

Dr. sc. Justyna Maliszewska - Nienartowicz
Jean Monnet Center for European Studies
Nicolaus Copernicus University in Torun, Poland

UDK: 34:061.1 (4) EU
Pregledni znanstveni rad

THE PRINCIPLE OF PROPORTIONALITY IN THE EUROPEAN COMMUNITY LAW – GENERAL CHARACTERISTIC AND PRACTICAL APPLICATION

Abstract: The article shows the place of proportionality in the European Community law, its legal character, content and functions which it plays. Apart from these general considerations, the ways of the application of proportionality in different EC policies are presented. This part of the study concentrates mainly on the case-law of the ECJ. Thanks to this analysis different attitudes to the principle of proportionality can be presented. It is also important to present the case-law because the provisions of the Treaties fail to reveal the real significance and all areas of application of proportionality (this concerns in particular actions undertaken by the Member States).

Key words: proportionality, general principles of EC law, suitability, necessity, manifestly inappropriate measure, the least restrictive measure

1. Introduction

The principle of proportionality plays an important role in the European Community (EC) law, which is even strengthened in the process of European integration. At the same time it is an example of a principle which is subject of certain interpretation disputes. They are connected with the special character of proportionality – it is a flexible principle which can be applied in many areas and protect different interests.

Proportionality has been developed by the European Court of Justice (ECJ) in its case-law and remains mainly an instrument of judicial control. However, the Member States while signing the Maastricht Treaty decided to regulate it in art. 3b (3) together with the principles of conferred powers and subsidiarity. The Amsterdam Treaty did not change this provision but it regulated some practical aspects of proportionality in the Protocol attached to the EC Treaty. Consequently, there is only a very basic provision of art. 5 (3) of the EC Treaty which predicts that “any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty”. Other regulations can be found in the Protocol on the application of subsidiarity and proportionality principles. However, its provisions concentrate on the practical questions connected with proportionality when it is applied by the Community institutions and in relation to Community measures. The real significance of this principle goes further as it

also influences actions undertaken by the Member States. This function and area of application can be discovered only when we study the case-law of the ECJ.

2. Legal character of proportionality

There is no doubt that proportionality is one of the general principles of the EC law¹. However, it should be determined what kind of a general principle it is. From this point of view proportionality is referred to as a general principle of administrative law². We can also find an opinion that the inclusion of proportionality in the EC Treaty in art. 5 (3) underlined its fundamental and at the same time constitutional character³. However, this distinction is not so important because the line of division between administrative and constitutional law is blurred in the context of the EU⁴.

It should also be noticed that the principle of proportionality is applied to different relations: Community – Member States, Community – individuals, Member States – individuals. Consequently, one can say about „the double nature” of this principle and distinguish institutional and material proportionality⁵. The former one is connected with the protection of individuals against too intensive interference of the public power represented either by the EC institutions or the authorities of the Member States. Therefore, it is underlined that proportionality is also “a fundamental rights rule”⁶. However, it is an objective norm which means that this principle does not safeguard any subjective right. Instead of it proportionality limits the possibility to infringe both fundamental rights and freedoms of the internal market of the EC⁷. The institutional proportionality in turn refers to the relation Communities – Member States and is regulated mainly in art. 5 (3) of the EC Treaty. Its objective is to set relationships between these entities. It can be said that the institutional proportionality protects competences of the Member States.

¹ This is underlined by the ECJ in many judgments. See e.g. case 265/87, *Hermann Schröder HS Kraftfutter GmbH & Co. KG v Hauptzollamt Gronau* [1989] ECR 2237, § 21; case C-331/88, *The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others* [1990] ECR I-4023, § 1; case C-101/98, *Union Deutsche Lebensmittelwerke GmbH v Schutzverband gegen Unwesen in der Wirtschaft eV* [1999] ECR I-8841, § 30. The similar view is presented in the literature, compare e.g. J. Jowell, *Is Proportionality an Alien Concept?*, *European Public Law* 1996, vol. 2, issue 3, p. 402; D. Oulton, *How Widely Accepted As a General Principle Is Proportionality?*, *Commonwealth Judicial Journal* 1997, vol. 12, no. 1, p. 17; J. Jowell, A. Lester, *Proportionality: Neither Novel Nor Dangerous* [in:] *New Directions in Judicial Review*, London 1988, p. 56; Rt. Hon. Lord Hoffmann, *A Sense of Proportion*, *Irish Jurist* 1997, vol. XXXII, p. 54.

