The monistic and the dualistic theory in European law

Ph.D. Emilian CIONGARU,
Associate researcher,
Institute of Legal Research „Acad. Andrei Radulescu” of Romanian Academy.
Bucharest, Romania
emil_ciongaru@yahoo.com

Abstract: Immediate applicability or monism, is characteristic of European law by the legal rules of European law, either original or derivative are immediately applicable law of the Member States, European law therefore forms an integral part of the legal order applicable in the individual Member States, making such a transfer of competences from national to EC State with the following consequences: European law is integrated naturally into the legal order of states without the need to place any special formula, the European rules dealing with its national law in place, that European law; national judges are obliged to apply European law.

European law confers rights and obligations not only of Member States but also of the citizens and enterprises subject to certain rules directly. It is part of the legal system of Member States to respond, firstly, the correct application of these regulations. Therefore, any citizen of EU Member States should be entitled to expect that national authorities throughout the European Union to correctly apply their rights as European citizens.

Each Member State is responsible for implementation within national legal systems, law (transposition of the deadlines, compliance and correct application). Under the Treaties, the European Commission watches over the correct application of European law. Therefore, if a Member State does not comply with European law, the Commission has powers of its own (action failure) of the EC Treaty and the EAEC Treaty to try to end the infringement and, if necessary, may apply to the Court of Justice.

Failure means the failure by a Member State of its obligations under European law. This may take the form of an action or omission. The state understands that Member State has violated European law, whatever the authority - central, regional or local - responsible for failure.

Any person may submit a complaint against the European Commission by a Member State to denounce a measure (legislative, regulatory or administrative) or imputed to the practice which it considers contrary to a provision or principle of European law. Not be proved or interest to act and there is direct breach of European law on which it relies. However, to be taken into account, the complaint must relate to an infringement by a Member State, so the object can not have an issue of personal nature.

The legal system of Member States of the European Union has two components complement each other as follows: the component composed of of the European law the rules and the component consists of national legal the rules.

European law is a legal order, because is a set of legal rules endowed with its own sources, the organs necessary for the adoption and applying the rules and compliance his is ensured by an independent judicial device. European law establishes the relationship between Union and Member States.

Taking as base the relationships between international law and national law and may elucidate the relationship between European law and construction law. This starts from the existence of two theories about the integration of international law in national law: monism and dualism.

In terms of legal the theory of dualism was developed in the doctrine of German and Italian at the end of sec. XIXth. century and beginning XXth century, and held the idea that international law and national law represent legal systems of equal value, but distinct, which acts on different levels with different sources and addressees. Consequently, the two legal systems can not intersect in any situation, each covering a specific domain of legal systems.
relationships. It also supports that may be unconformities between the national and international acts, which in modern law is not accepted.

After A. Fuerea, according to this theory, take their first steps the possibility of legal rules to conform with requirements of the national law and with international law, but as it was possible for legal rules to correspond with the rules of a legal order and to be contrary to the other without affecting their validity. In any case must be applied the rules of national law in national law and when as they in conflict with international agreements or engagements, the disparity will attract international responsibility of that State.

So the dualist theory, support the clear distinction between the the two systems of law - internal and international - and says that it is necessary to issue a normative act through which the transfer of the treaty of international order in the internal order, it acquired the act was implemented (the internal law).

In some Member States to apply the dualist system as the United Kingdom, Ireland and Scandinavian countries where, for as the norms of international law to take effect in national law to proceed to implementation of legal norms of international law - contained in the treaties - in the legal rules of national law, by an act of national legal. The international treaties become part of national law only after a special law enforcement is adopted by the legislature.

Monistic theory is based on the idea that there is only one legal order component which has the, the national law and the international law and one of these items prevails over the other and includes two alternatives: primacy of international law over national law; primacy of national law over international law.

The first variant, the primacy of international law over national law, developed after World War that, based on concepts of natural law, it is argued that there is a universal legal system would be superior to national laws of various states, implying that time apply international legal law, by right, without receiving or processing in the national law of the State Party to the Treaty and in the the event of conflict between the national and international rule will apply the latter, and the internal standard will be ineffective as long as the international treaty is in the force.

