Jurnalul de Studii Juridice

Journal of Legal Studies

ISSN: 1841-6195 (print); e-ISSN: 2067-8509 (electronic)

Covered in: Index Copernicus, Ideas RePeC,

EconPapers, Socionet, CEEOL

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Jurnalul de Studii Juridice, Year X, No. 1-2, June 2015, 25-32

Published by:
Lumen Publishing House

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Abstract

The reports between the European Union Law and the national law proved to have a complex character, not only evolutions and positive aspects being acknowledged, but also some difficulties in what it concerns, on one hand the assimilation of the European Union rules and, on the other hand, their implementation within the national legal systems. Not once it has been acknowledged the occurrence of some conflicts between the European Union legal provisions and the national legal provisions.

In order to harmonize the Romanian legislation with the European Union legislation in private property law matters, the Romanian law makes a distinction between the acquisition way of the property by the citizens of European Union member states or by the citizens of European Economic Space and by the citizens of other states.

Keywords:

legal transplant; legal integration, private property, foreign citizen, stateless person

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1. Introduction

The reports between the European Union Law and the national law proved to have a *complex character*, not only *evolutions and positive aspects* being acknowledged, but also some *difficulties* in what it concerns, on one hand the assimilation of the European Union rules and, on the other hand, their implementation within the national legal systems. Not once it has been acknowledged the occurrence of some conflicts between the European Union legal provisions and the national legal provisions. These asperities can be eliminated only through the harmonization of the legislation, in what it means solid knowledge of the integration process exigencies – involving, on one hand, the amendment of some existing regulations in the member states and, on the other hand, the implementation of some normative texts, according to the dispositions of the European Union Rules – and also to the particularities of each national legal system.

However, *the main difficulty* doesn't results in the closeness of legislative texts, but in the adaptation of the society and of the administrative system to the conditions needed for a proper functioning of the European Union legislation, dealing with a complex process which imposes the creation and the adaptation of structures and institutions and the radical change in the responsibilities field. To these is added, at least for the countries from Eastern Europe, another touch stone: *the transition to the market economy*. It's obviously that, while the market economies which reached a certain development degree dispose of some structures aimed to ensure the observance of the obligations resulting from the European Union legislation, in the associated countries it was needed the creation of some new structures and the adaptation of the existing ones, and also changes of the legal system.

A theory appeared in the nineteen's - "the legal transplant" according to which, a legal rule can be transferred, in some circumstances and without any inconveniences, from a legal system to another, in the advantage of that which borrows, the only condition of the record office success being the autonomy of legal orders between which the transplant is operated. In fact, for the record office success are also needed some conditions on which the success of the unification or harmonization operation depends, falling on the European Union law giver, proving, in time, several deficiencies (M., Guţan, (2014) :269); (M., Guţan, (2013) :11). André Jean Arnaud, , illustrates, in one of his papers, that there is a series of *problems of the accession to the European Union*, in the legal plan, determined

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especially by the deficiencies of this theory (A., J., Arnaud, (1991) :227-238, 240-241); (S., Popescu, (2004) :39).

It's not excluded the confrontation between the rationality of the legal system of the Union and that of national legal systems, the problem of this confrontation consisting in the inequality of those who confront. The inequality imposes the mandatory renunciation to divergences from the part of the countries which took the accession decision, in the matters in which the *European Union law has priority* (S., Popescu, (2004) : 39).

One of the problems which appears is that the introduction of the same rule in different regions in respect to economic and social-cultural development, rule having different addressees, is at least inefficient and, in some cases, it can consist even in a serious violation of the rights of the subjects. It's needed that the elaboration of rules to be applied in so different regions and on so different subjects have, as starting point, the fundamental principles of the law field, rules with an accentuated generality character, susceptible of various interpretations. But, the risk presented by the rules with a high degree of generality is the possibility that these be interpreted in other sense than that wanted by the law giver.

The legal integration process doesn't take place without difficulties in respect to the *"legal culture"*. (S., Popescu, (2002) :247). The concept summarizes the reports between law and culture, being a "system of material and spiritual elements, which reports itself to the sphere of action of the law and it is reflected in the human condition and conscience" (S., Popescu, (2002) : 248).

