

CONSEQUENCES OF ACCESSION TO THE EUROPEAN UNION FOR THE CONSTITUTION OF ROMANIA

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ABSTRACT

One of the problems that bring a strong lately (despite past failures in implementing the new European construction) is what effect it will have on Romania's accession to the European Union for the Constitution of our country.

In the last two years, much less attention has been given to the practical implementation of new institutional proposals included in the Treaty of Lisbon. Even a cursory examination indicates that the implementation of some of these proposals is likely to be uneasy, and in some cases could be a source of future problems or difficulties.

The aim of this paper is to highlight, and to clarify potential problems.

KEYWORDS: *Romania, Constitution, Treaty of Lisbon, accession, European integration*

1. General issues

Romania (as well as current and future member states of the European Union) will be in the future to give up some of the attributes of sovereignty, transferring them to the Union.

In this respect, the Constitution establishes separate provisions, grouped under Title VI (Euro-Atlantic integration).

Article 145 of this title shows that our country's accession to the Treaties establishing the European Union, to transfer certain powers to EU institutions and the joint exercise with the other countries of powers established by these treaties, is achieved through a regulations adopted at a joint session of both parliamentary chambers, by a vote of two thirds of the deputies and senators.¹

As a result of accession, the Community rules becomes ascendant (priority) as otherwise provided in the law, respecting the provisions of the Act of Accession. Implementation of the obligations of the Act is guaranteed by the joint efforts of all three branches of government.

The new position of EU member puts into question the necessity to revise the Romanian Constitution.

¹ Gheorghe Iancu – *Drept constituțional și instituții politice*, ediția a 3-a, Editura Lumina Lex, București, 2005, p. 603

The procedure rules of both parliamentary chambers do not have special provisions in this field.

As a result, are valid the general rules of legislative parliamentary procedure.

The project and the proposal of revision may be admitted only after the decision of Constitutional Court.

The non-constitutionality of the project and the proposal of revision, declared by the Constitutional Court, has as effect in the parliamentary procedure the blocking of legislation procedure.¹

These effects must be estimated in terms of the influence of the European Constitution and constitutional systems in the Member States which are now EU. If the European Constitution will enter into force, its functioning depends on an optimum harmonization between Member States' constitutions, a process that may be more difficult than can be foreseen, or even impossible.

The constitutional system we can understand the coherent and harmonious whole structure of political institutions and governance mechanisms mentioned in the Constitution, which is achieved through social management system.²

Closely related is the concept of constitutional system of political regime.

According to a definition of a Romanian author, the political regime is defined as a single coherent whole structure of legal rules and mechanisms of constitutional, political, ideological, socio-economic, which is done with government, or political power is achieved.³

Within the European Union meet only pluralistic political regimes, characterized by ideological pluralism, the existence of at least two functioning parties acting lawfully and for seizing power, and the existence of different public powers (executive, legislative and judicial).⁴

From this point of view, in the Community meet parliamentary regimes (Austria, Belgium, Denmark, Germany, Greece, Latvia, Luxembourg, United Kingdom, Ireland, Italy, Netherlands, Spain, Sweden and Hungary) and semi-presidential regimes (Bulgaria, Estonia, France, Lithuania, Poland, Portugal and Romania).

Czech Republic, Finland, Slovakia and Slovenia can be considered to some extent as a middle way between semi-presidential and presidential regime, and Cyprus and Malta are characterized by a presidential regime. In terms of parliamentary organization, meet with bicameral system states (Austria, Belgium, Czech Republic, France, Germany, Ireland, Italy, United Kingdom, Netherlands, Poland, Romania and Spain) and unicameral system states (Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia, Sweden and Hungary).

¹ Ioan Muraru, Mihai Constantinescu – *Drept parlamentar românesc*, Editura All Beck, București, 2005, p. 254

² Cristian Ionescu – *Regimuri politice contemporane*, ediția a 2-a, Editura C. H. Beck, București, 2006, p. 11

³ Cristian Ionescu – *Op. cit.*, p. 63

⁴ Cristian Ionescu – *Op. cit.*, pp. 80-82

The Treaty of Lisbon does not specify anything in what way to proceed if the European constitutional provisions are in conflict with the Constitution of the Member States. In theory, the acts adopted by the European institutions in exercising their powers will have priority over the laws of Member States. Special problems may raise the problem of European citizenship.

