

EUROPEAN PROPERTY – NEW FORM OF CIVIL OR ADMINISTRATIVE ONE

MARIUS VACARELU

Faculty of Public Administration, National School of Political and Administrative Studies Bucharest, Romania

Abstract in original language

Dintotdeauna dreptul civil a avut o importanță covârșitoare pentru economie, văzută ca un proces normal de dezvoltare a posibilităților de acțiune a unei societăți. La baza acestei ramuri de drept stă instituția proprietății, analizată, până în ultimii ani, doar din perspectiva națională.

Totuși, europenizarea dreptului, noțiune la modă astăzi, trebuie analizată și în perspectiva proprietății, în sensul în care ea este însoțită cumva și de o nouă formă a acesteia, și anume proprietatea europeană. La această întrebare vom căuta să oferim un răspuns.

Key words in original language

Proprietate națională; proprietate europeană; forme ale proprietății.

Abstract

In legal theory, a legal person must respect (to exist) few conditions. One of them is the existence of a patrimony, of property.

Every state has private property and public property. If EU has its own property, it is a private property, or only a public property? After this question, there are other ones: which goods belong to EU, as single legal person? Only their buildings from Brussels, or even for them EU pay rent to Belgian state? And who's the person that administrates this kind of property? To these questions we try to have an answer in our text.

Key words

National property; European property; forms of property.

1. When comparing various models of market integration, whether of a federal origin (such as can be found in the U.S.) or not (such as the European Union), it becomes apparent that market integration inevitably demands or, perhaps one should say: unavoidably results in, legal integration. Maybe?

Lisbon treaty creates a single Europe, with a single legal personality, this one of the most important conclusions of 2007, when a lot of people describe this treaty as the key for a real and coherent European state.

In legal theory, a legal person must respect (to exist) few conditions. One of them is the existence of a patrimony, of property. That's because it is very important to understand the importance of economic, patrimonial dimension of any legal subject.

However, in this property dimension we must find a strong wall, a strong resistance opposed by the national law.

In fact, no one can ignore this attitude. For example, professor Sief van Erp underlined this:

“Particularly in the area of property law the differences between the various legal traditions are substantial. Even within the civil law tradition considerable divergence exists between the French, German and Scandinavian legal traditions. Property law is therefore an area where legal integration demands careful comparative analysis, taking into account the results of multidisciplinary cooperation.”¹

In the same time, we cannot deny few attempts to create a real European state, with a single European law, in whole branches. In this way, in 2009 it was written: “Although it is not entirely clear yet what the work of the European Commission on the Common Frame of Reference (CFR) will lead to, it is sure that it does contribute to the making of European private law. The unclear political status of the CFR leads the drafters of the Draft Common Frame of Reference (DCFR) to conclude that DCFR should at least function as a legislator's guide or toolbox for future European legislation.”²

2. As we underlined in another article³, the starting moments of this debate is soon after the First World War, when Woodrow Wilson imposed in Europe and in whole world a new principle of political affairs: principle of nationalities. From this moment it started a wave of independency movements (officially or secret), wars and negotiations: finalization of this political process was in 1976, after red revolution of Portugal.

In the same time, international relations receive a new face in 1919 – 1920; super powers disappeared, and inside “black hole of power” new national and independent states tried to create a new style of international relations,

¹ Sief van Erp: Deconstruction and Reconstruction of European Property Law: A Research Agenda, electronic available at: <http://ssrn.com/abstract=1572574>, pg. 2

² Bram Akkermans: Property law and the internal market, electronic available at <http://ssrn.com/abstract=1436496>, pg. 1

³ Marius Vacarelu: National constitutional law resistance against European integration, *Dny práva proceedings*, 2009, Brno, pg. 667

when agreements between states are respected and morality represent supreme law and behavior between states, politicians and citizens. After the great and universal war (between states and systems), history stopped to be inspiration for politicians: television and radio appeared, so, it was time for propaganda.

In this propaganda war, the 1989 was decisive: the official victory of capitalist economy makes a new arrangement, and European Union appears like the perfect institution for human rights, economy and not only for human race: a global model, good to impose to Heaven itself.

3. Analyzing the official history of European Union⁴, we can observe this manner of presentation:

“A peaceful Europe – the beginnings of cooperation.

The European Union is set up with the aim of ending the frequent and bloody wars between neighbors, which culminated in the Second World War. As of 1950, the European Coal and Steel Community begin to unite European countries economically and politically in order to secure lasting peace. The six founders are Belgium, France, Germany, Italy, Luxembourg and the Netherlands. The 1950s are dominated by a cold war between east and west. Protests in Hungary against the Communist regime are put down by Soviet tanks in 1956; while the following year, 1957, the Soviet Union takes the lead in the space race, when it launches the first man-made space satellite, Sputnik 1. Also in 1957, the Treaty of Rome creates the European Economic Community (EEC), or Common Market.”

