INTEGRATION INTO THE EUROPEAN UNION AND ITS IMPACT ON THE SOVEREIGNTY OF THE MEMBER STATES, AS WELL AS THE DESTINY OF THEIR POPULATIONS (IN THE AREA OF THEIR FREEDOM AND WELL-BEING)

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Abstract

The provisions "The European Union ... on which the Member States confer competence to attain objectives they have in common", and "the creation of an ever closer union among the peoples of Europe" of the Treaty of the European Union (Article 1, paragraph 1), are of paramount and unmatched importance to understand what the EU is, which its virtues and deficiencies are - virtus aut periculum - and in what direction it should go. By the aforementioned syntagm, the ***transfer*** *(cessation of exercise by states)* ***of sovereignty prerogatives*** *phrase, meaning that the Member States assign some of their attributes as* ***competences*** *to the EU, is consecrated in a lapidary formula, which is being outlined to become a classic: the creation of the* ***community legal order,*** *and, according to our appraisal, the degree and the benefit of* ***EU integration****.*

Keywords: *European Union; integration; sovereignty; the* ***principles of subsidiarity***

1. Introduction

EU integration, the controlled and promoted version of globalization, occurs as a result of:

- the transfer of the sovereign attributes of the jurisdiction, by failing to be exercised by the Member States, in order for these prerogatives to revert as competences to the EU;
- admitting that EU rules apply directly and first-hand to the institutions and population in the Member States, under that heading, without being conditioned by or subject to their control (*nostrificated*) any longer, while eliminating or excluding the national law rules;
- the creation of a community legal order alongside the international one, that is gradually narrowing down states jurisdiction; a stage is thus reached where EU rules apply in a society / association of states, while the Member States are left with only their enforcement;

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the rebate of the substance of the state, its modification or even its cancellation.

Therefore, the competences exercised by the EU play the role of a triggering tool and, together with the superstate legal order that is being created as their effect, European integration is reached.

Decoding the meaning of the goals in Articles 2 and 3 (*establishment of a single internal market and economic cohesion*) in the context of the proclamations in the preamble of the TEU ("*resolved to mark a new stage in the process of European integration*" and "*resolved to continue the process of creating an ever closer union*"), we note that these stipulations express the commitment made by the Member States - acting by virtue of the *pacta sunt servanda* fundamental principle of international law - to transfer or, more precisely, not to exercise some of their prerogatives of sovereignty and transfer them to the EU as the competences it should have in order to achieve their common goals. There is ground to believe that, since the common goals of the Member States are the reason and the ultimate goal, *omni ratione,* the "*ever closer union*" phrase[1] equates, in the end, with the evolution that leads towards a dissolution of state structures and a merger of societies in these state entities into a single denationalize agglomeration, a mosaic of populations governed by a group of alleged technocrats - the EU bureaucracy - from a single lectern. States abandon their populations - one of the constituent elements of any state – and let their own citizens remain citizens of the European Union only. The objectives mentioned in Articles 2 and 3 of the TEU, that is the EU fundamental goal, namely "*the creation of an ever closer union among the peoples of Europe*", and expressed in the "European integration" phrase, could be reduced to this denationalization and then artificial merger of nations and civilizations, an unnatural situation, familiar in the empires era, when the idea of promoting human rights was totally lacking. All these take place under the dome of EU governance, while the Member States, which would no longer be proper state authorities themselves, would reach the position of simple tools to implement its policy.

Thus, the commandment to achieve the European integration under discussion, representing the essence and reason for being of the European Union, from which the concept, the mechanism, its mode of operation and the purpose of the association of the states concerned in the EU follow, is defined and laid down at the basis of the European Union. By this suite of joint actions - the transfer of sovereignty and the attribution of competences, through which a European legal order distinct from those of

[1] The reference is to the peoples of Europe and not to the state entities.

the Member States and overlapping them is constituted - the foundations for reaching the ultimate goal, the European integration, are provided. The achievement of this ultimate goal, the European integration, *ie* governance of the society in all Member States by the EU, in the form in which it is taking place, curtails or excludes the action of governing the society by the states concerned, or replaces it. Thus, new political-legal structures of a governmental nature are taking shape in an impressive manner alongside with states and in co-operation / competition with them or replacing them.

II

1. In the following promotion, we intend to point out the elements enclosing all sorts of procedures and modalities that have come into view and which, in our opinion, disturb and deregulate (through the rhythm of operation and the direction imposed versus those originally conceived and laid at the basis of constitutive treaties) the only form of engagement valid and within the limits of legitimacy, which is assumed by states (according to their constitutions) in a frontal and explicit mode. We also propose to see if, by what it is now added in other ways and recorded as a not envisaged direction, these new elements - deviations or improvisations and exaggerations - can be accepted as modifying the course of the EU in such a manner, so as to transform it from a truly free and beneficial association, a fact that was recognized and accepted *ab initio*, into a misleading structure of the populations of the Member States and a distortion of purposes towards a way of obedience that verges on slavery, which is ultimately supposed to cease its existence.

In our analysis, we start from what is natural and decent, what exactly states wanted. Participation in any association of states, but even more so in the case of one having a super state character, implies, inevitably and without the slightest shadow of doubt, a certain sacrifice of sovereignty. And that is also reasonable in relation to the goal pursued. Nevertheless, the question is how much of this transfer of sovereignty, which can be irreversible, is justified, and if there are indeed valid reasons for us to assume it; how far you can go and how exactly to proceed: openly, willingly and unequivocally assumed, or induced by all sorts of promises and confusing formulations and imposed on ways that do not find their place in the normal relations between states and human collectives, where legitimacy and moral principles cannot be truncated or ignored.

By virtue of the fact that its Member States have formed an associative international structure, consenting to delegate society leadership / governance and management attributes to the EU, the Union was conferred

the capacity it needed to achieve the goals states had set for themselves. No international organization has sovereignty, which means that it has only defined and limited attributions and competences[1] . As a result, in Article 5 (1) of the TEU the rule was stated that the EU acquires competences on the basis of the principle of conferral, which has always and constantly been the only applicable ground in the area (the principle of the specialty of legal persons requires the application of the principle of conferral in the case of any public institution and in any act of association, including that of the establishment of an organization, where states, in accordance with their legislation or their agreement, are the ones which determine the legal capacity it is endowed with and the kind of competences to be assigned to it; the capacity of a law subject of any organization is established by its founders). In fact, it is also stipulated that "*Under the principle of conferral, the Union shall act only within the limits of competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein*". The idea of conferring competences through treaties, and not in any other way- at all; in a general way, is also reasserted in other provisions. It is an emphasis that certifies the authority of this principle[2].

Consequently, the European Union has an exclusive competence (when "*only the Union can legislate and adopt legally binding acts*", while Member States can do so "*only if they are empowered by the Union*"), and, while respecting the principles of subsidiarity[3] and proportionality, it has also shared competences with the Member States (when, assuming that the EU is better able to carry out the envisaged actions, shared competence will be constantly exercised by the EU; in the case of shared competence, '*Member States shall exercise their competence to the extent that the Union has not exercised its competence*', or "*to the extent that the Union has decided to cease exercising its competence*", according to Article 2 (2) TFEU). As far as the EU exclusive competence area is concerned, it is worth mentioning that its fields are listed in Article 3 of the Treaty on the Functioning of the European Union, as they were also written, as the first pillar of the EU, in the treaty before the one amended by the Treaty of Lisbon. That is the communitarised economic zone. But, as a result of the last alteration, the conservation of

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[1] Paul Reuter, *Droit International Public*, Presses Universitaires de France, 1963, p. 128.

[2] Ref. EU competences, see Ion M. Anghel, *Personalitatea juridică și competențele Comunităților Europene / Uniunii Europene*, București, 2007, *Scurte considerațiuni asupra modului de stabilire a competențelor Uniunii Europene în regimul Tratatului de la Lisabona*, Rev. rom. de Drept Comunitar nr. 1/2009, pp. 28-55 and *Obiectivele Uniunii Europene ca temei al competențelor sale*, *ibidem* nr. 5/2009, p. 29 and following; and *Diplomația Uniunii Europene (și regulile acesteia)*, Universul juridic, 2015, pp. 349-354.

[3] Under this principle, in the fields outside its exclusive competence, the Union intervenes only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States or at the central level.

marine biological resources was also included in the Common Fisheries Policy. The cases provided for in Article 3 paragraph 2, where the exclusive competence of the EU is not based on the principle of conferral, but on deductions and presumptions, are also worth mentioning. The areas of the competence shared with the Member States, a total of 10 of them, are cited in Article 4 TFEU.

There is an exaggerated number of circumstances in which it is claimed that this excessive enlargement of the Union's competences without state consent might be justified and, consequently, a taking over from the sovereign attributes of the state to occur, which is difficult to accept. This practice of enhancing EU's competences is a deviation from the fundamental rule. The conferral of competences is not being done by those who grant them, the Member States, but by the beneficiary of such an assignment which acquires it under all sorts of alleged grounds. Yet, proliferation, becoming uncontrollable and dangerous, affects the very existence of the EU Member States.

To the abovementioned conferral competences, which are truly legitimate and at the same time the most important of the EU, the competences normally assigned to it according to the exigencies of its existence and binding on any international organization in its capacity as subject of international law, as any international organization, are added. As any international organization, the EU has both international legal capacity and legal capacity in the legal order of the Member States. Having legal personality (Article 47 TEU), the EU is recognized in each of its Member States as the most extensive legal capacity granted to legal persons under national law, and it acquires a number of rights (Article 335 TFEU). From the fact that, as is well known, the international organization, in this case the EU, has its own will and international legal personality, not identifying itself with that of its Member States, and since its Member States are engaged in EU acts, it is possible, through the practice that is now taking shape within the EU (jurisprudence does not limit to interpretation, but undertakes the work of creating legal norms), on the basis of the competences that it is continuously extending, to modify its own legal capacity[51], so that the founding states discover that the EU has become something else than what they had considered.

[1] The capacity of international organizations to conclude treaties is governed by the "rules of the organization concerned", which means, in particular, the constituent acts of the organization, the decisions and resolutions adopted in accordance with those acts and the long practice of the organization - Ion M. Anghel, *Certains aspects. Du droit des traités dans le cas des organisations internationales*, Revue Roumaine d 'études internationales, no. 4/1988, pp. 352-355.

In addition, the EU has also explicitly assigned tasks referred to in the TFEU (Articles 2 (1) and (2), 3 and 4) the following: to define employment policies (3), to define and implement a common foreign and security policy, inclding the progresive framing of a common defence policy (4), to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas, with the comment that those EU acts which are legally binding and adopted on the basis of the provisions of the treaties relating to these areas may not involve the harmonisation of laws and management regulations of the Member States.

