



THE 15TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

The Impact and the Social Mission of the Juridical order in Republic of Moldova at the Stage of association to European Union

Tatiana Stahi¹, Mariana Robea²

Abstract: Today, the European Union is a political and economic construction that was reached after several decades of integration efforts. The EU institutions were able to create and preserve the rule of law within the European commonality, serving as a benchmark for its citizens. EU institutions functioning must be permanently ensured, which are basing tools of modeling a large consensus on common values and norms within community block. This paper aims to explain the impact and social purpose of the legal order of the Republic of Moldova at the stage of association with the European Union.

Keywords: Legal order; European Union; European Law; European Law principle; association

1. Introduction

The juridical order is a phenomenon having as condition or essential premise the existence of the social order. Thus, without social order we can not speak about juridical order. The reverse assertion would be also true if we are able to see all secrets of the correlation between the social order and a juridical one (Bancila, 2014, p. 56).

The juridical order is enabling to promote the unity at the global level, to fortify the peace and social cohesion. Thought apparently the juridical order is a concept of juridical kind this one can not include the social belonging.

As we pretend to award to the juridical order a social size characterizing the right reiterate that although the juridical essence comes out always in first plan, the social impact of this order is incommensurable.

At the level of each state the social impact to which we refer is an obvious one bringing only juridical valence to the preexistent and pre-established social order but which is not otherwise possible to be ensured.

At the level that surpasser the state limits and in case of the juridical order one can not avoid this fact and has the possibility to create peaceful relationships between states, to unify the efforts of super-state entities in this way that all of them have the same finality:

¹ Associate Professor, PhD, Faculty of Cadastre and Law, Law Department, State Agrarian University of Moldova, Republic of Moldova, Address: No. 44, Mircești Street, Chișinău, Republic of Moldova, Tel.: +37368639991, E-mail: tstahi@mail.ru.

² Assistant Professor, PhD, Faculty of Law, Danubius University: Address: No. 3, Galați Blvd., Galați 800654, Romania, Corresponding author: rb_mariana@yahoo.com.

I. Huma (2016, p. 101) mentions concerning the juridical order that in its order the juridical-normative system is being configured like a genuine noose the specified, valuable sphere concerning the guiding ideals and the basic principles of the justice

In the given sense, the world of law has to be the world of the conscience and responsible assuming of the human condition.

The moment of signing Association Agreement to the European Union by the Moldova Republic constituted without doubt a very important historical moment.

This one presents a particular importance due to the possible effects that may have its application on the state territory and the construction of relationships with the states member of European Union on the basis of a new juridical foundation.

This new juridical foundation represent a new juridical order of our state. The novelty consists in harmonization of the existent juridical order with this one of the European Union in accordance with The Agreement of Association.

As the juridical order represents the totality normative acts in force at the given moment on the territory of a state we mention that being reported to our state too, the juridical order represents exactly the totality of normative acts that are applied by Republic of Moldova and its actors from inside of this one at this moment.

When the state is unitary and does not participate in some union supranational all referring to the internal juridical order of this one is relatively simple. But at the moment in which we speak about federative states the situation becomes more complicated. Though the notion of juridical order and the essence of the concept remain unchanged yet the proper content of this juridical order is being changed.

Thus, in case of these states the juridical order represents the totality of normative acts in force at a moment, but the complexity consisting in the fact that on the territory of the federal state and on the territories of the member state of the federation the juridical order has a different content.

With all these differences there are also significant part of the juridical order being common to the federation subjects and the federal state. In the situation of the states member of different union of states the content of the juridical order can also stamp to this affiliation.

Depending kind of union of states, we have in any particular case, this stamp is more superficial or contrary one deeper.

The idea to which we want to come is being referred to the correlation between internal juridical order of the European Union States and juridical order of European Union. On the other hand again the integration in European Union also suppose the quality of the associated state that having a juridical specific statute impose certain characters specific to its juridical order that is the juridical order of the associated state to the European Union.

2. The Supremacy Principle of European Union Right on the National One

In this context we will mention that at present the juridical order of the Republic of Moldova is equals with specific characters of the statute of the associated state.

