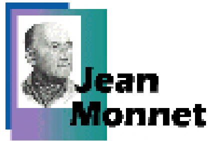

Robert Schuman

Application of the Andean Communitarian Law in Bolivia, Ecuador, Peru, and Venezuela in Comparison with the European Union Experience

- Eric Tremolada

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Application of the Andean Communitarian Law in Bolivia, Ecuador, Peru, and Venezuela in Comparison with The European Union Experience

Introduction

The correct application of the Communitarian Law produced by an International Integration Organization implies that States Members have to make political and legal internal reforms. However, those obligations are not always undertaken by the States and, therefore, the goals of the integration process cannot be reached.

As 2005 was very crucial for the conformation of the Andean Common Market, it is quite important to study the different mechanisms for application of the Communitarian Law within the Member States and the comparison of them with those of the successful European Union experience.

This historical context is the frame within which we are going to undertake the study and investigation of the political and legal reforms that facilitate the application of Andean Communitarian Law made by Bolivia, Ecuador, Peru and Venezuela. This research is not going to consider the case of Colombia because that issue is being addressed in other broader and deeper academic investigation.

The Difficulties

The sovereign condition of each State is to adopt and to impose regulatory systems on their respective societies. Therefore, it is not difficult to understand the coexistence of individual legislations that are different to each other, as opposed to the legislations of the global international community or regional and sub regional levels. The entire domestic and the international regulations exist separately given their originality, since they are based on their own policies that do not require others for its validity.

On the other hand, there are some who question the enunciated autonomy, starting from the assumption that the basic original policy belongs to one of the regulations, to the international or to the state one, and that it has resulted from one to the other. To determine if the national regulation came from the international or if this last one of the domestic one, will depend on the interpreter who wants to reinforce him in the supremacy of one of them.

The two preceding paragraphs, have only tried to explain in a few words the debate between the dualism and the monism that by the way, and interpreting the words of the Professor Rozo Acuña, it is fruitless. The full recognition and the historical ascertainment of different state and international regulations with legal validity only for

the subjects from that legal system, makes absolutely unnecessary the supremacy problem that locks up monism[1].

In our opinion, the debate must be focused in the constant relationship with others; a legal system invokes or appeals to the other regulations in order to complete or to determine the content of its own policies. The invocation process or reference between the regulations can be done from the international to the domestic or vice versa, double way which it is carried out through two methods , the remission or receptive forward or material, that looks to determine the content of the policy and, the non-receptive or formal remission that only looks to determine some of the elements of the policy[2].

If a regulation invokes to other, adopts the policies of this one being part of it, we will be in front of the receptive forward. A clear example in this sense, of remission of the domestic law to the international law is found in the section 15º of the Constitution of Austria that sets up

> *1. The federation and the States will be able to arrange to each other the agreements on the matters of their respective scope of competitions (....) 3. Will be applicable to those agreements the principles of the International Law on the matter of arrangements (....)*[3].

Otherwise, if the policy to which the regulation is sent is not part of the petitioner but it is limited only to state exactly or to interpret its policies, this will be a non receptive forward, like when the International Court of Justice (ICJ) in its sentence in the subject of *Barcelona Traction* indicated that the International Law *"must be related to the Internal Law rules, whenever legal questions are considered regarding to the States Rights that concern the treatment of the societies and the shareholders and with regard to which the International Law has not set their own rules"*[4].

However, the need to mutually talk about regulations not only obeys to the necessity to complete or to determine the content of its policies, the diversity and

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[1] Rozo Acuña Eduardo, "Derecho Interno y Derecho Internacional en las Constituciones de América Latina" en: *II Seminario Internacional, Relación entre Derecho Internacional y Derecho Interno* / "Internal Law and International Law in the Latin America Constitutions" in: *II International Seminar, Relationship between International Law and Internal Law* , p.505-508. Fundación Universitaria de Boyacá (Colombia: Boyacá, 1999).

[2] Tommási Di Vignano Alessandro e Solina Mario, *Profili di diritto internazionale / Profiles of international law* (Italia: Torino, 1990), p. 12. y Mariño Menéndez Fernando M., *Derecho Internacional Público, Parte General / Internacional Public Law, General part,* ed. Trotta, (España: Madrid, 1995). p.507.

