

THE ROLE OF THE EUROPEAN COURT OF JUSTICE AND THE CIVIL SERVICE TRIBUNAL IN CREATING THE NECESSARY PREREQUISITES FOR DEVELOPING AN EUROPEAN CRIMINAL CODE FOR EUROPEAN CIVIL SERVANTS AND EUROPEAN PUBLICLY APPOINTED OFFICE-HOLDERS

Carmen-Mariana MIHALACHE¹

e-mail: av_carmen_diaconu@yahoo.com

Abstract

The European Court of Justice is, according to Article 13 of TEU, the European institution which serves as a guardian of European law from the perspective of compliance with the Treaty on European Union and the way of its interpretation and appliance by enabling procedural safeguards and effective judicial protection in the fields covered by Union law.

Key words: The European Court of Justice, Lisbon Treaty, Common Law, the pillar structure

The role of the European Court of Justice has been revised with the entry into force of the Lisbon Treaty on 1 December 2009, which had in jurisdictional plan the disappearance of the pillar structure introduced by the Maastricht Treaty and the extrapolation of its power to the entire area of freedom, security and Union Justice, restrictions imposed by the EU Article 35 and 68 EC being removed. Therefore, as regards the police and judicial cooperation in criminal matters, the competence of the European Court of Justice is binding and is not subject to a declaration of each Member State, by means of which the respective state acknowledges this competence and indicates the national courts that could notice it. The changes introduced by the Lisbon Treaty co-opt the field of the police and of the criminal justice in the Common Law and all national courts may refer to the Court of Justice. This criminal jurisdictional competence becomes complete after the fifth anniversary of the entry into force of the Lisbon Treaty. In this respect we make reference to Art. 10 of Protocol no. 36 regarding the transitional provisions.

MATERIAL AND METHOD

Given the topic analyzed, material and method consist in the study of the law such as the Lisbon Treaty, Maastricht Treaty, Council Decision no. 752 of 02.11.2004, etc, the judicial practice and the policies set by the European Union.

RESULTS AND DISCUSSIONS

Although the concept of pillar disappears with the coming into force of the Lisbon Treaty, in respect of common foreign and security policy, called CFSP, the competences of the Court are limited, having its jurisdiction only in two hypothetical situations: 1) control of delimitation between competences of the Union and CFSP, whose implementation should not affect the Union's competences and powers of the institutions in the exercise of exclusive and shared competences of the Union, 2) judgment of the actions for annulment against decisions providing for restrictive measures against natural or legal persons adopted by the Council, for example in the fight against terrorism (freezing of funds). In relation to the provisions of Art. 19 of TEU, the European Court of Justice is composed of the Court, the General Court and specialized courts.

A specialized Court is the Civil Service Tribunal which started operations on October 1, 2005, as established by the Council Decision no. 752 of 02.11.2004 and had its material jurisdiction assigned on: a) disputes between the European Union and its agents according to Art. 270 of TFEU, which as statistics currently stands at about 120 per year compared to the 35,000 people who represent the unit of administration in the Union. The settled disputes concern employment relations in terms of payment, career development,

¹ University of Agricultural Sciences and Veterinary Medicine, Iasi

recruitment, disciplinary measures, as well as social security system linked to disease, age, disability, work accidents, family allowances. If we make an analogy with the Romanian judicial and jurisdictional system, the Civil Service Tribunal is similar to the Contentious-Administrative Court Section, which legally divides work relations through the civil service marked by public servant status law no. 188 of 1999, between the civil servant and the contracting authority. The difference lies in the fact that such section shall not judge the disputes between contract staff and public contracting authorities, such disputes being strictly for the competence of the Court-section Labor Disputes, judges assessing the lawfulness according to the provisions of the Labour Code. b) It was given to resolve disputes between the competent bodies, offices or agencies and their staff. (Gyula Fabian, Procedural Law of the European Union, Ed.Hamangiu, 2014).

The Civil Service Tribunal, in terms of organizational and functional matters, is part of the European Court of Justice, its members having similar status of judges of the Court. The decisions of the Civil Service Tribunal may be appealed to the Court within two months of notification as Court decisions can be appealed in the same manner before Court. The grounds of appeal are therefore limited to strict matters of law, as they are not suspensive of the effects of the decision appealed, and the procedure is short.

