CONSIDERATIONS REGARDING THE CHOICE, BY THE EUROPEAN INSTITUTIONS, OF THE LEGAL BASIS OF ACTS, DURING THE LEGISLATIVE PROCEDURES OVERVIEW OF THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

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Abstract

An important moment in the conduct of legislative procedures within the European Union is located right at their onset. Thus, the initiator of an act finds himself in a position to have recourse to its legal basis, since that ground depends on fundamental issues such as the competence of the European Union or its institutions to act, the applicable procedure, etc. However, in practice, this may be rather complicated. For example, depending on the categories of competence of the Union in which each field falls and depending on the desired end, the question arrises about choosing the type of act that is best suited. After that, there is the question of choosing the legal basis of the act, which can be very complicated, since, in the case of some acts, the proper legal basis may not be obvious, in which case the Court of Justice and its case law may provide further clarification. For example, in certain situations, the Union's acts may be susceptible to more than one legal basis. To further complicate the analysis, we can say that these grounds may be compatible or not. If they are not compatible, it is necessary to identify the main legal basis, and there comes the matter of how to determine it. With all these, and not only, we will deal in the present research.

Keywords: *European Union, Commission, Parliament, Council, procedure, legislative proposal, legal basis.*

1. Introductory considerations.

As the reader knows very well, the action of the European Union in its areas of competence involves, mainly, the adoption of acts, some of which being endowed with binding force and the others not being of this nature. Among the acts endowed with binding force, some are adopted through a legislative procedure, thus becoming legislative acts[1].

In the following, we will focus on choosing the legal basis for their adoption, using, in support of our research, the information provided by the European Union's legislation (mainly primary), the jurisprudence of the Court of Justice of the European Union (henceforth referred to as CJEU) and the doctrine of specialty.

2. Legislative procedures in the European Union. General presentation.

Since, in our presentation, we intend to limit ourselves to the legislative acts of the European Union, we will present, for the begining, some general aspects on their adoption.

Thus, the article 289 of the Treaty on the Functioning of the European Union (hereinafter, TFEU) divides the legislative procedures in two categories – the ordinary legislative procedure and the special legislative procedures.

Regarding the ordinary legislative procedure, this, the same article states, "*consists in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission*[2]."

The successor of the former co-decision procedure, instituted by the Maastricht Treaty, the ordinary legislative procedure is, we could say, one of the most important elements of deepening the European integration and a reference in comparing the Union with a becoming federation.

We say this because, through the specificity of this procedure, the Union fundamentally differs from the classical international organizations in which the most important acts are adopted by a plenary body composed of the representatives of the member states and where each of them generally enjoys a veto right, while, within the mentioned procedure, the acts are adopted by a representative institution of the Member States (the Council), with a qualified majority, and by the institution representing the citizens of the Union, aspects closer to the notion of federation than to that of classical international organizations.

These seem to us, even more valid as the ordinary legislative procedure is used, according to the doctrine of specialty, in most of the situations of adoption of the Union's acts[3], this quantitative dimension

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[1] Art. 289 (3) of the Treaty on the Functioning of the European Union stipulates the following: *"The legal acts adopted by legislative procedure shall constitute legislative acts."*

[2] Art. 289 (1) TFEU.

[3] Sean Van Raepenbusch, *Institutional law of the European Union*, Rosetti publishing house, Bucharest, 2014, p. 233, apud Augustin Fuerea, *The Legislative of the European Union - between unicameralism and bicameralism*, in the journal Dreptul, no. 7/2017, p.187-200.

complementing the qualitative dimension referred to above.

Apart from the ordinary legislative procedure, as mentioned earlier, the art. 289 TFEU also stipulates the existence of the special legislative procedures.

Therefore, according to the TFEU, "*the adoption of a regulation, directive or decision, by the European Parliament with the participation of the Council or by the Council with the participation of the European Parliament constitutes a special legislative procedure*[4]."