Most European countries have provided in the their constitutions, with international recognition as part of their internal system. Such a system of perception is found in Austria, Italy, France and Germany. Dutch Constitution also provides that international treaties to which the State is party prevail over national laws provide otherwise (one-tier system with the primacy of international law over national law).

The second option has appeared as a reaction to the first, claiming independence and sovereignty complete of the states trying to demonstrate that international law was a design in the area of relations between states of rules of law, the international law thus derived from the internal law of each state.

The dominant in the end of the XIXth century, the primacy of law over international law, treaty acquires the legal force to the extent that it would be provided by national law and in case of conflict between national and international rule, it gives priority to the internal normative act.

In the contemporary law, there is an accentuated determination of law by the international law, without any of the two theories have been fully validated. But there is not a uniform practice of States in this regard, the primacy of one or other of the two legal systems appreciating for each case, according to the provisions of national constitutions, and the Vienna Convention, which in art. 27 states that: a party may not invoke the provisions of its national law to justify the failure of a treaty.

European law has established the theory of monism and requires compliance for all Member States of the European Union, as monism derives from the very nature Uniunii and European system can only work in monism, only compatible with the idea of integration.

Keywords: European law; legal order; European Union rules; monism; dualism,
1. IMMEDIATE APPLICATION OF EUROPEAN UNION LAW

1.1. Immediate applicability

European Union law is a legal order, because is a set of legal rules endowed with its own sources, with the organs for the adoption and applying the rules and its compliance is ensured through a device an autonomous jurisdictional. European Union law establishes the relationship between Community and Member States.

Immediate applicability is characteristic of European Union law by which legal rules of the European Union, or original or derived is immediately applicable in the law of the Member States, so European Union law is part of the legal order applicable in to each member State, realizing so a transfer of competences from national state to European Union with the following consequences: European Union law is naturally integrated into the legal order of the states without the need any special formula of introduction; European Union rules shall ranked in national legal order as European Union law; the national judges are obliged to apply European Union law [1].

Taking as basic the relations between international law and national laws can be elucidate and construction of relations between European Union law and national law. This will starts from the existence of two theories about the integration of international law in national legal order: dualism and monism.

**Dualism:** This theory says that international and national legal order are equally but completely independent and separate, which coexist in parallel [2], there was no relation of subordination between the two systems;

**Monism:** considers that the rule of national law is in the same sphere with that international, existing a report of supra / subordination, depending on the variant adopted. This theory considers that national law is derived from international law.

The institutive Treaties establishes monism and requires respect of European Union law by Member States.

European Union rules of law be integrated in national law of Member States, which have not possibility to choose between dualism and monism, *monism being obligatory.*

1.2. The dualistic theory

In point of juridical view the dualist theory was elaborated in the doctrine of German and Italian at the end of the XIX th sec. and early XXth sec. and ruled the idea that international law and national law represents systems of law of equal value, but different, which acts on different levels with different sources and addressees. As a consequence, the two legal systems can not intersect in any situation, each regulate a specific domain of legal relations. It also supports that can be unconformities between national and international acts, which in contemporary law is not accepted.

Therefore, an international treaty perfectly, that regularly ratified, would not have effect only in the international order.

For him to be able to apply in the internal order of a Contracting State is necessary for this state to take over the dispositions in the national a rule (usually a law) or to it introduce into national order through a legal formula which makes admission.
And in one case and in the other produces a nationalization of the Treaty, that is international rule suffering a transformation of its nature and will not be applied only in his new capacity of national regulation and not in the regulation of international law.

In his opinion A. Fuerean, according to this theory, to launch possibility that legal rules to conform both with the prescriptions of national law and with of international law, but the same it was possible that legal rules to correspond with the rules of a legal order and be contrary to the stipulations to the other but without to affect their validity. In either case the rules of national law must be applied in the national law and if they is in conflict with international agreements or commitment, noncompliance will attract international responsibility of that State.

