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National and European Legislation, Instrument in the Process of Globalisation

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Abstract:*The paper proposes an analysis of the role that legislation has and of the way in which it becomes the main instrument in the process of globalisation. Which are the implications of the regulation at European Union level, the identification of European institutions and bodies with attributions in harmonising the conduct of the Member States as well as the national institutions involved in this process. We shall examine the role of the judicial precedent in the context of globalisation.*
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Introduction

According to Wikipedia, there is no definition of globalisation in a universally accepted and probably not definitive form. The reason lies in the fact that globalisation includes a multitude of complex processes with variable dynamics reaching different areas of a society. It can be a phenomenon, an ideology, a strategy, or all in one place. Globalisation is the modern term used to describe the changes in societies and in the world economy, which result from the extremely increased international trade and cultural exchanges. It describes the growth of trade and investment due to the fall of barriers and interdependence between states. In the economic context, it is common to refer, almost exclusively, to effects of trade, and, in particular, to trade liberalisation or to free trade.

Under four aspects we can refer to **economic globalisation**, which indicates four types of flows across borders, namely: flows of goods / services; for example, free trade; flows of people (migration), of capital and of technology. One consequence of economic globalisation is the improvement of relations between the developers of the same industry in different parts of the world (globalisation of an industry), but also an erosion of national sovereignty on the economic field. The IMF defines globalisation as "increasing of economic interdependence of countries around the world, by increasing the volume and variety of transactions of goods and services across borders, the flow of international capital much freer and faster, but also a wider diffusion of technology". [1] The World Bank defines globalisation as "Freedom and ability of individuals and companies to initiate voluntary economic transactions with residents of other countries".

In **Management**, globalisation is a term of marketing or strategy that refers to the emergence of some international markets for consumer goods characterised by similar needs and tastes of customers, thus managing, for example, to sell the same machines or soaps or food products through campaigns of similar advertising, to some people belonging to some different cultures. This custom contrasts with the internationalization, which describes the activities of multinational companies either in financial instruments, commodities, or in products that are exclusively intended for local markets. "The concept of Globalisation refers to the decrease of the world and to the increase of the awareness of the world as a whole" - Roland Robertson [2, 8].

The process of globalisation is relatively recent. It manifested itself especially after the Second World War and saw a spectacular development especially after the 80s, as financial markets became globalised.

1. The Reflection Document

At the level of the European Union, the phenomenon of globalisation and its effects are a constant concern, the European Commission (EC) publishing, in 2017, a *Reflection document*, aiming to capitalise on opportunities offered by globalisation. "Based on a fair assessment of benefits and shortcomings associated to this phenomenon, it launches a debate on how the EU and the Member States can manage it in a way that makes it possible to anticipate future developments and, thus, improve conditions of living of European citizens".

The reflection document analyses the effects that globalisation has had on the EU. "Although the EU has benefited enormously from globalisation, this phenomenon has brought many challenges, as well. At a global level, globalisation has lifted hundreds of millions of people out of poverty and allowed poor countries to further reduce the gap as compared to developed countries. For the EU, world trade has stimulated economic growth, with an additional 1 billion euro produced from exports, resulting in the maintenance of 14.000 jobs. Poorer families especially benefit from cheap imports. But these advantages do not come by themselves and they are not equally enjoyed by all citizens. Europe is also affected by the fact that not all countries apply the same standards in terms of employment, environmental protection or safety, which often means that European companies cannot compete with foreign companies exclusively in terms of prices. For this reason, factories are closed, jobs are lost and pressures on employers are reduced, which has the effect of worsening wage and working conditions for workers", but the solution is neither in protectionism nor in non-interventionist policies, say EC representatives. As it is clear from *the Reflection document*, globalisation can only be beneficial if it is properly used. The EU must ensure a better distribution of the benefits of globalisation, working with both Member States and regions, as well as with international partners and other stakeholders.

The reflection document opens a vital debate on how the EU can maximize the opportunities offered by globalisation and respond to the challenges that come with it.

▪ **Externally**, the document emphasizes the need to outline a truly sustainable global order, based on common rules and objectives. The EU has always supported the creation of an effective and "multilateral" regulatory framework and should continue to work on developing it in a way that makes it possible to address new challenges and ensure effective implementation. For example, the Union could support the development of new rules designed to create a fair competitive environment that eliminates harmful and incorrect behaviours such as tax evasion, harmful state subsidies or social dumping. Applying some effective trade defence tools and setting up the multilateral investment dedicated court could help the EU take decisive action against countries or companies that resort to unfair practices.

