

NATIONAL PUBLIC LAW IS BACK, EUROPEAN LAW DISAPPEARS?

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Abstract

Analyzing the last two years main titles in daily press, we discover not only great economic problems inside the EU, but also big concerns about the future of EU, when a lot of states are victims of their public debt. For this big deficit, only national budget was good to help, at European level money are missing.

In this idea, the concept: "EU with two speeds" really appears, and every government is forced today to have a position. But on this case, a good part of European laws are menaced by the national law coming back – it must be a legal system able to replace the holes, because every human situation must be regulated by a kind of law.

In fact, last years discovered why a lot of political constructions are made only of "perfect papers", not according with the reality. In this case, when integrationist plans are rejected by the reality, only the national states and the national public law are forced to intervene and to support the fury.

Our text try to analyze where is the limit of EU law appliance in this case and how much national law will come back.

Keywords: national public law, economic transformation, European Union with two speeds, disappearance of European law, political transformation

Introduction

Last year offers to public a common speech: economic crisis and its consequences, Greece and Italy prime ministers, national public debt and the Maastricht criteria of 60% debt, defeat of "multi-kulti", etc.

As we can see, the economy is the engine of every day television news journals and after few years, Occupy Wall Street time appeared – expressing a social wish. However, in this public speech, it was a problem: if we found a guilty element – the cause of everything bad, today is time to think to the future: because it must be someone who was not able to function correct and it will not function well too, despite big amount of Euro introduced by Central European Bank.

As always, every specialist and whole political class offered an answer for the next decade – a crisis has not only causes, but it has its victims. The globalization was one of them; human rights – in few states, young generation is a perpetual victim – today, the Spain unemployment rate for young people is almost 50%¹.

In this idea, the concept: "EU with two speeds" really appears, and every government is forced today to have a position. But on this case, a good part of European laws are menaced by the national law coming back – it must be a legal system able to replace the holes, because every human situation must be regulated by a kind of law.

The author try to analyze and describe where is the limit of EU law appliance in this case and how much national law will come back, because it is clear that last two years were not profitable for European unionist ideas.

The author intends to answer underlining few ideas who are still available in legal science, especially in their relation with new socio-political paradigm. In the same time, we must offer a perspective for the future: the dispute between national public law and the European law will have,

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¹ Just a single example.

on this lack of resources time, a long continuation: the pressure for both direction of human activity is too big now to can be avoided.

This “war” is now between image – EU law and reality – national public law. On this case, to not be schizophrenic, we believe that it can be a negotiated solution, but is not forever.

There is some literature for this subject: less in Romanian doctrine, more in Western Europe and other developed part of the world. But this idea is not too much studied, because it is a Pandora box for a fundamental change to some truths understood as “eternal”, after 1989: the complete victory of image (EU supremacy in everything) was not possible, but too many people forget that is still possible to have an efficacy existence the national public law.

The author believes that is time to come back to normal logic in public law and politics, because the old ideas cannot be replaced by propaganda.

Paper Content

1. Last year was almost mad – according with normal political standard. In this time, almost everything was changed by few elements that join together, being able to defeat the official paradigm.

Nicolas Sarkozy is causing a big stir after calling on November 8th for a two-speed Europe: a “federal” core of the 17 members of the euro zone, with a looser “confederal” outer band of the ten non-euro members. He made the comments during a debate with students at the University of Strasbourg²:

“You cannot make a single currency without economic convergence and economic integration. It's impossible. But on the contrary, one cannot plead for federalism and at the same time for the enlargement of Europe. It's impossible. There's a contradiction. We are 27. We will obviously have to open up to the Balkans. We will be 32, 33 or 34. I imagine that nobody thinks that federalism—total integration—is possible at 33, 34, 35 countries.

So what one we do? To begin with, frankly, the single currency is a wonderful idea, but it was strange to create it without asking oneself the question of its governance, and without asking oneself about economic convergence. Honestly, it's nice to have a vision, but there are details that are missing: we made a currency, but we kept fiscal systems and economic systems that not only were not converging, but were diverging. And not only did we make a single currency without convergence, but we tried to undo the rules of the pact. It cannot work.

There will not be a single currency without greater economic integration and convergence. That is certain. And that is where we are going. Must one have the same rules for the 27? No. Absolutely not [...]. 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.”

