

A EUROPEAN UNION WITH TWO SPEEDS AND NEW TYPE OF EUROPEAN LAW

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Abstract in original language

Europa unită nu este decât un concept politic, din care populația nu a reușit să înțeleagă mare lucru, și nici nu a reușit să identifice până la capăt toate aspectele care ar da consistență acestuia.

Situația economică a ultimilor ani, în care datoria publică a forțat statele să își recalibreze pașii a adus cu sine și o posibilă redimensionare a proiectului European. Textul nostru încearcă să identifice ceea ce ar putea rămâne în urma acestei operațiuni: credința noastră este legată doar de principiile dreptului și unele valori.

Key words in original language

Uniunea Europeană (UE), datorie publică, redimensionarea UE, valori și principii ale dreptului.

Abstract

United Europe is only a political concept and the population didn't understand all the ideas and the dimensions of this important process. The economic situation of last years, with an increasing public debt, forced European states to find a new logic and a new settlement of EU project. In this case, our text tries to identify which are the main things able to resist to these new treaties negotiations: in our opinion, it will remain only values and law principles.

Key words

European Union (EU), public debt, new dimension of EU, values and law principles.

1. People try every day to open a computer and enter on internet, or, maybe, to switch on the television or the radio. It is a normal situation for modern societies, because, after hundreds of years of hard-working, finally, the comfort is almost settled in a good part of contemporary world – however, in Europe, Northern America and Australia, and in a good part of Asia – but less in Africa.

A perfect day must have information – every day we can have surprises – at 8 A.M. in September 11 it was a famous moment who changed our lives; an earthquake in Japan or near Indonesia and whole world felt that nature is again stronger than human achievement.

2. On this big group of populations who need every day some news to well-function, there is a group with some specific attitudes – because of their studies and their social role: law faculty graduates.

They are, in fact, not only persons involved in society's march for perfection – in this case we must note politicians and political sciences graduates as mainly persons who believe that they have this power to change the world – but they are that specialist in real work of things and people, able to understand not only the correct way of working, but also the possibilities to not well function.

Thus, a lawyer is able:

- a) To see and to create rules for a positive functioning of every social system. In this case, his role is basic to the peaceful role, when he will contribute to new possibilities to improve the economic (mainly) settlements;
- b) To see where people don't respect the rules and to fight in legal procedure for their rights and obligations. In this case, lawyers are the first persons who feel the human nature for every kind of regulation, and where is the limit of social support to state legislation (mainly, to the public law).

In this equation, lawyers must analyze every day their role in the society, because, no doubt, their role is bigger than other professions want to recognize, and, in the same time, their power in society is able to produce frighten: on legal procedures a non-specialist is “lost in labyrinth, and there is not Thezeus and the Ariadne's wire” to protect them – here, only lawyer are able to walk and to obtain profit.

3. This power is important in daily work, but, we must note, of course, that society don't have too much trust in legal practitioners, because this feeling of frightening is something who dig every day at the prestige of legal science and lawyers.

In this case, we can talk about a moral crisis not for human society, but also inside legal practitioners, because they watch soon when the social trust disappears and sometimes they must find internal powers to continue the legal work as its official social purposes: helping the people and cleaning the society¹.

Describing this situation, an American law teacher wrote²:

“The legal profession sometimes behaves as if it is waiting for a knight in shining armor to rescue it from the evils of professional advertising, the forces of the marketplace, and the other afflictions we identify as the sources of our problems. But the practice of law is not a fairytale, and there is no knight in shining armor coming to the rescue. There are only we, its members.

¹ From the famous legal definition: “Honeste vivere, neminem laedere, suum cuique tribure”. Mainly the last part of the sentences describes this social role of noble profession.

² W. Bennett: *The lawyer's myth: reviving ideals in the legal profession*, The University of Chicago Press, 2001, ISBN 0-226-04255-3, 254 pages.