This fact contains certain signification both theoretical and practical. So, in the case of Moldova Republic the actual right order is also constituted from the totality of normative act being in force on the state territory. The totality of these normative acts is composed of multiple internal and international

acts the part of which is our state. Except this, the quality of associated state to European Union obliges the traverse of a compulsory trajectory in order to modify complete the existent juridical order with community one. Thus, the process of legislative harmonization is, namely that proceeding that must be by the associated state for confirming normative dispositions to community one. The association agreement signed by Republic of Moldova and which has already been in force is the normative act that indicates exactly the stage and terms following be respected in the domain of legislative harmonization for reaching the proposed goal – the conformation to the rigor of the juridical order of European Union.

Here we must mention that namely the principle of the supremacy of European Union right over the national one of the member states is one of the fundamental principles which alongside of the principle of direct effect and immediate applicability define European Union as an entity *sui generis* of the international right.

The doctrine of supremacy of European Union right is defined by four principal elements:

- a) The supremacy is an existential condition of European Union right. The realization of some common objectives imposes the uniform application of the European Union right without which the integration concept will not have sense. The source of supremacy resides in its own character of juridical order norms of European Union to be common.
- b) The supremacy springs from the own, specific call original nature of the European Union right and is not tributary at all to the constitutional right of the member`s states. So, it can not depend on the divergent rights applicable in one or other state.
- c) The juridical order of European Union is superior in its ensemble, to the national juridical orders. So, all right norms of European Union enjoy the supremacy being primary or derived gifted or no with direct effect. On the other hand, the supremacy is imposed to all norms making up national juridical order: administrative, legislative, jurisdictional even they are of constitutional order. Thus, the Justice Court affirms the internal constitutional dispositions can not be utilized for interfering the applying the European Union right such action being “contrary to the public order of European Union”. The supremacy is imposed therefore in correlation with fundamental rights so as they are formulated by the national
- d) Constitution and also in comparison with the principles of a national constitutional structure.
- e) Finally, the principle of European Union supremacy of the right is not applied only in the juridical order of the Union, in the relationship between the states and their institutions but it does also in the national right systems (“internal supremacy”) and comparison with the national jurisdictions (Radu, 2014, p. 2). In the Republic of Moldova Radu`s expressing (2014) the member states chose to limit in certain determined domains their sovereign rights and so created a body of norms “being applied both to their national and to them.

This phenomenon of transfer of sovereignty is essential for foundation of supremacy principle and understanding their immediate consequences. Thus the states member have no more the competence to legitimize in the domain in which this transfer of sovereignly operates by attributing of Union competences. The supremacy appears as like being con-substantial to the nature of the right it self of the Union because of it depends of its uniform application. The new created juridical order by the founding and modifying treaties is being integrated in the juridical order of the member states.

3. The Impact of Association of Republic of Moldova to European Union on the Juridical Internal Order of the State

As a result of the stated facts, the European Union treaties the legal provisions adopted later by the European institutions for applying this Treaties, The Maastricht Treaty and Amsterdam one must not only be accepted by the national institutions (legislative, executive and judicial) but the transpose in practice and made in an operative way.

The European juridical order must not come in contradiction with national systems. They have to cooperate with these ones for reaching some common objectives. The close relation between European Union right and national one is properly reflected in the mode in which are transposed the directives of European Union: these ones do not create new community rights by them their selves, but they require the recipient states to adopt the national legislation according with the content of the given directive, representing in this way the principal method of harmonization legislative.

Thus, a directive is dependent in its applicability on the national norm. The interdependence between European Union right and national one is also illustrated by that fact for filling the existent entities in the juridical system of European Union the European legislator resorts often to the provision of the national right (Buda, 2002, p. 5).

In addition, according to art. 4 of Constitution of Republic of Moldova, Constitutional provisions on human rights and freedoms shall be interpreted and are enforced in accordance with the Universal Declaration of Human Rights, with the conventions and other treaties to which the Republic of Moldova is a party and wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations.

