

# THE RELATIONSHIP BETWEEN EUROPEAN UNION LAW AND ROMANIAN LAW IN THE CONTEXT OF THE LAW UNIFORMIZATION AT EUROPEAN LEVEL

Dan VĂTĂMAN\*

## Abstract

*Taking into account the specific of the European Union law, which was synthesized by the Court of Justice of the European Union as "an own legal order integrated into the legal systems of the Member States", the aim of this study is to highlight the peculiarities of EU legal order, especially with regard to implementation of European legislation into national law of the Member States. For a full understanding of way in which the EU law is applied into Romanian law, a particular emphasis was given to the actions taken by the Romanian authorities to fulfil the commitments assumed in the Accession Treaty, especially with regard to the transposition and application of Union law. Also, were analysed the constitutional provisions and those contained in the four new codes concerning the application of EU law in the Romanian law.*

**Keywords:** *applicability of European Union law, Romanian law, legal order, implementation of legislative acts, law uniformization.*

## 1. Introduction

The complexity of the European Union and its legal order are not easy to understand, this difficulty is due, in part, even to the wording of the Treaties themselves, especially that certain concepts which are used in the Treaties are unfamiliar to the general public.

For this reason, in the research activity I have focused on the EU legal order through the prism of its peculiarities, with a focus on the process of adopting EU legislation and implementation of legislative acts into national law of the Member States. Thus, I emphasized the direct applicability and priority of EU law into national law of the Member States and the obligation for Member States to transpose and implement EU legislation, in this connection being analysed the relevant jurisprudence of the Court of Justice of the European Union.

Given Romania's status as a full member of the European Union and, especially, the fact that this goal has required extraordinary efforts from both the Romanian authorities and the Romanian citizens, I considered that is necessary to deepen the relationship between European Union law and Romanian law in the context of the law uniformization at European level, with the ultimate aim of accurate understanding the two systems of law. As a result, for a full understanding of way in which the EU law is applied into national law, in the first stage of research I have focused on the actions taken by the Romanian authorities to harmonize the national legal system to the provisions of the Community *acquis* for the accession of Romania to the European Communities / European Union. In the second phase of the research activity I have highlighted the efforts of Romania to

fulfil the commitments undertaken by the Accession Treaty, especially with regard to the transposition and application of Union law. Further I analysed the constitutional provisions and those contained in the four new codes concerning the application of EU law in the Romanian law, taking into account the views expressed in the doctrine.

## 2. General aspects concerning applicability of EU law into national law of the Member States

According to specifications of European Court of Justice, EU law is distinct from national legal systems and however it is imposed to Member States and their nationals, being an internal law of the European Union which is integrated into national law of each Member State.

Thus, between the legal order of the European Union and the legal order of Member States are developed relations based, on the one hand, on the principle of integrating EU law into national law of the Member States (principle that is translated by building at EU level of an autonomous and independent legal system, absorbed in the law systems of the Member States) and on the other hand, the principle of primacy of EU law over national law of the Member States. As a result, for the EU law are defining the following features: direct applicability and supremacy/priority of application.<sup>1</sup>

The direct applicability or direct effect means that EU law confers rights and imposes obligations directly not only on the Union institutions and the Member States but also on the Union's citizens. The principle of direct effect of European law was enshrined by the Court of Justice of the European Union in the judgement of *Van Gend en Loos* of 5

\* Professor PhD, "Titu Maiorescu" University, Bucharest, Romania (e-mail: [danvataman@yahoo.com](mailto:danvataman@yahoo.com)).

<sup>1</sup> Dan Vătămănuș, *European Union Law*, Bucharest, "Universul Juridic" Publishing House, 2010, pp. 9-10.

February 1963<sup>2</sup>, occasion on which the Court states that European law not only engenders obligations for Member States, but also rights for individuals. As a consequence, any individual or legal person may therefore take advantage of these rights and directly invoke the provisions of the Treaties and EU legislative acts adopted by institutions on the basis of the Treaties (regulations, directives and decisions) before national and European courts.