If the legal profession is going to save itself, we are the people who must do it. We are the wounded king, and our profession is the wounded kingdom. But we are also Parcival. Parcival *c'est moi!* It is we who must take up the long and difficult quest that will lead us to ask the essential question. And a good way to begin our part of that quest is to understand where we have come so far and where the dragons are. Like the Fisher King, whose fishing is a metaphor for his soul-searching in the realm of his own unconscious, we will need to do some fishing as well into our professional past and the landscape of our own unconscious³.”

Hard words about legal practitioners!

4. Being social people by excellence, lawyers must be careful to every political change, because it can bring new changes for an important law and the whole consequences are huge⁴.

Here, politics play an important role. It create new countries, new public regulations and the lawyer is forced to admit that he must analyze them, trying to solve and to create new habits for their clients.

One of the most important political entities created in 20th century was European Union. An artificial construction – is obvious, but with a strong propaganda machine back, able to make it a “strong new state”. A lot of people believe in this project, but economy doesn't like this and its voice is stronger.

However, EU create a lot of regulations, and legal practitioners are forced to read them, learn them and apply them – sometimes, the political pressure for these laws is stronger than to the national law appliance.

But, in the same time, European Union was a concept with a lot of opposing people, able to demonstrate that this political idea is not good for national states, and – more than that, for national economies. In fact, history proved that in every world region there are sometimes few ideas for a deep political integration, with a lot of consequences for small states and with a different allonge – more power, more influence: a hegemonic power or an empire, because imperial dreams are connected with the state dimension⁵ (we cannot imagine

³ W. Bennett: *The lawyer's ...*, pg. 12

⁴ Only one small example: the legal status of married person, when his / her husband / wife died was influenced in Romania by the love of state ruler (on 1944) for his wife, because he knew that he will be killed by communists. With few weeks before arrested, he changed the heritage law in this area, and his regulation survive until 1 October 2011.

⁵ After 1990 the scientific debates about empires disappear, but, after 2003, when USA adopt a different behavior in international relations, a lot of books start again to describe the imperial paradigm of history – related to the neo-liberalism and its purposes.

Lichtenstein or Monaco trying to create an empire, but we can imagine – one day or tomorrow – Nigeria or other state to be an empire (with the 21st century characteristics).

5. Lawyers are in the middle of social and political game – this is obvious. But, in the same time, they are forced to learn every day and for this they read books and scientific articles, but, in the same time, to have a correct image of the future, they are used and forced to watch daily news⁶.

In Europe, since 1955 (when Warsaw pact was created) the integrationist debates become stronger, because military problems were solved by American presence, but the economy was not on good position in global competition.

After 1990, military problems almost disappeared and economy receives the strongest voice. On this case, the speed of transport and speed of internet create a different world – everyone has access to almost any information, and almost everyone can develop his skills.

But after 1990 European Union integration started to be stronger, and the public speech work only in this direction – only to have a larger and united Europe, no matter the cost. Wikipedia⁷ – famous internet library describe the European project after 2000 in this way:

“The euro is the new currency for many Europeans. 11 September 2001 becomes synonymous with the 'War on Terror' after hijacked airliners are flown into buildings in New York and Washington. EU countries begin to work much more closely together to fight crime. The political divisions between east and west Europe are finally declared healed when no fewer than 10 new countries join the EU in 2004. Many people think that it is time for Europe to have a constitution but what sort of constitution is by no means easy to agree, so the debate on the future of Europe rages on.

6. The 27 EU countries sign the Treaty of Lisbon, which amends the previous Treaties. It is designed to make the EU more democratic, efficient and transparent, and thereby able to tackle global challenges such as climate change, security and sustainable development.”

The cost of this famous integration was something very deep: a huge public debt for every state from EU, with some particularities.

Looking to the World Factbook⁸, we can see this information:

⁶ Emil Balan, *Institutii administrative / Administrative institutions*, Bucharest, C.H. Beck, 2008, p. 41.

