

PN II „IDEI” ; ID_1211

The project: *Optimizing the implementation capacities of the communitarian juridical order into national juridical order*

Project Code ID 1211

Head of the Project: Prof. Emil Gheorghe Moroianu, Ph. D.(Institute of Juridical Research of the Romanian Academy)

The development period: October 2007-october 2010

Team members:

- a) **expedited:** Prof. Emilia Mihai, Ph.D., (West Univesity, Faculty of Law, Timisoara); Tudor Avrigeanu, Ph.D., Scientific researcher II (within the Institute of Juridical Research "Acad. Andrei Rădulescu" of the Romanian Academy, M. Iur.Comp. of the Bonn University)
- b) **without experience:** Lecturer Ina Raluca Tomescu, Ph.D., (Univesity "Constantin Brâncuși", Tg. Jiu, Faculty of Juridical Sciences); Mihaela Berindei, scientific researcher, Institute of Juridical Research "Acad. Andrei Rădulescu" of the Romanian Academy; Ion Ifrim, scientific researcher III, Institute of Juridical Research "Acad. Andrei Rădulescu".

Presentation of the Stage of Fulfillment the Project

I. The Stage of Performances Indicators Fulfillment:

The research activity was realized by the team members, in the original composition, as shown in the Primary Contract, settled in 2007, without further modifications.

Regarding the stage from the year 2007, the fulfillment of the performance indicators was materialized in the conceptual analysis of the communitarian juridical order in relation with the internal juridical order, and also with a critical reading and conclusions regarding the Romanian legislation from the perspective of the initial texts of the Treaties and also the derivate ones, that fundaments the communitarian structures of the European Union. It is also shown how they are reflected in Romanian Constitution and legislation, through workshops with young researchers and by publication, in the Journal "Romanian Law Studies" nr. 1-2/2008 of the study: *The concept of juridical order*.

For the stage 2008, the research activity of the team members was focalized on the four proposed objectives ("The evolution of the European constitutional texts regarding the superposition of the Communitarian law in relation with the national law and the national jurisprudence of the communitarian states in assuring the preeminence of the communitarian law"; the normative acts of communitarian law and the hierarchy after the juridical force", "the control of the state of the frontiers and immigrants in order to create an European security space", " the European politics regarding the protection of the consumers". The harmonization of the Romanian law and jurisprudence with the communitarian law; drafting synthesis studies based on documentation and study in order to realize these objectives.

From the point of view of the dissemination of the results and testing our interrogation, based on the research project, we requested and obtained, from the Romanian Academy Presidium, the accord to found the Centre of the European Law Studies, within the Institute of Juridical Research of the Romanian Academy, a institutionalized structure, that holds debates and colloquiums regarding the impact of the communitarian law in the Romanian law; the debates and colloquiums are held monthly, as a tradition. The participants at these debates are young researchers, professors, judges, prosecutors, lawyers, high public functionary.

Two studies were delivered: Emil Moroianu: *Le Traité de Lisabonne (2007) modifiant le Traité sur l'Union Européenne et le Traité instituant la Communauté européenne: son intégration dans l'ordres juridiques nationaux*, for the Journal „Revue de droit comparé” (at the sollicitation of the professor Vlad Constantinesco, Dean of the Law Faculty "Robert Schumann" from Strasbourg); Tudor Avrigeanu: *Rechtfertigung, Zurechnung und Bestrafung* for the Journal „Zeitschrift für die gesamte Strafrechtswissenschaft, **studies accepted for publication**; Emil Moroianu: *The concept of sovereignty*, published in the Volume "Problems of the application of the law within the European space", International seminary, Valahia University, Targoviste, The University Castilla, La Mancha, Spain, 2008, and also "The human rights between the juridical universalism and the right to differentiation. A socio-anthropological approach" (**published** in the volume "Communitarian law and internal law. Aspects regarding the legislation and the jurisprudence", Publishing House: Hamangiu, 2008, under the auspices of the Romanian Academy; Tudor Avrigeanu, "A pure theory of the penal Law? Thomas Hobbes, Hans Kelsen and Vintila Dongoroz", **published** in the Journal "Romanian Law Studies" nr. 1-2/2008; Ion Ifrim, "Some reflections on the accessory punishments" published in the Journal "Romanian Law Studies" nr. 1-2/2008, studies that reflect the documentation activity and study within our Project.

For the year 2009 the Project provided two theoretical objectives: "*The law of competition within the Jurisprudence of the European Court of Justice and its impact on the Romanian legislation*" and "*The consumer's rights and its protection by communitarian law*". **The two objectives were fulfilled by dissemination of the results.** Centre of the European Law Studies held seminars on this subject, as it results from the Report presented to CNCISIS, at the discount period for the year 2009. Professor Emilia Mihai, Ph.D., published two studies in the Journal "Revista Nationala de Drept", "*About the efficiency of the clemency programs*", nr. 1/2010, and "*The consent – a notion with a variable contain within the law of Concurrence*", admitted for publication in 2010.