[3] Constitution of Austria, Section 15º, from Mariño Menéndez Fernando M., op. cit. p.506.

[4] ICJ. Reports, 1970, Barcelona Traction, p.37 Nº50.

distinction among legal regulations implies its interrelation and its permeability. All pluralism is interdependent[5].

Interdependence that is demonstrated when we remember that the international policy is not by itself feasible in the domestic order, is not enough for the initial approval of it, its effectiveness is conditioned to the carrying out of an additional internal act. That is to say, it is approved through an initial internal act and afterwards for its internal effectiveness another one is needed. Legislative duplication that is known as the transformation theory of the international regulations in internal resolutions.

But the internal regulations have got over this troublesome procedure that attempts basically against the appropriate effectiveness of the international policy, with the practice of the adoption, widely guaranteed in the doctrine, today many states choose not to place internal regulations obstacles for the immediate application of the international resolutions.

Nevertheless, the adaptation phenomenon of the internal rules to the international law is a much more complex operation than the transformation or the reception, since it implies to precisely the form as the international policy well-matched with the characteristics and requirements of the internal regulations. The regulation effect that produces the international policy that need to be adopted, determines the internal rule for the adaptation, for that reason, if adapting the international policy the constitution is affected and will be necessary to emanate, to modify or to repeal a constitutional legislative act, if it affects a reserved matter to the law, it is a must to appeal to a law and thus respectively. In other words, the international law requires or imposes production, variation or domestic regulations changes so that the internal legislation would be well adapted to the international.

Imposition of which the common law will be beneficiary, since as fruit of the international law agreement is international law. Nevertheless, it is key to clear up that the International Organization created by the international law agreement, is governed by the international law when it acts as subject of the international legislation and, by the common law when their bodies develop their competences aimed to their subjects, in other words, their State members and individuals.

According to the above mentioned, we have the need to analyze the application of the Andean common law in the state legislations of Bolivia, Ecuador, Peru and Venezuela identifying the difficulties that arouse in this matter from the resolutions that govern the relations between the international law and the domestic/internal law, verifying them with the European experience. We have to bear in mind that this test will not talk about the case of Colombia, since by its importance for the country this being object of a deeper study.

[5] Rozo Acuña Eduardo, op. cit., p. 509.

Bolivia:

The Constitution of Bolivia of February 2, 1967, modified by law dated April 1, 1994, does not have any mention with regard to the integration schemes, nevertheless, regulates the faculties of the president of the republic to negotiate and to subscribe international treaties and the procedure that corresponds about this matter to the congress. *"Section 59. – The powers of the Parliament are: 12. - To approve treaties, agreements and international covenants. Section 96. – The powers of the President of the Republic are: 2. - To negotiate and to conclude deals with foreign nations; to exchange them, previous ratification of the Congress*"[6].

The mentioned constitutional policies, basically offer the legal framework necessary to acquire international commitments, however, these would be specifically limited to the sovereign competences cession, due to the following also constitutional forecasts *"Section 2. - The sovereignty resides in the people; it is inalienable and does not prescribe; its exercise is delegated to the Parliament, Judiciary and Executive powers. The independence and coordination of these powers are the basis of the Government. The duties of the state power: legislative, executive and judiciary cannot be gathered together in the same body... Section 30. - The state powers will not be able to delegate the faculties granted by this Constitution, nor to attribute to the Executive others than the specifically agreed*"[7].

That is to say, the observance of the classic sovereignty concept in the Politics Constitution of Bolivia, would not allow that this country takes part in the Andean process or any other integration scheme, and it is strange that up to this date did not generate problems of reception and application of the common policies, specially regarding the compliance of the decisions not only from the Council of Foreign Ministers but from the Commission as well, to the observance of the Resolutions of the General Secretariat and the respect to the judgment.

In our opinion, the fact to comply with the institutional structure and to take part in the adoption and application of the supranational policy, not only guarantee the harmony of the common and internal regulations, but contrary to it is translated in a constant threat to the Bolivian participation within the integration scheme, particularly now that we are going towards a common market. Bolivia must reconsider, through a constitutional amendment, its archaic concept of sovereignty, raising the express prohibition in the cession of competitions matter, so that the supra-nationality finds permanent constitutional support.