² See e.g. J. Temple Lang, *Community Constitutional Law* [in:] *Constitution-Building in the European Union*, edited by B. Laffan, Dublin 1996, p. 127 oraz J. Martens de Wilmars, *The Case-law of the Court of Justice in Relation to the Review of the Legality of Economic Policy in Mixed-economy Systems*, *Legal Issues of European Integration* 1982, no 1, p. 13 who refers to proportionality as the principle of sound and proper administration.

³ Compare T. Tridimas, *The General Principles of EC Law*, Oxford 1999, p. 91.

⁴ It is underlined by G. de Búrca, *Proportionality and Subsidiarity as General Principles of Law* [in:] *General Principles of European Community Law*, Reports from the conference in Malmo 27–28 August 1999, edited by U. Bernitz, J. Nergelius, The Hague–Boston 2000, p. 96.

⁵ See B. De Witte, *The Role of Institutional Principles in the Judicial Development of the European Union Legal Order* [in:] *The Europeanisation of Law: the Legal Effects of European Integration*, edited by F. Snyder, Oxford 2000, p. 90.

⁶ See J. Temple Lang, *The Constitutional Principles Governing Community Legislation*, *Northern Ireland Legal Quarterly* 1989, vol. 40, no. 3, p. 234.

⁷ H. Kutscher, *Zum Grundsatz der Verhältnismäßigkeit im Recht der Europäischen Gemeinschaften* [in:] *Der Grundsatz der Verhältnismäßigkeit in europäischen Rechtsordnungen*, edited by H. Kutscher, Heidelberg 1985, p. 94. See also G. Hirsch, *Das Verhältnismäßigkeitsprinzip im Gemeinschaftsrecht*, Referat im Rahmen der Vortragsreihe „Grundfragen der Europäischen Rechtsordnung”, Bonn 1997, p. 17.

As far as the **status of proportionality** is concerned it should be underlined that as a general principle it is a source of primary law. There is no doubt that it takes a higher position than the acts of secondary law and if the latter are incompatible with proportionality they can be declared to be void by the ECJ⁸.

It should also be noticed that the principle of proportionality (in particular where it protects individuals) has direct effects⁹. This means that individuals may plead its infringement both before the Community and national courts. The latter situation concerns these cases which have connections with Community law, e.g. in relation with the restrictions of the freedoms of the internal market by the authorities of the Member States¹⁰.

3. Content of the proportionality – three criteria

Content of this principle should be determined on the basis of both the provision of art. 5 (3) of the EC Treaty and the case-law of the Community courts. It should be underlined that after “the inclusion” of proportionality into the Community law the ECJ gave it specific features and meaning. However, the basic criteria of the principle were taken from the legal systems of the Member States. These are: **suitability, necessity and proportionality sensu stricto**. The first criterion refers to the relation between the applied measures and the intended objective. Its control begins with the examination if the objective is legitimate according to the Community law. Then, the ECJ checks if the activity can be helpful in attaining the concrete objective¹¹.

Necessity is the dominant criterion in the case-law concerning proportionality. Usually, the ECJ checks only if the measure does not go beyond what is necessary to achieve the objective so the Court does not examine if there are other, more lenient measures. However, sometimes the control is extended and the ECJ checks if there is a choice between several appropriate measures. If this is the case, then the least onerous measure has to be applied. This “onerousness” is evaluated in particular in relation to individuals’ interests so the ECJ applies this broader concept of necessity to the activities that infringe these interests. This concerns in particular the activities of the Member States where they apply derogation clauses (provided in the EC Treaty) or mandatory requirements (introduced and developed by the ECJ) in order to restrict freedoms of the internal market¹². Consequently, the action is necessary if it cannot be replaced by an alternative measure which would have the same result and at the same time

⁸ See e.g. case 114/76, *Bela-Mühle Josef Bergmann KG v. Grows-Farm GmbH & CO. KG* [1977] ECR 1211 where the ECJ declared the Regulation no 563/76 of 15 March 1976 to be void because it infringed principles of proportionality and equality.

⁹ Compare the opinion of Advocate General Mancini in the case 237/82, *Jongeneel Kaas BV i inni v. the Netherlands* [1984] ECR 522.