⁷ http://en.wikipedia.org/wiki/History_of_the_European_Union

⁸ <https://www.cia.gov/library/publications/the-world-factbook/geos/ee.html>, consulted on 1 December 2011.

External debt: 16.08 trillion dollars (at 30 June 2011)

GDP: 16.07 trillion dollars

Thus, we have European Union with minus

7. Why this phenomenon?

In our opinion, this situation appears because politicians must be voted very often. In fact, every 4 or 5 years they must be winners in national elections. For this, they must offer not only promises, but also the rights – mainly, social rights – for populations. Without these rights, their possibility to earn money, influence (and the pride is something natural for politicians) and traces for the history.

Rights are always good to be received – but someone must pay for it – for sure, in this comfort society there is very simple to imagine yourself being a successful politician for 20 years or more – and 20 years means minimum 5 elections!

5 elections minimum means also 5 electoral campaigns and a lot of public meetings, where a lot of speech must be considered – thousands of people will listen and they'll vote only if it will be something substantial – the social rights are perfect for elections, being able to offer a safety position on the party.

O.K., but who must pay for these 20 years or more? State can offer the rights, after a Parliament vote, but the real economy must pay, because every social right must be paid by someone – and here, there only one solution: to increase the tax average. For sure, for the rich person there is also a single solution: to refugee to the fiscal paradises, where national state control is less, and politicians are not able to rich their position.

Apparently, everyone is satisfied: state offers social rights to the citizens, politicians are elected for 20 years or more, rich persons can hide their money ... only the health of the economy become worse and one day the Truth Day appear: public debt is finally recognized as over passing the limits of strong economy, menacing with a great collapse social services⁹ (first, of course) and of the welfares state. On that moment is appear in public speech only one word: reduction (austerity for national budget).

Of course, politicians are not responsible; their duty was for more than 50 years only to assure the social progress ...

Inside EU the comfort society was killed almost since 2007, when global financial crisis (bank operation crisis) forced states to

⁹ This is the argument for every new left wing attack during the economic crisis. Irony of fate or irony of morality?

recognize: we spent more than we can afford, and the public deficit must be covered – because, without this operation, it will start a huge protest campaign against governments, in the name of democracy, because population is not used to accept social sacrifices.

But on this equation it was revealed something bad: all European states from Euro zone had a big deficit, more than 60% admitted – and here we must include UK, despite their currency position.

8. In the same time, 2007 brought not only a big crisis, but also an important European treaty, which is able to deep the political and administrative integration of member states: August 2007 brought crisis, December brought a treaty which can be considered – on the same time – first EU answer against the crisis: “United we stand”!

We shall present here the main disposition of Preamble who speaks about the purposes¹⁰ of this treaty:

“..... RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

..... DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union, a single and stable currency,

DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

¹⁰ Big letters underline and enforce this idea.

RESOLVED to establish a citizenship common to nationals of their countries,

RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy

..... RESOLVED to continue the process of creating an ever closer union among the peoples of Europe,

.....IN VIEW of further steps to be taken in order to advance European integration,

HAVE DECIDED to establish a European Union”.

The first article of the Lisbon Treaty continues these ideas:

“By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called "the Union" on which the Member States confer competences to attain objectives they have in common.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as "the Treaties"). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.”

9. However, big disparities between states and the big public deficit were impossible to be ignored, and in 2011 the daily news was like here:

Článek I. a) ”Are we already in a two-speed Europe?¹¹

Is a "euromark" the solution to the euro-crisis? The idea of creating a second European currency [is floated in De Standaard](#) by Belgian economist Peter De Keyzer. The new euro, which would be added to the old one, would bring together Germany, the Netherlands, Finland and "other 'strong' countries whose budget deficit is below 3%, whose national debt is below 80% of GDP [...] and whose long-term interest rates are close to Germany's," explains Peter De Keyzer. "Germany would then have a strong currency and a credible fiscal policy. The southern countries would have a heavily weakened currency, economic growth and a breather to clean up their financial act. No-one would be required to devalue or lose face, the euro would be saved and we'd have a strong European currency. Unfortunately, however,