Article 16, paragraph 4 of the Constitution of Romania shows that after our country's accession to the European Union, EU citizens, if they meet conditions set by the organic law, may elect and be elected in local authorities. In applying this constitutional provision is required of an organic law providing voting prerequisites, the law has not yet appeared. European countries legislation does not cover foreign citizen's access to all local authorities. About other types of appointments or elections (including elections and European MEP functions) do not speak Romanian in constitutional texts. Neither the Treaty on Romania's accession to the European Union does not clarify things. These gaps are filled by Law no. 33/2007 regarding the organization of the European Parliament elections.¹

Article 5 of the law enshrines the two groups of voters for the European elections, the voter and the voter national community. Community voter is any citizen of an EU Member State other than Romania, having the right to vote in Romania to the European Parliament and the domicile or residence in Romania. National voter is any citizen of Romania having the right to elect members of Romania in the European Parliament.

In terms of the Constitutions of the States of the Community, only the Austrian Constitution, art. 23 A, has similar provisions. This article shows that members of the European Parliament delegation in the Republic of Austria may be elected by the Austrians who have not the right to vote was raised by a provision of European law, or by citizens of another EU member state, which may vote on European legislation.

Treaty of Lisbon shows that there are areas where the Union has exclusive competence in other areas as these powers are shared. In areas where the Union has exclusive competence, it can legislate only that states can do so only if the Union has mandated this.

In the case of shared competences, enactment falls equally to the Member and the Union. Moreover, Member States coordinate their economic policies and those in employment within the Union. In particular, the Union may establish and implement a common foreign and security policy, including a common defense policy. The Union shall have exclusive competence in the field of customs union, competition, monetary policy (only for countries that have adopted the euro as their currency), conservation of marine biological resources under the common fisheries policy and common commercial policy.

Shared competence (between Union and Member States) will be no internal market, social policy, social cohesion, territorial and economic, agriculture and fisheries (excluding the conservation of marine biological resources), environment, consumer protection, transport networks trans-European energy,

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freedom, security and justice and security issues (safety) of joint public health sector.

In addition to exclusive and shared competences, the Union shall have competence to support, coordinating and complementary action in areas such as protection of human health, industry, culture, tourism, education, youth, sports, vocational training, civil protection and administrative cooperation.

2. Effects of accession

It becomes clear that, after Romania's accession to the European Union, community integration and application of Community law can not be realized in practice without a revision of the Constitution of Romania, a process that will be achieved gradually and balanced, without forcing or accelerating certain processes, primarily through better public information on the process.

Need to revise the Constitution of Romania membership itself derives from the provisions of par. 3 of art. 11, that "Where a treaty to which Romania is to become part contains provisions contrary to the Constitution, its ratification can take place only after reviewing the Constitution."

According to this constitutional principle, whether any treaty or other Community legislation establishes provisions contrary to the Constitution of our country, constitutional revision becomes mandatory.

Romanian constitutional text does not specify to whom falls the task of finding of unconstitutionality. The difficulties encountered in the process of ratification by Member States of the European Constitution was designed, especially in situations where ratification was achieved through popular referendum proves that this process must be based primarily on an understanding by citizens and correct their information by national and EU authorities.

It is somewhat contradictory that some governments, in theory adherents of the concept of popular sovereignty by Jean-Jacques Rousseau, that sovereignty belongs to the citizens (which means that usually only the law can be adopted by referendum) have supported the idea of repetition popular referendums until former draft European Constitution was adopted in the old form.

Further, it is appropriate to list the constitutional provisions that may be affected or which may conflict with the European Constitution.

Thus, art. 1 of the Constitution states that "Romania is a nation state, sovereign and independent, unitary and indivisible."

The words of the national state is somewhat outdated in the current European political developments, not present in any of the existing constitutions in the European Union.

The Romanian constitutional history, this phrase appeared in the 1923 and 1938 Constitutions, the Constitution of 1866 and the three totalitarian Constitution (1948, 1952 and 1965) having similar provisions.

Elimination not pose any danger, especially for the fact that the European Union is a federation of states and will respect the national identities of Member States.

For example, any person having the nationality of one of the Member States will have automatically and simultaneously and European citizenship.

European citizenship will have an ancillary (secondary) from the main nationality (a member of the State of origin) and will not replace national citizenship.

From a practical perspective, given that Romania is a member of the European Union, any natural person who acquires the Romanian citizenship, will automatically acquire the European citizenship too. In this context, perhaps should be amended. 5 of our Constitution, regulating citizenship. Any defects in writing this article, combined with weaknesses in border control and legal regime of granting Romanian citizenship can cause difficulties in our country, especially if the Romanian citizenship is granted to persons wrongly endorsed by the European Union countries.

Although Art. 16, par. 3 gives the right to hold public office, civil or military, all persons who have Romanian citizenship and residence in the country.

European acts regulating the free movement of workers within the Community, are not applicable to public functions (public service).

