided in the existing treaties.

This was done in the European Council in Amsterdam (1997), which amended T.U.E treaties that established the European Communities and related acts reformulating many of the articles of the Treaty of Maastricht. Such goals had to be achieved according to the Union Treaty provisions, respecting the subsidiarity principle, as it was defined in Article 5 of the Treaty of Amsterdam - "The Union needs to secure its internal and external consistency acts as a whole", increasing skills of the European Parliament, European Council, the Commission and the Courts of Justice.

The Lisbon Treaty is a complex structure that modifies the previous treaties on European Union and the European Community, and the Treaty establishing the European Atomic Energy Community. The Lisbon Treaty is perhaps the most ambitious revision of the founding Treaties,

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<sup>2</sup> Popa Nicolae, Teoria generală a dreptului, editia 5, Editura C.H. Beck, București, 2014

from the creation of Communities, surpassing in importance even the Maastricht Treaty. Through the large number and extent of the reforms made during this Treaty, main parts of the Constitutional Treaty were implemented, with the broad consensus of Member States in the current Treaty. Otherwise it can be said that the Lisbon Treaty is, in fact, transformed the old Constitutional Treaty and who lost the constitutional aspect. The Lisbon Treaty is a classic treaty reform. Like previous treaties of Amsterdam and Nice, the Treaty of Lisbon amend existing treaties, without replacing them with a new text, however<sup>3</sup>.

The main changes that have occurred since the entry into force of the Lisbon Treaty touch more sensitive areas at both institutional and national and individual levels. Therefore, in terms of the role of the European Parliament provides that "the European Parliament and national parliaments will have a much greater contribution to the EU decision making process, and citizens will have the right to be informed of the decisions taken by ministers at EU level. All citizens will have the opportunity to influence proposed EU laws. "The Lisbon Treaty clarifies and explains the EU's relations with Member States through an addendum of skills. In this latter regard the participation of national parliaments in Union occupies an important role. In addition to their traditional functions, the Lisbon Treaty give national parliaments the role of guarantor in front of the Union for national competences. Thus, national parliaments will participate in the political control "ex-ante" Community legislative compliance with the subsidiarity principle and will play an important role in the simplified revision of the treaties, by the opportunities it brings proceedings "terms".

The European Parliament is and used to be one of the most important defenders of the principle of subsidiarity. Incidentally, it was at the origin of this notion, proposing, on 14 February 1984 on the adoption of the Treaty on European Union, a provision that whenever the treaty gives the EU a concurrent competence with the Member States' competence, the action of Member States exercise as long as the Union has not adopted a regulation. Furthermore, the proposal insisted that the Union should not intervene except to perform the tasks that could be undertaken more effectively in common than by individual states acting separately.

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<sup>3</sup> Bărbulescu, Iordan Gheorghe; Iancu, Alice; Ion, Oana-Andreea; Toderaş, Nicolae (2010) - The Lisbon Treaty: Impact on Romanian institutions and policies, Strategy and Policy Studies (SPOS), No. 2010,1, ISBN 978-6-06-820203-7

The Lisbon Treaty can be considered very important because it realizes one of the most significant European reforms, through its magnitude, and through content. It involves a big step forward in the construction of a political Europe, to the extent that, on the one hand, explains the model of this unique political system and, on the other hand, increases the potency of the European Union in areas that belong traditionally to the sovereignty Exclusive national member states.

History and evolution of the principles of subsidiarity and then continuing from Maastricht to Amsterdam, Nice and Lisbon shows an emphasis on the importance of development and application of Principle. But the main difficulty formulating practical principles of subsidiarity is to determine when state action is ineffective and which optimum conditions for community action are. Although the limits, particularly by legal scholars or highlighted by critics through "weakness notable" as defined by the defenders of the cause of regional cause, Subsidiarity is a formal criterion interpretive in exercising the powers defined or assigned, without being distributed to political levels, priori and definitive. Subsidiarity is a temporal rule, only legitimizing concepts underpinning - failure more appropriate and effective.

Under the Lisbon Treaty, national parliaments are designed to ensure that the principle of subsidiarity in accordance with the procedure provided for in the Protocol. Protocol on the role of national parliaments in the European Union agreement that had been originally introduced by the Treaty of Amsterdam, is otherwise entirely redrafted by the Lisbon Treaty. It is divided into two headings: information for national parliaments and inter-parliamentary cooperation. It specifies that under the principle of proportionality, Union action, the content and form, does not exceed what is necessary to achieve objectives of the Treaties. It should be noted that EU institutions apply the two principles in accordance with the Protocol on subsidiarity and proportionality.

Principle of Subsidiarity has important links with the principle of proportionality in this respect it is a necessary corollary of sovereignty and interferes in fact after examining the principle of subsidiarity. So, proportionality intervenes when the decision is taken to exercise jurisdiction, the determination of the extent of legislation, and its aim is to avoid possible excess of rules at EU level so that no constraints to achieve certain goals Community. We can say that in fact the two principles are an important manifestation especially the desire of the smaller countries with less influence in the Union to create a relationship of balance between the power

of the Union, increasingly more evident and institutional system thereof, which acting above the sovereign states and their national interests.

The third part of the paper focuses on how the subsidiarity principle applies XXI century Europe and its influence in Romanian legislation and the development of Romanian society.