Regarding the supremacy or priority of EU law, the Court of Justice of the European Union formulated the so-called "communautaire" thesis according to that in relationship between national law of Member States and Community law, the latter must be supreme in the event of any conflict. This principle was first enunciated in the Case *Costa v. ENEL*<sup>3</sup> when the Court stated that by creating a Community of unlimited duration, having powers stemming from a limitation of sovereignty, or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and thus have created a body of law which binds both their nationals and themselves. The principle of EU law supremacy was consolidated by judgment of the Court in the Case *Simmenthal*<sup>4</sup>, where the Court stressed that Community law would take precedence even over national legislation which was adopted after the passage of the relevant EC norms. Thus, the existence of Community rules rendered automatically inapplicable any contrary provision of national law, and precluded the valid adoption of any new national law which was in conflict with the Community provisions.

### 3. The obligation of Member States to transpose and implement EU legislation

The European Union is founded on law and pursues many of its policies through legislation and is sustained by respect for the rule of law. Therefore, the success in achieving EU goals as set out in the Treaties and in legislation depends on the effective application of EU law in the Member States, this because laws do not serve their full purpose unless they are properly applied and enforced. According with European Commission the application and enforcement of EU

law involves many actors – the European institutions, the Member States, including local and regional authorities and courts.<sup>5</sup>

With the entry into force of the Lisbon Treaty were established powers of the European Union and were attributed to European Commission some monitoring and enforcement functions. Thus, in accordance with provisions of Treaty on European Union (TEU) was maintained fundamental obligation of Member States to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union<sup>6</sup>. At the same time, the European Commission is responsible for ensuring the application of the Treaties and of measures adopted by the institutions pursuant to them, for this purpose overseeing the application of EU law under the control of the Court of Justice of the European Union.<sup>7</sup>

As shown in the provisions of TEU cited above, while Member States have the responsibility to implement timely and accurately the EU legislation and to apply and implement correctly the entire *acquis*, the European Commission has to monitor the efforts of Member States and to ensure that their legislation is in conformity with EU law.

For this purpose, the Commission may contest on their own initiative the way in which the Member State implement the EU law but it also acts on the basis of petitions received from the European Parliament and complaints from citizens, businesses, NGOs and other stakeholders that reveal potential violations of EU law, for instance incorrect transposition or bad application of EU law.<sup>8</sup>

According to Article 258 of Treaty on the Functioning of the European Union (TFEU), the European Commission has the power to initiate the formal infringement procedure by referring the case to the Court of Justice of the European Union, with the possibility to request financial sanctions.<sup>9</sup>

I highlight that according to the case law of the Court of Justice of the European Union, the European Commission has the authority to decide whether it is necessary an infringement procedure<sup>10</sup> and, when it takes this decision, the time at which initiates the

<sup>2</sup> Judgment of the Court of 5 February 1963, Case 26/62 – *NV Algemene Transport en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*.

<sup>3</sup> Judgment of the Court of 15 July 1964, Case 6/64 – *Flaminio Costa v. ENEL* - Reference for a preliminary ruling: *Giudice conciliatore di Milano* – Italy.

<sup>4</sup> Judgment of the Court of 9 March 1978, Case 106/77 – *Amministrazione delle Finanze dello Stato v. Simmenthal SpA* - Reference for a preliminary ruling: *Pretura di Susa* – Italy.

<sup>5</sup> Communication from the Commission, *A Europe of Results – Applying Community Law*, COM(2007) 502 final, OJ C 4/13 of 9.1.2008.

<sup>6</sup> Article 4(3) of TEU.

<sup>7</sup> Article 17(1) of TEU.

<sup>8</sup> Report from the Commission – 31st Annual Report on monitoring the application of EU law (2013), COM(2014) 612 final.