▪ **Internally**, the document proposes tools designed to protect citizens and make them more autonomous by robust social policies and to provide them with the support they need to benefit from lifelong education and training programs. The application of policies on progressive taxation, investments in innovation and the implementation of some firm policies in the field of social protection could contribute to the equitable redistribution of wealth. In the meantime, negative effects of globalisation can be mitigated with the help of EU structural funds, used to support vulnerable regions, and of **the European Globalisation Adjustment Fund**, which helps displaced workers find another job. [3]

2. The Common Regulations - A Unitary Environment and Conducive to Development Throughout the European Union

Thus, globalisation becomes harmonised, and the latter can only be achieved through common regulations, which shall create a unitary environment and conducive to development throughout the European Union. Any idea, desire, initiative, in order to find its applicability, must take a form of the concrete, and this can only be the legal norm, which is the basis of the elaboration of any European legislative act, transposed later in the national regulations. Therefore, the legislation, be it national or European, becomes the main instrument in the process of globalisation.

The elaboration of a common legislation starts from the highest level within the Union and, by the "pyramid effect", one reaches the orientation of the European citizen towards a necessary conduct of globalisation.

The European Council, made up of the heads of state and of government of EU countries, the President of the European Council and the President of the European Commission, is the one that defines the general policy and priorities of the European Union. It brings together EU leaders to set the political agenda of the Union and it comes in the form of summits, usually quarterly, chaired by a permanent president. Although it does not adopt legislative documents, it deals with complex and sensitive issues that cannot be solved at the lower levels of intergovernmental cooperation. It defines the EU's foreign and security policy, taking into account the Union's strategic interests and defence implications. It may request the European Commission to draw up a proposal and may address it directly to the Council of the European Union.

The European Parliament, elected directly by EU citizens, every 5 years, is the legislative body of the Union, adopts the EU legislation together with the Council of the European Union, based on the proposals of the European Commission. It make decisions on international agreements, on enlargement of the European Union, it reviews the Commission's working hours and ask it to propose legislative documents. In addition to the legislative role, the Parliament exercises a control and a budgetary role. Thus, it exercises a democratic control on all EU institutions, it elects the President of the Commission and it approves the college of commissioners as a whole, also having at hand the "censorship motion" instrument, forcing the Commission to resign. It grants discharge, that is it approves the way the Union budget was spent, it analyses citizens' petitions and it sets up commissions of inquiry, it discusses monetary policies with the European Central Bank, it addresses inquiries to the Commission and the Council. At the same time, along with the European Council, it establishes the EU budget, including the long-term one ("multi-annual financial framework").

The Council of the European Union, made up of ministers from each EU country, which are responsible for the policy area under discussion, represents the governments of the Member States. The main role is to negotiate and adopt the European legislation, together with the European Parliament, based on the proposals submitted by the European Commission. It coordinates Union policies, it develops foreign and security policy. It concludes agreements between the EU and other countries or international organizations.

There are no permanent members of the Council of the European Union, meeting in 10 different configurations each corresponding to one of the political areas under debate. Depending on the configuration, each country sends its minister who deals with the area addressed. Each EU Member State holds the rotating presidency for a period of 6 months. Council members are empowered to engage their governments in carrying out the actions agreed upon in the meetings.

The European Commission is the executive body of the Union, politically independent, the only institution empowered to propose legislative documents that it proposes for adoption to the Parliament and the Council. It aims to protect the interests of the EU and its citizens on issues that cannot be addressed effectively at a national level. It sets the EU's spending priorities together with the Council and Parliament. It elaborates annual budgets for approval by Parliament and Council. Together with the Court of Justice, the Commission has the responsibility to ensure that EU law is properly applied in all Member States.

Each action taken by the European Union is based on treaties - legally binding agreements, signed by all EU countries, which set the Union's objectives, the operating rules of the European institutions, the decision-making procedures and the relations between the European Union and its member states. Treaties represent the starting point for EU law and are known in the European Union as "primary law". The legislative body that derives from the principles and objectives of the treaties is known as "secondary legislation". This includes regulations, directives, decisions, recommendations and opinions.

The European Union can adopt regulations only in those areas where its members have been authorised to do so, by EU treaties.