Yet, other metajuridic grounds are added to these *expressis verbis* rules included in the EU Treaties. They are political and jurisprudential considerations that are hard to control and be accepted by states, because they do not result from legal provisions, and, in our opinion, cannot and should not be accepted as such either. We are talking about the competences resulting from the objectives of the EU, although they are not mentioned under such a heading in the Treaties, implicit competences, external competences, also those on the internal plane, as well as those resulting from the passerelle clause[61]. The enhanced cooperation, the flexibility clause and the co-decision procedure (Article 352 TFEU), also add to the transfer of attributes accepted by virtue of the principle of conferral, and all these additional means, which have been applied as a way of transmitting competences, deprive the principle of conferral of any relevance and make it superfluous.

- According to the CJ jurisprudence, the EU has competences, even if they are not provided for in the treaties, in so far as they are deemed necessary to achieve the goals it has ("implicit competences"). However, the provision in Article 1 TEU - "*competences for achieving the objectives*", a phrase that is a general statement, a proclamation of the ideals of the EU, should be transposed into a clause of the treaty together with its mode of accomplishment. A provision like that should be read and understood jointly and not apart, or ignoring the clarifications which were otherwise required by way of Article 5 (2) TEU "*competences conferred in the Treaties*", or "*the delimitation of, and arrangements for exercising the Union's competences … shall be determined by the provisions of the Treaties*…" (Article 1 and 2 (6) TFEU). Such a distancing from the fundamental provision, the principle of conferral, is not allowed.

[1] See Ion Gâlea, *Tratatele Uniunii Europene (Comentarii și explicații)*, Ed. C.H. Beck, 2012, pp. 15-17.

- The conferral of competences to the EU aims at achieving the common objectives states have set (Article 1 TEU). That is a fundamental rule of law valid for the determination of the capacity of any legal person, and if only this were to be pursued, a redundancy, such a reference would appear to be mere futility - which is not the case. Reasonably estimating, I think that, in this case, it was meant to emphasize that the transfer of sovereign attributes from states - an extreme action in the form of EU competences which undoubtedly rest with the EU - can only take place if there is also a fundamental foundation that makes it imperative (that is, the objective to be fulfilled), and if that requirement imposes it, it is written down in the treaty as such, namely to have that competences specification that is made through the principle of conferral (Article 5 TEU). When the objective is mentioned just as a purpose pursued, but is not also legitimate or put in a concrete written form in the treaty as an action and not as a mere vision, and when the objectives are so general / vague and ambiguously formulated, by claiming such a fluid regulation, one gets to the anomaly of a massive transfer of sovereign attributes, without the consent of the Member States. Holding of a competence cannot be accepted, since it is not attributed.

- Inventing competences for the EU only on the basis of objectives which have been outlined in a generic and interpretable way in treaties, as is the case for "implicit competences", the work of EUCJ jurisprudence, is an abusive practice. Starting from more or less learned generalities and assumptions or opinions, to come to spoiling these crucial actors of international life of their sovereign attributes *summa potestas*, through potentially controversial interpretations, though not supported by states, the only ones entitled to decide, is a process of passing states into nothingness. States are primary subjects of law[1], with full capacity and they make up the international community. States, these political-judicial structures, sacred to their citizens, come to being deprived of what is their own: independence and sovereignty (including the reserved area), thus affecting the very basis of EU existence. When states agreed to transfer some their sovereign attributes as competences, they stated, to this effect, in Article 5 TEU, that this would be done on the basis of the principle of conferral by the inclusion of these

[1] See Louis Delbez, *Les Principes du Droit International Public*, 3-ème ed., 1964, pp. 79-85; Ion M. Anghel – *Subiectele de Drept International*, Lumina Lex, 1998, pp. 99-114.

competences in the treaties ("only ... by treaties"), which is crystal clear even from the way the text was written. It is only the state concerned, that original and supreme power, that fundamental structure of which the international community is made up, that is also bestowed to decide the transfer from its sovereignty prerogatives, because it is the holder of such an attribute. State sovereignty is a premise, and any exemption from it can only be made by the states concerned through a strict interpretation. But such an act, transfer of sovereignty, should be always expressly told and not inferred, because otherwise, it would be like any EU court could dispose of the sovereignty of the states, transferring, by virtue of the interpretations that they make for themselves, the sovereign attributes, without the latter having given their consent. And that is inadmissible (not only does the act of justice not stop at the function of interpreting EU rules, but it also comes to address even the reserved area[1] of the state); states represent a historical reality and do not end up by being abolished by EUCJ judges on different criteria or reasoning.

We also recall in the same line, the provision according to which the Member States have a competence not conferred upon the Union in the Treaties (Article 4 (1) TEU). That safeguard clause, as it was called in doctrine[2], has the gift of emphasizing and reiterating the idea that the EU has "*only the competence conferred in the treaty*" and not otherwise. But the text also presents an editorial flaw, an aberrant nonsense, probably premeditated, because it suggests that states would have powers with the approval of the Union, when, in reality, they are the ones that grant competences to the European Union.

Through this wide range of competences, the European Union takes over massively and abusively out of the sovereign attributes of the states. The first ascertainment to be made is that such a number of attributes have been included in EU regulations, a true proliferation, that states' sovereign and independent prerogatives, becoming, as a consequence, residual, find themselves in an emphatic and inevitable narrowing process.

It follows from the above that, in addition to the hypothesis that states have expressly and without the slightest ambiguity consented to transfer their sovereignty prerogatives as competences to the EU, through the treaties

[1] The state has, by virtue of its territorial jurisdiction, a discretionary power, an element of what constitutes the essence of sovereignty and state independence, and absolute exclusivity and which in no way can be regulated by international law - Ch. Rousseau, Droit International Public, 3-eme Edition, 1965, pp. 291-292.
[2] Ion Gâlea, *op. cit.,* p. 14.

concluded by them within the EU, an unacceptable and harmful practice has still taken roots. And that is worrying. Namely, that what history has consecrated, *ie* sovereign states, could be replaced, in the sense that it could be ceded, through all sorts of deductions - an effect of imagination. Assumptions were proliferated that the Union, itself a creation of states, can unimpendedly, and, as it can be seen, arbitrarily arrogate the attributes of sovereignty from the Member States, thus leading the society in the direction that has not been agreed by the Member States in any way.

We find a proliferation of competences overcoming the reasons they really require to be admitted. That is an abuse and a case of irresponsibility, which should attract the attention of those concerned, to cease tolerating such a practice. There is a real assault, with breaches and splinter effect from the prerogatives of a fundamental political and legal institution - the state. It is that frame formed in the course of history, and which, as has been demonstrated so far, is the hope of the citizen that there is somewhere from where he or she can get protection, namely from somewhat whose component he is, he who is now stripped of any ability to act further in his favour.

2. An essential segment of what the competences of the European Union are is the one that is constituted and materializes in the law-making work it is undertaking. By exercising them, it establishes the EU legal rules.

By issuing legal rules, the European Union disposes of the normative function which is necessary to ensure the existence of a *corpus* of community legal rules, without which it could not lead a society of a complexity like that of the EU made up of states that have associated themselves. Within the sphere of the constitutive function enters the drawing up of community legal norms and the revision of the treaties through which the EU was established – Article 48 TEU (the essential role lies with the Council, as the representative body of the governments of the Member States, which, on the basis of Commission proposals, approves with unanimity of votes). The legislative function includes the adoption of normative acts of general character – Article 16 TEU and Articles 288-292 TFEU. Due to the fact that the EU has the character of a superstate organization, such a function is partly exercised by the institution representing the citizens of the community states (the European Parliament), together with the institution emanated from governments (the Council of Ministers). To this end, there is a specific system of elaboration.

According to Article 288 TFEU, in order to exercise the Union's competences, the institutions shall adopt the following legal acts: the regulation, which has a general application and is binding "*in its entirety and directly applicable in all Member State*"; the directive, "*which is binding, as*

to the result to be achieved, upon each Member State, leaving the national authorities the choise of form and methods"; the decision is binding in its entirety; recommendations and opinions are not binding.

Member States are bound by Article 291 TFEU, under the sanctions provided by Articles 258-260 TFEU, to take all necessary national law measures to enforce the binding acts (those adopted on the basis of Articles 289 and 290)[1]. In case of serious breach of the values referred to in Article 2 TEU, the *infringement* procedure is triggered (Article 7 TEU).

As a result of the fact that EU legal acts, the regulation and even the directive, under certain conditions, apply directly (the Court of Justice ruling in the *Van Duyn* case), without mediation and with priority, both to the Member States and to their institutions and citizens and to other persons on their territory, Article 291 TFEU lays down that EU rules no longer go through the control exercised by the Member States, as in the case with any other international legal norm that falls within the scope of domestic law. They apply directly, as any law of that state, even though it is not established or nostrificated in the jurisdiction of that state (because states are bound to apply the treaties concluded by the EU - Articles 24 (3) and 29 TEU, as well as Articles 288 and 291 TFEU).

With regard to the direct application of EU law, it is worth mentioning that its rules provide rights and obligations, directly and without mediation, not only to States or institutions, but also to their citizens, or, more precisely, to all people in their territory, because these are the applicable legal rules and not the national ones. The EU Court of Justice confirmed in its decisions (*Van Gend* case and *Loos and Duyn* case, ref freedom of movement) the direct application of EU regulations, judging that a new order had been established, and the subjects, states and their nationals, had their rights and obligations, by virtue of it. For this purpose, the CJ referred to primary legislation, *ie* the constituent treaties of the EU, in which all conditions were established in legal terms and nothing else is required from the states to be enforced and produce legal effects. In fact, this is precisely what the motivation of the Court of Justice sets forth: states have transferred sovereign rights to the EU and consequently any unilateral action taken by them deviates from what constitutes the concept of EU law. No Member State can call into question the value and status of EU law, as a system which applies uniformly and generally across the EU. This condition was accepted by the Member States as a rule when they joined the EU (see Article 1 TEU). In fact, most states have provided that in their Constitutions (including Romania), so the courts have aligned themselves with this

[1] Ion Gâlea, *op. cit.*, pp. 461-473.

practice. Moreover, even when applying national rules, national courts of justice have to take account of EU rules (the ECJ judgment in *Van Colson and Kamman* case). The regulations contained in the EU treaties and acts cannot be ignored (ECJ, Member States cannot apply rules other than those of the EU).

In the *Costa / Enel* case, the Court of Justice has stated that those who drafted the Treaty had neglected to take an explicit position that it was as clear as possible what exactly represented the treaties to the domestic law of a Member State, as a legal value, and more particularly, to the law. An explanation was avoided and answers were bypassed. This omission /oblivion can only be explained by the solicitude that existed not to hinder treaties ratification, but to facilitate it. It was a deliberate omission, a trick or a misleading. If primacy had been expressly proclaimed, political problems / difficulties would have arisen. Eurocrats preferred to make Europeans happy, without asking them for informed consent. That procedure was also given an allegorical name of "permissive consensus".

