PN II „IDEI" ; ID_1211
Project Code ID 1211
The project:
"*Optimizing the implementation capacities of the communitarian juridical order into national juridical order*"

Synthesis of the work, year 2009
(third year of the Project)

Objectives and activities

The research activity was realized by the team members in the initial structure, stipulated by the basic contract, signed in 2007, without any amendments. The proposed objectives for the unique period of 2009 and the adjacent activities proposed to be fulfilled were four for each member, both as documentation and study, and also the elaboration of the synthesis-papers.

As follows, the **Prime Objective** ("*The Concurrence Law within the jurisprudence of the European Court of Justice and its impact on Romanian legislation*", persons implicated in this objective were*: prof. Emil Gheorghe Moroianu Ph.D*, director of the project, Institute of Juridical Research "Acad. Andrei Radulescu" of the Romanian Academy and *prof. Emilia Mihai Ph.D*, Faculty of Law, West University, Timisoara) consisted in studying the communitarization process of the national positive rights of the concurrence by increasing the role of the communitarian jurisprudence as a source of law in the field of concurrence, which, for the Romanian legislation, is very eloquent, on one side, by the emphasized recognition in our positive law the role of the Luxemburg European Court of Justice jurisprudence in a very unknown domain for our national legislator, and on the other side, of the impact of the decisions of the European Court of Justice on the mentalities of our Courts, in the condition that the national judge is obligated to apply the communitarian law and jurisprudence, even if those would come in conflict with the national law. The main purpose was the procesualization of the concurrence law on a conspicuous communitarian dimension.

On a second level, but closely followed, was the problem of reforming the communitarian regime of the concurrence restrictive practices, of the variable contain of the notion of "*consent*" within the law of concurrence, in the conditions of the communitarization of this notion, and also the leniency programs in the matter of concurrence, issue that we consider to be new in Romanian specialized literature. The documentations and the studies on the issues regarding the contain, but also those regarding the terminological innovation of the commercial and concurrence law, through the impact considered by us to have been produced on the national juridical order in matter, had materialized into practical activities as follows: organized debates on the liberty of establishment issue, in the case of transferring the residence of a moral person, resident in a member state of the European Union, on the national territory of other member European Union state, with a special view on the case Cartesio C-210/06; another debate, with a special interest for the practicians of law (judges, lawyers, prosecutors) was the issue of the auto fee from the perspective of communitarian law. Based on the carried out documentation, on a critical point of view of the proposed issue, there were expressed some proposals *de lege ferenda,* proposals became scientific papers, and also studies delivered for publication.

The critical examination of the Romanian jurisprudence, in this case, related to the jurisprudence of the European Court of Justice in the field of concurrence, was finalized with a debate-seminary regarding the interpretation and application of the communitarian regulation into the national law, the conditions and elements of a such complex process. The

discussions held within the debate-seminary were based on a case study – the Regulation (EC) nr. 1408/71.

The second objective (*The rights of the consumer and his protection through communitarian law*; persons implicated in fulfilling this objective: *prof. Emil Gheorghe Moroianu, Ph.D* and *prof. Emilia Mihai, Ph.D.*) aimed the study of the specific proceedings in Europe regarding the defense of the rights of the consumers, *de facto* responsibility of the product and, also, standardizing the contractual law, aspects that will be a challenge for the Romanian legislator.

There also had been studied the communitarian politics, the legislation and European jurisprudence regarding the consumers protection, it was analyzed the experience in this matter of other member states. The research in 2010 will be finalized with *de lege ferenda* proposals in this matter.

The **third objective** (*A critical examination of the Romanian penal law and jurisprudence in relation with the communitarian acts in the matter*) was developed in **two directions**: 1. **First direction** (*scientific researcher II Tudor Avrigeanu, Ph.D*, Institute of Juridical Studies of the Romanian Academy) was constituted by the analysis of the concepts of *justification* and *imputation*, with their derivates within the Romanian legislation, and systematically neglecting their theological substratum origin, pointed out by European researches in the field of penal law. The necessity of conducting investigations that will thoroughly show the substratum of the two concepts is a very actual theme because of the debates over the last few years on the drafts for a new Romanian penal code. The actual adopted Penal code, pointed out the existent lacunas regarding the theoretical fundaments in the Romanian penal law. There were taken into consideration, within the critical analysis, comparative elements from the perspective of elaboration the penal concepts and categories from Romania and other member states from which legislations some regulations were taken. After taking over certain provisions, there were made supplementary correlations that will permit a general perspective on these concepts from a European perspective. The conducted analysis-studies indicate an important gap of the Romanian penal doctrine in relation with the west and central European doctrines, the causes of such a gap being determined by neglecting the evolutions in the matter of the fundamental juridical research, the selection of the sources and separating the comparative analysis of the doctrines. There were also identified, within the conducted studies, massive terminological confusions, with possible and severe consequences in the field of penal jurisprudence. 2. **The second direction** of studying this objective ("*Normative acts in the field of European penal politics and modalities of reception in our juridical order"* and "*A critical evaluation of the Romanian legislative politics in fulfilling the European Space of Justice (Pylon III")* – (participants: *prof. Emil Gheorghe Moroianu, Ph.D*; *lecturer Ina Raluca Tomescu, Ph.D*, Faculty of Law and Administrative Sciences of the "Constantin Brancusi" University, Tg. Jiu; *Ion Ifrim, scientific researcher III*, Institute of Juridical Studies of the Romanian Academy).