Another difficulty signalized by Mrs. Teacher Sofia Popescu in *The study entitled "Difficulties of European integration in the law field"*, comes from the fact that the formation of the European legal thinking involves not only the observance of plurality, but also the management of complexity, because under the conditions of *plurality of sources of European Union law*, legal rules are spread around, these are anarchically cumulated, being found an inflation of Euro-rules, confusions, disparities, disorders. The management of complexity involves the consideration of all facts in presence, which consisted in the assembly of national law systems, the European Union law, the European Union case law, and the usages which weren't integrated to the legal systems, the individual imaginary and also the individual and the collective experiences of the persons subordinated to the European Union law.

The integration in the European Union in the law field claims the taking into account of *the legal cultures dynamics* which, in contemporary

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conditions, cannot be treated any more – as Wolf Heydebrand shows – as stable, homogeneous, unchanged matrices, which generate rules, values and attitudes (W., Heydebrand, (1997) :141). Such a vision is exceeded. It hides the possibility of cultural contradictions of current societies.

The role of deviant sub-cultures and contra-cultures represents reactions to the dominant culture whose values they disclaim, opposing it an own values system or, more precisely, on non-values. The existence of sub-cultures and contra-cultures affects and transforms the expectations regarding the consistency of cultural models.

Nowadays, the legal culture shall be treated as a pluralist and heterogeneous framework which forms customs, abilities and styles representing starting points in the elaboration of action strategies. That is why the answer to the question regarding if the integration of legal cultures of the European Union includes only the dominant ones or it also included the co-existing sub-cultures and contra-cultures is not easy to give.

In legal literature (Angelika Schade) is illustrated the fact that, in legal reports which exceed the borders of one country, can appear anomic situations, characterized *by the decrease of authority and by the lost of legitimacy of rules and conventional values*. Anomic situations are determined by the latent conflict which exists between the legal cultures; by the fact that the social relation exceeds the local and personal sphere of one legal system, having place, in this case, and the disintegration, for those involved, of unity, coherence, indubitable legitimacy and adequacy given by the national law (S., Popescu, (2004) :36).

Philippe Robert considers that a determinant factor of the normative systems crisis from the Occidental Europe countries *is represented by the diminution of pre-existing hegemony* of the state – *nation*, in the field of the creation of legal rules, in the favour of European Union law, which he presents as being hard to recognize, instead unpredictable and without precision, with which the member states shall fight for supremacy, appearing as a mysterious and forbidding law (P., Robert, (1994) : 38-39).

2. Aspects regarding the harmonization of Romanian legislation with the European Union legislation in respect to the acquisition of the private property by foreigners

In respect to the acquisition of the private property by foreigners, this starts several controversies under the conditions in which their statute is frequently different from that of the citizens of a state. From this point of

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view, in Romania, as a general rule, the foreigners statute is guided according to the nation's clause, meaning that foreigners enjoy almost the same rights as the own citizens, except the political rights, question disputable under the conditions in which Romania is a member state of the European Union.

In the doctrine is mentioned that, Romanian law giver didn't herd the way of acquisition of the private property by foreigners, and the importance he gives to this aspect appears from the fact that we find the schematic provision in this field in the Romanian Constitution, amended, in the art. 44 (2) which rules that "The private property is guaranteed and guarded regardless the owner. Foreign citizens and stateless persons can acquire the private property right on the lands only under the conditions resulted from the Romania's accession to the European Union and from other international treaties to which Romania is part, on reciprocity basis, under the conditions provided through an organic statute and also through a legal inheritance". We shall mention that, up to the year 2003, the year when the Constitution was reviewed, this provision was missing and the art. 41(2) of the ancient Constitution clearly mentioned that "foreign citizens and stateless persons cannot acquire the property right on the lands".(L., M., Crăciunescu, (2010) :37-42)

From current provision it results that the holders of the private property right can be both Romanian citizens and foreign citizens who acquire the property according to some conventions to which Romania is part, or through legal inheritance, provision which answers to the European Union requirements.

Another essential aspect is the fact that the private property is guaranteed and guarded regardless if the holder is a Romanian citizen or a foreigner. Herewith, it is expressly ruled that the acquisition of the property right by foreigners is regulated only through an organic statute.