Of course, the special procedures are not listed or described in that article, for each one's identification, it being necessary to go through those articles that refer to their use and which also provide the description of each procedure used.

Regarding the content of the special legislative procedure, art. 289 TFEU makes reference to the art. 294, which details the concrete aspects on its development (Appendix 1).

However, the dilemma that may arise in this context is related to the choice of the appropriate legal basis for each act, which is the subject of the next section.

To the elucidation of it, the case-law of the Court of Justice of the European Union helps us. This, summaring its prerogatives provided by the Treaties, which the reader knows too well, "*unitarily interprets EU treaties and legal acts*" and "*controls the legality of the EU's legal acts*[5]".

In addition, the appeal to the Court of Justice's case-law appears to be natural in the present case. In an opinion expressed in the literature of specialty, "*the Community system, as defined by TCEE in 1957, had important gaps. (...) Moreover, many of the fundamental provisions of the Treaty were drafted in unavoidable general and abstract terms (eg., the measures with an effect equivalent to the quantitative restrictions), which had to be specified*[6]*".*

However, before analyzing the jurisprudence, we will take a look at the Union's categories of competences and the types of acts that the institutions can adopt in various situations. This is because, in the first phase, the institutions can find themselves in a situation to choose of a certain type of act, out of the available ones, and only then they have to choose the exact legal basis.

Thus, in accordance with art. Article 1 (1) of the Treaty on European Union, „*by this Treaty, the High Contracting Parties establish among themselves a European Union (...), on which the Member States confer competences to attain objectives they have in common.*"[7]

Article 4 of the same treaty completes the division of competences by stating that „*competences not conferred upon the Union in the Treaties remain with the Member States*[8]"

The same article also enshrines the existence of the principle of sincere cooperation, through the regulation according to which *„the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties*[9]*."*

The competences of the European Union are exercised, however, in accordance with a set of principles. According to Article 5 of the Treaty on European Union, these are the principle of conferral, the principle of subsidiarity and the principle of proportionality[10]. As regards the categories of competences of the Union, they are listed in Articles 3 to 6 of the Treaty on the Functioning of the European Union.

Article 3 of the said Treaty specifies the areas in which the Union's competence is exclusive as follows: „*customs union; the establishing of the competition rules necessary for the functioning of the internal market; monetary policy for the Member States whose currency is the euro; the conservation of marine*

[4] Art. 289 (1) TFEU.

[5] Augustina Dumitrașcu, Roxana-Mariana Popescu, *European Union Law - Syntheses and applications*, 2nd edition, Universul Juridic, Bucharest, 2015, p. 83.

[6] Augustina Dumitrașcu, The role of the jurisprudence of the Court of Justice of the European Communities in the configuration of the community legal order, in the journal "Analele Universității din București – seria Drept", no. III-IV/08, p. 82-95.

[7] The Treaty on European Union, published in the Official Journal of the European Union, C 326/13, 26.10.2012.

[8] Idem, art. 4.

[9] Idem.

[10] Article 5 (ex Article 5 TEC):

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

biological resources under the common fisheries policy;common commercial policy[11].”

The competence of the Union is shared in a number of areas listed exemplified in Article 4 of the Treaty on the Functioning of the European Union as follows: *„internal market; social policy, for the aspects defined in this Treaty; economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of marine biological resources; environment; consumer protection; transport; trans-European networks; energy; area of freedom, security and justice; common safety concerns in public health matters, for the aspects defined in this Treaty*[12]*.”*

To these are added those areas not listed in Articles 3 and 6, but in which the Treaties confer on the Union the competence to act.

A number of areas where the exercise of Union competences is subject to a particular regime enshrined in paragraphs 3 and 4 of Article 4 TFEU. Accordingly, *„in the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs”*[13], while *„in the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs*[14]*.”*

Article 5 TFEU refers to a series of competences that we can call "coordination competences[15]."