¹¹ <http://www.presseurop.eu/en/content/article/239021-are-we-already-two-speed-europe>, 26 April 2010!

not everyone would come away a winner, there'd be a key loser, too: namely Europe and the European idea.””

b) ”Sarkozy pushes for 'two-speed' Europe¹²

With France's borrowing costs on the up and with its prized triple-A rating under threat, French leader Nicolas Sarkozy is publicly advocating a fast-lane Europe for 'core' euro-countries.

"In the end, clearly, there will be two European gears: one gear towards more integration in the euro zone and a gear that is more confederal in the European Union," Sarkozy said Tuesday (8 November) during a discussion with students at Strasbourg University.

Key to his argument was that as the EU will one day take on the Balkan countries, deeper economic integration at 32, 33 or 34 member states will be "impossible.””

c) “The two speed Europe solution was planned in 1994”¹³

d) “Two-speed Europe, or two Europes?”¹⁴

The European Union is, in a sense, made up not of two but of multiple speeds. Think only of the 25 members of the Schengen passport-free travel zone (excluding Britain but including some non-EU members), or of the 25 states seeking to create a common patent (including Britain, but excluding Italy and Spain).

If the euro zone survives the crisis—and the meltdown of Italy's bonds in the markets suggests that is becoming ever more difficult—it will plainly require deep reform of the EU's treaties. Done properly, by keeping the euro open to countries that want to join (like Poland) and deepening the single market for those that do not (like Britain), the creation of a more flexible EU of variable geometry could ease many of the existing tensions. Further enlargement need no longer be so neuralgic; further integration need no longer be imposed on those who do not want it.”

10. On the 1 December 2011 French president Sarkozy had an important speech on Toulon¹⁵. Few ideas must be included here,

¹² <http://euobserver.com/18/114236>, 10 November 2011

¹³ <http://www.parker-joseph.com/pjcjournal/2011/11/19/the-two-speed-europe-solution-was-planned-in-1994>, 19 November 2011.

¹⁴ <http://www.economist.com/blogs/charlemagne/2011/11/future-eu>, 10 November 2011.

¹⁵ <http://www.elysee.fr/president/les-actualites/discours/2011/discours-du-president-de-la-republique-a-toulon.12553.html>

because France is one of the most important voices inside EU and for EU:

“La crise est d’abord un révélateur de nos faiblesses. Mais pour peu que nous sachions en tirer les leçons, les crises nous indiquent aussi la voie à suivre pour reconstruire et elles donnent à la politique une responsabilité et un champ d’action au fond sans précédent depuis la deuxième guerre mondiale parce qu’il faut tout imaginer, tout réinventer.

L’Allemagne et la France unies, c’est l’Europe toute entière qui est unie et forte. La France et l’Allemagne désunie, c’est l’Europe toute entière qui est désunie et qui est affaiblie. Je recevrai lundi prochain à Paris la chancelière Merkel et ensemble nous ferons des propositions pour garantir l’avenir de l’Europe.

La France et l’Allemagne ont fait le choix de la convergence. Je ne reviendrai jamais sur ce choix.

L’Europe n’est plus un choix. Elle est une nécessité. Mais la crise a révélé ses faiblesses et ses contradictions. L’Europe doit être repensée. Elle doit être refondée. Il y a urgence. Le monde n’attendra pas l’Europe. Si l’Europe ne change pas assez vite, l’Histoire s’écrira sans elle.

C’est la conviction de la France et de l’Allemagne.

L’Europe a besoin de plus de solidarité. Mais plus de solidarité exige plus de discipline.

C’est le premier principe de la refondation de l’Europe. La refondation de l’Europe, ce n’est pas la marche vers plus de supranationalité. Ce n’est pas la réouverture des vieilles querelles entre les partisans de l’Europe des nations et de l’Europe fédérale.

