

## **NATIONAL CONSTITUTIONAL LAW RESISTANCE AGAINST EUROPEAN INTEGRATION**

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### **Abstract in original language**

Dreptul constituțional este cea mai importanta ramură de drept, deoarece ea reprezintă nu doar o „așezare cu temei” a statului, ci și o modalitate prin care cetățenii își manifestă încrederea în propriile instituții ale dreptului

Cu toate acestea, procesele politice moderne, cum ar fi cele provocate de integrarea europeană, pun probleme dreptului constituțional atât în spiritul său, cât și în aplicare: politicienii versus propriul popor pentru Uniunea Europeană sau aceasta este doar o imagine ce va dispărea ușor? Textul nostru imaginează un răspuns la această întrebare.

### **Key words in original language**

Drept constituțional; integrare europeană; rezistență; politicieni, cetățeni.

### **Abstract**

European integration create a problem: political vision was integrative, but this position can affect state's independence and sovereignty; in the same time, it is impossible to renounce from a national constitution at this fundamental institution of public law. So, it appears a resistance from national constitutional law to this integration: it is not always obvious, but its presence cannot be denied.

Our text will analyze which consequences appear from this resistance, with a special watch of Romanian public law.

### **Key words**

National constitutional law; European integration; resistance; politicians; citizens.

1. Constitutional law represents in public law system one of the big stones able to stop some side – slip of politicians and of many scientist. In this case, constitutional law is one of the most important elements of national resistance against any kind of integration, because it is part of the most important state's pillar: the army.

This introduction is court – but we need a court introduction to speak about the most important menace of this century for national state, and, of course, for national public law. In fact, we can say that European integration is worse then communism integration, because during iron curtain's age it was

possible also to realize a better resistance against Moscow's integrative policies.

These sentences represent part of conclusions; before the conclusion, it must be done a demonstration.

2. Woodrow Wilson imposes in Europe and in whole world a new principle of political affairs: principle of nationalities. From this moment it started a wave of independency movements (officially or secret), wars and negotiations: finalisation of this political process was in 1976, after red revolution of Portugal.

In the same time, international relations receive a new face in 1919 – 1920; super powers disappeared, and inside "black hole of power" new national and independent states tried to create a new style of international relations, when agreements between states are respected and morality represent supreme law and behaviour between states, politicians and citizens.

After the great and universal war (between states and systems), history stopped to be inspiration for politicians: television and radio appeared, so, it was time for propaganda.

Propaganda refers to the use of communication techniques to affect people's thinking and behavior. Any technique or action that attempts to influence the emotions, attitudes, values, beliefs, or actions of a group can be described as propaganda. Typically, propaganda benefits the sponsor and puts the interests of the sponsor above those of the recipient. As an instrument of persuasion and psychological coercion, it seeks to compel the recipient to submit to the will of the sponsor. Propaganda is thus different from education, which seeks to develop independent thinking, and from information, which is based on objective facts<sup>1</sup>.

This definition was necessary to understand new world conflict: conflict of ideologies, which include in their disputes not only ideas and intellectuals, but also states with their administrative actions (more visible or not), because from 1945 world become battlefield between two universal way of thinking: communism and capitalism.

What it was unique in this war: that pretension of both systems that everyone is the only one correct system, and everyone must follow only one system: in this case, *tertio non datur*, because capitalism exclude communism and communism exclude capitalism. In this case, humanity stayed on a small and fine balance, because every system was able not only to defend in public area its percept, but also to military destroy the enemy.

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<sup>1</sup> International encyclopedia of social sciences, second edition, ed. Gale / Macmillan, New York, 2008, vol. VI, pg. 545.

3. Western European states made an alliance between them, with a military protection accorded by Atlantic partners. In this case, they start with the economy, and they believe that it was necessary to recreate not only a new behaviour in international relations, but also a new form of state and alliance between states in Western Europe.

This new form of politics creates first three communities, and it made a huge step to create an European state: edification of a military community. It was a Rubicon decision to do that, but reality was stronger than politicians, and this idea died. Second Rubicon decision for creation of a new and integrated European state was to establish a justice court at European level.