The last category of competences, support, coordination or complement is described in Article 6 TFEU, covering the following areas: *„protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; administrative cooperation*[16]*.”*

As regards the proper way of exercising a competent authority, it is governed by Article 2 TFEU. He mentions that, „*when the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.*”[17] As for the shared competences, „*when the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence*[18].”

The Union also has the competence to coordinate the economic and employment policies, as well as to support, coordinate and complement the actions of the Member States, with the mention that in the case of the latter, the competence of States in the areas listed in Article 6 is not replaced by that of the Union and the harmonization of the laws and regulations of the Member States is expressly excluded by the same provisions of the TFEU.

Moreover, „*the scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area*[19].”

However. all of these provisions could not materialize in the absence of certain acts to transpose them into practice. Their legal basis is mainly found in the provisions of Article 288 TFEU.

This article states that the Union can adopt, in the exercise of it’s competences, *„regulations, directives, decisions, recommendations and opinions*[20]*.”* Detailing the mentioned provisions, article 288 states that *„the regulation shall have general application* [and] *shall be binding in its entirety and directly applicable in all Member States”*, while *„a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.”* Moreover, the *„decision shall be binding in its entirety* [and] *a decision which specifies those to whom it is addressed shall be binding only on them”.* Meanwhile, the *„recommendations and opinions shall have no binding force*[21]*.”*

Corroborating the provisions presented in this section, we come to the conclusion, also underlined in the specialized doctrine, that the degree of harmonization through EU legislation, allowed by the Treaties, is maximal in the case of exclusive competences and then decreases, progressively, in the case of shared competences, then of the co-ordination, ultimately reaching a minimum level in the case of

[11] Treaty on the Functioning of the European Union, available at www.eur-lex.europa.eu, accesed 14.01.2018.
[12] Idem, art. 4.
[13] idem, alin. (3).
[14] Idem, alin. (4).
[15] Article 5 TFEU states as follows: 1. The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies. Specific provisions shall apply to those Member States whose currency is the euro. 2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies. 3. The Union may take initiatives to ensure coordination of Member States' social policies.
[16] Idem, art. 6.
[17] TFEU, art.2.
[18] Idem.
[19] Idem.
[20] Idem, art. 288.
[21] Idem.

complementary competences (supporting, coordinating and completing the action of the Member States) [22].

Therefore, in the situations where the type of act that can be adopted in a given area is not expressly specified by the Treaties, the institutions will have to assess the specificity of each category of competence and each field in order to choose among the acts listed in Article 288.

For example, in the case of exclusive competencies, only the Union can adopt acts., Not leavind any place for state action, we think that the instrument used must be the regulation. In the case of shared competences, applying the principles of subsidiarity and proportionality, the institutions will have to choose between the regulation and the directive, specifying that, as far as possible, given the particularities of the purpose to be achieved, the latter will be preferred . The narrower applicability of the decision will give it a more limited sphere of application. Regarding the competencies covered by Article 6, the prohibition of harmonization will make recommendations and / or opinions preferable, but this conclusion must be corroborated with the principles of the open method of coordination.

3. Choosing the legal basis of proposals of legal acts. An overview of the Jurisprudence.

In terms of choosing the proper legal basis for the proposals of legislative acts, in our opinion, it can be raised a number of questions drawn from the difficulties encountered in practice, which can be summarized as follows: what features must present the choice of the legal basis of an act of the European Union, how will its own choice be made, what happens if a legislative act corresponds (at least apparently) to different grounds, how can we distinguish the primary legal basis from the secondary ones or what happens if the probable legal bases in a given case involve incompatible procedural issues. We will try to answer to these questions in the next paragraphs.