We also mention the publishing of the study „*Justification, imputation and punishment*, Tudor Avrigeanu, Ph.D, in the Journal „Curentul Juridic” nr. 4/2009, p. 15-37, (B⁺ Journal), edited by the University "Petru Maior" , Tg. Mures, and also signing the editing contract nr. 107/17.06.2009 between Tudor Avrigeanu Ph.D, and the Publishing House Wolters Kluwer Romania, having a subject the publication of the monograph: "*Social danger, personal guilt and penal imputation – a program for a theoretical explanation of the Romanian penal law*".

For 2010 the Project provides the **following objectives**:

1. *Analyzing the Romanian administrative and legislative politics regarding the assuring the implementation and respecting the communitarian law;*
2. *Analyzing the conditions of fulfilling the JAI Program (The cooperation at the level of Justice and Internal Affaires)*
3. *Finishing a group of measures for the harmonization of the legislation and the Constitution.*

II. The main new results, original and valuable from the scientific point of view:

- a) The distinctions made between the notions of juridical order – law order – public order – communitarian order – international juridical order and the preeminence of the communitarian juridical order on the national juridical order (*Emil Moroianu*);
- b) New theoretical aspects regarding the history of the sovereignty concept and the reference to this concept from the perspective of the kelsian philosophy of law (*Emil Moroianu*);
- c) Revealing the discussions within the communitarian doctrine regarding a possible classification of the communitarian juridical norms, of the sources of the communitarian law (*Emil Moroianu*);
- d) Evidencing the dilemma between the universalization and the regionalization of the human rights (*Emil Moroianu*);
- e) *De lege ferenda* proposals in the matter of concurrence law, and also the consumer and protection law from the perspective of the analyzing the communitarian doctrine and the jurisprudence of the European Court of Justice from Luxemburg (*Emilia Mihai*);
- f) New perspectives on the analysis of the concept of *consent* regarding the Concurrence law, in conformity with the discussions within the communitarian doctrine (*Emilia Mihai*);
- g) Evidencing the impact of the totalitarian political ideologies on the concepts of the penal law theory and analyzing how were the scientific reactions to totalitarianism, in the field of penal law (*Tudor Avrigeanu*);
- h) Evidencing the essential correlation between the concepts of any systematic construction of the penal law and the main European paradigms of the moral philosophy (*Tudor Avrigeanu*);
- i) the consolidation of the grammatical category of the penal law by integration of the historical analysis (J. Hrustchka), a comparative analysis (G.P. Fletcher) and the functional analysis (G. Jakobs) (*Tudor Avrigeanu*);
- l) Subsequent conceptual transfers at the level of the legislative reforms of the penal law, pre-eminently in Germany, and the structural similarity of the evolution in Italy and Romania (*Tudor Avrigeanu*);
- m) Evidencing and analyzing the indirect confrontation of the Romanian penal theory (Shneur Zalman Feller) with the common law doctrines and the Germanic law doctrines in Israel (*Tudor Avrigeanu*);
- n) The extension, in Romania, of the historical analysis regarding the evolution of the concepts crystallized in *Philosophia practica universalis* (S. Puffendorf – Chr. Wolff – Imm. Kant) as an European common reaction of the XVII-XVIIIth Centuries (*Tudor Avrigeanu*);
- o) Systematical explanation of the institutions of the General Theory of the Offence through general admitted categories at an European level by precise identification of the origins of those (*Tudor Avrigeanu*);
- p) Analyzing the European Union politics regarding the international terrorism fight with *de lege ferenda* implications in our internal public law (*Ina Raluca Tomescu*);
- r) Critical analysis and *de lege ferenda* proposals regarding the people with asylum in Romania in conformity with the European norms (*Ina Raluca Tomescu*);

III. Implication of the young researchers and the way that it is reflected in the personal expenses

The role of the three young members of the research team had been clearly emphasized, they fulfilling the attributions and realizing the adequate activities of their level of training and the requests imposed by fulfilling the Project:

The three members (Ina Raluca Tomescu, Ion Ifrim și Mihaela Berindei), had participated, during the entire activities provided by the Project at all international and seminaries, the debates provided by the project and developed by the Centre for European Law Studies within the Institute. They also had a sustained activity in the field of scientific documentation, information, in order to identify the existent works, until present day, referring to the communitarian legislation and also in relation to all the actions provided in order to fulfill the project.

In 2008, *Mihaela Berindei* participated at the Conference „*Quel droit européen des contrats pour l'Union Européenne?*” (Sorbona University, Paris, 2008).