The purpose of this study is that, by analyzing current jurisdictional competences of the European Court of Justice, to propose expanding its powers in criminal matters in terms of the need for a single European Forum which shall as well decide on the criminal liability of officials of different nationalities, that are part of the administrative structure of the European Union. The jurisdictional competence should aim those national officials working in the administrative units of the Member States and which by their conduct affect the financial security of the Union as well as the holders of public positions in Europe. This evolution of the Court's jurisdictional competence derives from the awareness of the need to combat corruption manifested in international meetings such as the 19th Conference of European Ministers of Justice, entitled administrative, civil and criminal Aspects, and the role of the judiciary in the fight against corruption held in Malta on 14-15 June 1994, event that crystallized the need to define the phenomenon of corruption, perceived differently from state to state. The report, that led to the preparation of this conference prepared by the Italian Minister of Justice, analyzed the phenomenon of corruption in

terms of the following definition - any industry and any person invested in a function that is involved in getting undue benefits related to the exercise of this function. From this perspective, the international concern has been a constant need to combat corruption from ambient that relate to the civil servant who, without directly asking something, expectes from citizens or people with leadership positions in various companies to submit tacitly a certain tender. Also amid those emerging meetings, as a trigger for the phenomenon of corruption in terms of active subject, it was found necessary to become aware of criminal accountability of legal persons from committing acts of corruption on public servants to meet their own interests, as well as, in the absence of a single European criminal code, to combat corruption committed by foreign officials.

In order to harmonize legal concepts in criminal policy, from our point of view, we are obliged to harmonize the objective and subjective content of the possible criminal acts, which by their committing breaches the settled conformity report and which aims, according to the provisions of Article 2 of TEU, to protect the human dignity, freedom, democracy, equality, the rule of law, human rights and those belonging to minorities, all juxtaposed on the principles of pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.

In terms of criminal liability on the European public servant and the European official, a transitional jurisdictional procedure which shall precede the European criminal code, would be to extend criminal jurisdiction of the European Court of Justice on those cases, the Civil Service Tribunal representing the first instance of jurisdiction and the Court of second instance of judicial review.

The difficulty of achieving a single European criminal code in a reasonable period of time consist of the generated doctrinal fascination for the criminal liability along with its two components, objective and subjective, focused on the active subject of the judicial report of the criminal law conflict, usually state authority that protects the holder of the protected social value. When the protected social value is the EU financial security, the protected holder is de facto, the European public interest, the citizens of the single European area, their confidence in individuals holding important positions or European or national public offices and who endanger by their conduct, the European feasible policy and accessible through the European money through various coordinated measures to support European and national government agencies.

Nationally, the main active subject of the judicial report of the criminal law conflict is considered to be the state as the main reflection of national sovereignty, contracted from the ability of a nation to decide its own fate and forever establish criminal penalties for all people circulating in its territory, without complying with the criminal law conformity report. In this respect, authors such as N.N. Polianski, quoted by V.Paşca and R.Mancaş in the paper on Criminal Law, General part, Publishing House Universitatis Timisensis, 2002, Timișoara, consider that the active subject of criminal liability would be the judicial bodies. We adopt the view of the authors such as D.Pavel or L.Biro (in the paper named Aspects of the criminal justice report, in SUUB, 1966, p.60) who claim that the right of prosecuting the offenders through judicial bodies is conducted as representatives of status, based on functional prerogatives that have been invested by the Constitution (if we refer to the judiciary and the Public Ministry) or the law of organization (criminal investigation authorities and those of the execution of the sentence). Moreover, a tide of opinion was developed in this context, that seem to more match with the factual social reality protected by the criminal law, the existence of an active subject adjacent to the state authority, found in the natural or legal person, usually the right holder of the protected social value (such as pluralism, non-discrimination, tolerance, justice and solidarity with European general values), which explains the legal possibility in some cases to decide the initiation of criminal proceedings and the exercise of the right to participate in criminal proceedings as an injured party.

The creation of a single European area governed by the free movement of people, goods and merchandise, have meant the creation of an institutional mechanism grafted on institutive treaties (Merger Treaty in Brussels Single European Act, the Maastricht Treaty, the Treaty of Amsterdam, the Treaty of Nice, Lisbon Treaty), which gave rise to a new legal order, created by disposing of some attributes of national sovereignty, integrated in the legal system of the Member states. This feature of the Union area, seen as a legal order, was established by the decision of the European Court of Justice, C6-64, called the Costa case, which established the principle of the precedence of Community law before national who has implicitly assigned a higher legal force (D.Vătăman, Institutional law of the European Union, Universul Publishing House, Bucharest, 2011)

In the first stage of our study we want to highlight the fact that a European area, guarantor of a legal order is possible only by European

criminal judicial instruments created by giving way to the national ones, according to the fact that the European Union should grow toward a federal state. Our support shows *de facto* the European ideal promoted by a series of pre-war thinkers such as the abbot Saint-Pierre (under the name of Irénée Castel, who lived between 1658-1743 and who cherished, given the realities of his time, the belief that in order to ensure peace present and future, necessary including for the trade development, the sovereigns should sign a perpetual alliance governed by a European senate, with a possibility of coordinating a European army financed by contributions from member states), Jeremy Bentham (lived between 1748-1832, jurist, philosopher and a English social reformer, who believed that a space and a European legal order would be possible by signing a treaty, generally guaranteed by France and England to Congress, concluding the treaty with the participation of two delegates for each European country, the European space under the agreement being governed by a Common Court of Justice, the only competent to settle disputes between states), J.J.Rousseau (lived between 1712-1778, and supported a European republic as a philosopher and as an outstanding representative of the Enlightenment), Victor Hugo (who claimed at the Peace Congress in Lugano, the need of a European nationality, possible by creating the United States of Europe, which will crown the ancient world). All of them were philosophers who wanted a United Europe in juxtaposition of a peace plan suitable to ensure the security and sovereignty of states regardless of their size).