Although such general and binding rules inherent in the community legal order are not properly set up by the Member States themselves or with them in the framework of the EU law-making process, they are promoted independently from the national legal order. They are a creation of the EU institutions, by exercising the competences assigned to it, according to its objectives and rules, and not in accordance with the national ones. Community law forms an integral part of the legal systems of the Member States, without being confused with them, though. It is that part of the legislation which comes *uno iactu* from the EU, and Member States' courts are obliged to apply them, because these are the proper applicable rules. The Court of Justice ruled that "*by creating a community of an unlimited duration, having its own institutions, its own personality, its own legal capacity of representation on the international plane and, more particularly, real 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 and have thus created a body of law which binds their nationals and themselves*".

3. As regards the thesis of EU rules supremacy (legal norms), we note that is the logical and natural consequence of the fact that, as the EU has objectives to be attained, which is the reason for it to exist (achievement of the intended purpose for which the EU was set up), *ultima ratio,* states have to incontestably assign cmpetences to it and to its institutions. The exercise of this legislative power in accordance with the procedures is materialized in the drafting of the EU legal norms. Bearing the heading of a EU legal act, norms apply directly and without mediation, as any national law. *Whereas* in certain areas of EU activity competence lies exclusively with it, because the states have transferred it from their attributes of sovereignty and it exercises it accordingly, it follows by itself that it is only those EU rules that apply to the area concerned (Article 2, para. 1 TFEU). Likewise, in the case of a competence shared with states, when assigned to the EU. Strictly speaking, there is no question of supremacy (a hierarchy, as when choosing between two variants), but simply it is the EU rules which have to be applied as such, because they have been legislated through the exercise of the functions the EU has to this end.

The EU has therefore the legislative attribute, *iuris dicere,* given the fact that European integration could not be achieved without applying the rules of EU law (exactly and uniformly for all states). EU rules are imperative, *iuris vinculum*, in the form in which they are enacted. Following this legislative action, the EU legal order has been formed, and all Member States are bound to it, so that the application of the EU rule and not that of the Member States, no longer requires any argument.

Regarding the primacy of EU law, there is no issue of competition between it and the national law of the Member States, but one of determining the rule that must be applied. The choice claimed between the two regulations could only have reason if the national rule were susceptible to being applied. Still, the application of the European rule is required by virtue of the treaties that made it clear that states would transfer from their sovereign prerogatives / competences to the EU. In this sense, there is a provision in their Constitutions, so that the European rule is the one that must be applied, not as an option, but under an imperative title, especially in the hypothesis where there are EU's exclusive competences, when the EU is the only one that adopts acts which are legally binding.

While the supremacy of EU law was formulated in a lapidary way in the Constitutional Treaty, such a notion is missing in the Lisbon Review Treaty, which only stipulates that EU legal acts are binding on states[1]. That

[1] Ion M. Anghel, *Supremația dreptului UE în regimul Tratatului de la Lisabona,* Rev. Rom. de Drept Comunitar, nr. 4/2010, pp. 209-218.

might appear as incomplete regulation, not fully implemented, but without, however, questioning their value as a legally binding act.

If the *primacy*, priority / prevalence phrase has no place in the relationship between the EU and national law, the supremacy of European rights phrase is downright hazardous and baffling.

In principle, countering the regulations assumed by the EU constituent treaties, which are part of the international legal order, with the constitution of one of its Member States - the fundamental act of a state that testifies to its existence as such – in order to determine which of them has supremacy over the other, is improper in the circumstances in which each of them is subject to a different legal order - domestic law and international law and there can be no hierarchy between them. By its accession, the EU Member State has simply assumed the obligation to apply the EU rules and is bound under the *pacta sunt servanda* principle. It is inconceivable to amend the constitution by the effect of community provisions or the decision of the Court of Justice, or by modifying the structures and functions of the state (Article 4 TEU). It would be aberrant to claim that, by a decision of the Court of Justice, a Member State is left without a constitution - a document attesting its existence. Therefore, European Union law is not above the states and their legal systems. The EU's legal rules really bind states, forcing them to comply with EU provisions, but this relationship between international law and domestic law is not a supreme criterion of legality. The problem still remains under the *pacta sunt servanda* principle. In fact, the establishment of EU rules itself is an act of the Member States - they agreed to introduce the appropriate legislation - but neither the EU nor its legislation are placed above the states and their fundamental acts, the constitutions. If states are the original subjects of international law, the EU is the creation of the founding states, decided by those states, and would exist for as long as these states are determined to maintain it. The EU has no original or general legal capacity. It is limited to what has been conferred – co-ceded - upon it by the Member States. Transposing the idea of supremacy in the EU - Member States relationship is improper, since the EU has a derived personality and is bound by the imperative principles and rules of international law, as any actor in international life. The idea of supremacy makes sense only in the case of the constitution of a state, when the entire legislation flows from it (on that line are also the provisions of the Romanian Constitution, when the Constitutional Court verifies both the law, whether the unconstitutional acts cease their legal effects, and the treaties concluded by Romania)[1] .

[1] *Constitutional Supremacy in the context of the principle of primacy of European Union Law*, Conference Paper -Supplement of Valahia University Law Study, 2017, pp. 62-72.

There is no such situation in the case of the EU as well, where it is only checked if states fulfill their assumed obligations.

The question of whether or not the legal rule applies does not, in our view, have any relation to the fact that there is or there is not a rule of domestic law that would be in conflict with the EU norm, as Article 148 in the Constitution of Romania is uninspired conceived. Such a correlation was necessary, but it had to be taken into account that the application of the EU norm would take place by virtue of the fact that by exercising the competences assigned to it, the EU simply enacts rules and they are the ones that have to be applied. Therefore, by hypothesis, it is not necessary to create a positive conflict of rules in order to establish that the EU rule has priority. If they are identical, it is still the EU rule that is applied. The two legal orders - EU and domestic law - are unequal, belonging to different legal orders and once a state pledges to apply the community law, it no longer has an option, because we are now talking about a violation of a treaty.

We also note that the EU treaties do not contain indications with regard to a conflict between EU rules and national law, and the pre-eminence of EU rules is not explicitly stated, which would have led to the avoidance of any ambiguity, but it is deduced from the fact that, in Article 288 TFEU, it is stipulated that one of these acts, the Regulation, is mandatory and applies directly in each Member State. Thus, by stating that the regulation is the one that applies, the application of the rule of national law is also implicitly blocked, because the area is within the competence of the EU and the state can no longer invoke it. The shortcoming lies in the fact that the pre-eminence of the EU rule does not appear in legal terms, but rather it is to be found in a political statement - an ambiguity. The direct effect of the EU legal act may be invoked in the case of treaties provisions (decision *Van Gend and Loos*)[1], as well as of those in the regulation (Article 288 (1)), or also even in the case of a directive, although such a reference does not exist in the TFEU. The explanation that has been advanced lies in the statement that the EU is setting up its "own legal order", because it results from an autonomous source and can be invoked against the law of the Member State. Nevertheless, such an advocacy is being promoted to the Member States, which are faced with the *fait accompli*, and that is not right, as the law-making process should be explicit and completely drawn in all cases (the restriction of sovereignty attributes is not proposed by the EU, but is explicitly decided by the Member States).

[1] Paul Craig, G. de Burca, *Dreptul Uniunii Europene* (comentarii şi jurisprudenţe), ed. a IV-a, Editura Hamangiu, pp. 338-340.

It has been argued that the primacy of EU rules would be a fundamental principle of the EU, although this idea of supremacy does not appear as such, *in terminis*, in any document of legal value to proceed accordingly. Still, this imperative was as obvious as possible. It follows the fact that legal acts, as a product of the exercise of EU competences, do not mean more than the fact that Member States are obliged to apply them, without this being explicitly recorded. The quality of a fundamental principle cannot be deduced from the mere interpretation of a regulation. It has to be clearly formulated and explicitly stated.

By subscribing to the assertion that the legal acts adopted by the EU (regulations, directives and decisions) are binding on any Member State (Article 288 TFEU), which has to take national measures for their application (Article 299 TFEU), under sanction, thus committing itself to liability, including through the *infringement* proceedings (Article 7 TEU), we believe that is not a reason to claim that the EU law supremacy is a fundamental principle of the EU, although the quality of such a rule does not stem from the mere fact of the obligation to be applied. From a legal point of view, there is no legal basis binding the states through which this would be consecrated or at least deduced, all the more so as Declaration 17 on the Supremacy of Law (through which the Conference endorses the opinion of the Legal Service of the Council) has a political character only, since it is not part of the Treaty and does not bind states except at the political and not the legal level, while any person can call into question such character. There is only a declarative act, states not going further to embody it as a fundamental legal principle, because they would have risked to have the ratification of the Treaty of Lisbon also blocked. As such, it is not acceptable that the Constitutions of the Member States, merely classified just as a matter of fact, should be shattered by a decision of the ECJ as long as it is not conceivable to have a state, the foundation of the EU, without its basic law. A political commitment has only a mere political value. As long as that state is a member of the EU, no court can overturn what has to do with the concept of state by a decision (under the conditions that the EU observes their national identity and the essential functions of the state).

At the same time, we note the negative fact that the activity of the EU institutions seems to be more focused on legislation that is the bureaucratic side, beyond what is necessary. There are more and more rules, a conglomerate of rules and even more rules are going to be indited - getting up to minor things, when such areas should be left in national institutions' charge, for more appropriate settlements. European Union regulations have acquired such a scale and complexity that their recipients are no longer able to understand them, feeling confused. These regulations have

grown to be too numerous, too detailed and rigid, that they have become suffocating for society and hinder its development in the absence of a political action to guide them. The decision-making mechanisms have come to be too bureaucratic, far from reality, and the European Parliament has no full powers (no parliamentary initiative). That inflation of regulations has generated a feeling of inconvenient coercion to citizens and ends up by blocking the welfare of society. All that stack of regulations keeps the citizen away from the act of decision and the deficit of democracy is as obvious as possible.