These ideas was completed by another ones, presented on 1 December 2011, in Toulon, considered as the main speech for the presidential elections in France of April 2012³:

“The reform of Europe is not a march towards supra-nationality. The integration of Europe will go the inter-governmental way because Europe needs to make strategic political choices.”

Sarkozy said he would meet German Chancellor Angela Merkel in Paris on Monday to push ahead with joint proposals for a new EU treaty to fix flaws in the Maastricht Treaty and create a true economic government for the bloc.

He said France and every other euro zone country needed to enshrine a budget-balancing “golden rule” in their constitutions, to force stricter fiscal discipline as the bloc strives to reform itself or get left behind.

² <http://www.economist.com/blogs/charlemagne/2011/11/future-eu>, consulted on 16 January 2012.

³ Selection available on <http://www.reuters.com/article/2011/12/01/us-eurozone-france-idUSTRE7B014O20111201>, consulted on 16 January 2012

He also said the European Central Bank must stay independent and decide for itself when to act against the risk of deflation.

“Europe is no longer a choice. It is a necessity. But the crisis has revealed its weaknesses and its contradictions. Europe must be rethought,” Sarkozy said.

“Let us not hide it, Europe may be swept away by the crisis if it doesn't get a grip, if it doesn't change. A consensus has already emerged on budgetary and fiscal convergence as well as harmonization. There is also consensus about euro zone countries' commitments to deficit-reduction targets”.

2. It may be asked: why such a log presentation of Sarkozy speech?

There are two reasons:

a) The importance of French economy. Despite all problems with rating agencies, in Europe Paris voice is still strong. The engines of European Union project are Germany and France and their economies: without them, in less than 6 months every EU institution collapse and

b) French legal system is very important for many countries, the basics of public law is settled by Law faculty of Sorbonne from 19th century and their disciples.

3. In this case, we must see that the possibility of a change in the triumphant road to totally integration in European continent can be fulfilled or is something inevitable?

In May 2010 it had appeared a special text: “PROJECT EUROPE 2030. Challenges and Opportunities. A report to the European Council by the Reflection Group on the Future of the EU 2030”.

Form the first pages the destiny of European Union it was underlined that⁴:

“The choice for the EU is clear: reform or decline:

Many of these developments have been accelerated by the current financial and economic crisis, the worst crisis of its kind since the Great Depression, and one from which the EU will take some years to fully recover. The crisis has highlighted the structural weaknesses which underline most of the European economy: lower productivity, structural unemployment, inadequate labor market flexibility, outdated skills and poor growth.

If the EU does not adjust to the needs of the global economy, there is a real danger that Europe's relative decline may become absolute.

Embracing a global ambition should not result in scaling back domestic reforms, far from it; external influence cannot be achieved without solid growth and internal cohesion throughout the European Union. But our current era has decisively become a global one, a transformation which is creating new winners and losers. If we do not want to join the losing ranks, we have to take bold action now.”

3. As we notice here, is only the economy who speaks. But the economy is commercial law (mainly) and public law for instrument used by the government: the tax regime, the different regulations adopted to create a profitable framework for economy, the demography politics.

The EU has often found itself at the center of global historical processes. There would have been no European integration at all without the Cold War, to cite but one example. The Cold War made it impossible for the actors most responsible for the international bloodbaths of the first half of the twentieth century to engage in the brutal *realpolitik* that had led to such disasters⁵.

But European integration, once begun, was based on market and economic matters, making its course sensitive to major shifts in the international economy. After 1945, helped substantially by American aid via the Marshall Plan, each Western European country refined its specific strategies for governing the economy, growing its welfare state, steering and subsidizing national industrial

⁴ M. Monti et al., *PROJECT EUROPE 2030. Challenges and Opportunities. A report to the European Council by the Reflection Group on the Future of the EU 2030*, p. 12

⁵ George Rose, *The European Union and Its Crises Through the Eyes of the Brussels Elite*, (Palgrave Mcmillan, 2011, London), p. 12

development, regulating credit, priming the pump to stimulate demand, and sometimes outright planning⁶.

The end of the Cold War created a puzzling new international situation for the EU. The rapid collapse of the Yugoslav Federation illustrated how treacherous this new world order could be, as key member states, faced with an explosion of warfare and ethnic cleansing, could do little but squabble, issue solemn pronouncements, and send a few unarmed emissaries to the Balkans.