The last paragraph of art. 16 confers the right to elect and be elected in local authorities meeting the requirements of European Union citizens organic law, it only when Romania's EU admission. Article II-100 of the former European fundamental law is somewhat different, providing the right for any citizen of the Union resident in that State, under the same terms as citizens of the host country.

Article 35 of the constitution anticipated integration of our country in the Community, allowing Romanian citizens to elect and be elected to Parliament.

On the same line to register and par. 2 of art. 41, that "foreign citizens and stateless persons may acquire ownership of private land under the terms resulting from Romania's accession to the European Union and other international treaties to which Romania is party, on the basis of reciprocity, as provided by law organic and by legal inheritance.

This constitutional amendment is necessary to ensure the free movement of capital, one of the four fundamental freedoms (along with that of persons, services and goods).

Ombudsman activity will be backed by the European Ombudsman, who may receive complaints regarding the activities of Community institutions (except the Court of Justice of the European Union) from any natural or legal person residing or having its registered office in one of Member States.

Romanian Ombudsman system has the power to defend only the rights and freedoms of individuals. Domestic constitutional text does not include any mention of whether legal persons and foreign citizens or stateless persons can enforce their rights before it.

Enactment raises special problems.

Romanian Parliament passes constitutional, organic laws and ordinary laws.

In the European Union's legal acts, is seen a larger variety.

Talking here about the regulations, directives, decisions, recommendations and opinions.

Regulation is a legislative act (legal) of general application. Presents binding in its entirety and directly applicable in all Member States.

Directive is also compulsory, but only the outcome to be achieved. In each Member State, national authorities may choose forms and methods by which to reach the result to be achieved.

Decision is a binding document in its entirety. Is binding only for those whom it is addressed.

Recommendations and opinions are not binding.

As you can see, in practice, only the organic and ordinary laws can sometimes come at odds with European Union legal acts.

Any disputes arising from conflicts between its national and EU legal provisions will be addressed by national and EU courts. There will be exceptions of unconstitutionality raised in Romanian courts.

3. Special areas

Special problems arise in national defense, public order and state security. Chamber of Deputies and the Senate adopted a joint session of the country's national defense strategy, examine the reports of the Supreme Council of National Defence and appoint the directors of information services. Organic laws are regulated organization of the Supreme Defence Council, the structure and organization of national defense forces.

Unfortunately, this area of confusion and failure can occur. These arise primarily from the fact that Romania is not yet a clear distinction between the defense, public order and state security. The community legislation makes a clear distinction between the Common Foreign and Security Policy, ie foreign and security policy (or defense work involving conventional military forces and intelligence services or special) and common Freedom, Security and Justice, that justice, order public and state security (assuming the courts, prosecutors, police and firefighters, customs, borders, civil protection, the prison system and, to a lesser extent, intelligence).

Lisbon Treaty shows that the EU would coordinate (leading) a common foreign and security policy, aiming at both a growing degree of convergence of Member States' actions (as evidenced by the existence of an EU Foreign Minister). At the same time, the Council will identify (determine) the Union's strategic interests and objectives of foreign and security policy.

Common foreign and security policy will be implemented by the European Union and the Member States through the use of resources (means) national and Community.

European decisions in foreign policy and security policy will be adopted by the Council unanimously. A particularly interesting aspect is that the common foreign and security policy includes defense policy and security policy. Defence

policy and security policy will include feathering (progressive) for a policy (strategy) of the European Union's common defense.

This can lead to a common defense, if the Council decides by unanimity in this respect. In this situation, it is recommended that member countries adopt such a decision in accordance with their constitutional procedures.

What is important is that Community policy in this area will not prejudice the specific character (particularly) the defense and security policy of the Member States, particularly the common defense made in the North Atlantic Treaty Organisation (NATO).

Member States will provide military and civilian capabilities available to the Union to implement a policy of defense and security policy. At the same time, countries which together establish multinational forces, it will devote itself to achieving the goals of defense policy and security policy.

In addition, we intend to create a European Defence Agency, responsible for military research, acquisition and armaments, the establishment of policies (strategies) of European armaments. An important aspect in this context is that policy decisions adopted European Security and Defence Policy (including the initiation of actions or missions) will be established by a unanimous Council decision on a proposal from the European Union Foreign Minister, or at the a Member State.

The European Union will be simultaneously a space of freedom, security and justice (Romanian constitutional texts not exist in this respect).

In this area will be approximated (within unclear and interpreted) laws and regulations of the Member States. National parliaments of the Member States will be involved in the political monitoring of Europol and Eurojust in the evaluation work.

Special problems (involving a novelty even for national constitutions) are made by the solidarity clause. This article shows that the European Union with all Member States will act in solidarity with any state victim of a terrorist attack or a natural disaster.