¹⁰ See the case C-27/95, *Woodspring District Council v. Bakers of Nailsea Ltd.*, [1997] ECR I-1847 where the Court stated that *An individual may plead in proceedings before a national court an infringement of Articles 39 and 40(3) of the Treaty and of the general principles of proportionality and non-discrimination in order to challenge the validity of an act of the Community institutions.*

¹¹ Compare J. Maliszewska-Nienartowicz, *Zasada proporcjonalności w prawie Wspólnot Europejskich (The Principle of Proportionality in European Community Law)*, Toruń 2007, pp. 84–86.

¹² See e.g. the case 261/81, *Walter Rau Lebensmittelwerke v. De Smedt PVBA* [1982] ECR 3961 where the Court underlined that *Although, in the absence of common rules relating to the marketing of the products, obstacles to free movement within Community resulting from disparities between the national laws must be accepted in so far as such rules, applicable to domestic and imported products without distinction may be recognised as being necessary in order to satisfy mandatory requirements relating inter alia to consumer protection, it is still necessary for such rules to be proportionate to the aim in view. If a Member State has a choice between various measures to attain the same objective it should choose the means which least restrict the free movement of goods* (emphasis added).

would not threaten legally protected interests or objectives so much¹³.

The criterion of proportionality *sensu stricto* requires the proper balance between damages suffered by individuals (or the limitation of their rights) and the benefit achieved by the Community or the Member State thanks to the concrete action. So the ECJ tries to weigh the conflicting interests and to check if an individual has not been charged too excessively in comparison with the intended objective¹⁴. Such a control takes place after the examination if the measure is appropriate and necessary.

Consequently, when the ECJ applies proportionality in its broadest sense it checks if:

- the measure is an appropriate method of attaining a legitimate objective;
- the applied measures are limited and do not go beyond what is necessary to attain this legitimate objective;
- the costs or limitations can be accepted in comparison with the attained objective¹⁵.

However, this is a model solution which is not applied very often in practice. One of the examples of the judgments where the ECJ referred to all the criteria of proportionality is the case *Fedesa*¹⁶. The Court underlined that: *In accordance with the principle of proportionality, which is one of the general principles of Community law, the lawfulness of the prohibition of an economic activity is subject to the condition that the prohibitory measures are appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question, it being understood that when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued* (emphasis added).

As it was mentioned, not all judgments contain such a reference to three criteria. Usually, the ECJ controls only if the measure is appropriate and necessary¹⁷ and does not distinguish the criterion of proportionality *sensu stricto*. Therefore, it can be said that the "two-elements proportionality test" dominates in practice.

4. Functions

The principle of proportionality plays an important role in the European Community law which is not limited to the protection of individuals against too intensive interference by public authorities (both Community and national ones). As it was mentioned, in the European Community law we can also distinguish institutional proportionality which concentrates on the relations between Community and the Member States and is regulated mainly in art. 5 (3) of the EC Treaty. Therefore, the functions of this principle in Community law are quite numerous.

First of all, it determines the way in which Community competences are realised – even if

¹³ Compare K. Lenaerts, P. van Nuffel, *Constitutional Law of the European Union*, London 1999, p. 108.

¹⁴ See G. de Búrca, *The Principle of Proportionality and its Application in EC Law*, Yearbook of European Law 1993, vol. 13, p. 117;

¹⁵ Ibidem, p. 113.

¹⁶ C-331/88, [1990] ECR I-4023.

¹⁷ E.g. in the case 66/82, *FORMA* [1983] ECR 395 it stated that: *In order to establish whether a provision of Community law is consonant with the principle of proportionality it is necessary to establish, in the first place, whether the means it employs to achieve its aim correspond to the importance of the aim and, in the second place, whether they are necessary for its achievement. And in the case 15/83, Denavit Nederland BV* [1984] ECR 2171 the Court directly referred to the criterion of suitability – *by virtue of the principle of proportionality, measures adopted by Community institutions must not exceed what is appropriate and necessary to attain the objective pursued.*

the Community is competent to act, its action cannot go beyond what is necessary to achieve the objectives of the EC Treaty. Therefore, it can be said that proportionality protects the competences of the Member States, similarly to the principle of subsidiarity (though there are differences between them – the latter regulates who is competent to act in particular field that does not belong to the exclusive competence of the Community while the former influences the intensity of all Community actions¹⁸).

