

THE ACTUAL IMPLICATIONS OF EUROPEAN UNION
MEMBER STATE QUALITY

Mihaela-Adina Apostolache⁹
Petroleum-Gas University of Ploiesti

Abstract

Romania, by adhering to the European Union, became part of the most achieving system of political and economical organization known in history.

It can be appreciated the fact that the national parliament has a multiple role in what regards the harmonization of the national legislation with the communitarian acquis, in the process of adhering to the EU, but also in the effective integration of the state in communitarian structures, implicitly in the transposing and applying the communitarian legislation in internal law.

Keywords: *adherence, integration, ratification, member state, communitarian acquis*

Defined at Bucharest but also at Brussels as an “event with political, economical and social high significance”, the adhering, which represented an important step to integration in the EU, involved measures, including of juridical nature, that Romania adopted so that “the strategic objective of integration be reached”. The adherence, but also the integration are complex processes during which natural interests of nations were defined and the reports of those interests are connected with those of the EU, at present and in perspective. (Mazilu, 2007)

The far reaching reform stated through the entering in vigor on the 1st of January 2009 of the Lisbon Reform Treaty “will have a direct effect over the development of Romanian constitutional law, assuring a balance between putting to good use the interest and traditions and the prominence of great communitarian values, based on the respect for freedom of the individual and solving, through common effort, the continent great economical problems”. (Calinoiu, 2004)

The pro-European option of Romania is fully based from a political, economical and strategic point of view. Romania belongs to the European family and has adhered to the set of values that define this civilization.

⁹ Assistant, Ph.D, Petroleum-Gas University of Ploiesti, Law and Social Sciences Department, Bucharest Street, No.39, 100640, Ploiesti, Prahova County, tel.0244/575292, fax.0244/575847, e-mail: mihapostolache@yahoo.com

Romania's integration in the EU is mutually favorable for Romania and for the European policy construction.

By adhering to the European Union, Romania became "part of the most achieved system of political and economical organization known in history". (Jinga, 2005)

In a European Union with 27 members, Romania is the 7th country as size and population. After the debates for the reform treaty, Romania will benefit from 14 votes in the Council of Ministries, as part of the intense negotiations that took place regarding the repartition of votes in this council, because, during the repartition, an important part was the population number.

A careful analysis of the mode in which the votes of the Council of Ministries were assigned, would prove that besides the primary role that should come to population number, it has been kept in mind, a special impact having the quality of negotiators to better protect their interests, as the case of Polish negotiators. This is the proof that to a country with a population under half than Romania's population has received 12 votes in the council, while our country got 2 extra votes, meaning 14. (Mazilu, 2007)

The analysis of Romania's place in an extended EU must be based firstly on the evolution of potential elements that give force and realism to any governmental option or strategy of development. (Epure, 2002)

The process of "becoming constitutional" at the European level has involved the approach of issues of principle in a new spirit. It is about, on the first hand, to accept a new way of exerting in common law some prerogatives of state sovereignty. (Duculescu, 2005)

On the second hand, there must be kept in mind the rethinking of some traditional prerogatives of the main state mechanisms, because, inevitably, accepting the priority of communitarian law, an especially in applying directly communitarian documents, operates certain diminutions in the Parliament's competence, considered for a very long time as an unique mechanism of law making.

On the third hand, accepting the communitarian *acquis* does not just impose the assimilation of a code of rules that were elaborated at the level of the European institutions, but also a new perspective regarding exerting citizens rights, with the European citizenship, with the imperative standards that are today accepted and recognized at the European level.

"Romania's entry in the EU, on the 1st of January 2007, forced the Romanian authorities to learn the states concepts and categories inside the Union, thus the decision that they adopt to be according to the rules existing at the Union's level". (Mazilu, 2007)

It can be imposed the problem of degree of convergence of the communitarian *acquis* with the other European juridical norms (treaties, agreements, conventions), having in mind that the most important norms have been ratified by Romania and are part of internal law. In the more dynamic and under juridical evolution areas, adopting a normative document after the model of the one in the EU, represents not only a step forward in the process of harmonization with communitarian law, but also an alignment to the stipulations in the Council of Europe, that finally, determine the modernization of the whole system of law.