4. The autonomy of EU legal order, with its paradigm role for the EU existence and actions, is of capital significance for the profile this corpus of regulations has. It is also important with regard to the way in which it asserts its way of being, imprinting the direction and autonomy of the legal order, an indispensable prerequisite for organic and functional unity. It is the only guarantee that the EU really exists as a legal, economic and political structure. It is a living reality that the EU is promoting its necessary impact on the society it governs and the evolution in sight. It ensures that the EU is in a state of functioning and leadership in its interaction with national law. Being uniformly applied throughout the EU, it grants the unity of thought – the coherence of such regulations. Therefore, the concepts of EU law are and should be interpreted only in the light of the goals of the EU legal order and of the EU goals in general, imposing the meaning of development taking place in the Member States. That interpretation, which is specific to a super state organization such as the EU, in relation to its own purposes and reasons, is indispensable for the rigorous and homogeneous determination of the meaning of its regulations, which are special and need to be understood in a uniform way. That is why it should be ensured only by the EU in terms of the objectives and the vision of its goals. Otherwise the community legal order would be jeopardized if, by its different interpretation, each Member State could to come up with its own variant of the sense of regulation, and decide individually on the substance of the freedoms the Union proposes to guarantee. The only criterion against which EU legal instruments can be assessed and accredited is the legal order of the Union itself, and not the systems of national law, which, on the contrary, should harmonize with it. But, even if the EU legal order is a distinct legal order, organically compiled and comprehensive in relation to the relationships it regulates, the fact that both legal orders - that of the EU and of the Member States - apply simultaneously to the same person who has also become an EU citizen, or to the *de facto* situation in the Member State, things do not go in the direction of such a rigid delimitation, with mutual exclusion effect. That is because, in principle, the rules of the two legal orders do not go as far as to

be necessarily contradictory and the national rules are shaped according to the community rules, as long as both categories of community and national rules apply in the same area and to the same recipients, there being common elements between them that lead to a correlation. The EU law is always a starting point as an operational rule of law, becomes part of the national legal order and is applied as such (see the case of European citizenship which cannot exist without the citizenship of the Member State). The existence of the two legal systems in competition should not become a case of antinomy, the normal state of which is to have them harmonized.

On the other hand, the interaction that takes place between the system of the EU law and that of a Member State's national law (as set in Article 4 paragraph 3 TEU) leads to sincere cooperation, that ensures the fulfillment of the obligations, as well as bringing them closer together, making them compatible. National law should be in harmony with that of the EU, but the latter also needs the former one to ensure its application. The community legal order by itself is not in a position to lead to the strict fulfillment of the objectives pursued by the EU, because the EU legal order is not an independent and isolated system, but rather a segment, the primary one, and that is why it is connected to and conditioned by the national one and relies on the national systems of states to materialize its actions. We note that the three powers of the state at the level of national governance (legislative, executive and judicial) and the EU institutions are not isolated from each other, but, on the contrary, they are functionally associated through their common goals and the cooperation they are undertaking; apart from interests, there is also solidarity and an interaction of mutual empowerment between the two systems.

This interdependence between the EU law and Member States' law is illustrated by the fact that, when there is a regulatory vacuum in the EU that needs to be filled up, the EU turns to the existing rules in national law, and, ultimately, the general principles of law, which are common to both, in order to see what rules apply. This happens as a rule, unless the EU has its explicitly own regulations.

The autonomy of the EU legal order should be based on the correlation, the balance and even the harmonization between EU rules and those of the Member States, as we are in the presence of a specific situation that cannot be ignored, because there is a reporting that targets the huge variety of situations that national regulations represent. The starting point are the societies in the 28 Member States, each one of them with its individuality and specificity. Compatibility should be established among them and the rapprochement between them should materialize in the direction of

European integration. Each nation comes from history with the burden of the situations and problems it has been confronted with and an identity that has been shaping it for centuries. It has its past on its back with the interests and aspirations it has achieved or not. It has traditions and customs outlined over time and realities joined onto a common denominator, in an organic and harmonious connection. It cannot accomplish its aims only through the mere crowding of the immense amount of regulations, *i.e.* through bureaucracy, but rather a coherent formulation of the rules that are valid and applicable to all states is necessary. A society is enhancing, people are evolving in course of time. The legal order, including that of the European Union, is not a spontaneous phenomenon. It introduces itself as a creation of people, and any sudden push, in the conditions of affirmation of human rights, does not allow a prevalence of factors coming from above, from the EU.

5. According to its Constitution, Romania introduces itself, in its general outline, as any other sovereign state - subject of international law, which, in its capacity as a member of the international community and within the framework of the existing international legal order, takes part as an actor in international relations and actions to solve the problems faced by mankind, and maintains relations in various fields with other states, including through its playing a role in organizations and other international structures of cooperation. We want, as is normal (any nation has such an aspiration), a Romania in the position of an independent and sovereign state, a state of democracy and prosperity, within an association of states, the EU, equal in sovereignty, having rights and assuming obligations with the same chances and benefits, on terms of respect and dignity, like other Member States. If not *primus inter pares,* at least to the same extent like them. Under no circumstances should we accept to be in a vassal or protectorate position, or others' appendix, the way Romania is currently being treated, or how it would become in the case of "multi-speed Europe" (second-hand). By participating in the EU and in the light of the obligations it has undertaken to have some of its sovereign prerogatives transferred as competences to the EU and honoring its obligations, Romania is, however, in the position of a state being governed from outside. *Hélas*, our country is kept on the periphery of the EU. For the state the country is in - the lack of diligence and efficiency that ought to have been demonstrated, and the deception of Romanians' expectations - it is the Romanian governors who should be held accountable. They do not justify their presence in Brussels and take advantage of a certain status, without, however, getting to the level of responsible national representatives and deserving of such an honor. How else could it be explained that Romania is abusively being held

outside the Schengen Agreement[1], by states which, in violation of the rule of law and through the abuse of law they have committed[2], treat us as second-hand EU members, if not, as their subjects, while inefficient Romanian governors are not capable of bringing things to their normal condition, so that we are no longer humiliated.

Having been endowed with legal personality (Article 47 TEU), the EU has replaced the European Community which it succeeds (Article 1 TEU), and having become the holder of the full range of tasks (of the EU and EC), it is currently carrying out the whole range of activities that emerge from its foreign action, drawing itself up as one of the most important and impacting actors in international life. The Union's competence covers all areas of foreign policy, as well as those relating to the security of the Union, including to the gradual definition of a common defence policy (Article 24). It is the common foreign and security policy and common defence (Articles 21-46 TEU), as well as the common commercial policy (Articles 205-215 TFEU). As a result, the EU has the right framework and the necessary mechanism (High Representative for Foreign Affairs and Security Policy and the European External Action Service); foreign policy is defined by the European Council and the Council, acting unanimously; Member States must actively and unreservedly support the EU's foreign and security policy; the European Council determines strategic interests and objectives; decisions engage states in taking their positions (Article 28) and make sure their national policy is in line with EU positions (Article 29). The Union may conclude agreements with states and international organizations (Article 37) which are binding on the Union institutions and the Member States (Article 216 TFEU)[3].

In the context of European integration, Romania's foreign policy is mainly carried out within the EU with the specific advantages and restrictions of an association of states with super state character. With regard to its relations with third countries, *inter se,* they are also modeled, and consequently, do not have the freedom of action of an uncommitted and fully available state to political actions and forms of cooperation, according to its interests. Romania is compelled to execute the treaties concluded by the EU on its behalf, having to take into account all its commitments, as well as the EU rules. Romania is building its entire foreign policy and

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[1] Ion M. Anghel, *Blocarea României de a intra în Acordul Schengen* and *Un caz de posibilă aplicare a principiului echității în relațiile dintre state membre ale UE*, in Reglementări ale Uniunii Europene de un interes aparte - *sui generis*, pentru România, Universul Juridic 2017, pp. 117-129 și pp. 279-334.

[2] *Encyclopedia of Public International Law,* Vol. One, 1992, North-Holland, pp. 4-8.

[3] Ion M. Anghel a.o., *Diplomația Uniunii Europene și regulile acesteia*, Universul Juridic, București 2015, pp. 380-397.

conducting that kind of diplomacy that has to be in line with that of the European Union. As a result, its international stature has become a derivative one and adjacent to the EU[1], a sort of subject of secondary international law entailed by certain conditions in the exercise of its international actor status.

It is quite understandable that, by joining the EU, there is no way for Romania to remain a fully independent and sovereign state, not only *de facto*, but also, *de iure.* Being part of an association of states with a super state character, some of its sovereign attributes are taken over as EU competences, and its freedom of action is greatly lowered, so that its independence is also limited. However, the fundamental principles[2] of international law, as well as the imperative norms[3] do not cease to apply to relations between the EU states, since the EU, being part of the international community, cannot be placed outside the international legal order, which not even itself can ignore. Nor can the rules of the organization - their internal law – come in conflict with the principles of international law. Besides, the EU constitutional treaties proclaim as one of its objectives the observance of the principles of the UN Charter and of international law (Article 21 TEU). As such, as long as the EU Member States are sovereign (even if they integrate into the EU), they do not cease to be bound by obligations, namely to enjoy the right to demand respect for the principle of sovereign equality, to fulfill their obligations in good faith. Under no circumstance does the capacity of partner in the EU constitute a reason for a state to intervene in the internal affairs of another state and to dictate how to govern (what laws to adopt, how justice works etc). Relations between the EU Member States are governed by its constituent instruments, and none of them provides that the representative of a state can give instructions, criticize and substitute for its institutions. In the EU, states are not subordinated to each other, but they are equal to one another. Nor is the privileged strategic partnership the basis for such a treatment of subordination and control, no state being allowed to arrogate such a position. However, the attitude of some diplomatic representatives accredited in Bucharest or passing through Romania, is simply revolting and intolerable by the way in which Romania and its institutions are treated (a colonial treatment). Not only do they not observe diplomatic duties in the accredited state of not intervening in domestic affairs and

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[1] Ion M. Anghel, *Uniunea Europeană şi poziţia (calitatea de subiect de drept internaţional) a statelor sale membre*, in the Revista Română de Drept Comunitar, nr. 6/2009, p. 89-107 şi *Diplomaţia Uniunii Europene (şi regulile acesteia)*, Universul Juridic, 2015, pp. 361-363.

[2] Ion Diaconu, *Dreptul internaţional public*, Vol. I, Lumina Lex, Bucureşti, 2002, pp. 272-329.

[3] A. Verdross, *Ius Dispositivum and Ius Cogens*, în Intenational Law, AJIL 60, 1966; Ion Diaconu, op.cit., pp. .343-381.

engaging in political activities, but they also do not respect the elementary rules of protocol, treating state institutions with disdain and humiliating us as Romanian citizens[1]. In fact, all EU Member States have, above all, diplomatic relations with Romania, and these relationships should take place, as is the case in the civilized world, in accordance with the provisions of the Vienna Convention on Diplomatic Relations (Article 41) in which it is stated that in the territory of the accredited state diplomats have a duty to observe the laws and not to interfere in its internal affairs. The question is whether such diplomatic representatives do not yet know this provision or think we do not deserve an attitude of civilized people.