<sup>9</sup> The infringement procedure can be initiate on the basis of other provisions of the Treaty, for example Article 106(3) of TFEU, corroborated with provisions of Articles 101 and 102 TFEU.

<sup>10</sup> Judgment of the Court of 6 December 1989, Case C-329/88 – *Commission of the European Communities v. Hellenic Republic, Failure by a Member State to fulfil its obligations - Failure to transpose a directive*; Judgment of the Court (Sixth Chamber) of 21 January 1999, Case C-207/97 – *Commission of the European Communities v Kingdom of Belgium, Failure of a Member State to fulfil its obligations - Council Directive 76/464/EEC - Water pollution - Failure to transpose*.

procedure<sup>11</sup>. The Commission also has the freedom to decide if and when refer the case to the Court of Justice<sup>12</sup>.

#### **4. Relationship between European Union law and Romanian law**

##### **4.1. The process of legislative harmonization with the European Union law before Romania's accession to the European Communities / European Union**

The harmonization process of Romanian legislation with the Community *acquis* represented a legal obligation under the Europe Agreement Romania-European Union, ratified by Romania by Law no. 20/1993<sup>13</sup>. The negotiations started with a preparatory phase or a screening of the *acquis* which was conducted by the Commission, and afterwards was necessary to adopt the basic legislation in order to harmonize national legislation with EU law before the Romania's accession to the European Communities / European Union.

In the first years, the process of approximation of the Romanian legislation with Community norms was carried out according to the National Program for Accession of Romania to the European Union, this document included clear responsibilities, divided on the *acquis* chapters.

Starting with 2003, this programme has been replaced with other Romanian internal programmatic documents. Thus, in 2003, the process of legislative harmonisation was carried out according to the Legislative Programme for Supporting the European Union Accession Process for the period November 2002 – December 2003, which was part of the Priority Action Plan for European integration (November 2002 – December 2003). The Programme essentially aimed at fulfilling the requirements expressed by the European Commission in the Country Report 2003.<sup>14</sup>

The next year marked important progresses in the harmonization process of the Romanian legislation with the Community legislation. In order to assure a fluid and effective legislative process, which would allow Romania to meet the deadlines of the measures it had assumed in the preparation for accession, the Ministry of European Integration, following consultation with other ministries and responsible institutions in the field, drew up The Priority Legislative Programmes (at law level) for the

Accession to the European Union, for the first and second semesters of 2004. The two programmes contained the relevant legislation for both the negotiations chapters and the political and economic criteria that Romania had to meet. The adoption of these laws is necessary to finalise the negotiations by the end of 2004.<sup>15</sup>

The Brussels European Summit (16-17 December 2004) endorsed the closure of negotiations and “noted with satisfaction that progress made by Romania in implementing the *acquis* and commitments entered into as regards, in particular, Justice and Home Affairs and Competition, has made possible to close formally all the outstanding chapters with Romania on 14 December 2004 and accordingly looked forward to welcoming it as a member from January 2007”. The European Council also considered that Romania will be able to assume all the obligations of membership at the envisaged time of its accession, provided that it continues its efforts to that end and completes in a successful and timely way all necessary reforms and commitments undertaken in all areas of the *acquis*, in particular the important commitments regarding Justice and Home Affairs, Competition and Environment.<sup>16</sup>

Therefore, the process of legislative harmonisation continued in 2005, too. At the proposal of the Ministry for European integration, the Government adopted up The Priority Legislative Programmes (at law level) for the Accession to the European Union, for the first and second semesters of 2005. The two programmes contained implementing and legislative measures resulting from commitments undertaken by Romania in the accession process.

The year 2006 was crucial for Romania's accession to the EU, whereas the Commission has closely monitored the fulfilment of commitments in the process of negotiation and preparation for accession, an essential aspect being the further harmonization of Romanian legislation and adoption of laws fully compatible with the Community *acquis*.