In fact, justice represents possibility to recognize to every state to decide what is correct and what is wrong in social life. This is a royal right of state, and to it state cannot renounce. In fact, justice is part of state essence. Making this step, politicians who created European communities (later – European Union) would underline that in Western Europe national truth disappeared, and it was moved to another level. In this case, we must consider moment when European Court of Justice had been established as the moment when states (in Western Europe) are replaced with another entity. Assuming justice, European construction became almost a state: adopting Euro, creating a European Central Bank, existence of European Parliament and of other institutions are only moments subsequent of justice.

When European construction advanced and economic integration in Western part of continent allowed to Monet and its continuators to hope that is not only possible, but is also probable to build a new state, federal one. All those double institutions (national and European Parliament, national government and a European institution with quite the same competences and especially a new jurisdiction) created not only an appearance of new state, but in fact, a real new state, at a different level. Euro was only the last moment when politicians broke citizens hopes to resist, this process is now almost complete, because Lisbon treaty is adopted now only by politicians, despite of constitutional effects which request a normal procedure for referendum. In fact, even in Ireland referendum was organized not because its dispositions modify constitution, but because this treaty “refers to important problems”. We must underline in the same time that first project of EU Constitution was rejected by the citizens too. Few cynical comments appeared in press: politicians are more important than citizens.

4. 1989 brought for eastern European state liberty, but economy was heel of Achilles. For solve economic crush of loosing COMECON it was necessary to receive some help, only Western Europe and USA could give it, but for that, it was necessary to fulfil (again) new condition: from conditions to be a perfect communist state, it was time to see in what way a country can be a perfect democracy. And conditions were described in one word: reforms.

Public administration and public servants received now pressure not only from new master (Washington and Bruxelles) who conditioned their help by reforms implementing, but it was joined by internal pressure of citizens who want a new state able to respect and protect citizens fast, very fast! Citizens understood that it was necessary to fulfil few conditions and they accepted, but for this purpose there is a wall against: constitutional law.

In fact, European Union was presented in whole Europe and in whole world like a panacea. For this, everything was good to be used: from teachers to politicians, from journalists to conferences, books, articles, libraries. In this case, in whole texts and presentations it appears like entire history had gone only to provoke and to create such kind of entity expected by humanity: it was human dream to create a continental state / entity able to fulfil noble dream of peace and economic prosperity. And, of course, after this model it must be create other political constructions in every continent, maybe – in a few years, at global level.

5. As all branches, lawyers are their special way to think, to see the world. In this time, we must understand that human society reaches such a way of technological development that is always possible to find even in smallest house – but with access to internet – can be capable to read books of every great law philosopher and to learn almost every foreign language.

This is only one part of the access to juridical culture. But we must understand that this huge amount of scientific books available free on internet create a big distance between people who read always and people who read especially newspapers. What is that? In fact, there is a continue problem for intellectuals: they can read and think something, but reality can be different, and they live in their world, but with influence in social life and on mass media.<sup>2</sup>

In this great influence, they are not always speaking about cultural problems: they love in fact to speak about two subjects:

- How bad is this world, because there are a lot of people which are not respecting time's age and;
- How bad is national state, how much desuetude affects its principles and how big is the necessity to change it, because for almost whole public intellectuals<sup>3</sup> we live now in a different world, which has only one land and only one state: Terra.

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<sup>2</sup> J. Sevilla: *Terorismul intelectual, din 1945 pina in prezent / Intellectual terrorism, since 1945 to present ed.* Humanitas, Bucharest, 2007, pg. 103

<sup>3</sup> For a better understanding of public intellectual read: A. Gavrilescu: *Noii preocupati. Intelectualii publici in Romania dupa 1989 / New merchandisers. Public intellectuals in*

In Romanian literature of XVIII-th century there is a famous book named: “The quarrel between intellectual and whole people”. In this book intellectual wants to correct what is was bad on those times, trying to convince that his proposal for a better world is in fact the best proposal. We can recognize this, but we must underline that is a normal tendency for every person: to be creator of a new world, perfect (especially for its creator – demiurge).

But all these affirmations mean not only an intellectual position in relation with humanity, but it means also a position in relation constitutional law, inside their own country and inside whole world. In this second case, intellectuals watch to two levels: universal, and for this they will analyze United Nations, and continental level.