The treaties set out the objectives of the European Union, the rules applicable to EU institutions, decision-making processes and the relationship between the EU and its Member States. They are negotiated and agreed by all Member States and subsequently ratified by national parliaments - sometimes following a referendum.

The regulations are legal documents that apply automatically and uniformly in all Member States, as soon as they come into force, without needing to be transposed into national law. They are mandatory in all their elements for all EU countries.

The directives require the Member States to achieve a certain result, but without imposing the ways in which they can do so. Member States must take measures to incorporate the directives into national law ("transposition") in order to achieve the objectives set by them. The national authorities must communicate these measures to the European Commission.

Transposition into national law must take place before the deadline set at the time of adoption of a directive (generally, within 2 years). Where a country does not transpose a directive, the Commission may initiate an action for failure to fulfil obligations.

Decisions are binding legal documents, valid for one or more countries / companies / natural persons. The party concerned must be notified, and the decision begins to take effect upon receipt of the notification. Decisions should not be transposed into national law.

The recommendations allow EU institutions to communicate their views and suggest directions of action, without imposing any legal obligation on the recipients. They are not binding.

The opinions allow the EU institutions to make a statement, without imposing any legal obligation on the recipients. The opinion is not binding.

Delegated documents are legally binding documents that allow the Commission, for example, to fill in or to amend non-essential elements of some EU legislation, in order to define detailed measures. A delegated document adopted by the Commission shall enter into force only if Parliament and the Council do not object.

Implementing documents are legally binding documents, which enable the Commission - under the supervision of some committees made up of representatives of the Member States - to establish measures to ensure uniform application of EU rules.

All this effort is complemented and supported by **the Court of Justice of the European Union (CJUE)** whose main role is the implementation of unitary legislation, uniformity of European rules, an intrinsic part of the process of globalisation. Equally important is the coercive role it plays within the Union.

It interprets EU law to ensure that it is applied in the same way in all member countries and resolves legal disputes between national governments and European institutions. In certain circumstances, the Court may be seised by natural persons, companies or organizations wishing to bring an action against an EU institution which they suspect has violated their rights. The court issues resolutions in the cases referred to it for settlement.

The most common types of causes are:
Interpretation of the law (preliminary rulings) - the national courts of the EU countries are obliged to guarantee the proper application of the European law, but there is a risk that the courts of different

countries shall interpret the legislation differently. If a national court has doubts regarding the interpretation or validity of an EU legislative document, it may seek the opinion of the Court of Justice. The same mechanism can also be used to determine whether a national document or practice is compatible with the EU law.

Compliance with the law (actions in breach of obligations or infringement procedures) - these are actions brought against a national government that does not fulfil its obligations under the European law. These actions can be initiated by the European Commission or another EU country. If the country concerned proves to be guilty, it has the obligation to remedy the situation immediately. Otherwise, a second action can be brought against it, which can lead to a fine.

Annulment of some EU legislative documents (actions for annulment) - if a Member State, the Council of the EU, the Commission or (under certain conditions) the European Parliament considers that a certain EU legislative document violates the fundamental rights or treaties of the Union, it can ask the Court of Justice to cancel the respective document.

Natural persons may also ask the Court to annul an EU document that concerns them directly.

Guaranteeing an action from behalf of the EU (declaratory actions for restraining from acting) - Parliament, Council and Commission are required to take certain decisions in certain situations. Failure to do so may result in complaints made by the governments of the Member States, other EU institutions and (under certain circumstances) natural persons or enterprises to the Court.

Sanction of EU institutions (*compensation actions*) - any person or company that has suffered from an action or lack of action on the part of the EU institutions or their employees can bring an action against them by the intermediary of the Court.

On the 1st of January 2007, Romania became a member state of the European Union. The quality of a member state implies both rights and obligations. All this derives from the treaties and legislation adopted by the European Union from its establishment until now, just as in the case of any other member state of the European Union. The joining treaty provides that, if there are serious deficiencies in the transposition and implementation of the acquis in economic fields, the internal market and, respectively, justice and home affairs, safeguard measures may be adopted within up to three years from the joining date. The obligation to transpose EU directives is stipulated in article 288 of the Treaty regarding the operation of the European Union (TFUE), which stipulates that the directive is mandatory for the Member States to whom it is addressed in terms of the result achieved, the form and the methods for obtaining it remaining at the discretion of the Member States.