Our research emphasize that it is not possible that the penal legislation to be left out during the European integration processes, exclusively only in relation with the national interests. For example, the assurance of the free circulation of the persons, goods, services could not be realized without using the normative penal frame, even if we were referring only to the necessity of incrimination and sanction of the discrimination offences based on nationality, sex, religion, race, economical relations or labor relations. The penal norm is inevitably involved in the repression of the offences regarding the obstruction of the free circulation of goods, through custom, fiscal, administrative obstacles.

The research also emphasizes the obligation of the member states to fulfill, unconditionally the goals of the European Union, using all means they dispose, including the

penal instruments, wherever these instruments would prove more efficient in fulfilling the goals of the Union.

The attention of the research focalized also on the extremely actual issue of the intervention of the penal law in repression the serious deeds of aggression the financial interests of the European Union.

As certain that are big frauds both in the way of spending the communitarian funds, and also in collecting the incomes, it is necessary (in the opinion of the team members of the project) that member states, even individually, must conceive distinct national penal politics of incrimination and sanction of such offences. From the undertaken studies the outcome was that the implication of the penal law is required also by the growth, in a very alarming proportion, of the European criminality. Our research aimed also a critical analysis of the Law. nr. 302/2004, regarding the international judicial cooperation in criminal matter, with the further modifications and completions, Frame –Decision nr. 2002/584/JAI (13th of June 2002) of the European Council regarding the European arrest warrant and the extradition between the member states of the European Union - first concrete measure in the field of judicial cooperation in criminal matter between the member states of the European Union in applying the principle of mutual recognition; the European Union Convention from 29th of may 2000 regarding the judicial assistance in criminal matter between the member states of the European Union and the Protocol adopted at 16th of October 2001; Convention adopted at 19th of June 1990 regarding the application of the Schengen Agreement (adopted at 14 June 1985 that eliminates gradually the control at the common frontiers) and other relevant regulations for the judicial cooperation in criminal matter with the European Union member states.

The analysis pursued the goal of detection of some more facile modalities of recognition of the judgments pronounced in a state and applicable in other state, the principle of mutual recognition being a key-factor in the development of a free zone of liberty, security and justice, but also in the growth of protection the fundamental rights.

The critical examinations of such issues caused interesting debates between the young practitians (judges, prosecutors, lawyers). One of the debates was: *Juridical implications of the future accepting declaration of the European Court of Justice competence, within the III*rd *Pylon of European Union – Juridical and police cooperation in criminal matter* (article 35 EU).

Regarding the analysis of the European Space of Justice the debates centered on the *preliminary matter* within the national Courts of the last grade and guide marks regarding the communitarian juridical frame of the mutual recognition of the diplomas (degrees), a controversial issue and still not clear for the Romanian education system.

It must be emphasized that the debates-seminaries were periodical organized at the Institute of Juridical Research "Acad. Andrei Radulescu" of the Romanian Academy, within the Centre of European Law Studies, structural component of the Institute, as a result of this Project of exploratory research.

We proposed, through the challenging issues, to facilitate a critical familiarization of the young researchers with the actual lacuna in the process of harmonization of our legislation with the communitarian legislation, with the appetite for a more critical and thorough correlation of our legislative system and jurisprudence.

Regarding the professional evolution of the team members, in June 2009 one of the team member, *lecturer Ina Tomescu* sustained the doctoral thesis in the field of military sciences, with the subject: "*The European Union Politics regarding the Fight against the International Terrorism*", a large part of the thesis was the documentation and theoretical-critical elaboration studies for this project.

Regarding another member of the team, *Ion Ifrim*, scientific researcher III, we can say that he has proven a serious dedication in realizing and finalizing the Project. He had participated at all seminaries sustained within the doctoral school, promoted in January 2009 as scientific researcher III, his scientific research plan being highly marked by the conclusions resulted from the development of this Program.

The actual two Ph.D students in law, *Ion Ifrim* and *Mihaela Berindei* actively participated to all seminaries and debates, developed within this Project in the year 2009, and some theoretical aspects that resulted as part of their documentation for this Project were presented at national or international scientific sessions.

The role of the two PhD students in law was clearly specified; they fulfilled their attributions in accomplishing the activities adequate to their level of training and the requirements of the Project.

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