We have indicated that the Constitution of Bolivia of 1967, modified in 1994, not only has a mention regarding integration schemes, but specifically prohibit the delegation of sovereign competitions based on a concept of classic sovereignty as well[8].

[6] Politics Constitution of Bolivia of 1967, with amended text of 1995 and reforms of 2002 and 2004.
[7] Ibídem
[8] See: Politics Constitution of Bolivia, sections 2º y 30º

Thus, and in accordance with numerals 12 and 2 of the constitutional sections 59º and 96º respectively mentioned, in the reception matter Bolivia has a special regime that comes under the internal effectiveness from the international obligations of an internal regulated act.

Nevertheless concerning the general international law of custom character, it does not need acts of special reception. That is to say, as in the Colombian case, in the matter of law of custom or usage, the international rules and declarations are preferred and hierarchically superior to any internal law and in case of dispute between both the international law prevails.

This comes off the reading of the section 35º of the Constitution that indicates that not necessarily all the declarations, rights, and guarantees, must be specifically established in the basic law to be applied in the internal order *"the declarations, Rights and Guarantees that proclaim this Constitution will not be understood as denial of other Rights and Guarantees not stated that are born of the sovereignty of the people and of the republican way of government".* However, the Constitution in section 228º is categorical in affirming its prevalence on opposite regulations, which at last would be reflected in possible actions of unconstitutionality, that would throw out their commitments in which it gave in sovereign competences, that are specifically prohibited as we saw when mentioning the sections 2º and 30º.

Ecuador:

In the Ecuatorian case, on the contrary, we found that the Constituent Assembly included two constitutional forecasts that privilege the relationship with the common regulations. We referred to the sections 4º and 163º of the Politics Constitution approved the 5 of June of 1998 establishing that *"-Section 4. - Ecuador in its relationship with the international community: 5. It advocates the integration, in an special way, the Andean and the Latin American"*. We are therefore, as opposed to a constitutional policy that specifically recognizes the Andean integrating aim, which will make easier the binding effects of that regulation in the internal law, besides to consider a mechanism of automatic reception of the agreement law *"Section 163. - The policies contained in treaties and international covenants, once passed in the Official Registry, will be part of the legal system of the Republic and will prevail over laws and other policies of lower hierarchy".*

On the other hand the Supreme Law Court of Ecuador recognizes implicitly the pre-eminence, direct application and immediate effect of the common law: *"Therefore, it is obvious, that it is obligation of the national Judge who knows a process in which ` must be applied or some of the norms that make up legal regulations of the Andean Community ' are infringed (Section 33 of the Modifying Treaty), to consult its interpretation to the Andean Court, being the consultation optional when ` the sentence is liable of appeal in the internal law`, and is obligatory when ` the sentence will not be liable of appeal in the internal law`. It is key to write down that in Section 33 of the Modifying Treaty the term ` infringed` is included, modifying therefore the Section 29 of the original Treaty of Creation of the Court of Justice, that only stated the consultation for processes ` in which some of the policies of the Andean common law must be applied,*

but not when some of said policies are infringed .... Therefore, in the current case the prejudicial consultation from the Second Trial Court was obligatory, that was required at the right time by the defendant part, and as it was not properly done, it failed to fulfil with Section 29 of the Treaty of Creation of the Court of the Cartagena Agreement, Section 33 of the Modifying Treaty, due to the erroneously interpretation of these resolutions"[9].

Nevertheless, for the application effects of the common law in the Ecuatorian territory, the demand of publication in the Official Registry anticipated in the mentioned section 163 of its Constitution, causes delays that can generate breach of the Andean policy, for this reason, in our opinion, it would have to be eliminated. On the subject the Law Court of the Andean Community has expressed that this publication is an unnecessary procedure[10].

On the contrary, in Ecuador exists an automatic reception regime, which incorporates immediately the international law only demanding the material act of its official publication [11].