The principle of proportionality also influences the form and content of acts. According to the art. 6 of the Protocol on the application of the principles of subsidiarity and proportionality: "The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures". It means that the principle of proportionality is important at this stage of legislation where proposals of the acts are prepared – they should not be more detailed than it is necessary to achieve the objectives of the Treaty. This obligation is strengthened by the fact that the statement of reasons for the adoption of the act should contain information concerning its compliance with the principle of proportionality (art. 4 of the Protocol).

Finally, this principle is important in the field of sanctions predicted in the Community law and imposed on individuals. It protects them against severe and disproportionate penalties which is particularly important in the field of competition policy and fines imposed for the infringement of its provisions. Generally, it can be said that proportionality is applied to assess the legality of all legislative and administrative actions which are undertaken by the EC institutions.

This principle plays also an important role in relation to the Member States activities which have certain connections with the Community law. In this field of application, proportionality is taken into account in relation to measures which restrict freedoms of the internal market but can be justified either by derogation clauses or mandatory requirements. However, even if they are justified they still have to meet certain requirements – one of them is their compatibility with proportionality. This principle is also applied to sanctions provided by the Member States for the infringement of the Community law (in both Community legislation and the case-law of the ECJ we can find a formula that such sanctions should be effective, dissuasive and proportionate¹⁹). The same requirements have to be met if the Member States provide sanctions for infringement of different visa or customs formalities which restrict one of the four freedoms of internal market. Moreover, the principle of proportionality has to be taken into account while implementing the EC law. It means that all measures that implement the Community law should be appropriate and necessary to achieve its objectives. Finally, the authorities of the Member States should apply the principle of proportionality while interpreting the regulations of the EC law (this is a particular task of national courts and organs of administration). In other

¹⁸ As far as differences between both principles are concerned see further *inter alia* N. Emiliou, *The Principle of Proportionality in European Law. A Comparative Study*, London-The Hague-Boston 1996, s. 140 or T. Tridimas, *The General Principles of EC Law*, Oxford 1999, s. 119.

¹⁹ Compare N. Emiliou, *op. cit.*, p. 167.

words, if a legal norm can be interpreted in a different way, this one should be chosen which is the least onerous for individuals²⁰.

5. Practical Application – Different “Proportionality Tests”

Considerations on practical aspects of the principle of proportionality have to be based on the case-law of the ECJ. Its analysis allows for the conclusion that this principle is applied in many Community policies. However, there are such ones in the frames of which proportionality plays a particular role – it concerns common agricultural policy, competition policy, common commercial policy (here the ECJ controls measures undertaken by the EC institutions) and free movement of goods, persons, services and capital (here the ECJ controls the activities of the Member States).

It should be noticed that there are differences as far as the intensity of the review of this principle is concerned. Generally, two tests of proportionality can be distinguished. Therefore, it can also be said that the ECJ applies double standards of its control. The proportionality tests depend mainly on the fact who – the EC institutions or the Member States – undertake actions and additionally what interests are protected.

Thus, **in relation to actions undertaken by the EC institutions in these areas where they have discretionary powers, the ECJ controls only if a measure is not manifestly inappropriate** (such a test is applied e.g. in the field of common agricultural policy, competition policy and common commercial policy). Consequently, the review of proportionality in these areas is not intense. The ECJ justifies it by the fact that discretionary powers of the EC institutions in certain areas correspond to their political responsibilities given by the EC Treaty. Therefore, *the legality of a measure adopted in such spheres can be affected only if it is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue*²¹. Such an attitude is probably connected with the fact that the ECJ does not want to interfere with the legislative powers given to the Council and the Commission. However, if the infringement of proportionality is serious i.e. the measure is manifestly inappropriate, then the ECJ can declare the act to be void²².

The second test – of the least restrictive measure – is applied in relation to the Member States' activities which restrict freedoms of the internal market. Consequently, the ECJ controls if there are not any other measures which allow to achieve the same objective and which do not restrict the freedoms of the internal market so much. It should be underlined that the principle of proportionality plays a double role in this area. Firstly, it eliminates the unnecessary restrictions in the free movement of goods, persons, services and capital, so it

²⁰ See A. Wyrozumska, *Państwa członkowskie a Unia Europejska (Member States and the European Union)* [in:] *Prawo Unii Europejskiej. Zagadnienia systemowe. Prawo materialne i polityki (Law of the European Union. System Issues. Substantial Law and Policies)*, edited by J. Barcz, Warszawa 2006, s. 325. Podobnie Ch. Zacker, S. Wernicke, *Prawo europejskie w pytaniach i odpowiedziach (European Law in Questions and Answers)*, Warszawa 2001, s. 113.