Thus, as regards the choice of the legal basis for the Union's acts, the case-law of the CJEU states, in one of the most representative cases in the matter, known as the "Titanium dioxide"[23], the fact that at this stage "*it must be firstly taken into account, that the organization of powers at Community level supposes that the choice of the legal basis of a measure can not depend solely on an institution's conviction relating to the objective pursued, but must be based on objective factors which are susceptible to judicial control. These factors"*, the Court also states, "*include, mainly, the purpose and the content of the measure"* which is envisaged.[24] Otherwise, the Court reiterates, in this judgment, the wording used in Case 45/86, but in most subsequent judgments, it would prefer to cite the judgment from the "Titanium dioxide" case.

This wording will remain a reference to how the Court of Justice examines the issue in question, it being resumed and confirmed in the subsequent case-law.

For example, in case 155/91, the Court reiterates that "*in accordance with what is already a consistent jurisprudence, in the context of the organization of the Community's powers, the choice of the legal basis of a measure must be based on objective factors, susceptible to judicial review. These factors include, in particular, the purpose and content of the measure*[25]".

Furthermore, in another judgment, the Court provides further clarification, stating that "an earlier Council practice of adopting legislative measures in a given area, based on a dual legal basis, can not derogate from the rules laid down in the Treaties and can not, therefore, create a mandatory precedent for the Community institutions as regards the correct determination of the legal basis[26]."

In addition, in the Court's view, the legal basis of an act can not be determined by similarity to other acts with a similar subject-matter, but must be based on its own characteristics. In the Court's wording, "*the determination of the legal basis of an act must be carried out by considering its own purpose and content, and not the legal basis for the adoption of other Union acts having similar characteristics*[27]*."*

This conclusion is complementary and must, in our view, be seen in close connection with the wording of an earlier case, according to which, "*if the Treaties contain a more precise provision which may constitute the legal basis of the measure in question, it must be based on this provision*[28]*."*

In other words, we figure out, the legal basis for the acts is provided by the provisions of the Treaties that are closest to the purpose and content of the project. Moreover, the same wording is reiterated in case 533/03, which demonstrates the Court's consistent orientation in the matter.

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[22] Augustina Dumitrașcu, Roxana Popescu, op.cit., p. 159.

[23] Action initiated by the Commission for the annulment of the Council Directive 89/428/EEC of 21 June 1989 on establishing procedures for the harmonization of the programs for the reduction and the eventual elimination of pollution caused by waste from the titanium dioxide industry, published in OJEC L 201, p. 56 .

[24] *Judgment of the Court of Justice of the European Communities of 11 June 1991* in Case C-300/89, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017, personal translation.

[25] *Judgment of the Court of Justice of the European Communities of 17 March 1993* in Case C-155/91, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017, personal translation.

[26] Judgment of the Court of Justice of the European Communities of 23 February 1988 in Case 131/86, extracted from www.curia.europa.eu, personal translation.

[27] *Judgment of the Court of Justice of the European Communities of 20 May 2008* in Case C-91/05, extracted from www.curia.europa.eu, website accessed on 14.01.2017, personal translation.

[28] *Judgment of the Court of Justice of the European Communities of 29 April 2004* in Case C-338/01, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017, personal translation..

We also consider it useful to point out that the above aspects are confirmed in a series of additional judgments of the Court, including the judgments in cases C-338/01, C-155/07, C-43/12 or the connexed cases C-317/13 and C-679/13.

Hence, so far, analyzing the case-law of the Court of Justice, we noticed that the choice of the legal basis of an Union's act is not left to the hazard or to the issuing institutions, but must meet some objective criteria on which the Court may rule. In addition, the basis of an act must be the one or those provisions of the Treaties closest to its purpose and content, and it can not be determined by using similarity to other acts having a close content or purpose.

Until now, however, we have considered the relatively simple hypothesis in which the basis of an act can be identified with a certain precision and in the provisions on a single area of action of the Union, but we will continue to try to determine the possible solution of the situation in which an act has a multiple legal basis.

Thus, a first such situation concerns the case where a measure can be based on two legal bases, one of which departs as the principal.