Once, on the basis of the EU Treaty of Accession, it has been agreed that Romania is a member of the EU, namely it is part of an association of integrating states and *ipso facto,* has become a party to the treaties on which the Union is founded (Article 1, paragraph 1), and by the TEU (following its amendment by the Treaty of Lisbon - where the fundamental purpose was European integration / creation of an ever closer union), it has consequently also been stated the fact that the Member States have assigned competences to the EU in order to achieve its objectives, an utterly unprecedented complex situation has been created, with effects including on the legal framework of the relations between the states members of the EU. The follow-up of this situation of fundamental change in legal capacity, when the main partners are others or have come to have another feature according to EU rules, is expressed in the fact that Romania has become (or should become) a party to certain EU treaties, has ceased to be a party to other treaties or to be able to conclude certain treaties with other states, or that it has become a party to treaties without having concluded them, or that its relations with the EU are no longer regulated by treaties (when acting as subjects of international law), but through its internal acts (by virtue of a rule in the domestic law of the organization - the community legal order).

According to the TEU (following the amendments made in Lisbon), the EU has legal personality (Article 47 TEU) and in the framework of its foreign action, exercises its common foreign and security policy, as well as its common defence – attributes exercised in its own name (Articles 21-46 TEU). As such, having exclusive competences (when only the EU can conclude international treaties in certain areas), or shared competencies (where Member States have competence only if the EU does not exercise its own - Article 5 of the TEU and Articles 2-4 of TFEU), the EU concludes treaties that are binding on its Member States as well, in its capacity as

[1] Ion M. Anghel, *Politica externă a României cu privire la Basarabia, reflectată în activitatea diplomaților săi,* Universul Juridic, București, 2016, pp. 358-359.

subject of international law. The treaties concluded by the EU have priority over the treaties concluded by the Member States and, consequently, there is a preventive control exercised by the EUCJ (its negative clearance can only be overcome through the formal alteration of the treaty); in the case of treaties concluded by the Member States between themselves before their accession to the EU, they remain valid only insofar as they are compatible with the EU treaties, and the Member States can no longer rely on the existing treaties concluded between themselves, as regards the submission of a dispute on their interpretation and application; in the case of treaties concluded between a Member State and a third state, after its entry into the EU, the treaties concluded by the EU also have priority (there is a preventive control by the EU institutions); finally, EU does not give in to the treaties concluded by its Member States with third countries prior to their accession to the EU (and has to cease them)[1] .

The dimension of the treaties concluded by the EU within its general legal framework of its relations becomes the main one, depending on which all the other relationships that exist are ordered, while that of the Member States remains adjacent and subsidiary, in a report of subordination. Hence, the implications also extend to the institutional and legislative area of the Member States. Therefore, Romania's entry into the EU was a true purgatory of its conventional legal framework. While becoming part of the EU treaties and other regulatory forms (as a EU member), with a concentration of its international regulations in this area of the EU (which is no longer international, but intra-community), it gave up some of the treaties it had signed before accession, by ceasing or revising them. This selection works in the future in relation to what lies within the competences of the EU, or takes into account the fact that no treaty which Romania concludes can be in contradiction with the EU or in violation of its rules.

If by virtue of the principles of international law, states are equal in law ("the principle of sovereign equality", Article 2 (1) of the UN Charter, regardless of size of territory and population, degree of development etc.)[2], in the EU instead, as in any federation, states are not equal in rights. Equal representation exists only for the big states which, having the advantage of economic development, enjoy influence, so that the proportional representation that is being practiced sacrifices the interests of the small or inferior states in terms of their development, and thus a compromise is reached that combines bicameralism with the weight of the vote. In the EU

[1] Guy Isaac, *Droit communautaire général*, Armand Colin, 1999, p. 139; Paul Craig, G. de Burca, *op.cit.*, pp. 209-280 and 334-370.

[2] Ion Diaconu, *Tratat de drept international public*, vol. I, Lumina Lex, Bucureşti, 2002, pp. 276-285.

Council, decisions are taken by a qualified majority of at least 55% of the members of the Council, comprising at least 15 of them and representing the Member States with at least 65% of the EU population (Article 16-4). It is worth noting that the principle of equality is not mentioned in the preamble to the TEU, where the principles at the basis of the EU are evoked, although this was the place where such a reference should have been made; in this instance, equality refers to human rights only.

Indeed, it is provided in the TEU that the Union observes the equality of the Member States, as well as their national identity; but the text does not shine with clarity when it refers to "*the equality of the Member States in relation to the treaties*". It is not known what it was meant to say, or maybe that is precisely why. Equality to treaties does not clearly indicate also the fact that states are equal in the EU (their vote is equal). When it is stated that "*the Union shall respect the essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security*" ((Article 4 (2) TEU), but at the same time the "*Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties and facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives*" (Article 4 (3) TEU) prohibitive specification is added, there is sufficient substantiation from what still remains admissible as essential functions of the state. Moreover, the European Union carries out the common foreign and security policy in its own name (Article 23 - 46 TEU), with the appropiate reflexions, and the Council's decisions commit the Member States in the positions they adopt (Article 28 TEU). States ensure that their national policies are consistent with the positions of the Union, and the Union may conclude agreements in its own name (Article 37). The agreements concluded by the Union are binding on its Member States (Article 216 (2) TFEU).

6. The finality / the EU reason to be, a specific facet, mandatory and inevitable to occur during the integration process that is taking place, is the establishment and development of a new political and judicial order within the EU - the community legal order.

European integration is, at the same time, a condition, creating interdependence between the elements of an international system and a process through which integration is achieved.

European integration is defined as "*a process by which EU Member States progressively transfer a number of competences based on national sovereignty from national to supernational level, by accepting to exercise them jointly and co-*

operating in the respective fields of activity, in order to achieve political, economic, social and cultural objectives related to the program and development of these states. "Unlike EU integration[1], international integration - a new way of organizing international and co-operation relations between distinct political units within a centralized system - does not necessarily call into question the unification of the participating States. The degree of interdependence created in the framework of integration brings about a transformation of the international system, but it does not, however, produce an alteration of the system and the fundamental laws nor the achievement of the independence of the nation-states.

By exercising the competences conferred on it by its Member States, the EU is building its own social, political and legal economic order - a society with a different structure and configuration, more evolved and functional. It is a situation similar to the ones in any international organization, when each one sets up its own order, under the name of rules of the organization or domestic law. In the case of the EU, however, the form is much more advanced, with a much deeper impact on state sovereignty and on society as a whole.

The Member States have accepted, as a result of their participation in the EU, not to exercise some of their sovereign powers by assigning them to the EU, as its competences. By exercising them to itself, the EU establishes a new legal order of its own that is placed between the international and internal legal order, so as to achieve the common objectives. And since common goals are to create a closer union among the peoples of Europe, the conclusion follows naturally that we are talking about the building of a new international structure, rather a transnational one, which should undoubtedly have its own legal order. It is a situation that cannot exist, except in the case of a super state organization, as is the case with the European Union.

European integration[2] , as well as the continuous deepening of the process, imply, *inter alia*, in a clear and inexorable way, the establishment of a uniform regulation, the same legislation, based on a unique concept and the same mode of operation, even if we reasonably admit that the organizational system involved in the process of EU setting up and functioning cannot exist without such development, or that the objectives the EU and the Member States propose could not be achieved and that not even the sacrifice that the restriction of state sovereignty implies knows an

[1] Integrarea europeană ca mecanism, see Ion Jinga. Andrei Popescu – *Integrarea europeană* (Dicționar de termeni comunitari), Lumina Lex, 2000, pp. 113-114.

[2] Ref. Concept of European integration, see Ion M. Anghel, *Personalitatea juridică și competențele Comunităților Europene/ Uniunii Europene*, Lumina Lex, 2007, pp. 66-67.

alternative. The same (single) regulation should necessarily apply throughout the community (which represents the sum of the territories of all its Member States)[1]. Therefore, there should be set up and function a single, unitary and coherent way of regulating social relations, through rules that substitute for those of the Member States or reduce them to minor dimensions and importance. This is what the community legal order means, without which the EU cannot exist.

The EU legal order is the reliable and fundamental element of the Union, because only by creating a new system of law and applying its rules can the objectives underlying it be achieved. This new order of law is the indispensable prerequisite for organizing and resolving its economic and political problems. It has been affirmed in doctrine that the only way forward, the EU direction EU should follow, would be to admit unconditionally the primacy of the EU rule, which is not sufficient, and the argument is that there would be nothing left of the EU's legal order, because it can no longer achieve its goals, so that it will be goodbye to the rules, but also to the EU[2] .

Such a stage in the organization of society, having an indisputable prominence of the EU rules[3], as well as the smoothing of discrepancies that may turn up and consequently, the uniformity of the rules of conduct, can only be reached through a single legislative process taking place at the Union level[4]. That happens when the Union, through its acts, and those of its institutions (the constitutive treaties, as the accession to it treaties, as well as the treaties concluded by it with other subjects of international law, the acts - regulations, directives, etc.)[5], together with its Member States (within intra-corporate relations), according to their appropriate procedures, issues rules of conduct, in other words, the EU makes the law: a true *iuris dicere* prerogative. An even closer integration process, as an action that is taking place while the EU is evolving and as a result of extending the transfer of sovereign attributes in the form of EU

[1] Ref. EU territory (the area of treaties application), see Ion M. Anghel, *Eastern Frontier of the EU. Expression of the Past / Future Binome*, in Annals, Series on History and Archaelogy nr. 2/2015, pp. 45-46.

[2] Klaus – Dieter Borchard, *The ABC of Europea law*, 2010, p. 115.

[3] See Ion M. Anghel, *Supremația dreptului UE în regimul Tratatului de la Lisabona*, în Rev. Română de Drept European nr. 4/2010, p. 209-218 and *Diplomația Uniunii Europene (și regulile acesteia)*, Universul Juridic, 2015 – Tratate, p. 367-378; Paul Craig, *op. cit*., pp. 431-436.

[4] Ref. The normative function, see Nicoleta Diaconu, *Dreptul Uniunii Europene - Tratat*, Lumina Lex, 2011, pp. 242-248.

[5] Ref EU legal acts, see Augustin Fuerea, *Dreptul Uniunii Europene – principii, acțiuni, libertăți*, Universul Juridic, 2016, pp. 45-50.

competences[1], leads to the logical consequence that the preponderant / vital part of the rules in the European society should be the rules emanating from the EU. That new *corpus*, a complex and impressive ensemble of community rules, and the other regulations that continue to propagate are drawn within the legal order of the international community along with the national laws of its Member States, as well as of the other states, but with a transnational character and together with the regulations of different international structures. As such, the community legal order becomes a component that integrates into the international legal order. The commandments to which these community legal rules / the EU legal order relate and from which they later flow, consist of achieving the objectives that the EU has. The meaning and nature of the regulations being enacted derive from the purpose it has, *i.e.* the objectives to be achieved, and are reflected in the form of the legal rules under the jurisdiction of its Member States, instead of their legislations. The gradual progression of setting up of EU rules leads to such an extension - horizontally (as expansion in space following the EU enlargement) and vertically (in the process of covering new areas of social relations within the national framework) – so that the national legislation will naturally become ever more narrower and insignificant (a kind of habit), left only to complete the community rules. But, that will also be done in the sense and in harmony with EU regulations (states refrain from any action that would jeopardize the achievement of the objectives, by virtue of the principle of sincere cooperation and of the duty to ensure the fulfillment of the obligations arising from EU acts, - Article 4, paragraph 3 TEU).