Perú:

The Politics Constitution of Peru of 1993, stipulates that *"Section 55º The treaties celebrated by the State coming into force take part of the national law"*, forecast that is enough to assert that the common primary law is the valid law of obligatory fulfilment in Peru, to that the justice administrators are specifically submitted by virtue of the constitutional forecast that set up its guarantees *" Section 146º... The State guarantees to the judges: 1. its independence. They are only submitted to the Constitution and to the law"*. Nevertheless, the Peruvian judges and courts do not practice the preliminary ruling consultation stated in the section 28 to the 31 of the Treaty of Creation of the Law Court of the Cartagena Agreement[12].

But this Constitution of Peru, projected by a pocket Democratic Constituent Congress, after the Fujimori's auto bump to the institutions in 1992 and later legitimized by referendum, is enough for the recognition of the supra-nationality principle, since in case of dispute between both regulations the internal takes priority over, as can be observed in the following constitutional forecasts *" Section 51º. The Constitution prevails over all legal policy; over the law, over the regulations of lower hierarchy, and so on... Section 138º....In every process, if exists incompatibility between a constitutional regulation and a legal regulation, the judges prefer the first. Also, they prefer the legal*

[9] Supreme Court of Ecuador, Third Civil Division, Sentence October 5, 1999.

[10] Court of Justice of the Andean Community, Sentence 07-AI-99

[11] See: Politics Constitution of Ecuador, adopted 5th June 1998, section 163º

[12] Our study does not find evidence of prejudicial court procedures; however we dare not to be emphatic in this sense. Until 1996, Manuel Sánchez-Palacios Paiva, Member of the High Court of Peru, assured that "…the judges and the Peruvian courts do not use the prejudicial consultation …", see: La integración del derecho y los tribunales comunitarios, en: *Memorias del Seminario Internacional* / The Law integration and community Courts, in: *Statements of the International Seminar* (Quito: Cuenca, Guayaquil, Trujillo, julio-agosto de 1996), pp. 309 y ss.

regulation over other one of lower position"[13]. We can find the reasons in the necessity of the regime to escape in the human rights matter from the internal jurisdictional control and the international control[14].

Although the section 44º of the valid Constitution promotes the integration, particularly the Latin American, is obvious that we are as opposed to a constitutional backward movement in the matter of reception and application of international agreements. It is enough to remember that its revoked Politics Constitution of 1979, in case of dispute between treaty and law the first takes priority, it gave constitutional hierarchy to the treaties on human rights and privileged the treaties of Latin American integration on other multilateral treaties[15].

As stated, the validity and the binding character of the resulted common law could be in doubt in face of the absence of constitutional basis, nevertheless Peru as Ecuador and Bolivia, have been submitted to the jurisdiction of the General Secretariat and of the Court active and passively and without question they recognize the characteristics of the common legal system.

In the case of Peru, for the reasons that we maintained, we found a mixed reception regime, although all valid treaty takes part of its internal regulation, when it is received will need an specific ruling act if they deal with human rights, ownership or integrity of the State, national defense and financial obligations. Also it will need an act that is ad hoc to the treaties that create, modify or cut out taxes, those that demand modification or abolition of some law and those that require legislative measures for their execution[16]. Thus, this regime of reception privileges, according to the matter, the conventional international law and on the contrary it leaves out mention of the general international law.

The previous subject, in principle does not affect the Andean integration which as we said is promoted in section 44º, nevertheless this is only in the reception matter, because when it is about the application the Constitution prevails, therefore, in the event there appears a contradiction between this and a legal policy as it would be the common law, the judges will prefer the first [17].

Venezuela:

Contrary to the analyzed matter, the Constitution of the Bolivarian Republic of Venezuela of 1999, recognizes the competence of the supra-national organisms to adopt their own legal regulations, with its characteristics of pre-eminence, direct application and immediate effects *"The Republic will promote and favour Latin American and Caribbean integration, in order to move forward to the creation of a community of*

[13] Politics Constitution of Peru of 1993 includes reforms introduced until 2005.

[14] The professor Eduardo Rozo, shows this reality analysing the differences in the chapters regarding the treaties in the last two constitutions of Peru. See: Rozo Acuña Eduardo, op. cit., pp. 568 - 572.