Consequently, the Romanian authorities have taken measures to ensure a fluid and efficient legislative process and, at the same time, to allow meeting deadlines for completion of the measures undertaken in preparation for Romania accession to EU and to avoid registration of delays. In this respect, were finalized The Priority Legislative Programmes (at law level) for the Accession to the European Union, for the first and second semesters of 2006.

<sup>11</sup> Judgment of the Court of 1 June 1994, Case C-317/92 – Commission of the European Communities v. Federal Republic of Germany, Medicinal products and medical instruments - National rules on the indication of expiry dates - Barrier to the free movement of goods - Failure to notify the Commission; Judgment of the Court of 10 May 1995, Case C-422/92 – Commission of the European Communities v Federal Republic of Germany, Failure of a Member State to fulfil its obligations.

<sup>12</sup> Judgment of the Court (First Chamber) of 6 October 2009, Case C-562/07 – Commission of the European Communities v. Kingdom of Spain-Failure of a Member State to fulfil obligations.

<sup>13</sup> Law no. 20/1993 was published in the Official Journal of Romania, Part I, no. 73/12 April 1993.

<sup>14</sup> [http://www.mdrl.ro/\\_documente/arhiva\\_mie/en/relatiile\\_ro\\_ue/armonizare\\_legislativa.htm](http://www.mdrl.ro/_documente/arhiva_mie/en/relatiile_ro_ue/armonizare_legislativa.htm), accessed on 23 January 2015.

<sup>15</sup> *Ibid.*

<sup>16</sup> Presidency Conclusions of the Brussels European Council (16/17 December 2004) - <http://www.consilium.europa.eu>, accessed on 23 January 2015.

In its report of September 2006, the Commission stated that Bulgaria and Romania have made further progress to complete their preparations for membership and they have reached a high degree of alignment. However, the Commission also identifies a number of areas of continuing concern and areas where will initiate appropriate measures to ensure the proper functioning of the EU, unless the countries take immediate corrective action.

In the case of Romania, the Commission showed that our country have made far-reaching efforts to adapt their legislation and administration to the laws and rules of the European Union. However, the Commission stressed that further efforts were needed in several areas, such as social policies and employment including public health, genetically modified organisms, motor insurance, capital requirements for credit institutions and investment firms, money laundering and the fight against fraud and corruption, financial management and control of future structural funds and animal diseases. Taking into account the progress made by Romania with regard to the political, economic and acquis criteria, the Commission considered that Romania has demonstrated their capacity to apply EU principles and legislation and will be able to assume the rights and obligations of membership of the European Union from 1 January 2007.<sup>17</sup>

#### 4.2. The efforts of Romania to fulfil the commitments undertaken by the Accession Treaty

As a result of the progress made, on 1 January 2007, Romania became a member state of the European Union, this quality involving not only rights but also obligations. Thus, Romania's accession to the European Union has meant an integration to a space of well-defined rules, a failure in applying these rules can generate corrective measures such as: safeguard measures, financial corrections of EU funds, competition policy measures and infringement procedures.<sup>18</sup>

Along with these measures, the Treaty of Accession of Romania to the European Union includes three provisions which allow the Union to remedy difficulties encountered as a result of accession: a general economic safeguard clause; a specific internal market safeguard clause; and a specific justice and home affairs safeguard clause<sup>19</sup>. In addition to these safeguard clauses, there was a clause according to that the Council may, acting unanimously on the basis of a

Commission recommendation, decide that the date of accession of that State is postponed by one year to 1 January 2008.<sup>20</sup>

Pursuant to the provisions of the Act of Accession, whilst noting the considerable efforts to complete Romania's preparations for membership, the European Commission has identified some remaining issues, in particular in the accountability and efficiency of the judicial system and law enforcement bodies, reason which warrant the establishment of a mechanism for cooperation and verification of the progress of Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption. As a consequence, by Commission Decision 2006/928/EC of 13 December 2006 has been established a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption<sup>21</sup>.