Thus, the normative documents issued at the EU level must be implemented in a timely, efficient and balanced manner, and the Member States, through the legislative or the executive, must adopt normative documents that effectively implement the directive, respectively to adopt, within the indicated deadline, measures for transposing its provisions.

In terms of compatibility with European Union regulations, **the Legislative Harmonisation Directorate** carries out the following actions:

It mandatorily endorses the draft normative documents that follow the transposition into the national legislation of the European normative acts, which create the legal framework necessary for their application or that have EU relevance. It formulates, as appropriate, proposals for accelerating the transposition and implementation process. These proposals are sent to competent institutions in order to elaborate the necessary normative documents. It examines the legislative proposals in terms of compatibility with European regulations, in order to formulate **the Government**'s point of view on them, at the request of **the Department for Relations with the Parliament**. In the process of inter-institutional endorsement of the normative documents drafts that transpose or create an application framework for EU legislative documents, **the Ministry of Foreign Affairs** is the penultimate

institution, before **the Ministry of Justice**, according to article 20, paragraph (6), of *the Government Decision no. 561/2009 for the approval of the Regulation regarding the procedures, at the level of the Government, for the elaboration, approval and presentation of the projects of documents of public policies, the projects of normative documents, as well as of other documents, for the adoption / approval*.

The reason for establishing this obligation is that, in case other institutions receive a normative document draft for approval subsequently to the MAE approval, they can bring forward amendments that contravene the law of the European Union, the compatibility being, thus, affected.

In order for all these legal provisions to have a constant effect, in other words not to have to repeat a procedure, the problem of recognizing the source of law of the "judicial precedent" of what has already been decided, an instrument of a clear utility in the process of globalisation.

Conclusions

A "clean" definition of the judicial precedent is that which consecrates it the mediator feature, that of a guide, being regarded as *"an earlier judicial decision, which, although it cannot be a source of law, has the role of orienting the judicial practice at a given time"*.

I attributed the adjective "clean", because it captures the essence, being deficient in the implementation chapter, the current law recognizing at the practical level the source of law of the judicial precedent only when it is confirmed by a court decision of the highest jurisdictional degree courts, the Constitutional Court of Romania or the High Court of Cassation and Justice, and after the joining to the EU, the decisions pronounced by the Court of Justice of the European Union (CJUE) or of the European Court of Human Rights (ECHR).

Thus, the judicial precedent next to the judicial practice, although they are not dedicated the character of source of authentic law, are those that have an intrinsic, constant evolution and that generate through their effects the real and present evolution of norms, which are unanimously recognised as the real springs of law.

The preceding tandem - practice is born and develops from one judicial solution to another, be it national or European, is continuously updating, and it is the basis of the future norms that shall regulate the society in continuous change.

The opinion according to which the judge applies the law, but he / she does not create it is real, but the way in which he / she applies it, the immediate social impact of the pronounced decision, causes that, until the evolution of the norm, the precedent becomes law and law - a source of it.

Judicial practice is casuistic, since it never reaches the establishment of a norm, of a general and impersonal rule, so that the judicial precedent serves as a model in successive cases, without having the power and strength of a principle. The decision within the framework of a trial, ongoing litigation, is made taking into account the decisions taken in past trials and this, in turn, affects the law that shall be applied in future cases. If there is no provision to be applied to the case under trial, "common law" judges have the authority and responsibility to "create law" by creating the precedent.

At a national level, the New Code of Civil Procedure of Romania, regulates, by article 3, that "in the matters regulated by the present code, the provisions regarding the rights and freedoms of persons shall be interpreted and applied in accordance with the Constitution, the Universal Declaration of Human Rights, with the pacts and with the other treaties to which Romania is a party.

If there are inconsistencies between pacts and treaties regarding the fundamental human rights, to which Romania is a party, and the present code, international regulations have priority, unless the present code contains more favourable provisions". According to article 4, of the same normative document "in the matters regulated by the present code, the mandatory norms of the law of the

European Union are applied as a priority regardless of the quality or the status of the parties", "being practically achieved the legal framework, in which the European judicial precedent can fully produce its effects.

On that note, article 12 of the New Code of Criminal Procedure regulates that the provisions regarding the territoriality of the criminal law, the personality of the criminal law, the reality of the criminal law or the universality of the criminal law, contained in articles 8-11 of the same code, apply if it is not provided otherwise by an international treaty to which Romania is a party". This is how the process of globalisation can only be achieved by the establishment of some common rules, rules that, in their entirety, create the legislation.

References

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