L’Europe se refondera en tirant pragmatiquement les leçons de la crise. La crise a poussé les Chefs d’États et de gouvernements à assumer des responsabilités croissantes parce qu’au fond eux seuls disposaient de la légitimité démocratique qui leur permettait de décider. C’est par l’intergouvernemental que passera l’intégration européenne parce que l’Europe va devoir faire des choix stratégiques, des choix politiques.

Au sein de la zone Euro, il nous faut décider maintenant aller sans crainte vers davantage de décisions prises à la majorité qualifiée.

L’Europe ouverte à tous les vents, l’Europe qui ne se protège par contre les dumpings, l’Europe qui ouvre ses marchés sans exiger la réciprocité de la part de ses concurrents, l’Europe qui laisse entrer des produits de pays qui ne respectent pas les règles sociales ou environnementales, ça ne peut plus durer. L’Europe doit négocier pieds à pieds la défense de ses intérêts commerciaux.

L'Europe qui fait appliquer à l'intérieur le principe de la libre circulation et qui ne contrôle pas ses frontières extérieures, ça ne peut plus durer. Schengen doit être repensé.

L'Europe qui tolère le dumping social et le dumping fiscal entre ses États membres, l'Europe qui supporte que les subventions qu'elle verse à certains de ses membres pour les aider à combler leur retard sur les autres puissent servir à baisser leurs charges et leurs impôts pour faire aux autres une concurrence déloyale, ça ne peut plus durer.

L'Europe ne peut pas laisser ses groupes industriels à la merci de tous les prédateurs du monde, parce qu'elle leur interdit de se regrouper au nom d'une fausse conception de la concurrence, L'Europe ne peut plus ignorer la nécessité absolue d'une politique industrielle, pour soutenir nos filières et nos exportations.

L'Europe doit défendre sa politique agricole commune car dans un monde de ressources rares, la sécurité alimentaire est un élément essentiel de l'indépendance.

L'Europe va devoir faire des choix cruciaux dans les semaines qui viennent. Ces choix ne peuvent plus être ceux des années 80.”¹⁶

11. Big politics is made by big states, and smaller one must resist for these actions and to accept watching their shoes.

For sure, this speech announces a new text for European treaties, and, of course, it fixes the limits of modifications.

So, for sure, in next year we'll see a new kind of European law. On this idea there is another one just coming: what kind of EU law, what it will be kept and what it will be throw out? Where are the limits of national parliament acceptance, because this process – create by France and Germany will be solved in only two ways:

- a) everyone will accept, and EU will be radical transformed or
- b) some states will not accept, and EU will be broken in different entities.

Both solutions must be fulfilled by the law science and legal practitioners.

Main question: what it can be solved?

For sure, not the same legal kind of integration on public law and public administration: maybe a double speed Europe, one deep integrated and one less, or it will be renounced to almost all European common administrative procedures.

¹⁶ In European legal system is important to know French language, because of the legal traditions and legal history of the continent.

This solution is easy to be understood: to change something now on European public law means to have a deeper integration (impossible, because of the languages and the national force of economies) or to change into few levels of integration. To every level will be different procedures, but it will something that still exists: values and public law principles

Private law has a simple evolution – here, the globalization cannot create problems: the harmonization on commercial law is something clear for everyone and it will continue to deep. Internet helps now firms to communicate faster and a lot of commercial practices start to be universal or triple-continental: Europe, America (North and South, in this order) and Asia (partially).

However, the main aspect of European law is the European values (the same French president speaks about them) and the European law principles: good administration, non-discrimination, equality in front of the law and to the public administration, right to defense on the court of justice, etc.

In this case, we can replace not only whole EU law with these words: values and principles, but we can add here another one: moral. And, somehow, the economy makes us to remember that sufferance is eternal and only the human naivety is deeper: without a correct proportion between rights and obligations, our world will collapse – and we didn't create something to replace it!

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