So the dualist theory, claims the clear distinction between the two systems of law - national and international - and says that it is necessary to issue a normative act of making transfer of treaty from international order to internal order, this acquired act in which was implemented (national law).

In some Member States applied the dualist system as they are United Kingdom, Ireland and Scandinavian countries where, as norms of international law to have effect in the national legal order to proceed to implementation of legal norms of international law - contained in the treaties - in the legal rules of national law, by an act of internal normative. International treaties can become part of national law only after a special law of application is adopted by the legislator.

1.3. **The monistic theory**

Opposed of international law, European Union law it is does not indifferent nature of relations to must be established between the European Union law and national law. It postulates monism and requires respect it from Member States.

Monism results from Communities nature, so from assembly of the Treaty system as the Court of Justice said. The European Union system, especially since it has the powers of legislative power for the institutions, can only function in the monism, only principle compatible with the idea of a system of integration by instituting a Community with unlimited duration, invested with own prerogatives, personality, legal capacity and especially with real powers results from a limitation of jurisdiction or a transfer of responsibilities from the Member States to the Union, they have limited, although in limited areas, their sovereign rights, thus creating a aplicicable law to themselves and their nationals. Claim is very clear: different from ordinary international treaties, the Treaty establishing the EEC has established a own legal order, integrated in the legal system of Member States after the entry into force of the Treaty and imposing their jurisdictions.

Monistic theory is based on the idea that there is only one legal order component wich has the, the national law and the international law and one of these items prevails over the other [3] and includes two alternatives: primacy of international law over national law; primacy of national law over international law.

The first variant, the primacy of international law over national law, developed after World War that, based on concepts of natural law, it is argued that there is a universal legal system would be superior to national laws of various states, implying that fact as the international legal law to apply immediatly, by all right, without receiving or processing in the national law of the State Party to the Treaty [4] and in the the event of conflict between the national and international rule will apply the latter, and the internal standard will be ineffective as long as the international treaty is in the force.
Most European countries have provided in their constitutions, with international recognition as part of their internal system. Such a system of perception is found in Austria, Italy, France and Germany. Dutch Constitution also provides that international treaties to which the State is party prevail over national laws provide otherwise (one-tier system with the primacy of international law over national law).

The second option has appeared as a reaction to the first, claiming independence and sovereignty complete of the states trying to demonstrate that international law was a design in the area of relations between states of rules of law, the international law thus derived from the right internal state of each.

The dominant in the end of the XIXth century, the primacy of law over international law, treaty acquires the legal force to the extent that it would be provided by national law and in case of conflict between national and international norm, it gives priority to the internal normative act.

In the contemporary law, there is an accentuated determination of law by the international law, without any of the two theories have been fully validated. But there is not a uniform practice of States in this regard, the primacy of one or other of the two legal systems appreciating for each case, according to the provisions of national constitutions, and the Vienna Convention, which in art. 27 states that: a party can not invoke the provisions of its national law to justify the failure of a new treaty [5].

European law has established the theory of monism and requires compliance for all Member States of the European Union, as monism derives from the very nature of Unionii and European Union system can not functions just to monism, this is only compatible with the idea of integration.

2. IMMEDIATE APPLICABILITY - MONISM. EXEMPLIFICATIONS.

2.1. Immediate applicability – Monism

European Union legal system operates on the principle of applying in the national law as it was adopted, without the need assimilation or its transformation into national law.

The principle of immediate applicability of European Union law signifies automatic integration of European Union rules in the national legal order of Member States, without the need for a national rule of introducing (it is just prohibited, because it affects the status of European Union law). Immediate applicability does not aims the temporal aspect, so that the word immediate must be taken in the sense of *i-mediated* that is *operate without an intermediary*. Shall be immediately applicable the following:

- provisions of the constitutive treaties;
- those of international agreements that contain a clear and precise obligation whose execution and effects are not under adoption of a measure later;
- Regulations (under Art. 249 para. 2 TEC).