The Co-operation and Verification Mechanism (CVM) and specific benchmarks<sup>22</sup> was put in place to improve the functioning of the legislative, administrative and judicial system and to address serious deficiencies in fighting corruption. The purpose of the Cooperation and Verification Mechanism is to ensure that measures are taken to provide assurance to Romanians and to the other Member States that administrative and judicial decisions, legislation and practices in Romania are in line with the rest of the EU.

Based on inputs from the Romanian authorities, complemented by expert missions, the European Commission presented a series of evaluation reports in which are presented a summary and detailed assessment of how far Romania has come in meeting the benchmarks set out in the CVM.

According to the latest report presented by European Commission at 29 January 2015, since then CVM reports have charted the progress made by Romania and have sought to help focus the efforts of the Romanian authorities through specific recommendations. The CVM has played an important role in the consolidation of the rule of law in Romania as a key facet of European integration. Monitoring and cooperating with the work of the Romanian authorities to promote reform has had a concrete impact on the pace and scale of reform. The 2014 CVM report noted progress in many areas, and highlighted the track record of the key anti-corruption institutions as an important step towards demonstrating sustainability.

<sup>17</sup> Communication from the Commission - Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, COM (2006) 549 final, Brussels, 26.9.2006.

<sup>18</sup> Dan Vătăman, *History of the European Union*, Bucharest, "Pro Universitaria" Publishing House, 2011, p. 110.

<sup>19</sup> Articles 36, 37 and 38 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded - OJ L 157/203 of 21.6.2005.

<sup>20</sup> Ibid, Article 39.

<sup>21</sup> OJ L 354 of 14.12.2006, pp. 56–57.

<sup>22</sup> The four benchmarks are summarized in the Annex of Decision 2006/928/EC, as follows: a) Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy - Report and monitor the impact of the new civil and penal procedures codes; b) Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken; c) Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption; d) Take further measures to prevent and fight against corruption, in particular within the local government.

At the same time, it noted that political attacks on the fundamentals of reform showed that there was no consensus to pursue the objectives of the CVM.<sup>23</sup>

As can be seen, although the reports on the progress made by Romania in the CVM reflects the sustainability and irreversibility of the reforms implemented, to eight years after accession these reports still contain recommendations on matters related to the judicial independence, judicial reform, integrity and fight against corruption.

If we refer to the positive aspects of reform should be noted that from the date of accession to the European Union, Romania has pursued an ambitious legislative program comprising the new legal Codes, action which had a special importance to the modernisation of the Romanian judicial system. However, the challenges facing the judicial system are still numerous, these issues were approached in the "Development Strategy of the judicial system 2015-2020"<sup>24</sup>, document which sets the directions of action, strategic and specific objectives to achieve a modern judicial system.

In my opinion, following analysis of planned measures to be taken during the period 2015 - 2020, it is clear that Romanian authorities want to eliminate the concerns expressed by the European Commission relating to the judicial independence, judicial reform, integrity and fight against corruption, and through the adopted measures pursuing the institutional and legislative strengthening of judicial system.

#### **4.3. Provisions of the Constitution and of the new legal Codes concerning the application of EU law in the Romanian law**

With regard the relationship between international law and national law, the Romanian Constitution provides that "the Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to". At the same time, the Constitution states that "if a treaty Romania is to become a party to comprise provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution".<sup>25</sup>

In addition to these provisions, the Constitution sets the priority of international treaties on human rights in this regard showing that "constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to". More than that, "where any inconsistencies exist

between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions".<sup>26</sup>

In addition to recognizing the priority of international treaties to which Romania is a party, the Constitution clarifies the relationship between national law and EU law. Thus, in connection with the integration of Romania into the European Union, the Constitution establishes that "the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act, these provisions shall also apply accordingly for the accession to the acts revising the constituent treaties of the European Union".<sup>27</sup>

A normal question arises, respectively if the term "national laws" includes constitutional provisions or, in other words, to what extent the priority of the EU law applies over the constitutional norms, especially the Romanian fundamental law enshrines the principle of supremacy of the Constitution, according to that "in Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory".<sup>28</sup>

On this subject there are several currents of thought, one claiming supremacy of the Constitution, inclusive over to European Union law, and another which claiming priority of consistent and unconditional application of all European Union law rules over all national law rules, inclusive over to constitutional provisions.