Applying the Principle of Subsidiarity in the Regions subject determine various options depending on the nature of the Member States of the Community (single or composite), the degree of decentralization of these countries, trends are more or less centrifugal of Regions, benefiting differently status autonomy, legislative or running separatist or secessionist intentions to. In relations with the Regions, subsidiarity prove its validity in their attempt to preserve their identity against interference and competition will, state or community through the "communitarisation" that the Lisbon Treaty makes for numerous regional competent. According to the principle of subsidiarity, which advocates for decision making levels as close to citizens, ethnic minorities are justified in their demands for self-determination on their territory, which would favour the freedom and autonomy to the lowest possible level. They considered decentralization as a way of organizing the State, invoking principles of subsidiarity reforms concerning the transfer of state powers to the local authorities and their citizens.

In the current political debates, it is considered that the viability of European integration will depend in large measure competition will appropriate treatment for Regions. Moreover, this way of thinking is found in Romanian reality where the idea of reorganization of Romania on a regional model to allow better development and modernization of the state is becoming more appealing. How this regionalization process can do is of course subject to multiple scenarios and interpretations that have created an effervescent debate in the Romanian society.

At European level, the model promoted by the European Union, where it is desirable regions to have autonomy raised in the States, and major funds are directed to their development, allowed the partisans of the idea of regionalization based on administrative and not ethnic to take forefront public debate and try sketching a model that will allow more rapid development of this part of Europe. Principle of Subsidiarity cannot be fragmented, however, to refer only to some political and administrative levels and excluding others, while his influence must reach lower levels and other sub-community, for the distribution and exercise of competences. There are other



voices who support the idea that subsidiarity relates only to the Community and the Member States, viewed as the only legitimate representative entities in the Community.

Applying the principle of subsidiarity in the future could induce a triple current positive effects:

- From the legal point of view, a step in the unification and consolidation of European integration, ensuring effective and appropriate community development;
- As a political motto that could lead to a strengthening of the Regions composite States (Germany, Belgium, Spain, Italy), followed by the inclusion of local entities within the community;
- From a policy perspective, the idea of subsidiarity would help to generalize to other EU countries regional structure.

With the entry into force of the Lisbon Treaty no longer only demand national governments to strengthen territorial aspects of their policies. The new concept of "territorial cohesion" goes hand in hand with a new idea promoted by the Treaty, namely taking into account regional and local actors in the definition and implementation of cohesion policy. Thus, the general principle of subsidiarity has been extended to regional and local level: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by Member States either at central level or at regional and local level, but the scale and effects of the proposed action, will be better achieved at Union level.

How it was increased importance of the subsidiarity principle in the Lisbon Treaty and its new levers designed precisely to increase the involvement of national decisions taken at central level should help the rapid development and implementation of Principle in all States. But in current geopolitical situation, the latest example being the referendum in Scotland on independence from Britain, which though has not reached the goal has given birth to an effervescent increased several provinces European separatist tendencies (Corsica, Basque Country, Catalonia, Northern Italy, the Belgian provinces), the principle of subsidiarity is visibly slowed because of its high degree of autonomy that would reach the provinces with separatist tendencies of the EU. Otherwise no other major paradigm shift in international relations do help

to better application of Principle. Therefore, application of the Principle in Romania is not a priority for those entitled and implement.

The Lisbon Treaty provisions on the important role played by Parliament in decision-making in Romania is seen only as a formality that must be met and not as a mechanism to allow the promotion of national interests in front of decision-making mechanisms in Brussels. In Romanian legislation, formally The Law 373 of December 18, 2013 on cooperation between parliament and government in European affairs was adopted, where in Chapter VI deals with monitoring compliance with the principles of subsidiarity and proportionality. Adopted at the end of 2013, Act 373 aims to regulate how the Parliament complied with its obligations under the Treaty of Lisbon, but makes no reference to how the subsidiarity principle should be applied and down in the sense that decisions as closer to the citizen.

Suggestions and proposals of ferenda law are systematized in the last chapter of the book and touching aspects of how Romania has to fulfil effectively its obligations upon accession to the European Union to be able to apply in depth and with the expected effects changes substantial introduced by the Lisbon Treaty. Appropriate recommendations when it is likely to bring improvements and efficiencies in several areas such as strategies for public policy, professionalization and non-politicization total central structures, regional and local authorities involved in European funds absorption and increasing the role of national media, regional and local civil society, and communities of practice in European affairs for purposes of study and application of EU policies. Also another important direction to be developed and watched is the closer implication in foreign policy at European level.

For the implementation of these strategies public policies require a rethinking of the system architecture Romanian society with the sole purpose of creating a modern European State which respects the European social model and the social market economy.

Perhaps the most important recommendation, however, is linked to amending the legislative framework so that Parliament to be involved in the national coordination of European affairs especially in terms of major topics on the European agenda of the moment, given that the role of National Parliaments in EU decision-making under the Lisbon Treaty has skyrocketed.

In terms of increasing the role of citizens in the EU brought by the Lisbon Treaty so through legally binding Charter, and through their right to formulate directly legislative proposals, it is desirable to educate citizens about their rights and obligations their European citizens. It is very important that public institutions to use public consultation mechanisms and, especially, to capitalize on the results of these consultations.

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