[15] See. Politics Constitution of Peru, adopted on 12th July 1979, sections 101º, 105º y 106º.

[16] See. Politics Constitution of Peru of 1993, sections 55º y 56º.

[17] See Politics Constitution of Peru of 1993, sections 51º y 138º

nations, defending the economic, social, cultural, political and environmental interests of the region. The Republic will be able to subscribe international treaties that combine and coordinate efforts to promote the common development of our nations, and that guarantees the well-being of the towns and the collective security of their inhabitants. For these aims, the Republic will be able to attribute to supra-national organizations, through treaties, the exercise of the competitions necessary to carry out these processes of integration. Within the policies of integration and union with Latin America and the Caribbean, the Republic will privilege relations with Ibero-America, trying to be a common policy of all our Latin America. The regulations that are adopted within the integration framework agreements will be considered member part of the valid legal regulation and of direct and preferred application to the internal legislation"[18].

Nevertheless, the recognition of the competence of the supra-national organizations to adopt their own legal codes, with their characteristics of pre-eminence, direct application and immediate effects, predicted in the section 153º of the Constitution of Venezuela of 1999, can be seen detracted if the President, the Assembly or a percentage of voters decide to submit it to referendum according to the second clause of the section 73*º "The treaties, covenants or international agreements that could commit the national sovereignty or to transfer competences to supra-national bodies, they will be able to be submitted to referendum by initiative of the President or President of the Republic in Cabinet; by the vote of the two thirds parts of the members of the Assembly; or by the fifteen percent of the voters registered in the poll and civil registry".*

Thus, this special reception regime not only when adding the international law would need a specific internal regulation act but would be able in the circumstances described to hold besides that reception to a referendum as well. Nevertheless, as for the application of it already received there would not be discussion.

In matters of human rights, according to the section 23º of the Constitution, the direct application of the conventional law guaranteed, prevails on the internal regulation and is presented to the level of constitutional hierarchy.

The European experience in matter of application of the common law:

In the case of the members of the European Union, the option to transfer sovereign prerogatives to the international organizations was, in some cases, previous constitutional forecasts and in the other the adaptations were done at the same time of its admission.

Great Britain, that does not possess a written constitution, in 1972, through the European Community Act, foresees in their sections 2º and 3º, that the resolutions of the competent bodies of the European Communities are applicable directly without need of any transposition act[19].

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[18] Constitution of the Bolivarian Republic of Venezuela, adopted on 20th December 1999, section 153º.

[19] Ruda José María, "La aplicación y la primacía del derecho que emana de las organizaciones internacionales en el fuero interno" en: *Hacia un nuevo orden internacional y europeo, Homenaje al*

The Italian Constitution, allows, in its section 11º, that in parity of conditions with other states, the country limits its sovereignty in favour of a regulation that guarantee the peace and the justice among the nations at the same time that favours the international organizations directed to such purpose[20].

On the other hand, the Greek Constitution of 1975, previously stipulated to its entrance to the European Communities, the attribution of competences to the bodies of the international organizations[21], and as an analogous form, more precise, the Dutch Constitution specified that in virtue or fulfilment of a treaty, can be conferred legislative, executive and judiciary powers to these organizations [22].

In the Spanish case, through an organic law can be authorized the celebration of treaties that attribute to an international organization the competences exercise resulted from the constitution [23].

But it is Portugal who enjoys of a constitutional forecast in this clear sense, to stipulate, that the regulations emanated of competent bodies of international organizations in which it is part, will govern directly in its internal legislation, when the constituent treaty will specifically establish it[24].

The reluctances of some member states of the European Communities and the difficulties that initially presented their Constitutional Courts, set against the immediate effects of a common law that as a whole, would be hierarchically superior to the internal regulations, they have got over, thanks to a constant and repeated legal doctrine of the Court of Justice the European Communities that begins with the mentioned sentences Van Gend & Loos, of 1963, and Coast/ENEL, of 1964[25].