The decision has immediate and direct applicability as follows:

- the decision shall be integrate in the national law from the moment its adoption;
- are not necessary national measures of receiving;
- has direct effect in the person its intended recipients and of third persons who may rely on it;

Principle of immediate applicability does not permit judges of a dualistic country should considered a treaty of the European Union as applicable well as national law its admission on the pretext that in accordance with procedures of admission of international treaties has made it one of national law.
Also can not be eluded the application of European Union a treaty ratified on a regular basis on the pretext that they were not satisfied procedures of admission of international treaties provided by Constitution.

The institutive treaties were ratified on a regular basis and introduce each of the founding states accordance with the of national provisions in their own national legal order on the ordinary treaties.

Thus, by provisions of the decision of 3 April 1968, Case Company Molkerei [6] Court of Justice has established monistic concept, stating that European Union legal rules pass into the national legal order without the need of help a national measure therefore European Union law - original or derivative - is immediately applicable in national law of the European Communities states.

According to the principle of immediate applicability, the European Union rule automatically acquires status of positive law to the internal order of the member states, is prohibited any transformation of EU rules to national law rules, any procedure of receiving them, and all internal measures of susceptible should altering the integrity execution of EU rules.

In as regards primary European Union law, the immediate applicability of the signifies suppression receptions not formal, but rather to neutralize its effects.

In as regards secondary legislation and the one was born of international relations of the Communities, it constitutes the area in which suppression of dualism works the full: the law which has as a source the normative activity of of EU institutions is necessary in the legal order of the member states without transforming, without receiving or enforcement measures.

2.2. Exemplifications

- *The institutive treaties with immediate applicability* by itself have the property the fact that they were on a regular basis ratified and introduced each one of founding states in their national legal orders in accordance with national provisions relating to ordinary treaties.

In 1972, with Communities expansion to three other dualistic countries (Denmark, Ireland and the UK), the applicable character of European Union law (which in the meantime had been expressly emitted by the ECJ) has been adequately take into consideration by the monistic theory.

- *Any case of economic or commercial* which is judgment has power automatically of immediately applicability in member countries and implicitly to Romania. Any directives adopted by the Commission from Brussels will have immediate applicability, and the publication in the European Union Official Monitor of such rules will have an impact equal and superior sometimes compared to Romanian Official Monitor.

2.2.1. Application of the principle immediate applicability to Italy

The Court ruled that the dualistics techniques used by Italy to the European Union regulations, compared to the national law execution order has the effect of transformation of the source of international law in internal source (January 7, 1973, Commission / Italy, 39/72 [7], and October 10, 1973, Smallpox, 34/73 [8]).

The Costa decision [9], the Court categorically removed except of absolute inadmissibility invoked by the Italian Government which, according to dualistic logic, pretended that the italian judge could not apply only Italian national law and therefore could not to apply Article 177 of the EEC Treaty
Italian Constitutional Court upheld the immediate applicability of European Union law by decision Frontini (December 18, 1973) whose considerations are very clear: is in conformity with the logic of the European Union system that EEC regulations should not be as immediate source of rights and obligations be the subject of state measures which to recopied European Union provisions likely to affect or to make the in any manner the entry into force and especially than to substitute, to derogation or to abrogate even partially Union European acts.

Constitutional Court admitted abandonment of the dualistic system in advantage of European Union law. But it decided that as any Italian judge notified with the question of incompatibility between a law and European Union law previously could not adjudicate himself and should send the difficulty, to the Constitutional Court.

2.2.2. Application of the principle immediate applicability in the UK.

Monistic theory (immediate applicability) [10] on which is based the principle of integration can be the object of applied by the courts. The principle of integration can be of competence of the legislator, most clearly exemplified of the use of a dualistic procedure to ensure application of the principle of integration the constituent treaties on the time of ratification is constituted of European Communities Act voted by the British Parliament at the same time with the authorization of ratification of the Treaty of adhesion.