Despite much talk about common EU foreign and defense policies, it took US intervention to begin recreating order.

4. The collapse of the Soviet bloc posed even greater challenges. The ex-communist central and eastern European countries aspired to become market democracies, implying that they would eventually want to join the EU.

Adding ten or more poor and mostly small members in the midst of other very complicated and uncertain transitions was daunting, especially because the EU 15 were still digesting very large economic changes that had begun in the middle of 1980s.

Moreover, a flock of new members with different histories and interests from Western Europeans would complicate EU decision-making and involve reforms to EU institutions initially designed for six Western European countries.

5. The 2005 political ‘emergencies’ made the EU’s difficult situation much more visible. On May 29, the French held a referendum to ratify the European Constitutional Treaty. This document was the product of long public consultations and discussion by the European Convention, set up to remove matters of institutional reform from a seemingly bottomless mire of intergovernmental disagreement⁷.

On referendum day, 70 percent of French voters turned out and 55 percent voted “no”. The French debate had been thorough. Every citizen received the text – very expensive cost, and the first decade of 21st century introduce in public debate a new problem: the cost of EU institutions and the cost of propaganda for EU – and the issues had been discussed exhaustively by political leaders and the media. But unemployment was high, economic growth lagged, and there was widespread anxiety about the future of the French welfare state.

Sociologically, the middle classes, the better-educated, and the better-off voted “yes”. Blue-collar workers, rural dwellers, the young, the poorer and less well-educated were more negative, many fearing for the future of France’s social model and seeing the EU as a liberalizing threat to it. A majority of “no” voters also believed that by defeating the referendum they could thereby precipitate renegotiation of the ECT in a more “social” direction⁸.

Thus, the propaganda was addressed to the people with a high level education. In fact, it is something from the psychology science: educated people believe more in ideas, and they try to analyze fact according with official doctrines; less educated people think and act more in reality.

What is as not underlined: it was a discussion about losing of national sovereignty in both countries that used referendum – but not very decided, because the world economy still had good profit.

When the Dutch held their own ECT referendum a few days later on 1 June, their verdict, harsher than the French, was 62 percent against. Like France, the Netherlands was a founding EU member and had traditionally been strongly pro-European. The results of the French vote played a role in Dutch negativity, but the opposition had its own roots.

⁶ Ibidem.

⁷ Catherine Moury, Luís de Sousa, edit., *Institutional Challenges in Post-Constitutional Europe Governing change*, (Routledge, 2011, London), p. 5

⁸ John Erik Fossum, Agustín José Menéndez, *The Constitution’s gift: a constitutional theory for a democratic European Union*, (Rowman & Littlefield Publishers, 2009, Plymouth), p. 11

This was the first referendum in Dutch history and the government of the day was unpopular, partly because after long years of a supposed Dutch Miracle, the economy had turned sour. Politicians, confused by the new referendum procedure, did not campaign effectively and national debate was unclear. Perhaps more significant was the timing; Dutch society was in the throes of debate and upheaval about immigration and cultural diversity⁹.

What is surprising here: the first referendum in the history of Netherlands, despite important acts that creates a different political entity inside Eastern Europe. Where is the democracy?

6. Since 2007, when the EU enlargement had a break, it was time to think if the expansion was good and profitable. In that moment, it started the global economic crisis, which introduces all states on the same position: private economy is down; the only one change for escape was the public budget. And public budget means that public law is back (no matter if is national or supranational).

Once the Eurozone troubles exploded, however, the Union's responses confirmed the worst of their fears about deeper institutional dynamics. It was true that key Eurozone actors eventually reached some agreement on courses to follow, but whether it would be successful remained to be seen. What was clear was that it was much too slow in coming and dangerously costly in economic and political terms¹⁰.

National public law was the only one able to help states during the private banks crisis (2008 – 2009). The national budget represents a reserve and politicians was forced for the first time after many years to think more to the capacities of their national states to pay.

In this case, the cost of banking operations was paid by all citizens, and a big problem appeared: the legitimacy of national politicians – who saved the big banks – almost disappeared. A lot on internet blogs and forums was suffocated with critics: why national state must pay for the mistakes of private enterprises?

But this saving time made only one thing: create stronger holes on national budgets. In these cases, politicians were forced to recognize that the price of citizen's bribe was the public debt. The citizen's bribe was the comfort and the social services created in late 50 years.