²¹ See e.g. case C-331/88, *Fedesa* [1990] ECR I-4023, which concerned common agricultural policy or case C-150/94, *United Kingdom v. Council of the European Union* [1998] ECR I-7235 which concerned common commercial policy. In the latter case the ECJ directly stated that: *The Court's review must be limited in that way in particular if the Council has to reconcile divergent interests and thus select options within the context of the policy choices which are its own responsibility. In that connection, the Court cannot substitute its assessment for that of the Council as to the appropriateness or otherwise of the measures adopted, if those measures have not been shown to be manifestly inappropriate for achieving the objective pursued.*

²² See e.g. case 114/76, *Bela-Mühle Josef Bergmann KG v. Grows-Farm GmbH & CO. KG* [1977] ECR 1211.

is an important instrument for the integration of the Member States markets. Secondly, it protects individual interests as it guarantees that rights provided by the Treaties in relation with the functioning of the internal market are not infringed without justification. Therefore, the principle of proportionality is applied in a much intense way in relation to the Member States measures. However, the intensity of the review depends also on the character and importance of the interests which are protected. If the Court states that interests which are invoked by the Member States are important, then the control of proportionality is not so detailed, e.g. when public security is invoked by the states²³.

Some scholars distinguish a specific test of proportionality in the frames of competition policy – in relation to the public aid for enterprises that perform services of general economic interest²⁴. It is called “the necessity test” or “the Corbeau test” as it was applied for the first time by the ECJ in the case *Corbeau*²⁵. The Court underlined there that art. 90 (2) *permits the Member States to confer on undertakings to which they entrust the operation of services of general economic interest, exclusive rights which may hinder the application of the rules of the Treaty on competition in so far as restrictions on competition, or even the exclusion of all competition, by other economic operators are necessary to ensure the performance of the particular tasks assigned to the undertakings possessed of the exclusive rights* (emphasis added). In order to state if the restrictions or the exclusion of competition are necessary we should take into account the conditions of economic equilibrium in which this undertaking performs its services. Generally, it should be noticed that even though the ECJ reviews the activities undertaken by the Member States and their authorities, its control is not intense. Firstly, it does not check the suitability of the applied measures as it is not important if undertakings perform their services effectively. Secondly, the ECJ does not take into account the alternative measures that could have been applied²⁶. Therefore, it can be said that the proportionality test recognises discretionary powers of the Member States in the area of the performance of public services²⁷.

Generally, the compatibility of the measures with the principle of proportionality is evaluated on the basis of the factual and legal circumstances of concrete cases. Moreover, the ECJ often leaves the national courts with the assessment of the Member States activities which have connections with the EC law. Consequently, the courts have to control proportionality of the acts adopted by national authorities. In this way national courts are present in the process of application of this principle²⁸.

6. Conclusions

On the whole it should be noticed that the principle of proportionality is an important judicial tool in the EC law. There is no doubt that even though the principle is regulated in the EC Treaty, the ECJ is this institution that has played the most important role in its development.

²³ Compare further G. de Búrca, op. cit., s. 147.

²⁴ See e.g. M. A. Nesterowicz, *Monopole państwowe i przedsiębiorstwa publiczne (State Monopolies and Public Undertakings)* [in:] *Konkurencja (Competition)*, edited by Z. Brodecki, Warszawa 2004, p. 318.

²⁵ C-320/93, *Criminal proceedings against Paul Corbeau* [1993] ECR I-2533.

²⁶ See L. M. Soriano, *How Proportionate Should Anti-competitive State Intervention Be?*, *European Law Review* 2003, vol. 28, no 1, p. 120.

²⁷ Ibidem, s. 112.

²⁸ Compare further J. Maliszewska-Nienartowicz, op. cit., s. 169-174.