In this manner the British constitutional practice, which stipulated the formal introduction of the international treaty by all parliamentary procedure and its transformation into intern regulation has been eliminated voluntarily by the European Communities Act in 1972 which deals with the immediate applicability as follows: All these rights, powers, responsibilities, obligations and restrictions created or arising out of or by virtue of the Treaties, and all such legal remedies and procedures conferred by or by virtue of the Treaties have, no further action required formalities the legal judicial force and can be invoked in the UK; they will be recognized as law in existing and will be executed, completed and followed; and the expression 'European Union as existing' and similar expressions shall be understood as referring to the law which is applicable to this subsection.

Act constitutes for all British authorities and especially for courts an permanent enforcement order of the assembly of European Union law.

Ireland also adopted on the time of accession on the basis of revised Constitution for this purpose, a European Communities Act lesser detail but with similar effect to British act.

2.2.3. Application of the principle immediate applicability in France.

In France, monist State, the State Council admitted that EU regulations, under Article 189, is integrated, from the moment of its publication, in the law of Member States (December 22, 1978, Syndicat des Hautes Graves de Bordeaux).

The Constitutional Council was also very clear in the two decisions of 30 December 1977 assuming that the binding force of European Union regulation is not subordinated to intervention by the authorities of the Member States.

Another example is the fact that in favor of acceptance of primacy of EU law have decided, in France, the Supreme Courts by decision Cafes Jacques Vabre 1975, where the Court of Cassation stated that the Treaty of March 25, 1957, which, under Article 55 of Constitution, has an authority superior to
that of laws, establish a legal order of Member States own integrated, thanks to this specificity, the legal order that has created it is directly applicable to nationals of those Member and their jurisdiction is required.

For these reasons, the Court of Appeal rightly has decided that Article 95 of the Treaty must be applied by removing Article 265 of the Customs Code, just where the latter text was posterior, while the State Council by its decision Nicolo was joined this position.

2.2.4. Applying the principle of immediate applicability in Belgium.

In Belgium, dualistic state, there is a jurisprudence founded that the provisions of an international treaty they could be ignored in basis of a posterior law contrary. In the absence of constitutional consecration of the primacy of European Union law, the first jurisprudential solutions have remained consequent that are outlined in practice of the international treaties. The turning point was represented to the Court of Cassation decision of 27 May 1971, date in the case Société des Franco-Suisse Le Ski Fromageries. In this case, the Belgian Government was condemned by the Court of Justice for introduction in 1958 of an fees contrary to Article 12 of the Treaty. As a result this decision the fee was eliminated on November 1, 1964, but without retroactive effect.

3. CONCLUSIONS

European Union law confers rights and obligations not only of Member States but also of the citizens and enterprises subject to certain rules directly. It is part of the legal system of Member States to respond, firstly, the correct application of these regulations. Therefore, any citizen of EU Member States should be entitled to expect that national authorities throughout the European Union to correctly apply their rights as European citizens.

Each Member State is responsible for implementation within national legal systems, law (transposition of the deadlines, compliance and correct application). Under the Treaties, the European Commission watches over the correct application of European law. Therefore, if a Member State does not comply with European law, the Commission has powers of its own (action failure) of the EC Treaty and the EAEC Treaty to try to end the infringement and, if necessary, may apply to the Court of Justice.

Failure means the failure by a Member State of its obligations under European law. This may take the form of an action or omission. The state understands that Member State has violated European law, whatever the authority - central, regional or local - responsabile for failure.

In an action for infringement, the Commission launches first, an administrative procedure Procedure for violation of European Union law or pre-litigation procedure. Pre-litigation objective is compliance, voluntarily, of the Member State to the requirements of European Union law.

This procedure has multiple phases and may be preceded by a phase of analysis or examination, especially in infringement proceedings of the European Union law which to initiated on complaints.

Formal notice is the first step of the pre-litigation phase, during which the European Commission requests a Member State to inform it until a certain time, his observations regarding a problem of application of European Union law.

The reasoned opinion proposes to establish the position of the European Commission compared to infringement European Union law and to determine the subject possible action for failure to fulfill obligations, accompanied by an invitation to put an end to the infringement until a date. Reasoned opinion
[15] must contain a coherent and detailed presentation of the reasons which have led the European Commission to the conclusion that the State concerned has not fulfilled one of its obligations from the treaties.

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