From a juridical point of view, Romania's role "as member state of the EU in the frame of external and common security policies and cooperation in the domains of justice and internal affairs is different from it's communitarian role", difference that is explained through the objectives of those policies, but also through the institutional options that the objectives inspired. (Munteanu, 1999)

Romania's interests must be permanently harmonized with those of Europe being in a continuous movement, institutionally, but also politically and socially speaking. Thus, the role of Romania must not be quantified only in the number of votes that can be used in the process of decision making, but also in the contribution and dynamic flow that Romania is capable of offering to European construction.

The state dimension of the communitarian system justifies the determining of the role of member states and explains the turning to the principle of institutional autonomy that characterizes the ways of national intervention, principle whose limits are taken from the communitarian exigencies.

The general dispositions regarding the role of member states must be obviously completed with different other dispositions that come from the documents adopted by communitarian dispositions, that fix in their task different obligations for national public authorities. Also, the European Court of Justice has defined constantly the role of member states, and it's jurisprudence regarding article 5 of the CE treaty (in the new numbering, the article is 10) distinguishes this tendency. The Court has given article 5 a larger importance, considering that this constitutes the base of what was called, communitarian loyalty or communitarian cooperation, but the application of this text has some limits.

Regarding the content, it remained unmodified by the Amsterdam treaty, the European Court of Justice has distinguished, in paragraph 1, especially positive obligations in the tasks of member states, obligations that enlighten the original impact of this disposition, as the communitarian

jurisprudence was interpreted, while the consequences resulting from paragraph 2, according to the court correspond in a great measure to the principle of communitarian law primacy over national law.

The loyal cooperation between the European institutions and Romania forces our country to respect the specific and general obligations of informing that are stated, and that are of nature to allow the European Commission to fulfill its task, meaning to oversee the applying of the treaty and the dispositions taken by institutions in its base.

The national legislation that will be elaborated must keep in mind the stipulations of the Lisbon Treaty in its integrality. "The principle of supremacy of the communitarian law over internal law will apply also in Romania. Romania's Constitution allows, in an integral way, the supremacy of the communitarian law over Romanian national law." (Convention, 2002)

The doctrine of direct effect of the communitarian law was developed on the occasion of interpreting the stipulations of the treaty. These criteria will be used in the derived communitarian law.

For Romania and the Romanian system of law, the effects that the different reports between the two normative layers have because of integration are very complex. First of all, it must be observed the adding of internal juridical springs, also traditional, of European sources of law. The consequence was redefining the national juridical space in the sense of its enlargement and the entering of Romanian legal norms in juridical reports of posteriority and anteriority with already adopted communitarian laws and with those that have not been yet. In solving these reports, the principle of direct applying and that of primacy of the communitarian law have a greater importance.

Second of all, as a result of giving up a part of national sovereignty through the integrating in the EU, the Romanian law is transformed from a closed normative system and generally impermeable to external influences, into a open one which apply superior legal dispositions, emitted by Brussels. It becomes, also, a complex system of law that had many transformations because of internal adopting of the principles and norms of communitarian law. Even though some of these principles are common to Romanian law, others inspired by the German or Anglo-Saxon law constitute an absolute novelty for Romanian practitioners' of law. A proper example is the fact that the European Court of Justice's jurisprudence has become an internal spring of law, a totally unusual aspect for a law constituted according to the French principle of a law as a spring of law.

It might be said that, through the act of integrating Romania in the European communitarian structures, the jurisdictional system has lost, once

again, a significant part of self-thinking, being forced to use, in even more domains, the juridical authority of the European Court of Justice. (Miulescu, 2000)

These major changes, mostly due to the first hand effects of the integrations in the EU, so in a new political-juridical space, had a powerful impact over the state and internal structure of Romanian law in its whole. On the background of diminishing Romanian state autarky, the internal juridical system has a process of opening and continuous structural adaptation to the principles and norms that act at the level of the European Union.

Romania's position on the role of national parliaments in the EU

It can be appreciated the fact that the national parliament has a multiple role regarding the harmonization of the national legislation with the communitarian *acquis*, in the process of adhering to the EU, but also in the effective integration of the state in communitarian structures, implicitly in the transposing and applying the communitarian legislation in internal law.