In general, integration involves a political community made up of actors whose interdependence is sufficient to influence the decisions of each one - a conflict community. It is a condition that turns in a kind of solidarity between them, because there is a community of interests based on the necessity of cooperation, which is the commandment that eventually prevails. The degree of integration depends on the importance of the advantage and the cost of waiving which integration requires[2]. The European integration meant unifying the sovereignty of its Member States under the aegis of the EU, with an enlargement of its competences - vertically and horizontally - not only in the economic, but also social, justice, security fields (external actions), including the reserved area of

[1] Ion M. Anghel, *Scurte considerații asupra modului de stabilire a competențelor Uniunii Europene în regimul Tratatului de la Lisabona*, in Rev. Română de Drept Comunitar nr. 1/2009, pp. 28-55 and *Obiectivele Uniunii Europene – temei al competențelor sale*, in Rev. Română de Drept Comunitar nr. 5/2009, pp. 29-37; Augustin Fuerea, *op.cit.*, pp. 26-36.
[2] Jean-Pierre Cot , *Institutions internationales*, 1969-1970.

states (internal order)[1].

The degree of integration into the EU differs from that taking place in the composite states: if in the case of confederations, their constituent states retain their international legal personality and remain as sovereign states, in the federation, the member states lose their international legal personality, as a result of passing on a number of prerogatives which used to belong to them (foreign affairs, defense and resolution of disputes) to the federation; in the case of European integration, a complex and complicated sociological process, the Member States, the political actors within the national framework of the different participating entities, choose an alternative to have their political activities grouped into a new cooperative center. The order and the pace at which integration is performed are different. Economic relations (common economic policy) are considered first, then social questions, foreign action and defense issues, the latter being regulated within NATO. There is a cooperation involving the states that remain sovereign, and do not abandon sovereignty. However, a comparison between the EU (where Member States remain sovereign even if some of their attributes go as competences to the EU, and the multinational character is by far more pronounced), and federations (where the federal state is no longer a subject of international law), is inadequate and inconclusive, as federations cannot be taken as a model for the organization of the European Union.

European integration, at the current stage of EU regulations, is broad, and is not simply limited to the economic segment, even if it is prevailing and will remain preponderant in EU's overall objectives. There are, besides economic issues, many other segments of social relations which cannot be ignored or put into economic patterns. The modern society is confronted with a variety of more complex issues than the one related to the market economy.

As the European integration is in the process of being achieved and even conceived, there is, in our opinion, a deficiency at its base that could prove to be confusing and counterproductive, moving things in a different direction than the one envisaged. Market economy rules operate in a discretionary manner in the EU, reducing everything to a proliferation of regulations, especially economic ones and forgetting the fact that the EU is the result of a policy tailored for a particular purpose. The EU was above all a political project. In an economy where wild competition and performance at all costs function as a guillotine, the fatal outcome is that the developed regions of the European Union are growing even more,

[1] Ion M. Anghel, *Subiectele de drept internațional*, Ed. aII-a rev., Lumina Lex, 2002, p. 158.

while less developed areas become more submerged in underdevelopment, becoming colonies for the former.

The market economy, originally conceived as a means of stimulating economic progress, development and general welfare, has now become an end in itself verging on the absurd, a fetish, making from the legal rules of free competition a policy of exaggerated and aggressive competition. Being neglected, democracy proclaimed in treaties, the other lever of development, has become a caricature, given that the fundamental guidelines result from rules that had been elaborated by bureaucratic bodies.

By abandoning the elements of closeness - unity - solidarity, which were aimed at consolidating national economies and ensuring their convergence and moving towards a stratification of economies and their discrimination (equality, just an illusion!), the creation and consolidation of the single market equals, in reality, with the immolation of some and their subjugation, to the benefit of more developed categories. Indeed, in a market of the huge size that Europe has, fundamental principles such as pure economic competition and competition law left to operate discretionary make society as a whole fragment, rather than homogenize itself. An increasingly obvious fracture between the developed and less developed countries is now under way. Small economies are shattered, and powerful ones take advantage of the effects of development, evolving towards the restoration of the colonial system, with the difference that it is now being practiced on the same continent. Romania's case illustrates these developments. In this situation, the EU integration comprises the germs of self-destruction, creating prosperous and crowded areas which they oppose to the backward and depopulated ones. The exodus that is taking place confirms it. With such a segmentation of the population made through the fatality imposed by market rules, we cannot talk about democracy. But no society can be built solely on the basis of economic efficiency. Integrated Europe does not reduce itself to the free market. Society, whatever it is, represents much more and is more complex than an economic enterprise. The economy constitutes only one segment; it is important, of course, but not unique. The requirements of society and man are much wider, and play the role of an objective to which the human being aspires.

On the other hand, it is far from the truth that, by accepting the participation of the states with less developed economies in the EU, they would have been granted an act of generosity by the more developed states, when it is known that without the outlet in countries with lower economic potential to which they have access, the Western economy would

have been blocked (production cuts, unemployment, social instability, etc.). Big economies base their efficiency on smaller ones, and the seizure of natural resources and outlets lead to the elimination of domestic capital.

The sacrifices of sovereignty made by EU states relate, however, to the destiny of a nation and under no circumstances can they be ignored or neglected, even if the economies of some are less effective. I also add to this the historical teachings: those who are ruling the European Union today have triggered the cataclysms that our predecessors, but also some of us, endured, and the time has come for reasonable attitudes from them - *est modus in rebus*.

Of the solutions that are required: promoting an intense social cohesion policy and balancing economic areas through the substantial contribution of wealthier states, if they want to assure them a convenient outlet and a qualified workforce, which is actually also assured on account of the contribution of the states with weaker economies. Even in the conditions of competition in the economy, states cannot be denied their right to protect their economy and the population, which cannot be left to the discretion of governance that is being run at European level and not necessarily in their interest. The evolution should be in the direction of harmonizing the interests of all social categories, by building a balanced and viable society, based on equity. A Union that does not take account of the above is unlikely to become viable or legitimate. It is an anti-historical / retrograde and immoral structure and is capable of generating economic conflicts, aggravated by the discrimination of national ones and by those of a secessionist nature.

When having, naturally, the factual situation as an objective basis, the European institutions, including the EU, emerged though from an original, ambitious and risky political project (evidence is the zigzag evolution of these community structures so far), the same kind of approach is still required, and this positive alternative should prevail over normative rigidity, *ie* bureaucratic methods, because the multiplication of regulations has an inverse effect of constraint that impairs society.

We cannot understand the provision that the Member States confer competences on the EU in order to attain objectives they have in common and create an ever closer Union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen (Article 1 TEU). Such phrases no longer make either sense or reason, unless the exercise of these competences leads to the promotion of social and territorial cohesion of the Union, and of cohesion between the Union and the Member States (Article 14). It is only in this vision that the citizens of the European states had put their hopes when they agreed to be governed by the EU and benefit from

its protection, instead of being ruled by their states. Sure enough, they excluded the prospect that their status would degenerate into a status of modern slaves, under the EU dome. If the fundamental reason for EU membership of any state is to reach a higher level of development, then we should point out that the results of socio-economic and territorial cohesion are not significant and the narrowing of the gap between the level of development of various states is still maintained (Articles 174-178 TFEU). Within the EU there is a diversification and distance between the level of development of some states compared to that of other states, due to the economic laws, which are not controlled and corrected by the political factor, and propel more efficient factors in terms of economic competition.

Equality of treatment and non-discrimination, as an abstraction, as well as the functioning of competition, as a fatality, in the conditions in which their own state has no leverage, exclude the defense of their own citizens and ensure a complete freedom of domination of stronger economic agents from the EU states with a developed economy. In this way, the economic agents in that state are removed, because they are weaker in competition, and thus the entire country is subordinate. Starting from a disadvantageous position of inferiority, they get into the situation of subjects to the most economically powerful. That is, a metropolis-colony relationship is created, which reminds us of the colonial system that has been eradicated in our century.

As a result of demographic desertification, 3 million Romanians left the territory and went to find a place in the world, because, by deindustrializing the country, our governors deprived them of their jobs and even urged them to go wherever they could. That unfortunate trend for Romania will remain unstoppable. In the context in which the arable lands in Romania are grabbed by foreign landowners from the EU rich countries, who have to acquire their workforce among the immigrants who assail Europe, the current ethnic composition will worsen even more. By juxtaposing this way populations belonging to other cultures that are confronted with European civilization, Romania will be put in a critical situation, with many confrontations. The result will be that the national identity of Romanians will be deleted; both the national identity of those who left the country and who are inevitably integrating in the countries they are living in, as well as of those who remained in the country and who would be in a state of numerical inferiority and also inferiority in terms of their role in society. And the Romanians, no matter how many they will be around here, will no longer have a say in their own country.

European integration, its ever closer evolution, is the fundamental objective of the EU, the very reason for it to be, as an inter-state associative structure.

It is the purpose for which the European states have set up this association, which was hoped to be a saviour through the safety and prosperity expected from the EU. Integration, under the conditions of ensuring cohesion between all participating EU institutions at all levels, would ensure the development and prosperity of the entire population in the Member States. Otherwise, there would be a risk of returning to what used to be the Austro-Hungarian Empire a century ago, a conglomerate of subjugated and exploited populations. It would mean to return to the same situation in the Millennium III, for which sacrifices have been made for centuries to be removed, namely, the economically powerful ones to have now ideal space and conditions to dominate and subdue those who do not stand to unequal competition. Or, precisely in the age of human rights, this is not the meaning of the future, that is to have freedom and well-being replaced by subjugation. From this point of view, there are both lights – Europe, through what it has achieved, stands out in the world as an actor worthy of consideration - and unfortunately, mainly shadows. That result is fully illustrated in a creepy way, in the concrete case of our country. All this happens as a result of the cruel / wild selection that competition involves and the indifference manifested by the political factor, which left society at the discretion of this element that is opposed to social interests in their entirety.