6. However, we can underline that continental level is in fact only one: European. For being much more understand, we must come back to year 2003, when Dick Cheney, former vice president of United States, shared European between an old part, where it was created European Union, and a new one, where Soviet Union was supreme ruler 45 years, but much closer to American interest.

It is obvious the cultural importance of Western Europe for humanity. In fact, almost whole intellectuality worked for this part of world: London, Paris, Berlin and Geneva represent not only big economical centers, but also a place for intellectuals, who worked hard and which was able to influence with their works human destinies: Marx and Engels were born in Germany and worked especially in United Kingdom, Immanuel Kant only in Germany, Hegel – same; Bertrand Russell and whole Fabian society in United Kingdom, France and Paris was the center for exile and a lot of active ideas; Wien is the land of psychology; Czech republic of pedagogy; Italy is famous for its Renaissance artists.

It is also true that this part of Europe had start soon after Second World War an economic project<sup>4</sup> who had many years a real success – but not all its members are satisfied<sup>5</sup> – for politicians. This construction becomes stronger only after 1989 fall, because on that time it had appeared the biggest economical conquest of human history.

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Romania after 1989, ed. Compania, Bucharest, 2006. Especially the first chapter: “What is remaining from intellectual’s mission”?

<sup>4</sup> This aspect is always an argument for a stronger integration between states from Old Continent; what is forget: that differences between European states is so big, that is impossible now to have a continue and homogeny space.

<sup>5</sup> C. Booker and R. North: *Uniunea Europeana – marea amagire: istoria secreta a constructiei europene / European Union – big deception: secret history of European construction*, ed. Antet, Bucharest, 2004. in this book both authors presents United Kingdom’s policy and its disillusion during negotiations.

But this economical construction tries to become stronger developing political dimensions. For this, politicians from Bruxelles were forced to create and to adopt new treaties and to re-configure European continent and its economical dimension. It was necessary to implement a real currency, to make much stronger integration, and it was also a terrible need to not involve citizens, because they will pay economical cost if integration.

7. In this case, Maastricht treaty was followed by Amsterdam, Nice and finally, Lisbon treaty. Last treaty was almost ready to be rejected, because the most important capital<sup>6</sup> was against: human beings. In fact, we must underline few special characteristics of European Union since 2002, when Euro remains single currency of big European economies<sup>7</sup>:

- Lisbon treaty was approved only by politician members of parliaments. With on exception, people didn't spoken, and we don't know which was in fact its real wish of them;
- Before big extension of 2004 European elections wasn't so popular, but after 2007 (when it was the last one), this elections became only something marginal, without importance for citizens, despite of whole huge propaganda for participation. Despite political enthusiasm for accession inside European Union, population from new members of this entity had the weakest reaction, their percentage to European election being smaller then 25%;
- Despite of beautiful image, European economy felt the strongest energy increasing prices shock and with this, first steps which are completely against a common energy policy.

What is shocking in European Union construction? There are two treaties who tried to create a constitution for European continent, or maybe to a European Common House, but despite 52 referendums<sup>8</sup> it was only four: three was with a negative result, and the last one was, finally, for European Union.

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<sup>6</sup> As Lenin said. In fact, there is something strange: why always we talk about Soviet Union and its leaders when we analyze European Union. For more details, watch: V. Bukosky: *Uniunea Europeana, o noua URSS / European Union, a new SSSR*, ed. Vremea, Bucharest, 2006.

<sup>7</sup> Another paradox in European economy: new members wants to adopt sooner Euro as national currency, but members with many years inside of EU want to renounce, and secretly whole economist from Europe approve United Kingdom decision to not renounce to sterling pound.

<sup>8</sup> 25 members was in 2005, when first treaty was voted in France and in Netherland: two tries, to defeats received by politicians. In 2008 it appeared from 27 member only one referendum, in Ireland. And of course, citizens denied Lisbon treaty.

But not only was that it surprise: when Ireland rejected Lisbon treaty whole politicians from Europe speaks against them<sup>9</sup>, presenting citizens like a not-recognizing persons for whole benefits received from Bruxelles. In fact, whole attitude was to punish citizens because they speak in such a way not accepted in today political speech.