Regarding the role of national parliaments, since 2001, Romania has considered that in the spirit of opening to the European citizens, it should created a "Committee of national Parliaments", after the model of the Economical and Social Committee of regions. Defining the role of this new mechanism must start from the proposed model for the future Union, existing two alternatives: a minimal one, in the sense that it will be constituted a new committee in the same position was the two existing ones and that would have a consultative role on the problems that regard the intergovernmental cooperation; a maximal alternative, in the sense that this new structure will receive important competences by taking over legislative functions of the council, in co-decision with the European parliament. (Nastase, 2001)

Delimiting the competences between the EU and member states reflects the principle of subsidiarity, whose comprehensive consequences are clearly pointed out.

Romania supports the cooperation in an inter-governmental plan and identifies some common project and policies that would facilitate the development of a more visible role of the EU on an international level. At the same time, Romania has pronounced in favor of transforming the EU in an actor in which national identity is preserved, national interest are

harmonized with the Union, and trans-national solidarity, cultural and religious tolerance are respected, having as a result the creation of an European society.

Romania's representatives participate in the COSAC reunions, expressing Romanian points of view on the integration process and developing common bilateral agreements with the representatives of Commission for European Affairs from the parliaments of other states. The Romanian Parliament is thus involved in forming Romania's position regarding the strategical directions of action of the EU, that are adopted in the European Council, also in forming Romania's position regarding the main European themes or policies. There is also a "parliamentary reserve": the government's negotiator in the EU council is forced to ask for the postponing of the negotiation until receiving the opinion of the Romanian Parliament.

All the projects of European documents are processed, indifferently of the number of those that will be selected for effective analysis. The Commission for European affairs, as a permanent common commission of the Deputy Chamber and Senate of Romania, has competences regarding the transposing of European legislation, but acts only at the request of one of the chambers.

The Romanian system for parliamentary monitoring of European affairs is still in development. The Commission for European Affairs of the Romanian Parliament is empowered, after examination, to express the point of view of the Romanian Parliament regarding European affairs and to grant negotiations mandate to the government for projects of European documents in the procedure of decision of the EU Council.

Since the convention for the future of Europe, in the plenary session from 6-7 of June 2002, the Romanian participants have revealed the relationship that exists between democratic legitimacy of EU actions and associated national parliaments to its activity.

The necessity of deepening the control of national parliaments regarding the positions of the governments of member states in the Council was underlined, as well as the necessity of consolidating the institutional frame of cooperation between the national parliaments, and between them and with the European Parliament.

Two interventions of Romanian parliamentary people regard especially the problems of COSAC. Puiu Hasotti estimated that: "The COSAC experience should be extended to other committees tasked with sector policies for creating in the end European network of such committees. Meanwhile, a more efficient COSAC needs a tighter relation between the

European Parliament and national Parliaments.” Senator Liviu Maior, referring to COSAC, has pronounced in favor of “a reevaluation of it’s functions, also for it’s reform”. (Convention, 2002)

The Romanian member of the Parliament has also participated to a work group in the European convention regarding “the role of national parliaments in the actual architecture of the Union”.

In the frame of this group it has been revealed the request for consolidating the communication flux with all communitarian institutions, especially those between euro-parliamentary and national parliamentary people, also using COSAC as a consultative mechanism at a sector level.

It can be estimated that in the frame of national debates, the idea of the relation between the Romanian Parliament and the communitarian institutions was widely examined. The discussions started especially from fundamental problems – prerogatives, competence delimitation, and informational flux – to applicative problems regarding the ways and forms in which the national control is exerted. (Duculescu, 2004) There has been unanimity regarding the further using of COSAC and perfecting its mechanism of functioning, but also regarding other form of organizing the inter-parliamentary reports and intensifying links between national parliaments and European Parliament.