But it is until the sentence *Simmenthal* [26], of 1978, that the Court establishes with general character, including, specifying and reinforcing previous decisions, the framework of the supremacy principle. Thus, the common policy should be applied with preference to any internal regulation, with independence of its status and of its previous or later condition. According to the doctrine contained in this sentence, the national judge is obliged not to apply by the powers invested in any internal policy that is contrary to the common law. On the other hand, the adoption of a common policy produces a future effect, that is, it prevents the production or new internal policies incompatible with that.

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profesor Manuel Díez-Velasco / "The application and the law primacy that emanates from the international organizations in the internal codes of law" in: *Towards a new international and European order, Tribute to professor Manuel Díez-Velasco*-, ed. Tecnos, (España: Madrid) p. 628.

[20] Italy Constitution, adopted on 22th December 1947

[21] Greece Constitution, adopted on 9th July 1975, Section 28.2

[22] Netherlands Constitution, adopted on 17th February 1983, Section 92.

[23] Spanish Constitution of 1978 with the amended of 1992, section 93º

[24] Constitution of the Republic of Portugal, section 8.3º. adopted on 2nd April 1976

[25] Court of Justice of the European Communities, Sentence CJEC February 5th 1963, subject Van Gend & Loos and Sentence CJEC July 15th 1964, subject Costa /ENEL

[26] Court of Justice of the European Communities, Sentence CJEC March 9th 1978, subject Simmenthal.

Without doubt the most problematic question and that more reluctances has caused and that would definitively have got with the adoption of the Constitutional Treaty, is the supremacy statement of the common law on the constitutions of the states in matter of basic rights by lacking the founding treaties of such content. Three sentences more of the same Court began to solve the relating to the unconditioned supremacy of the common law and to the constitutional policies of the member states. We refer to the sentences *Stauderr*[27], of 1969, *Internationale Handelsgesellschaft*[28], of 1970 and *Nold*[29], of 1974, with them the Law Court of the European Communities was building its doctrine, initially indicating that the basic rights take part of the common law as long as they are general principles of the right, later said that for the identification of those general principles turns to the common constitutional traditions, to end up completing its construction indicating that the basic rights take part of the common law, as general principle of the law that is extracted of the common constitutional traditions and of the treaties in which they are part or they have collaborated as the European Covenant of Rome for the Protection of the Human Rights and Basic Liberties, of November 4, 1950. This legal construction was literally included in the section 6.2 of the European Union Treaty, but as it is being part of the Title I of the same one, where the Court does not have competence, makes its regulations content innocuous which only will be effective at the moment of the definitive adoption of the European Constitution, whenever this treaty gets over to its difficult ratification process by the 25 members.

From the characteristics recognized by the Court (direct and immediate application) comes from another feature of the European common law that makes easy its application. The national courts are also the legal bodies of common law for the application of the common legal order. It means that, without detriment of the own competence in the disputes among the common bodies, the Court of Justice the European Communities is the Court of Appeal for all the national judges and, exercises the final control, unifying the interpretative jurisprudence of the common policies through different appeals and actions.

Conclusion:

This not very optimistic study of the application of the international law in the state legislations of Bolivia, Ecuador, Peru and Venezuela, contrasts with the submission of all to the General Secretariat and to the Law Court jurisdiction, as much as in active and passive capacity, for this reason there is no doubt that recognize the characteristics of the common legal code, although this does not necessarily mean the fulfilment of the legal ruling and sentences.

Besides, the Court of the Andean Community, with attachment to the most authorized doctrinaire opinion has pointed out that the same existence of the Andean common law depends on the presence of the direct implementation and the pre-eminence,

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[27] Court of Justice of the European Communities, Sentence CJEC November 12th 1969, subject Stauder.

[28] Court of Justice of the European Communities, Sentence CJEC December 17th 1970, subject Internationale Handelsgesellschaft

[29] Court of Justice of the European Communities, Sentence CJEC May 14th 1974, subject Nold

implementation that rules in all the territory that integrates the Andean Community and entails the connotation of direct effect, and pre-eminence that refers to the supremacy of the common policies of native and derivative law, on the legal regulations policies of the internal law. Thus, on March 24, 1997 in the Action of non-observance presented by the Assembly of the Cartagena Agreement against the Republic of Venezuela, by the violations to the Resolutions 397 and 398 of the Assembly, to the section 41, 42, 43 and 46 of the Cartagena Agreement, to the sectional 5° of the Treaty of Creation of the Court and section 13º of the Decision 328 of Andean Farming Health system Commission, expressed *"The single supposition that the Decisions of the Commission or the Resolutions of the Assembly, had to pass for the legislative sieve of each one of the member countries, before their internal application, would carried out to deny the existence of an Andean common law"*[30]. It fits to indicate, that in the Andean Community of Nations the direct application of the common law came from the own positive policies of constituent or native character[31], for that reason exists the constant and repeated legal doctrine of its Court.