III

1. That original (not coming from something that would have constituted it, but stemming from the will of the people), and supreme power (having no superior and not belonging to any equal or concurrent power), *summa potestas* and *plenitude potestatis*, a value underlying the organization of all mankind, is the core of all fundamental principles of international law and the basic criterion of legitimacy in international life. It is currently exercised by the sovereign state, within the limits of the legal order, and in compliance with the rules of international law and the commitments assumed by it[1]. By virtue of sovereignty - this full and supreme power - and of its exclusive, autonomous and full independence, any state has jurisdiction / authority on any person, goods, natural resources and activities taking place within the area that represents its state territory, as a core element of its personality. Its territorial competence is characterized by plenitude and exclusivity, while the personal one accompanies its own citizen wherever he is. As a result, it is the state that has the attributes of enacting rules of law, *iuris dicere,* ensuring that they are enforced and

[1] Ref Sovereignty and its content, see Ion M. Anghel, *Subiectele de Drept internațional*, Lumina Lex, 2000, pp. 105-138.

observed, as well as granting diplomatic protection to its citizens abroad.

State sovereignty is not just a starting point in addressing any foreign policy and diplomacy issues. They are not simple problems of choice, but they identify with the destiny of the Romanian state and nation. There is no doubt that complete integration may amount to the disappearance of the sovereignty of the constituent states or at least to an essential part of it.

But, the process of transferring sovereignty competences from states to the European Union is an inevitable and binding phenomenon, and if sovereignty is individualized by exclusivity, indivisibility and inalienability, nothing remains of them following European integration.

The first target, I refrain from saying the victim of the effect that is wrongly, but also logically, taking place following the current European integration course is the statehood on which the EU is built. It is a process of transformation / subordination that is being drawn within the Union, statehoods overtly disappearance or their just formal assertion, as a simulacrum of state, with another essence and insignificant role, but having the sovereign states that decided to form a supranational association and remain to appreciate the continuation of their participation in the Union, as a prerequisite. There is a radical transformation from a Union founded on sovereign states that homogenize to such an extent that all state entities within the EU dissolve, so that it is no longer constituted by independent and sovereign states. But also in this hypothesis of substantially reducing the role of the Member States - which would become only executors of EU rules - even if they come to the EU by their own decision and formally have the right to leave the Union, we conclude that as long as they are in the EU as a member of the EU, they still remain sovereign states, with their general vocation to their full legal capacity, but with its lesser exercise, because their role is minimal. Their area of jurisdiction is substantially reduced, because (as stated in Article 4 of the TEU) states still have only that jurisdiction that they have not taken as competences, and the dynamics of this statement tends to reduce the role of the states concerned.

The way described above in which the European Union is currently operating - an ever closer European integration, *per se,* a precipitated and obsessively imposed process - clearly leads to the disappearance, if not exactly formal, definitely, *de facto*, of the Member States. Taking over the direct action to govern society by the EU by the dominant circles in the Member States that are associated in the EU actually, transforms the Member States from holders of the act of governance into executors of EU decisions, *ie* a simple tool that is needed to implement EU decisions. Such an evolution, a real overthrow of the situation, calls forth the blurring of the role states have up to their disappearance. Being no longer independent

and sovereign, they are kicked out of the game as an unnecessary link, reporting being mainly made to the EU, if not entirely.

We admit that the existence and functioning of a public entity having powers of organizing economic, social and political life, such as the EU, could not be conceived without it having the power of decision and jurisdiction by which to lay down rules and to impose their enforcement. Nevertheless, this competence, parallel to that of the states, requires an adaptation, and that can only be done by power shift from states to the European Union. Therefore, by hypothesis, community integration and, all the more, its further closeness, necessarily implies a cut down, if not even a disappearance of state sovereignty, in which case the community institution is totally replacing the national one.

Conceptually, the fact that the Member States transfer some of their attributes of sovereignty does not result in the cessation of the status of sovereign states. They enter the European Union and can leave it, by virtue of their sovereignty, even if they temporarily do not exercise it entirely. If independence and sovereignty, unique and unequivocal premises for the governing act, constitute the fundamental reason for the state's subsistence, because only in such a position it is able to fulfill the role it has and justify its existence as such, then, in a situation where the state delegates or transfers some of its essential competences, there can be no question of what it should be. Or, the Member States of the European Union find themselves exactly in such a position, because although they have the capacity of holders of sovereignty prerogatives, they are executing acts adopted by the EU. It is colonies that used to have a simulacrum of power of this kind. In this case, the Member States do not govern, but execute the provisions of another structure.

2. Euroregions, in which parts of Romania are also present (Lower Danube, Upper Prut, Siret - Prut - Nistru), are constituted on the basis of interstate agreements imposed by the EU. They are tailored on the territory of several states, having their own competences and operating rules (the Euroregion Council, etc.). They carry on an interstate dialogue, in the conditions in which they operate alongside with the states concerned, which note that they have been replaced. But, resorting to the system of regionalization, with its dialogue and the achievement of common objectives, also raises issues that affect the sovereignty of those states. By substitution or sharing, it cuts off from the territory belonging to the states concerned, over which they exercise their jurisdiction. Under the conditions in which the EU relies on sovereign states, being an association of these, they are the ones that created it and they are also the ones that maintain it alive, setting its goals and direction, including the very existence of the EU as such. This parallel

route, practiced through the system of regionalization, appears as a way to reduce their role and, making them superfluous, eliminate them in the long run.

Autonomism, irredentist or not, becomes a tool of undermining statehood (which is founded on nationality, the national state as such), but even multinational federations. It opens the way for secessionism, as does the EU's organization by economic regions that divide the existing national states, minimizing their role and authority. What is even worse, it divides even the nations (now when the historical accident "of the multisystem nations" is about to be overcome - see the case of Germany, Vietnam, etc.). By pushing national states to a European integration based on their division into regions with populations of different nations, a disorder is created and there is danger of reducing the chances of a set and functional society that is being considered. This is how we get to a reverse course to that which has been known for centuries, when there were global conflagrations and peoples fought for national liberation in order to have their organization as national states recognized. But not only the division of the Member States set up and organized to deal with the problems they face is in question. Most of them are unitary states. By fragmenting them into economic regions, the EU also takes over from the states their sovereign prerogatives as competences. Secession is a second blow to them. The consequence of these demolition contractors of state entities, constituted and functional on the national criterion, can pulverize the national community into groups that are more or less organized and able to manage global issues. As for the issues of security and cooperation, there can be no talk in such an agglomerate. European integration on such a background of developments in Europe would bring it up to date the familiar obsolete forms which seem to be applied for.

Alongside the EU's integration project, there are also secessionist movements (Europe is made up of 250 distinct identity regions and about 100 active secessionist movements - with the appetite of autonomism, independentism and fragmentation). But even worse is the fact that secessionism is stimulated by the "German economic selectivism" (deliberate and quasi-exclusive co-operation strongly promoted by German companies in some areas that have become prosperous - Catalonia; but does the fact that the area with the most important investments in our country is Transylvania not say anything?), that the question arises whether there is no political calculation in this respect[1]. The game of economic regions may cost the EU a lot, if not fatally!

[1] Sebastian Simion, *Integrare și fragmentare în Uniunea Europeană: mișcările secesioniste, Europa și spectrul secesionismului*, in Puncul Critic review nr. 1/ 2018, pp. 60-69.

3. We note, on the other hand, that in the context of the establishment of a closer Union among the peoples of Europe, the EU citizenship has been set up. The idea of European citizenship[1], like that of a United Europe, emerged at the European Council in *Fontainbleau* in 1984. It was included in the Treaty of *Maastricht* (1992), and is regulated in Articles 20-21 of the TEU, being considered to be its most important legal, political and symbolic innovation. And that, in our opinion, is an exaggeration. In fact, this action, presented as an act of generosity, was actually imposing itself and had to have a regulation for the simple reason that EU rules have as their recipients the citizens of the Member States. It is to them that the community rules are directly and first-hand applicable and it is they who are subject to a number of obligations enshrined in the EU acts. In other words, the citizen of the Member State is also under the jurisdiction of the EU. Thus, the link between the citizen and his state is constantly weakening and therefore the EU sees it bound to take on such responsibilities that used to devolve upon the national states. Since the regulation is placed in the section on principles, *ie* having a legal effect, it results that European citizenship can be invoked as such. In order to know whether a person has European citizenship, it should be checked, if he or she holds the nationality of a Member State. Hence, there is a reference to national law. The acquisition, preservation or loss of European citizenship stems directly and exclusively from the national law of the Member State, that is to say, only those who have the nationality of a Member State, may therefore also hold the European one. The loss of citizenship of the Member State also results in the loss of European citizenship. European citizenship does not replace national citizenship, but adds to it, forming a single whole. If in the past the status of citizen was up to the states, the relation is currently done on two subjects of international law: first, on the state and, additionally, on the EU.

We retain as fundamental the idea that EU citizenship is granted exclusively to persons having the nationality of one of the EU Member States. The "*Every person holding the nationality of a member state shall be a citizen of the Union*" provision expresses this idea so lapidary and indisputably that no institution has anything more to say or add. Which, otherwise, would be inadmissible. As such, humanitarian considerations or impressing the CJ judges with humanitarian aspirations exclude the distortion of what the states have decided, namely that their citizens only

[1] Ref European citizenship, see Ion Diaconu, *Protecția drepturilor omului în reglementprile Uniunii Europene după Tratatul de la Lisabona*, in **Reglementări ale Uniunii Europene de un interes aparte – *sui generis*, pentru România**, Universul Juridic 2017, p. 38-39. Ion M. Anghel, *Politica externă a României cu privire la Basarabia, reflectată în activitatea diplomaților săi*, Universul Juridic, 2016, pp. 386-388.

and not other people should acquire EU citizenship. Otherwise, there would be a European citizenship without any basis, because the EU is not a state, and it cannot grant citizenship either for it or on behalf of the states. However, the EU uses the citizenship granted only by the Member States, so that it can also grant the European one (the contrary decisions are amateurism and irresponsibility). Actually, the philosophy underlying European citizenship has a diluting impact on the value of national regulations, imposing on states solutions that are up to the reserved area of states, as is the case with the European Convention on Nationality.

Indeed, European citizenship, a symbol of a political and legal reality, strengthens the EU image as a factor of a dimension that cannot be ignored in international life. It is promoting the idea of European identity - a new political and legal concept. At this stage, it has an additional effect, rounding out and enhancing the rights they already enjoy as national citizens. But, in its dynamics, it leads to the gradual narrowing and institutional dissolution of national citizenship, which will be made increasingly irrelevant. First, it will remain as a background, fulfilling the reason for granting European citizenship as a basic function, and when the state has no longer any form of exercising its authority, it will eventually fall into desuetude.