In its jurisprudence, the Romanian Constitutional Court has not yet examined the relationship between Romanian constitutional law and EU law. But, as shown in a concurrent opinion formulated to the Decision no. 1656 of Constitutional Court, "EU legal order and internal constitutional order are complementary sets of legal rules, and the relationship between them is not based on a hierarchy of norms, so the concept of «supremacy» is replaced by the concept of «priority». Moreover, nor the Court of Justice of the European Union in its case does not use the concept of a «lower or upper» legal order".<sup>29</sup>

The principle of EU law priority was enshrined in the new Romanian Civil Code, entered into force on 1 October 2011, which states that "in matters governed by Code, the rules of EU law shall apply with priority,

<sup>23</sup> Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, COM (2015) 35 final - <http://ec.europa.eu>, accessed on 30 January 2015.

<sup>24</sup> Development Strategy of the judicial system was adopted by Government Decision no. 1155/2014, published in the Official Journal of Romania, Part I, no. 19/12 January 2015.

<sup>25</sup> Article 11 of Constitution of Romania, published in Official Journal of Romania, Part I, No. 758 of 29 October 2003.

<sup>26</sup> Ibid, Article 20.

<sup>27</sup> Ibid, Article 148.

<sup>28</sup> Ibid, Article 1(5).

<sup>29</sup> Concurrent opinion formulated by Judge Iulia Motoc to the Decision no. 1656 of Constitutional Court of 28 December 2010, published in the Official Journal of Romania, Part I, no. 79/31 January 2011.

regardless of the quality or status of the parties"<sup>30</sup>. Thus, the consecration of EU law priority in relation with national law encourages subjects of law (individuals and legal entities) to invoke European rules before national and European courts, when they consider that their rights have been violated.

In correlation with these provisions are those contained in Article 4 of the New Civil Code, according to that "where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions".<sup>31</sup>

These provisions are relevant in the context of the major legislative changes at the European level regarding human rights, and here I refer to the fact that the Charter of Fundamental Rights of the European Union has become legally binding on the EU with the entry into force of the Lisbon Treaty<sup>32</sup>. More than that, by the Lisbon Treaty was established that "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law", reason for that "the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms"<sup>33</sup>.

EU law priority was also enshrined in the new Romanian Civil Procedure Code, which stated that "the rules of EU law shall apply with priority, regardless of the quality or status of the parties"<sup>34</sup>. Also, the Civil Procedure Code provides that "in matters governed by Code, the provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to". In addition, the Code stated that "where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and this

Code, the international regulations shall take precedence, unless the Code comprises more favourable provisions"<sup>35</sup>.

The principle of application with priority of international treaties and EU law was also consecrated by new Criminal Code and new Criminal Procedure Code. Thus, in case of application of criminal law in space, the Criminal Code states that these "shall apply unless otherwise provided by an international treaty to which Romania is a party"<sup>36</sup>.

Also, setting out the principles and limits of the criminal procedural law, the new Criminal Procedure Code provides that "the rules of criminal procedure are aimed at ensuring the effective exercise of judicial functions of guaranteeing the rights of the parties and other participants in criminal proceedings such a manner that to respected the provisions of Constitution, the constituent treaties of the European Union, the other EU regulations on criminal procedure and the covenants and treaties on fundamental human rights to which Romania is a party"<sup>37</sup>.