This attitude (of politicians) was in the same time against every constitution, and, as consequence, against national constitutional law, because:

- Every constitution consider that its sovereignty and its independence being something not-negotiable<sup>10</sup> and for this it is necessary to change not only constitution, but also to make disappear that state;
- Politicians are elected by citizens, but after this vote, they cannot have a total control of their decisions. In fact, this attitude can be possible because an imperative mandate for members of parliament is not a characteristic in modern constitutional law<sup>11</sup>;
- During last years whole scientific researches underlined that politicians are on last position of public trust in Europe. If citizens don't have trust, it means in fact that it necessary to be a fundamental change in politics, or this distance between citizens and politicians will become too big, and it disappear the legitimacy.

8. Legitimacy is in fact the supreme key in relations between national constitutional law, citizens and European integration. This small number of people (less then 35%) who participate to European elections are a symbol for dysfunctions; but this number it must be compare with important participation for national elections, almost 70% in every state<sup>12</sup>. This disproportion is sometime so big, that it creates few rhetoric questions not only for citizens, but also for Bruxelles bureaucrats.

This relation is not only psychological – legitimacy being in fact a concept from this science, but it can have a deep content inside constitutional changes: fundamental law being the supreme framework for a state, and its citizens finding more legitimacy inside this act, it can be dangerous for

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<sup>9</sup> This means a constitutional reaction, in fact.

<sup>10</sup> C. Ionescu: *Tratat de drept constitutional contemporan / Contemporary constitutional law treaty*, ed. CH Beck, Bucharest, 2008, pg. 32. See also art. 1 from Romanian Constitution.

<sup>11</sup> Watch, for example, art. 69, (2) from Romanian Constitution.

<sup>12</sup> In few states it can be a “fog”, because many citizens work abroad and they cannot vote in normal conditions inside their borders. However, it was demonstrated a great interest and participation for citizens who works abroad, many of them staying many hours to their embassies to exercise this right.

European politicians to change everything. They can try, but post-modern society created by internet can also be an obstacle for them in next elections.

Which is public law specialist role? In fact, this debate means where lawyer's position in this game is: with European construction or with national constitutional law? For this answer, we must note there are only two possible positions:

- A lawyer can justify politics and politicians decisions<sup>13</sup>. This attitude can help their career, but they will loose trust of their own citizens. And there is important to note that for every lawyer: best name you will have only inside of your own country, where you will be always legitimate;
- A lawyer can imagine a system for its country, and this system can be against political decisions. In this case, history, economy and daily life will decide who were right, but it cannot be said that lawyers are only a technicians for the government.

National constitutional law oppose and resist against European integration using many instruments, few of them belonging to law science, but many of them being part of other sciences:

- First resistance is representing by its existence. Because national state cannot be replaced (watch only energy problems and whole negotiations for an American shield in former communist Europe), European integration will be always in front of a great wall: where is nation and where national constitution is. This problem belongs to law science;
- Politicians who modified constitutions are always national, and they can be replace by national electors. Even they will receive a good position in Bruxelles, their career will be finish inside their own countries. This legitimacy belongs to psychology and to political science;
- National constitutional law is always applied, but European law is something different: big distance and big number of official languages cannot do a real single law for continent. This argument belongs to political geography;
- Europe is a continent without mineral resources, but with a modern and diverse economy. However, for those resources is a daily competition inside EU member, that is obvious someday this alliance will be broken, because few states will don't resist to economic competition. And this is geopolitics.

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<sup>13</sup> E. Balan: *Institutii administrative / Administrative institutions*, ed. CH beck, Bucharest, 2008, pg. 58



9. A special situation is for Romania. Being at EU border, it cannot be like other members, because its problems are not only with its internal economical situation, but also with its neighbors. However, inside or not in EU, Romania is the only one country which in next years will increase its territory.

In this case, EU will have a problem, because until now, only small states had entered, but with Romania it will be introduced for the first time a former soviet state: last economic war between EU and Russia starting.

On that time, only national constitutional law will be able to solve this problem. Despite of whole European integration, geography will be stronger. And, of course, citizens will be stronger. But for that, it will be a question: what we can keep from European law?

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