Simultaneously, the Union will mobilize all resources (means) available to it (including the military resources provided by Member States) in order to prevent terrorist threats on the territory of member countries to protect democratic institutions and the civilian population from any terrorist attack, and assisting (help, support) any Member State upon request of the authorities (institutions) of its policy, if a terrorist attack or a natural disaster.

As seen from the discussion above, given the European provisions, it is necessary to make a definition or distinction in terms of constitutional regulations of the concepts of the Romanian national security and foreign policy, defense policy and security, armed forces, freedom, justice and public order.

In the field of judiciary, will be developed judicial cooperation in civil and criminal, based on mutual recognition of judicial decisions.

In criminal law, will be established minimum rules concerning the mutual admissibility of evidence between Member States, the rights of persons during

criminal investigations, crime victims' rights and other specific aspects of criminal investigation.

What is important is that it will set minimum rules concerning the definition of offenses and penalties (sanctions) particularly in the field of trans-border crimes (terrorism, illicit traffic of drugs, weapons, and human beings, sexual exploitation of women and children, money laundering, corruption, counterfeiting (forgery) of payment instruments, organized crime and computer-related crimes). European provisions will determine the structure and powers of Eurojust. These tasks include the initiation (start) of criminal investigations and prosecutions.

European rules adopted by the Council will establish an Office within Eurojust (Office, Department of) Attorney (Prosecutor, Ministry) European Public. This office will investigate and forward the proceedings before national courts those accused of crimes against the financial interests of the European Union. This will mean prosecution and interference in the work of national courts, meaning giving up sovereignty in the legal field and creating the space of supranational judicial authority, in addition to existing ones so far. The Union will ensure the police cooperation, involving Member States' competent authorities (police, customs and other law enforcement services).

This cooperation will be aimed at prevention, detection and investigating offenses. To this end, European regulations shall establish measures for the collection, storage, analysis and exchange of relevant information, mutual support and exchanges in the field of personnel and equipment, and techniques in the field of investigating serious forms of organized crime.

The biggest role will be played by Europol, an institution that will support cooperation between national authorities in preventing and combating serious crime in effect at least two states, terrorism and other forms of crime affecting a common interest.

The provisions of the Treaty of Lisbon make Romanian constitutional regulations on the economy and public finances (art. 134-136).

Article 134 stipulates that the state must ensure freedom of trade and protecting fair competition. In this context, some contradictions and conflicts may arise due to the fact that Treaty of Lisbon indicates the power to regulate the Union through the European law establishing some measures for the implementation of a common commercial policy, which sometimes can impair the freedom of trade within national borders. Moreover, there is ample space devoted to ensuring free competition.

Issues of particular importance are raised by the powers of the Court of Justice of the European Union. In practice, it will operate as a constitutional court not only as a Supreme Court, as before. Thus, if the Commission (in its capacity as guardian of the treaties) considers that a Member State fails to fulfill a constitutional obligation, it will send a reasoned opinion, and allowing state concerned (involved) to submit comments. If the state does not comply with the Commission's opinion within the period of this community forum will bring the case before the Court of Justice of the European Union. It may also receive an

action brought by a Member State if it considers that another Member State has failed to fulfill their constitutional obligations.

An action against another Member State and the Commission may be made up to reach the Court. In this case, the Commission will send a reasoned opinion to each of those states, both countries by enabling them to express their views, both in writing and orally.

In the event that the Commission did not express any opinion within three months of receiving notification, the absence of its opinion can not prevent bringing the case before the Court.

Where the Court of Justice considers that a Member State has failed to fulfill their constitutional obligations, the State may be required to take the necessary steps to achieve the Court's decision.

It can happen as the Commission consider that a Member State has not implemented the decision of the Court, will bring the case before the Community Courts, with the possibility and the State (involved) to submit his observations. Will be specified and the amount to be paid by the state.

Unfortunately, it is not clear how to resolve the situation in which the decisions of the Commission and the Court of Justice of the European Union regulations are contrary to national constitutional. Court of Justice may issue preliminary rulings on the interpretation of the Constitution, and the validity (validity) acts of the institutions, offices and agencies. Such a question may be raised before a court (court, tribunal) national, and it may ask the Court of Justice if necessary.

Conclusions

As can be seen from the discussion so far, Romania's EU accession will have some effect on the Romanian Constitution, effects determined primarily by the need to align with the European Constitution, effects that probably were not taken into account in the development of the fundamental law of our country or in the accession process.

The most important effects (consequences) will occur in foreign policy, national defense, public order and state security. But we must not neglect the effects of economic, social or cultural.

Of course, that the consequences (positive or negative) of these effects will be correlated with changes at the institutional and political structure.

How will occur, however, only the future (more or less distant) can tell us.

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