Or, as we can see from those which were previously presented, we can deduce a close and regulated collaboration between the state authorities and the European ones, and from another side, a correlation between national legal norms and international norms enshrined in the text of the Constitution of the Republic of Moldova.

This thing is specific to international relationships of the state, romanian and foreign researches (N, Osmochescu, V. Gamurari, etc., A. Pellet, L. Duguit, P. Dupuy, etc.) expressing the innumerable ideas that the public international law is being formed in the process of cooperating with the country. Since the period of classical development of international law to the present this has not lost its coordination feature and it has played an important role in the long-term development of the entire international community, this being the peace, the progress and the development of the society, the assurance of the observance of the fundamental rights of the human being, the cooperation of the state and the world. (Florea, 2016, p. 12).

Returning to art. 4 of the Constitution, have to be mentioned that from the provisions of this (art. 4 par. (2)) as well as from the decision of the Constitutional Court no. 55 of October 14, 1999 “Regarding the interpretation of some provisions of art. 4 of Constitution of Republic of Moldova results that CEDO is an integral part of the internal and respective legal system and has to be applied directly to any other law of the Republic of Moldova or if it is not in accordance with the internal laws should be treated as priority”.

4. Harmonization of National Legislation in European Union Law

Opposite to the process of legislative harmonization to which we were referring previously, we mention that the obligation to harmonize national legislation in the European Union Law, according to the principles of gradual and dynamic harmonization, is enshrined in it. 448 and 449 of The Association Agreement, but also in annexes of this agreement: Art. 448 al AA which predicts that “the Republic of Moldova realizes the gradual approach of its legislation to the Law of the European Union and to the international instruments mentioned in the present”.

As part of the harmonization process, the Government of the Republic of Moldova is obliged to withdraw and repeal internal legislation which is incompatible with the law of the European Union or with the legislation to be harmonized with the law of the European Union (Art. 407). Obligation to harmonize and derive from the Sectoral Agreements on European Integration which regulates the relations of the Republic of Moldova with the European Union and the countries which are part of it in the field of energy and agriculture, the provisions of which prescribe clear and time-bound obligations in the field of national legislation in the areas concerned.

In addition, it is important that the process of harmonization to be carried out in accordance with the provisions of the Annex of the Association Agreement which indicates expressly the normative acts of the European Union the provisions of which have to be transposed into the internal legislation of our state. The Agreement itself also contains a calendar that stipulates the term in which its directive or another aims have to produce an effect on the territory of the Republic of Moldova namely through the act of self-harmonization. We are of the opinion that certain provisions of Annex II have to be taken as a basis for the directives which have to be transposed into the relevant legislation. This shall in no way be an impediment to the transposition of provisions of this Act, for the transposition of the provisions of the other acts of the European Union, the priority for the harmonization is to meet the requirements of the Association Agreement and to be carried out in accordance with the indicative calendar indicated in the content of the Agreement.

According to lined up (2), art. 1 of the Association Agreement, the objectives of the association are:

- a) to promote political association and economic integration between the parties on the basis of common values and close links, including through increased participation of the Republic of Moldova in European Union policies, programs and agencies;
- b) to consolidate the framework for a political dialogue consolidated in all areas of mutual interest, which will allow the development of a political relationship between the two parties;
- c) to contribute to the consolidation of democracy and to political, economic and institutional stability of the Republic of Moldova;
- d) to promote, maintain and consolidate peace and stability in in the region and in the world, including by uniting the efforts to eliminate the source of tension, by improving border security, by promoting cross-border cooperation and by good neighborly relations;
- e) to support and intensify cooperation in the area of freedom, security and justice, for the purpose of consolidating the rule of law and respecting human rights and fundamental freedoms, as well as in terms of mobility and accountability;
- f) to support the efforts of the Republic of Moldova, which aims to develop its economic potential through an international cooperation, as well as through the approximation of its legislation to the European Union;

g) to create favorable conditions for the improvement of economic and trade relations, the final objective being the gradual integration of the Republic of Moldova into the internal market of the European Union, as provided in this Agreement, including by training a comprehensive and comprehensive free trade area, which will allow you to achieving legislative approximation and liberalizing access to the market with major implications in accordance with the rights and obligations arising from the status of the members of the OMC and of the parties and with the transparent application of the rights and obligations, and.

h) to create favorable conditions for a closer cooperation in other areas of mutual interest.