In this case, the case-law of the Court states that if the examination of a Community measure reveals that it pursues a dual purpose or has a dual component, and one of which is identifiable as the main purpose (or component) the other is only incidental, the act will be based on a unique theme, namely the one given by the main purpose or component[29].

The same wording can be identified in the judgments on the cases C-211/01, C-338/01, C-94/03, C-178/03, C-155 / 07, C-43/12 and not only, the conclusions from these being in the sense of confirming what has been said before.

A more complicated situation occurs when it can not be established which basis is the main one and which is secondary or accessory. However, for this case, the Court of Justice gives some clarifications.

More specifically, in one of the cases brought to its judgment, the Court held that "*exceptionally, if it is established that the act simultaneously pursues a number of inextricably linked objectives, without one of them being secondary or indirect in relation with another, such an act may be based on the various legal bases related to*" its objectives[30].

The same idea is reiterated in the subsequent case-law, which states that "*by way of exception, if it can be established that the measure simultaneously pursues several objectives which are inseparably linked, without one of them being secondary or indirect by reference to another, the measure must be based on the appropriate legal bases*[31]."

In the same idea, exceptionally, if, on the other hand, "*it is determined that an act simultaneously pursues a number of objectives or has a series of components that are inextricably linked, without one of them being secondary or indirect in relation with another, such an act will have to be based on the various appropriate grounds*[32]."

This jurisprudential orientation is also confirmed in a number of more recent judgments, such as those in the cases C-178/03, C-155/07, C-43/12 etc.

However, difficulties may also arise in this case. More specifically, we can think of the situation where, given the characteristics of the case, the applicable legal bases are not compatible. And in this situation, the Court of Justice provides the main coordinates needed to find a solution.

Specifically, since the "Titanium dioxide" judgment, it has stated that "the use of a dual legal basis is excluded where the procedures provided for the two legal bases are incompatible[33]."

The conclusions from the "Titanium dioxide" judgement can be found in the subsequent jurisprudence. For example, in a judgment post-2000, the Court reiterates that *"a dual legal basis is not possible where the procedures established for each ground are incompatible with each other*[34]*."*

Further details can be found in a more recent judgment. According to it, "as the Court has already established (...), the recourse to a dual legal basis is not possible where the procedures established for each ground are incompatible with each other or where the use of the two legal bases may undermine the rights of the Parliament", as mentioned in the judgments from the cases C-164/97 and C-164/97, C-338/01 etc.[35].

In this case, the position mentioned is reiterated by the Court in subsequent judgments, of which, we specify, as an example, those in the cases C-155/07, C-43/12 or the connexed cases C-317/13 and 679 / 13.

It also seems useful to mention that the same Court has set some rules for the situation where, of two incompatible grounds, one has to be chosen. Thus,

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[29] *Judgment of the Court of Justice of the European Communities of 30 January 2001* in Case C-36/98 (which refers to the Judgments in Case C-42/97), extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017, personal translation.

[30] *Judgment of the Court of Justice of the European Communities of 19 September 2002* in Case C-336/00, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2018, personal translation.

[31] *Judgment of the Court of Justice of the European Communities of 11 September 2003* in Case C-211/01, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017, personal translation.

[32] *Judgment of the Court of Justice of the European Communities of 10 January 2006* in Case C-94/03, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017, personal translation..

[33] *Judgment of the Court of Justice of the European Communities of 6 November 2008* in Case C-155/07, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017.

[34] *Judgment of the Court of Justice of the European Communities of 29 April 2004* in Case C-338/01, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017, personal translation.

[35] *Judgment of the Court of Justice of the European Communities of 10 January 2006* in Case C-94/03, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017, personal translation.

summarizing the conclusions of the case-law, we could state that if, of two incompatible grounds, one involves a more consistent involvement of the European Parliament, and one reserves a less important place for this institution, it will be necessary to choose the basis that gives Parliament a more important role in the decision procedure.