The doctrinaire study often draws legal hypothesis that can serve as material working tools depending on the direction of policy development toward which the European Union strives for: a federal voice (a first example of a federal trend was the Paneuropean movement in the interwar years, supported by Aristide Briand, a French foreign minister and Gustav Stresemann, his German counterpart, seen also in the light of economic objectives such as the creation of new markets for the industry of European countries, streamlining the continent's economy and its integration into the international circuit, issues that have been studied extensively in works such as History of International Relations, Bucharest, Romania of Tomorrow Foundation Publishing House, 2002, p.108 and federal European projects from interwar period, George Sbârnă, Sylvi Publishing House, Bucharest, 2002, p.18) or an intergovernmental mechanism for cooperation with national voices. The national sovereignty in the field of criminal legal means so closely linked to

the principle of territoriality remains a sensitive topic. The political context reminds us somehow of failure of the Paneuropean movement, juxtaposed on the skeleton of the League of Nations organization (the establishment of this international organization, in the context of which the memorandum, called the Pact, was voted together with the Treaty of Versailles, being integrated therein and which coincided with the time of the formal entry into force of the Treaty of peace, i.e. January 10, 1920), created as an international organization in order to meet international obligations of peace and security.

CONCLUSIONS

The Community establishment was generated by the desire of achieving a safe space, based on the desire of equality regardless of the size of the state, the protection of minorities, the advancement of economic and social welfare by creating a legal framework for equal rights and freedoms for all, a promoter of European unification in order to avoid a new international conflagration. From the theoretical foundations perspective which divide the way of functioning and, why not, of the development of space juxtaposed to the European Union, which consists of 28 Member States, there are several schools of thought (I.Gh. Bărbulescu, *European Union - from national to federal*, Tritonic Publishing House, Bucharest, 2005, p.20, Mădălina Viziteu, *School of thoughts on community building*, pp.307-308, from the collection of Romanian law in the context of EU requirements, Hamangiu Publishing House, 2009):

a). Monnet's sectoral functionalism, inspired by French legal institutionalism, which led to the ECSC and EUROATOM establishment, based on the sectoral approach, focused specifically on coal and steel, the emerging industries of the moment,

b) the intergovernmentalism, characterized by intergovernmental cooperation, promoted by Charles de Gaulle,

c) the neofunctionalism consisting of spillover process and consisting of concept of extending the community powers from one domain to another,

d) intergovernmental federalism, a continuation of the sectoral functionalism supported by Joschka Fischer, German foreign minister who suggested, in a speech in 2000 at the Humboldt University of Berlin, to transform the European Union into the United States of Europe, with a President and a Union government, the idea being rejected by France, fervent defender through the voice of President Chirac in 2000, defender of

national identity, a refusal to achieve a European superstate and militant of a much clear cutting of competences and of participation in national parliament in joint activity with specificity shaping of the community institutions,

e) the euroscepticism, manifested as policy ideology exhibiting skepticism towards the EU and European integration (in the context of the economic crisis, each state ultimately defended its national interest, the most developed European states limiting the right to work for nations from Eastern Europe, forgetting about impact of the competition in the manufacturing sector from East, characterized by the failure of many eastern economic activities and associated with the abolition of a large number of jobs), a trend associated with the desire to preserve the sovereignty and identity of European nations, the drift manifested by non-accession to the euro area of countries such as the United Kingdom, Denmark, Sweden.

We synthesized the schools of thought regarding possible Community developments for considering the possible implementation of a European criminal code, even in a small matter as such of our review, yet sensitive, in the context of which the civil servant or the holder of a public office is the exponent of national state power appointed or elected by Populus vox.

However, in the context in which the protected social value is fundamental for the good economy of the European Union, the transfer of powers to the European Court of Justice in criminal law matters in order to protect the community financial security would be a form of compromise, characterized by overcoming crisis situations, such as that of 1966, when France refused to take its place in the Council, likely to be overcome by the compromise of Luxembourg, when it was decided that, where there are very important interests at stake on a part of a Member State, the Council will extend the discussion till the reach of a compromise that can be adopted unanimously.

ACKNOWLEDGMENTS

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013"

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- *** - Lisbon Treaty- <http://www.diplomatie.gouv.fr/fr/IMG/pdf/traite.pdf>,