## 5. Conclusions

Based on the legal provisions contained in the new codes, the Romanian juridical doctrine<sup>38</sup> considered that the provisions of international covenants, the EU law and other rules contained in international treaties signed by Romania are integrated in national law, with mention that through these categories of rules should understand both "primary" rules and "derived" rules from the decisions of the two European courts, European Court of Human Rights<sup>39</sup> and Court of Justice of the European Union<sup>40</sup>.

Taking into account the views expressed in the doctrine and based on the results of research activity, I believe that application with priority of international treaties and EU law in national law is a fundamental requirement in the context of Romania's integration into the Euro-Atlantic structures.

<sup>30</sup> Article 5 of New Civil Code, republished in the Official Journal of Romania, Part I, no. 505/15 July 2011, in the basis of Article 218 of Law 71/2011 for the implementation of Law no. 287/2009 on the Civil Code.

<sup>31</sup> Ibid, Article 4.

<sup>32</sup> According to Article 6(1) of TEU, "the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties".

<sup>33</sup> Article 6(2) of TEU.

<sup>34</sup> Article 4 of New Civil Procedure Code – Law 134/2010, republished in the Official Journal of Romania, Part I, no. 545/3 August 2011, in the basis of Article 80 of Law 76/2012.

<sup>35</sup> Ibid, Article 3.

<sup>36</sup> Article 12 of New Criminal Code - Law no. 286/2009, published in the Official Journal of Romania, Part I, no. 510/24 July 2009, as amended and supplemented.

<sup>37</sup> Article 1 of New Criminal Procedure Code - Law no. 135/2010, published in the Official Journal of Romania, Part I, no. 486/15 July 2010.

<sup>38</sup> Ion Deleanu, Valentin Mitea, Sergiu Deleanu, *Treaty of Civil Procedure. Revised and supplemented edition*, Bucharest, "Universul Juridic" Publishing House, 2013, p. 58.

<sup>39</sup> According to Article 46 (1) of Convention for the Protection of Human Rights and Fundamental Freedoms, the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties, thus being established the binding force of the Court judgements.

<sup>40</sup> Under Article 51 of Charter of Fundamental Rights of the European Union, the provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

Regarding the relationship between European Union law and Romanian law, I am convinced that in the context of Romania's status as a Member State of European Union, any recognition of the national legislation priority would be a breach of assumed obligations and also a serious violation of the provisions of the European Treaties.

At the same time, taking into account the provisions of the European Treaties consolidated through the reform realised by Lisbon Treaty, I express conviction that entire national legislation, including constitutional provisions, must be harmonized with European law. Thus, in accordance with the normative evolutions at European level, I think that at the future revision of the Romanian Constitution must be introduced a new paragraph in Article 5 (Citizenship) which should reflect the provisions of Article 2 (1) TFEU, according to that: "Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship". Also, should be completed Article 17 of Romanian Constitution in light of the provisions of Article 2 (2) TFEU, pursuant to which the European citizens have the right "to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the

protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State".

Moreover, taking into account the progress made by Romania in the European integration process, I am convinced that for the future revision of the Romanian Constitution must be taken into account the reform carried out by Lisbon Treaty as well as the judgments of the Court of Justice of the European Union concerning the consecration of the direct effect and priority of EU law. Thus, is urgently required that Article 148 of the Romanian Constitution to be modelled in accordance with Article 5 of the New Civil Code and Article 4 of the New Civil Procedure Code, which similarly provide that "the rules of European Union law shall be applied with priority, regardless of the quality or status of the parties".

In view of the above mentioned information, I am confident that this study represents a scientific support that allows future developments of research in the field of European Union law, thereby enabling interested parties to understand and apply the provisions of the treaties on which the European Union are founded and also the acts adopted by Union institutions in application of the treaties, allowing them to correlate theoretical knowledge with the ability to apply them in practice.

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- [www.consilium.europa.eu](http://www.consilium.europa.eu) – Council of the European Union;
- <http://ec.europa.eu/> - European Commission;
- [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu) – Access to European Union law;
- <http://www.mdrl.ro> – Archive of the Ministry of European Integration.