The existence of a second chamber in the European Parliament, composed form representatives of national parliaments, would lead to the rising the visibility of national parliaments in the process of European integration and to strengthening the democratic legitimacy of the EU. This idea has few supporters “preferring to put an accent on raising the role of the conference of national parliaments as a more supple form, more facile and more direct link between the elaboration of new parliamentary structures at the European level”. (Duculescu, 2004)

Regarding the direct link between the national parliaments and the European Parliament, senator Liviu Maior has considered that “the conference of presidents of national parliaments” would be the best and the most coherent inter-parliamentary cooperation formula “; this would be “the most adequate forum for raising the problem of an agreement of inter-parliamentary cooperation”. (Convention, 2002). Moreover, Romanian deputy Puiu Hassoti has pronounced against those proposals that regarded the forming of a new chamber at the level of the European Parliament; he considered that this proposition “would lead inevitably to the further complication of an institutional frame already complex”. Furthermore, “raising the European Parliament to the condition of a full equality with the council, co-legislator is a better idea in order to satisfy the legitimacy, but

also the efficiency; this would lead to a classic legislative bi-chamber, in which the European citizens would be represented in the parliament, and member states in the council. Thus, a chamber having members of national parliaments would actually mean, a third chamber with an evident loss of efficiency." (Convention, 2002)

It has been revealed the fact that an adequate solution could be "to establish some ad-hoc parliamentary conventions, with European parliamentary members, but also national parliament members, with different specific tasks, such as the revisal of constitutional arrangements of the EU or the decision regarding the direct financing of the Union".

In the discussions there has been evoked the idea of granting right of appeal to national parliaments to the European Court of Justice, on problems regarding subsidiarity. It has been underlined that choosing the implication model of national parliaments must have in mind the necessity of simplifying the decisional process and of associating national parliaments to the decisional process of the Union under consultative form.

Regarding the activity of the Romanian Parliament in the period that passed from the constitutional reform, it must be mentioned that, in this period, the parliament has been very active, decreasing visibly the number of emergency ordinances of the Government. The high number of normative documents that need adopting in the present need a considerable effort from the parliament members, but also the experts, of specialists called to ensure the accuracy and efficiency of normative documents.

"The communitarian order will have to ensure a larger role of national parliaments, the coming together of communitarian general interest with those of the member states, the elimination of non-functionalities that might appear between the communitarian interests and the diverse national interests." (Duculescu, 2004)

References

1. Calinoiu, C., 2004, "Influences of the European Constitution over the political evolution of the continent, also over the recent constitutional changes in Romania", Romanian Magazine of Communitarian Law 4, 41-42
2. Duculescu, V. and R. Adam, 2004, "The Romanian national report regarding the impact of adhering to the European Union over Romania's juridical order", Romanian Magazine of Communitarian Law 4, 37-38
3. Duculescu, V. and C. Calinoiu, 2005, „Constitutional law and political institutions", (Lumina Lex Publishing House, Bucharest), 276-277

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4. Epure, E., 2002, "Romania in an Extended European Union", (Economical Tribune PH, Bucharest), 165-166
5. Jinga, I., 2005, „Romania's profile in the EU", Romanian Magazine of Communitarian Law 1, 10-11
6. Mazilu, D., 2007, "The Berlin Declaration – synthesis of fundamental interests of the EU in the contemporary era", Romanian Magazine of Communitarian Law 2, 15-16
7. Mazilu, D., 2007, „Reform Treaty – the main coordinates agreed upon the European Council in June 2007", Romanian Magazine of Communitarian Law 6, 15-16
8. Miulescu, L., 2000, "The main characteristics of reports between European communitarian law and national laws of member states. Consequences for the Romanian law, in the perspective of Romania's ascendance to the European Union", Magazine Law12, 36-37
9. Munteanu, R., 1999, "The necessity of adapting the national juridical frame to the exigencies of the European construction", Romanian Studies of law 1-2, (Romanian Academy Publishing House, Bucharest), 133-134
10. Nastase, A., 2001, "Vision over the future of Europe – Romania's contribution", Romania and the future of Europe (Official Monitor Publishing House, Bucharest), 21-22
11. Orban, L., 2005, "Short presentation of Romania's adherence treaty to The European Union", Romanian Magazine of Communitarian Law 2, 12-13
12. "The convention regarding the future of Europe. The contribute of Romania's representatives" 2002, (Ministry of European Integration, February-August), 31-32