In 2009 *Ina Tomescu* had the following **publicist activity**: "*European policy of security and defense*" published in the volume "Security and defense within the European Union", Editura Universității Naționale de Apărare "Carol I", Bucharest, 2008, ISSN: 1844-30-95; "*Terrorist financing in the European Union*" published in the volume "Security and defense within the European Union", Editura Universității Naționale de Apărare "Carol I", Bucharest, 2008, ISSN: 1844-30-95; "*Consolidating the security policy of the European Union through the Lisbon Treaty – The European service of External Action*", published in the volume "The security of the air and maritime space at the eastern frontier of the European Union" Editura Universității Naționale de Apărare "Carol I", Bucharest, 2008, ISSN: 1844-7635; "*The radicalization and the recruiting the Islam in the European Union*", Proceedings of the International Scientific Conference *European Developments and Globalization*, ECO TREND, V-th edition, Editura „Academica Brâncuși” Tg-Jiu, 2009, ISSN: 1842-4856; "*Citizens' rights and liberties vs. antiterrorist legislation*", Proceedings of the 1st International Scientific Conference „The Role and Place of Law in a Society Based on Knowledge", Editura „Academica Brâncuși” Tg-Jiu, 2009, ISBN: 978-973-144-283-9; "*The priorities of the European Union in fighting against the terrorism*", in the volume: „Security and defense”, Editura Universității Naționale de Apărare "Carol I", Bucharest, 2009, ISBN: 978-973-663-719-6; "*European Union and the member states, possible targets of the international terrorism*", published in the volume „The security of the air and maritime space at the eastern frontier of the European Union", Editura Universității Naționale de Apărare "Carol I", Bucharest, 2009, ISSN: 1844-7635; "*The fields of the antiterrorist actions of the European Union*", in the volume: "The security of the air and maritime space at the eastern frontier of the European Union", Editura Universității Naționale de Apărare "Carol I", Bucharest, 2009, ISSN: 1844-7635; "*European Area of Justice*", in: International Journal Of Juridical Sciences, Editura Universității Agora, Oradea, 2009, autor, ISSN: 1584-2428; "*The transposition of the frame-Decision regarding the European warrant of arrest in the Romanian law*", Proceedings of the International Conference „Days of law”, Masaryk University, author, ISBN: 978-80-210-4990-1.

Participations to scientific manifestations: "*National citizenship and European citizenship – complementary or mutual exclusion?*", Scientific symposium „Participation of the Romanian air and naval forces to the military actions within NATO and EU”, organized by the Department of Air and Naval Forces within the National University of Defense "Carol I", Bucharest, author; "*European policy of security and defense*", Scientific communication with international participation, Strategies XXI, the theme: Security and defense in the European Union, organized by the National University of Defense "Carol I", Bucharest, 17th-18th of April 2008; "*Terrorist financing in the European Union*", Scientific communication with international participation, Strategies XXI, the theme: Security and defense in the European Union, organized by the National University of Defense "Carol I", Bucharest, 17th-18th of April 2008; "*Consolidation of the security politics of the European Union through the Lisbon Treaty – the European Service of External Action*", A session of scientific communications ""The security of the air and maritime space at the eastern frontier of the European Union", organized by the National University of Defense "Carol I", Bucharest, July, 2008; "*The priorities of the European Union in fighting against terrorism*" Scientific communication with international participation, Strategies XXI, the theme: "*Regional stability and security*", organized by the National University of Defense "Carol I", Bucharest, 9th-10th of April 2009

Year 2010:

- *Ion Ifrim* : **publicist activity**: **1)** *Some reflections and the reability of states for international illicit acts*, in Journal "Acta Universitatis Danubius", nr.1/2010 (edited by Danubius University, Galati, (B⁺ Journal); **2)** "*Penal protection of the social and private life of the person*", in Romanian Journal of Sociology, edited by the Institute of Sociology of the Romanian Academy, (B⁺ Journal); **Participations to scientific manifestations**: Participation at the International Conference of young Ph.D students in law, from the eastern and central Europe, 16th of April 2010 Timisoara, with the study: "*Reflections regarding the concept of private life*",

published in the volume: European Legal Studies and Research, vol. II, Public Law, publishing House: Wolters Kluwer, p.344-347.

In January 2010 – taking the first exam within the doctoral school.

- *Mihaela Berindei* : **Participations to scientific manifestations:** Participation at the International Conference of young Ph.D students in law, from the eastern and central Europe, 16th of April 2010 Timisoara, with the study: "*Some considerations regarding the existence conditions of the legal support obligation*", published in the volume: European Legal Studies and Research, vol. I, Private Law, publishing House: Wolters Kluwer, p. 59-64.

In May 2010 – taking the first exam within the doctoral school

At the time when the Project began, the professional situation of the team members was:

1. *Emilia Mihai* Ph.D - in 2008 obtains the didactical grade of Professor, by the Order of the Ministry

2. *Ina Raluca Tomescu* – Ph.D student in law at the National Military College "Carol I", obtains the degree of Ph. D I Military Sciences in July 2009, with the thesis: "*European Union Politics in fighting the international terrorism*"

3. *Ion Ifrim* – scientific researcher; in 2008 obtains the third grade in research, by exam, and he is admitted to the Ph.D. student in law school, within the Institute of Juridical Research, (specialization: penal law), under the coordination of Professor George Antoniu, Ph.D.

4. *Mihaela Berindei* – scientific researcher is admitted to the Ph.D. student in law school, within the Institute of Juridical Research, (specialization: Civil law), under the coordination of Professor Marilena Uliescu, Ph.D.