In Romania, the law which regulates this aspect is the Law no. 312 from 10th of November 2005 regarding the acquisition of the private property right on the lands by foreign citizens and stateless persons and also by foreign legal persons, published in the Official Gazette no. 1008 from 14th of November 2005, law entered into force on the date of Romania's accession to the European Union.

For harmonization purposes, the law makes the distinction between the acquisition way of the property by the citizens of the member states of European Union or of the European Economic Space and by the citizens of the other states, this provision being a mark of the relationships between Romania and the other European states.

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Thus, the Chapter II from the quoted law regulates the acquisition of the property right on the lands by the citizens of the member states and by the legal persons having the nationality of these states, and also by the stateless persons with the domicile in a member state or in Romania; by a member state we understand, within the meaning of the law "any member state of the European Union or of the European Economic Space and, through a third state – any other state, other than the member state" (art 2 lit. a and b) (L., M., Crăciunescu, (2010) :40)

In the article 3 from the law mentioned we notice that both the citizens of a member state and the stateless persons with the domicile in another member state or in Romania and also the legal persons established according to the legislation of a member state can acquire the property right on the lands in the same conditions as those provided by the law for Romanian citizens and for Romanian legal persons. Therefore, for these we can put the equality sign with the Romanian citizens, in respect to the acquisition of the property. It is noticed the essay to implement a legislation which shall be applied, mainly, to the European Union citizens and to third parties, without being made distinctions between the Union's citizens, national persons of some different European states, what is a very important step in the process of legislative harmonization.

However, certain limits are imposed to the citizens of a member state, non-residents in Romania, to stateless persons who don't reside in Romania, with the domicile in a member state and to non-resident legal persons, established according to the legislation of a member state, who can acquire the property right on the lands for secondary residences, respectively secondary head offices, at the fulfilment of a term of 5 years from the date of Romania's accession to the European Union.[3] Apparently, this regulation could seem discriminatory, but it isn't. The law giver wanted to avoid, through this provision, the apparition of some disadvantageous situations for Romanian citizens, meaning that, if those mentioned above were allowed to acquire the property right immediately after the Romania's accession to the European Union, they would have buy most available lands, which had a very low price reported to the economy from their countries of origin, following to send them as soon as Romania's economy and, implicitly, the

[3] Art. 4 from law no. 312 from 10th of November 2005 regarding the acquisition of the private property right on the lands by foreign citizens and stateless persons and also by foreign legal persons, published in the Official Gazette no. 1.008 from 14th of November 2005.

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prices of the lands, will be aligned to those of the member countries.(L., M., Crăciunescu, (2010) :40)

This is the reason why it was regulated a transition period when the resident persons of the member states cannot acquire the property on the lands for secondary residences, respectively secondary head offices, of course, except the cases of legal inheritance where, as we mentioned, will be applied other regulations.

Another similar limitation exists in the case of acquisition of the property right on agricultural lands, forests and forest areas, by this time by any other citizen of a member state, stateless person, with the domicile in a member state or in Romania and also by any legal person established according to the legislation of a member state. In this case, according to the art. 5 paragraph (1), the property right on the lands mentioned above can be acquired at the fulfilment of a term of 7 years from the date of Romania's accession to the European Union. This is also a provision regarding the transitory situation in which Romania is from the accession date to the Union, its rationalism being, as a general rule, the same which determined the implementation of the art. 4 from the Law no. 312 from 10th of November 2005.

Conclusions

Therefore, it can be noticed that the harmonization process is a complex process which doesn't presupposes only the creation of some common laws in the European Union, but, more important than this, even their implementation in the national law of states, process which is very difficult considering the traditions, the needs and the different development of each state in part.

This very complex process barged into and still barges into serious obstacles in our country, considering the experiences, not exactly blowing, which the history placed in the Romania's destiny (L., M., Crăciunescu, (2010) :42).

Indeed, the legislative harmonization process from Romania started even with the fundamental law, following to harmonize each field of legal interest, aspect impossible to approach, in detail and in full, within this paper.

Although it will pass a long period of time till the complete alignment with the European Union in the legislative field, anyway, the Romanian social and legal customs and needs. which are a fundamental

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guideline in the implementation of the legislation, will be gradually harmonized under the well-known slogan of the European Union „*Unity in diversity*".

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