Thus, in a relatively recent judgment, the Court stated the following: "In the present case, it should be stressed that, unlike the situation which led to the judgment for Titanium dioxide (...), the Council decides with a qualified majority both in the procedure laid in the article 179 EC and in the article 181a EC.

It is true that, under the article 179 EC, the European Parliament carries out its legislative function through the codecision procedure together with the Council, while the article 181A EC - the only legal basis used for the adoption of the contested decision - stipulates only the consultation of the European Parliament by the Council. However, the importance of the role of the European Parliament in the Community legislative process must be reminded. As the Court has already stressed, the participation of the European Parliament in this process is the reflection, at a Community level, of a fundamental democratic principle, according to which the peoples participate in the exercise of power through a representative assembly (...)[36].

We appreciate that this Court's approach supports the transition from the elitist institutions (the Council, the Commission) to the institutions that have the most democratic legitimacy (the European Parliament, the European Council), given by the existing rapprochement between the European citizen's vote and the persons who, obviously, make up these institutions (the European parliamentarians, plus the heads of state and / or of government) [37].

However, from the further analysis of that judgment, we conclude that privileging the legal bases which give a more prominent role to the European Parliament can not be done in a way that would prejudice the achievement of the purpose of the act in question.

As the Court further states, "a solution which, given the differences between the procedures known as <<co-decision>> and <<consultation>> provided in the article 179 EC and article 181A EC, would consist in privileging only the legal basis of the article 179 EC as a ground for a greater involvement of the European Parliament, would mean the non-inclusion in a specific way, in the the chosen legal basis of the economic, financial and technical cooperation with non-developing third countries. In such a case, the Council's legislative role would, in any event, be affected in the same way as it would have been affected by the use of a dual legal basis, represented by the articles 179 EC and 181A EC. On the other hand, as shown in the content of the paragraph 47 from this judgment, since the article 181A EC does not have the vocation to constitute the legal basis for some measures which pursue the objectives of the article 177 EC on the cooperation for development for the purpose of the Title XX of the Treaty, the article 179 EC can not, in principle, be the basis of the cooperation measures which do not pursue such objectives[38]*."*

4. Conclusions.

In conclusion, it can be noticed that the choice of the legal basis of the European Union's acts, a matter not detailed by the Treaties and apparently simple, is susceptible to numerous specific requirements and difficulties. In order to elucidate them, the Court of Justice, with numerous cases brought before it, has, over time, made a constant effort and produced a consistent set of rules, which today form an effective guideline of the subject mentioned.

These judgments mainly arise due to the concern of each applicant institution to safeguard its own prerogatives and, more broadly, its place in the Union's institutional architecture. In this respect, we positively note the energy with which the institutions defend their own role, a reality that confirms Jean Monnet's vision on their role in shaping a European identity.

Summarizing the conclusions of the analyzed jurisprudence, we can say that the choice of the legal basis of the Union's acts shall be based on objective factors and can not depend on mere whim of the issuing institutions, in order to achieve an effective judicial control of it.

Also, the institutions can not derogate from these rules by their own will and must take into account the purpose and content of those acts and not those of some acts with a similar content. The legal basis of an act must consist in that provision that matches the most its content.

In addition, in the case of the existence of several legal bases, if one of them stands as principal, it will regulate the adoption of the act, while, if one can not establish a main and a secondary theme, the act will be based on both grounds, unless they are incompatible. Moreover, the Court of Justice tends to give priority to the role of the European Parliament, given its democratic legitimacy, in the case of some alternative and incompatible legal bases, some of which granting a more important role to the Parliament and others diminishing its participation.

[36] *Judgment of the Court of Justice of the European Communities of 6 November 2008* in Case C-155/07, extracted from www.eur-lex.europa.eu, website accessed on 14.01.2017.

[37] Augustin Fuerea, The Legislative of the European Union - between unicameralism and bicameralism, in the journal Dreptul, no. 7/2017, p.187-200.

[38] Ibidem.

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