Association agreement between the Republic of Moldova, on one side and the European Community for Atomic Energy and its member states, on the other side, since 27.06.2014.

As it can be observed, its objective will not be done by the exclusive application and observance of the internal legal order of the state. It is an absolutely inherent application of legal norms that are part of a different legal order, that of the European Union. As the commitment of the associated state allows this, it is possible to interweave from the internal legal order and the community in the process of preparation and development.

This entanglement derives from the process of legislative harmonization. We mention that the Association will also provide a calendar for the collection of internal legal norms for the Europeans ones from different domains. Thus, the obligation to respect this calendar belongs to our state, the obligation assumed including by signing the Association Agreement.

Following the finalization of the process of harmonization of the legal order of our state, it will undergo rigorous modifications in order to be compatible with the legal order of the European Union. This is essential for the achievement, in turn, of the objectives drawn in the Agreement.

It should be noted that the legal order of the European Union, as it can be deduced from the concepts already analyzed and from the definitions formulated opposite to the law, represents the totality of the normative legal acts adopted at the level of the European Union. On the other hand, the autonomy of the law of the European Union opposite the legal order is constituted based on the entire legal system of the European Union. Based on this principle, the institutions of the European Union have the right to adopt their own internal regulations of the organization and function and may appoint their own (2014) members (Verga, 2014).

From here, it results the conclusion that in the process of association and integration in the European Union, the internal legal order of the state is in close interaction with the legal order of the European Union, the effects of this interactions can be referred at the level of the internal order and not at all at the level of the European Union. Or, the legislative harmonization presupposes the alignment of the state to the norms of the European law and by no means the opposite process. And in the case of the Republic of Moldova this line should be produced as optimally and opportunely as possible, the Twinning project entitled "Strengthening the capacities of the Parliament of the Republic of Moldova in the process of harmonization of national legislation with EU legislation", financed by the European Union, which was launched on October 16, 2017 in the Parliament of the Republic of Moldova.

The program will offer public administrations in the beneficiary country - Republic of Moldova - the possibility of working with other members of the state, to work with the members of the member states to facilitate the transposition, consolidation and implementation of the EU legislation. The final goal is, therefore, the compatibility of the legal order of the Republic of Moldova with that of the European

Union, with the passage of time and the efficiency of all the processes additional to the harmonization and implementation of the Association Agreement.

Also, according to Law no. 100/2017 regarding the normative acts for all projects with the logo “UE” expertise on compatibility with European Union legislation is mandatory. This expertise have to be carried out after the removal from the project of the normative act of the corruptibility factors, detected by the National Center. We mention that neither Law no. 780 nor Law no. 317 do not contain express and clear precepts in this sense.

Also, the law proposes special regulations for all authors of projects developed for the purpose of harmonizing national legislation and drawing up the table of compliance. This table has to be drawn up at the stage of project elaboration. The details of the compatibility expertise will have to be carried out by Government decision, and the center of harmonization of legislation will have to elaborate the methodology of the implementation of the compatibility expertise.

5. Conclusions

In conclusion, we mention that the legal order is the phenomenon in which the conditions are based on the existence of the social order. Just as we claim to uphold the legal order and the social dimension that characterizes the law, the impact of this order is immeasurable. At the level of each state, the social impact to which we refer is not an obvious one, the legal order leading only to the legal values of the pre-existing social order. The social management of the legal order derives also from the socialization of the social order in any institution of law. This legal garment has its own social dimension, as far as it is concerned. Exactly the same thing can be said when referring to the legal order and social dimension of the right that reflects it.

The moment of the signing of the Agreement of the Association of the European Union to the Republic of Moldova was constituted without exception and can be an extremely important historical moment. This is of great importance thanks to the fact that it is possible to apply it to the territory of the state and to the construction of the relations with the member states of the European Union based on a new legal basis. The novelty consists in the harmonization of the existing legal order with that of the EU, according to the Association Agreement. This new legal theme represents our new legal order of our state. The novelty consists in the harmonization of the existing legal order with that of the EU, according to the Association Agreement.