This is connected with the fact that proportionality is a flexible rule that is difficult to be regulated in a rigid and complex way in the Treaty. The flexibility of proportionality can be advantageous – it allows to apply different attitudes which depend mainly on the character of the interests that are to be protected. Consequently, there are different ways of application of proportionality. The main disadvantage of such a solution is the uncertainty of individuals or the Member States as to the way it will be applied in a concrete case – in a lenient or rather restrictive way? Therefore, the ECJ should elaborate more transparent rules concerning application of proportionality subject to the character of a case. It is a big challenge for the ECJ but it should be undertaken with a view to the certainty of law²⁹.

²⁹ Ibidem, p. 527.

Dr. sc. Justyna Maliszewska - Nienartowitz, Jean Monnet Center for European Studies
Nicolaus Copernicus University in Torun, Poland

Načelo proporcionalnosti u Pravu Europske zajednice – opće karakteristike i praktična primjena

Sažetak

Rad prikazuje mjesto proporcionalnosti u Pravu Europske zajednice, njezin karakter, sadržaj i funkcije. Osim ovih općih elemenata, rad također predstavlja načine kako se primjenjuje proporcionalnost u različitim politikama Europske zajednice. Posebna pozornost posvećuje se pravu slučaja Europskog suda za pravdu. Zahvaljujući ovoj analizi mogu se predstaviti različita stajališta o načelu proporcionalnosti. Također je vrlo važno predstaviti pravo slučaja jer odredbe osnivačkih Ugovora nisu uspjele razotkriti pravu važnost i sva područja primjene proporcionalnosti (ovo se posebno odnosi na aktivnosti koje poduzimaju države članice).

Ključne riječi: Pravo Europske zajednice, načelo proporcionalnosti, pravo slučaja, Europski sud za pravdu

Dr. Justyna Maliszewska - Nienartowitz, Jean Monnet Center for European Studies
Nicolaus Copernicus University in Torun, Poland

DAS PRINZIP DER VERHÄLTNISMÄSSIGKEIT IM GEMEINSCHAFTSRECHT – ALLGEMEINE MERKMALE UND DIE ANWENDUNG IN DER PRAXIS

Zusammenfassung

Der Beitrag analysiert die Rolle der Verhältnismäßigkeit im Recht der EG (Gemeinschaftsrecht), den Rechtscharakter dieses Prinzips, seinen Inhalt und seine Funktionen. Außer diesen allgemeinen Erörterungen werden die Formen der Anwendung des Prinzips der Verhältnismäßigkeit in verschiedenen Aspekten der Politik der EU analysiert. Dieser Teil des Beitrags ist meistens auf die Fallanalyse des Gerichtshofs der Europäischen Gemeinschaften (EuGH) fokussiert. Auf Grund dieser Analyse konnten verschiedene Aspekte des Prinzips der Verhältnismäßigkeit dargestellt werden. Es ist sehr wichtig, das Fallrecht als ein Rechtsgebiet des Gemeinschaftsrechts darzustellen, weil die Verordnungen der EG-Verträge weder auf die volle Bedeutung noch auf alle Anwendungsbereiche des Prinzips der Verhältnismäßigkeit hinweisen (insbesondere in Bezug auf die Tätigkeiten der Mitgliedstaaten).

Dr. Justyna Maliszewska - Nienartowicz, Jean Monnet Center for European Studies
Nicolaus Copernicus University in Torun, Poland

PRINCIPE DE PROPORTIONNALITÉ DANS LE DROIT DE LA COMMUNAUTÉ EUROPÉENNE – CARACTÉRISTIQUES GÉNÉRALES ET L'APPLICATION PRATIQUE

Résumé

L'article révèle la place de la proportionnalité dans le Droit de la Communauté européenne, son caractère, contenu et fonctions. A part ces éléments généraux, on présente aussi les modes d'application de cette proportionnalité dans de différentes politiques de la Communauté européenne. Une attention particulière est portée à la jurisprudence de la Cour Européenne de justice. Grâce à cette analyse il est possible de présenter des différents points de vue relative au principe de proportionnalité. Il est très important également de présenter la jurisprudence étant donné que les dispositions des Traités de fondation n'ont pas réussi de révéler l'importance réelle et toutes les domaines d'application de proportionnalité (ceci concerne particulièrement les activités entreprises par les pays membres.

Mots-clés : Droit de la Communauté européenne, principe de proportionnalité, jurisprudence, Cour Européenne de justice