4. On the other hand, the EU does not go in the direction of the national unity and identity, like any state entity. Its direction is placed in a logic that is contrary, *ie* towards instituting the system of regions next to or in place of states, as well as cultivating good neighbourly relations. Therefore, there is no way that the problems related to the achievement of our national unity have anything to do with the EU. The European Union cannot propose to promote the realization and preservation of the national identity and national ideals. EU's objectives are to transform national societies into an integrated political and legal structure. Maintaining or forming national entities do not fit on this line and get to be eliminated. Nor does the idea of completion and national unity confine to it. With all the closeness of peoples, as proclaimed in the TEU, national identity, like the borders between states, cannot disappear. The former, because the population / mankind does not decrease, even on a continental scale like the EU, nor will it become a conglomerate of identical beings, copied to indigo. History has rejected such an evolution so far, and globalization cannot produce such aberrant situations. The individual features of the human being will maintain the categories that will be differentiated on various criteria[1]. The proliferation of secessionist actions is the best proof that membership of a

[1] Ref. Romanianity and Europeanism; Romanian identity, see Mihai Milca, *Identitatea românească și europeană*, Ed. Ager, București, 2005, pp. 77-104

social group based on language, culture, traditions, etc. remains fundamental. As far as borders are concerned, it is not necessary to confuse the proximity between human collectivities and the facilities set up to move from one country to another, with the disappearance of the delimitation between state entities. The development of relations between states does not mean merging them.

5. Social cohesion within the EU is an objective, but under the conditions of a market economy with its demolishing effects, it goes in another direction. At the same time, we are also mindful of the fact that European integration will also definitely produce mutations in terms of social cohesion, but we would be naive to believe that we will ever reach the standard of living of the people in Luxembourg or Austria (under the conditions of the single internal market[1]). We keep in mind the fact that all Member States have access to the natural resources of one state, as is the case with Romania. We have become the object of the exploitation of others, have been left without forests, with regions exposed to floods and environment alterations, oil resources are being exhausted and such countries in the position of metropolises live on our account.

6. Globalization, in general, and even more so, the one in European version (integration), aligns mankind with other values or with one of their synthesis, with the most powerful ones, which have imposed themselves over the course of history. Thus, national specific values are reduced in intensity, attraction and impact, but also as frequency and forms of manifestations. They fade away and disappear, merging into a value that has already become dominant: the European ideals (the catchword *sans frontières* has become fashionable). Culture and language, our national identity, will gradually erode, eventually. Not having our own language and culture, our own national specificity and spirituality, but rather some grafted ones, combined with the values of others, we would become anonymous in the spiritual sense, that is, we disintegrate as a nation; a mixture of people devoid of their own identity, who hardly communicate with each other, or resort to another form of communication. Not having our own history, which is easily forgotten, because it is no longer part of our education, it will be difficult for us to find ourselves in the history of Europe, as one of the nations. As for our future, it is easy to see what awaits us. These are the challenges, such as the fancy parlance of the day, which is claimed to be elevated, but which unfortunately, reveals humdrum and spiritual scarcity. Or, as our great poet Mihai Eminescu put it in his day, traditional values, their continuity in time, attest therewith the rights of that nation. Such statement, whether we like it or not, whether it is modern or

[1] Ref The single market, see Paul Craig, *op.cit*., pp. 755-794.

not, will preserve, in our opinion, its validity also within the EU, because no matter how far they go with European integration, each society will strive to preserve its history, that national identity representing each nation's point of resistance. Those who give up their nationality and move to the nationality of others are lost in the immensurable human ocean and no longer represent anything for society, nor do they deserve any other fate.

7. That new context which the European space represents is not left without influence on citizens' lives and their way of thinking. Our own ideals with which we are born and live with ardour will consequently dilute and be adjusted according to the inevitable influence of the new realities. Unity of regulations applicable to all national societies in the EU makes that binder with regard to the organization and functioning of the institutions in the Member States disappear. The community legal order installed, as well as the focusing of coordination by the Union institutions on the central level that is taking place as a result of a closer integration, with its reflections on its national status, all these are altogether melting down the EU's internal borders, and leave without meaning the need to a change what is legitimate for us (then, what happens to our claims to unite Bessarabia with Romania?). This set of conditions leads to the assimilation of the specificity of the life the population in the European Union is now living, and through it to the reinforcement of the European spirit in lifestyle and thought. With a common foreign and security policy, life will be related to Europe, and the ideals will build on the same coordinates. That will lead to the cancellation or at least the influence of the concept of the national ideal[1]. Socio-economic and territorial cohesion (Articles 174 - 178 TFEU) means a harmonious development, a cut in the gaps between the levels of development. It also presupposes a uniformity, shaping another entity and generating another way of thinking. Even if the U.E. has no competences, it has though a power of influence. Multicultural policy, cultural relations and actions organized within the European framework have the effect of erasing their own nations' past - language, tradition and so on, their spirituality - and from this mélange there ensues another spirituality, with other valences.

European integration ("*the process of creating an ever closer union among the peoples of Europe," based on the common values of its Member States')* naturally and inevitably implies a "European conscience", the conscience of belonging to the European civilization and culture, a moral value that is developing at present, being also an instrument of EU integration, and not just a fashionable whim, which Europeans are proud of. Indeed, the

[1] Ion M. Anghel, *op. cit*., pp. 385-397.

formation and promotion of "European conscience" is a necessity that cannot be bypassed, a *volens, nolens*, being beneficial to cultivate and establish European unity. But European conscience does not overlap, nor should it replace, but rather join "national conscience". The former should be grafted and integrated with the latter, completing it and adding new valences, just as the connection of a person with "European citizenship " is done / attributed to it, through "national citizenship" [1] and not directly. European conscience does not eliminate national conscience, but rather makes it superfluous and anachronistic, or even anathematize it, as anti-European. By the hypothesis, such a substitution effect is excluded, given that the EU itself has the European national states as a single foundation. It is quite obvious that as long as the Member States remain subject of international law, are equal in the EU and still responsible for the fulfillment of the essential functions of a state - "*it ensures the maintenance of public order and the defense of national security* ", there is no way for national conscience to disappear either. It is an instinctive and direct consequence of any national and human identity, after all. In the "national conscience" and "European conscience" statements, the former is the fundamental one, and the latter is derived from the former, and is an addition to what already and no matter how exists. "National conscience" is the trunk, an accessory, on which "the European conscience" is grafted, and whoever does not have "national conscience" cannot have the European one, unless we are in the presence of a degrading case of a crass opportumism - *ubi bene, ibi patria* . The pre-fabrication of European conscience, at random and at all costs, is an ineptitude, when it should be cultivated and developed only keeping pace with the progress made in the process of European integration. The insistently trumpeted urge of forming a European conscience, overnight and no matter how, suggests intentions of maliciousness, artificial constraint and harmful purposes, meant to liquidate the "national conscience". In the absence of support, it leads, in fact, to undermining the concept of "European conscience" itself, because the EU cannot substitute for a nation.

The brutal and ostentatious way of trying to promote Europeanism as a spirit and attitude made in a tone of inquisitorial threat by labeling and blaming those who do not fit in to row of the fans, reflects, if it is to express myself in indulgent terms, an immaturity, a rudimentary and, anyhow counterproductive way of thinking. Europeanism is an ideal of the future, in all its nobility, which implies democracy and pluralism, humanity and

[1] Ref European citizenship, see Paul Craig, *op. cit*., pp. 1053-1055 and Ion Diaconu, *Protecția drepturilor omului în reglementările Uniunii Europene după Tratatul de la Lisabona*, in vol. Reglementări ale Uniunii Europene de un interes aparte – sui generis, pentru România, Universul Juridic, 2017, pp. 38-39.

tolerance in society and education. To counter it does not mean, under any circumstances, to exclude national citizenship, national identity and aspirations which exist and represent a natural attitude, something rooted, with which we are born. However, anathematizing "nationalism", or distorting and turning democracy, a correct attitude by itself, into derisory, through a stigmatizing and contemptuous expression, such as that of "populism", and also deriding the fulfillment of the elementary duty to take into account the interests of society in its entirety, is to ignore the past, with the respect we owe our ancestors (when the whole history of mankind is furrowed by the continuous struggle for national freedom, against imperialist oppression, gathering the people of the same lineage in national states with the related border changes, eradication of colonialism, etc.), and disregard at the same time the inevitable requirement - the ideal of promoting human rights. It also means not to understand that there is a relationship of interdependence between Europeanism and national aspirations / patriotism. The alternative to this state is a division between people or the subjugation of nations and a lack of democracy, a neutralization of human personality and aspirations, right now, in the era of the triumph of human rights. Only by harmonizing the legitimate aspirations between the European peoples and not by depriving them of democracy can a viable Europeanisation be achieved. Cultivating or reserving a position of masters by imposing an artificial, hollow and immoral Europeanism equates to the imposition of slavery. This binomial, the national interest - Europeanism, is the only way to cultivate fair and equitable relations in the spirit of democracy and the promotion of human rights.

8. Through this very fact of the establishment and functioning of the EU, we anticipate the launch of a genuine globalization exercise, an original version of the process of globalization at European level, a form that seems to be viable thereof. It is taking place at a faster pace, due precisely to the fact that it has started from a notable development level - a sure premise of its success. This ongoing European precedent will certainly and salutary constitute a source of inspiration and an objective of interest to other areas of mankind as well.

In our opinion, regardless of how important it is to solve the problems faced by the EU, after centuries of repression, sacrifice, reforms and crowning the struggle for the achievement of national independence, "*European Union Super State*", the currently vogue-word is not acceptable for Romania. It seems that it is intended to create a super state, an empire made up of nations that have just succeeded in gaining their independence, including democracy, as an asset won by mankind, and which has become a universal concern. Through the effect of the exodus of peoples, when man

disappears as the beneficiary of these conquests, does mankind come back to the condition it has just managed to escape from? That would be a mammoth state structure conducive to establishing a kind of colonialism on the European continent of today, a super state federation, in other words, a conglomerate of populations, exactly the state structure that also existed two millennia ago. But if the federation becomes a super state, this new legal political structure, comprising an amorphous population in its immensity, leads to a hybrid structure. It is set up according to the ritual of a unitary state, in this case, a colossus (empire) from which the member states disappear, since they no longer have the specific state functions. Societies created on the basis of nationality dissolve in this vast conglomerate, resulting in a single population, now structured on criteria other than those related to their past and their national identity, with the only distinction made between masters and subjects. An abrusion.

It is well known that at present some European countries have constituted themselves in a *sui generis* association of sovereign states, the EU, in the form of a super state international organization. They remain, however, independent and sovereign, even though, transferring some of their attributes as competences to the EU, they accept its regulations. They narrow down their independence as subjects of international law as a result of the non-exercise of sovereignty prerogatives, but continue, however, to remain sovereign, exercising their rights at the same time, there being no question of their freedom to withdraw from the EU (Brexit). Putting human beings together in a flock is no longer to be conceived.

It should not be forgotten that the European Union is a new organization of society, being unprecedented by its rationale and modalities, as well as its results. It is a turning point in history, going in a reverse direction from the past.

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