The quality of the state associated with the European Union obliges it to go through a compulsory life in order to modify / comply the existing legal order with the community one. However, the process of legislative harmonization is the same as the process that must be followed by the associated state in the context of the information provided. However, the process of legislative harmonization is the same as the process that must be followed by the associated state in view of the conformity of the internal normative dispositions to the other communities. The agreement signed by the Republic of Moldova which has already entered into force is the normative act which indicates exactly what terms and conditions have to be respected in the field of legislative harmonization in order to achieve the proposed purpose - compliance with the rules of the legal order of the European Union.

As it can be observed, its objective will not be done by the exclusive application and observance of the internal legal order of the state. It is an absolutely inherent application of legal norms that are part of a different legal order, that of the European Union. As the commitment of the associated state allows this,

it is possible to interweave from the internal legal order and the community in the process of preparation and development.

Reference

Băncilă, A. (2014). *Elaborarea și sistematizarea actelor normative/Elaboration and systematization of normative acts*. Retrieved from https://www.juridice.ro/wpcontent/uploads/2014/05/teza_Bancila_A.pd.

Buda, D. (2002). Uniunea Europeană – realitate juridică/European Union - legal reality. *Revista Transilvăneană de Științe Administrative/Transylvanian Journal of Administrative Sciences*. No. 1(7). <http://rtsa.ro/rtsa/index.php/rtsa/article/viewFile/358/353>.

Florea D, N. (2016). *Particularitățile creării și aplicării de către state a normelor de drept internațional public/ Particularities of the creation and application of the status of the public international law*. http://www.cnaa.md/files/theses/2016/24394/dumitrita_florea_thesis.pdf.

Humă, I. (2016) . *Noos juridic. Valorile identitare în fața globalizării. Culegere de studii./ Values of identity in the face of globalization. Collection of studies*. Bucharest: Universul Juridic.

Proiectul Twinning pentru armonizarea legislației R. Moldova cu cea a Uniunii Europene va fi lansat în Parlament/ Twinning project to harmonize the legislation of the Republic of Moldova with that of the European Union will be launched in Parliament. http://www.realitatea.md/proiectul-twinning-pentru-armonizarea-legislatiei-r--moldova-cu-cea-a-uniunii-europene-va-fi-lansat-in-parlament_65524.html.

Radu, R. H. (2014). *Prioritatea ordinii juridice UE asupra dreptului național./Priority of the UAE legal order over national law*. http://www.constcourt.md/public/files/file/conferinta_20ani/programul_conferintei/Razvan_Horatiu_Radu.pdf.

Robea, M. (2015). Unele considerente referitoare la particularitățile ordinii de drept la nivelul Uniunii Europene/Some considerations regarding the particularities of the rule of law at the level of the European Union. *Legea și Viață/Law and Life*. No. 12, p. 35-40.

Verga, C. (2014). *Dreptul Uniunii Europene/The law of the European Union*. <https://jurisdictie.wordpress.com/2014/06/30/dreptul-uniunii-europene-suport-de-curs/>.

Arama, E. (2009). Reflecții privind sistemul și ordinea juridică/Reflections on the system and the legal order. *Revista națională de drept/National journal of Law*, No. 10-12, pp. 3-11.

Legal Acts:

*** (1994). *Constituția Republicii Moldova/Constitution of the Republic of Moldova*, No. 1.

*** (2014). *Legea Republicii Moldova pentru ratificarea Acordului de Asociere între Republica Moldova, pe de o parte, și Uniunea Europeană și Comunitatea Europeană a Energiei Atomice și statele membre ale acestora, pe de altă parte/ Law of the Republic of Moldova for the ratification of the Association Agreement on the hand, and the European Union and the European Atomic Energy Community and their member States, of the other part*, No. 112.

Declarația Universală a Drepturilor omului/Universal Declaration of Human Rights. Retrieved from https://www.ohchr.org/en/udhr/documents/udhr_translations/rum.pdf.