This brief comparative exercise, shows up that the European tendency of respect and acceptance of the international law in the internal regulations with their respective consequences in matter of sovereignty, is partially shared by the Andean countries, and that their constitutional inadequacies, up to now, have not hindered in a considerable way the Andean sub-regional integration. The five states recognize and they accept the supra-nationality and its characteristics of pre-eminence, the direct application and immediate effects, and the Court of this community, as the European Communities, has developed a constant and repeated legal doctrine.

Nevertheless, the problematic that occurs in matter of application is not reduced to the legal discussion, the common work needs the contest of certain tools that makes it specific, we refer to three different ways of action: a planning that indicates the direction and balance of means for the efficient and rational fulfilment of the agreed purposes; an inquiry exercise of the common regulations that is incumbent on not only to its bodies but to the member states as well; and a promotion activity that through honorary, psychological, legal and/or economic stimuli guides the private initiative, offering benefits or imposing obstacles to certain activities with the aim of pursuing the integration goals in a indirect way and without need of coercion[32].

Three tools that need a real political decision on the part of the governments of the member states and that have not been developed throughout the Andean integration process, for that reason, despite of having a true legal regulation on the base of mutual obligations, adapting and adopting the EU model with its respective mechanisms to carry it out, fails basically by its short inquiry and almost null promotion activity.

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[30]Court of Justice of the Andean Community, Sentence 03-AI-96.

[31] See Treaty of Creation of the Court of Justice in the Agreement of Cartagena, sections 2º, 3º and 4º, and their Modifying Protocol of Cochabamba. Today codified by Decision 472 of the Commission, articles 2º and 3º of the Treaty of Creation of the Court.

[32] Dromi Roberto y otro, *Derecho Comunitario: Sistemas de Integración Régimen del MERCOSUR / Common Law, Regime of Integration Systems of MERCOSUR*, (Argentina: Buenos Aires, 1995).pp. 116 – 121.

As previously stated, it does not surprise us that the vast majority of national judges, do not know the pre-eminence and the direct application of the common policies, except in some the cases that are the justice administrators that make up the high courts.

But the previous ignorance is of double way, not only is reduced to the work of the domestic judges, but the majority of the individuals as well ignore that since the international regulation can arise them rights and obligations that would have to comply and to demand, as it happens in the internal regulation. With regard to the Court of Justice of the Andean Community has indicated *"while the principle of the direct application refers to the policy as it is the principle of direct effect relates with the actions that the beneficiary subjects can exercise for the duly application of the common policy. In other words that their effects 'generate rights and obligations for the individuals as it happens in the state regulations policies', allowing the possibility that those can demand directly their observance in face of their respective courts"*[33].

Thus, the application of the Andean common law not only is uncertain by the constitutional inadequacies of its country members, but by a shy politics work in matter of inquiry and promotion that would contribute with said application. If the individuals, as the beneficiaries of the integration through the appeals and actions will demand constant and permanently the application of the common law in face of their national judges, we would find the point of no return that reached the European Union. From there the purpose of this brief that is not other that to contribute, since the academy with the promotion of the integration in a year that was going to be key for the Andean Community of Nations, on January first would become effective the free circulation of people, on May 20 come into effect the common foreign customs duty and, the 31 December a common market must have been established[34].

[33] Court of Justice of the Andean Community, Sentence 03-AI-96

[34] Tremolada Eric, "Integración Andina: Visado ecuatoriano un obstáculo para el mercado común" / "Andean Integration: Ecuatorian Visa a handicap for the common market" *El Nuevo Siglo*, (Colombia: Bogotá, 9 de julio de 2005).

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