Here EU law and EU social principles appeared again and the anger increase: the European standards of living were accepted by any state and any national politician: the cost was, of course, public debt¹¹, because the big jumps made by EU member states were not according with their economic potential.

So, almost all profit made by governments before private banks economic crisis was lost in 2008 – 2009; from 2010, when the holes of public budgets was difficult to be covered, the politicians understand that the European Union must help from its central budget, unless, the prestige will collapse and all integrative measures adopted in last 50 years will represent only a piece of cake.

Of course, it was impossible, national budget of big states was claimed – and Berlin and Paris started to ask for special conditions. Without them, the European construction will disappear, and from the big Corpus Juridicus Europeanum will remain only its values – which are, in a real interpretation, the high level of humanity moral.

7. A sign of this coming back of national public law is represented by the Treaty on stability, coordination and governance in the economic and monetary union, adopted on 31 January 2012.

In this text, the first article underlines the correct interpretation of European Union level of politician's purposes:

“By this Treaty, the Contracting Parties agree, as Member States of the European Union, to strengthen the economic pillar of the Economic and Monetary Union by adopting a set of rules intended to foster budgetary discipline through a fiscal compact, to strengthen the coordination of economic policies and to improve the governance of the euro area, thereby supporting the

⁹ Ibidem.

¹⁰ George Rose, *The European Union and Its Crises ...*, p. 160

¹¹ About public debt, watch Emil Balan, *Drept financiar/ Financial law*, (C.H. Beck, Bucharest, 2007), p 116

achievement of the European Union's objectives for sustainable growth, employment, competitiveness and social cohesion.”

For sure, today sustainable growth has a different interpretation: before 2007 this means economic growth for every state, and preserving high position for Western Europe; today it means: if we don't grow again fast, the EU will collapse. This is the correct interpretation of the text: “strengthen”. Today EU legal texts are more important to don't let the national states to run away!

For this we can watch more the preamble, which contain few dispositions impossible to fulfill today:

“... RECALLING the need to facilitate the adoption of measures under the excessive deficit procedure of the European Union for euro area Contracting Parties whose planned or actual government deficit to gross domestic product exceeds 3%, whilst strongly reinforcing the objective of that procedure, namely to encourage and, if necessary, compel the Member State concerned to reduce a deficit which might be identified,

RECALLING the obligation for those Contracting Parties whose government debt exceeds the 60 % reference value to reduce it at an average rate of one twentieth per year as a benchmark ...”.

Thus, the national public law must do everything to respect these dispositions, no matter the costs. We can consider that its role increase now (for sure, not for innocent purposes), but the law practitioner lost partially their skill of working with national law. In fact, this treaty is more an official invitation: “save who can”, because ... the main actor of EU had a public debt bigger than 60% (almost 100%, it seems).

So, today generation of politicians are confused: their “career plan” is menaced by the national public law (financial law, mainly) and citizens are now more informed like no other time. “Sto delat?”/What we can do? Lenin asked this – but the answer is, for sure, not communism, but a re-evaluation of national public law and its role, and, for sure, a different EU construction, only for big liberties and rights, but not more for public affairs.

Conclusions

Our text underlined few directions of research about the difficult problem of transforming European Union and its treaties – which change, as main consequences, the pillars of EU law – into a coherent organization, where the limits of national public law are not violated by the Brussels organizations.

The results of our research offer a small understanding for the big confusion which exists at the politic level, both directions: national and European. Now, the economy forces the politicians to recreate themselves, because the population starts to make pressure on streets and on internet.

It might be possible that our text to not be accepted for its ideas – the national public law is back; it is necessary to build now a new generation of politicians, etc. – but in “battle of ideas” the history proved many times that the ideas who are not on the same level with the official doctrines resists better then he “fashion on public debates”, because it is more sincerity on it. It is necessary – for a real impact of this article – that the lawyers must think a little for the destiny of their states and not only to read articles to discover new techniques for a blind appliance of any law, no matter its purpose or its effect.

This kind of researches are made more with the ear connected to the social noise – new direction of study can appear only if people will want to think in a normal way: the states are to different – as history and economic power – for a coherent and functional political integration. Internet can create a different psychology, but no one can replace the national tax system and the politician ambitions, which are more pillar of any political system: no politician, no promises; no money from the tax law, no money to fulfill the politician promises.

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