In all books who describe this political entity, it is added the historical significance of this construction, but it is presented in a continuous tradition with former European kingdoms and empires. Unfortunately, today reading is not famous – for many young people internet represent education. There is one site very important tin internet equation, considered by many people as “quite – official” handbook: Wikipedia. It is used not only by simple people, but also by diplomats in official meetings⁵, and this means that they try to offer a legal role of this site.

On Wikipedia, the European Union description for the beginning moments is⁶:

⁴ http://europa.eu/abc/history/index_en.htm

⁵ Watch few presentations on Institute of Cultural Diplomacy from Berlin: <http://www.culturaldiplomacy.org/index.php?en>

⁶ http://en.wikipedia.org/wiki/History_of_the_European_Union

“Pre-1945 ideas on European unity.

Large areas of Europe had previously been unified by empires built on force, such as the Roman Empire, Byzantine Empire, Frankish Empire, Holy Roman Empire, Ottoman Empire, the First French Empire and Nazi Germany.

A peaceful means of some consolidation of European territories used to be provided by dynastic unions; less common were country-level unions, such as the Polish-Lithuanian Commonwealth and Austro-Hungarian Empire.

Largely due to the devastating effects of war many people turned to the idea of some form of unified Europe, notably William Penn, Abbot Charles de Saint-Pierre, Victor Hugo, Richard Coudenhove – Kalergi and Giuseppe Mazzini.

Such ideas became greater in Western Europe following World War I, with the massive loss of life it entailed, but it was not until after World War II that real steps were taken in Western Europe. An example of an organization formed to promote the association of states between the wars to promote the idea of European Union is the Pan-Europa movement.”

About the years 2000 the official history speaks about:

“The euro is the new currency for many Europeans. 11 September 2001 becomes synonymous with the 'War on Terror' after hijacked airliners are flown into buildings in New York and Washington. EU countries begin to work much more closely together to fight crime. The political divisions between east and west Europe are finally declared healed when no fewer than 10 new countries join the EU in 2004. Many people think that it is time for Europe to have a constitution but what sort of constitution is by no means easy to agree, so the debate on the future of Europe rages on.

The 27 EU countries sign the Treaty of Lisbon, which amends the previous Treaties. It is designed to make the EU more democratic, efficient and transparent, and thereby able to tackle global challenges such as climate change, security and sustainable development.”

About this treaty we must note that it is in a direct connection with the project of European constitution.

But the population didn't accepted, so, they reject this kind of act. Lisbon treaty it was a “replacement”, but not with the same image. However, the text of the treaty has an important significance, especially for our ideas.

The Preamble of this document underlines the psychological and political reasons for European Union:

“..... RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

..... DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty and of the Treaty on the Functioning of the European Union, a single and stable currency,

DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

RESOLVED to establish a citizenship common to nationals of their countries,

RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy

..... RESOLVED to continue the process of creating an ever closer union among the peoples of Europe,

.....IN VIEW of further steps to be taken in order to advance European integration,

HAVE DECIDED to establish a European Union”.

In this kind of text, we can see the purposes of this treaty. Despite of any opinion, an official text had a target, which it is more obvious or not, according with the used sentences by the Higher Parts who sign the document.

After this important preamble, the first article of the Lisbon treaty speaks:

“By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called "the Union" on which the Member States confer competences to attain objectives they have in common.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as "the Treaties"). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.”

4. The author don't change the official text, and, of course, the letters. If the dimension of letters is very important for communication⁷, for us the legal significance is clear.

establish among themselves a EUROPEAN UNION, hereinafter called "the Union" on which the Member States confer competences to attain objectives they have in common;

a new stage in the process of creating an ever closer union among the peoples of Europe.

For that, we must consider today in Brussels a new capital, of a different state. This is a state without history, with great handicap in legitimacy, but with a main political purpose. And, if the politicians – our rulers – decide in this way, we must consider a new state. And this new state is not only a state with a single citizenship, but its dimension is not only reducing to constitutional law.

In fact, when you create a state, you make too the administrative law and civil law. And, among them, a strong and old institution: right of property. The property belongs to normal citizens, but also to the state.

Understanding this, few questions about the European Union functioning appears:

Which goods belong to EU, as single legal person? Only their buildings from Brussels, or even for them EU pay rent to Belgian state?

Who is the person ho administrate this kind of property?

⁷ Edward L. Rubin: *Beyond Camelot : rethinking politics and law for the modern state*, Princeton University Press, 2005, pg. 36

Which is the real situation of goods where EU has its representations in the member states? Who's the owner - the national state, the EU? And if EU rent that houses, in what name? In a name of member states, of in itself position?

If somebody wants to make a donation to EU, who will accept this donation in the name of EU?

5. In this dimension, we must underline the answer of the Lisbon Treaty:

Article 335: “In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission. However, the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation.”

This text, as we can see, doesn't speak directly about European property, but it can be considered as existing. But we must underline something: last part of the article speaks about the representation made by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation.

So, for this question, if exists a European property, our answer is simple: despite of this regulation, the absence of a real, coherent institution in every member state, after the national model offer a negative answer. Few central institutions are not important to create a real state, when national member states had such a history and legal tradition. Anyway, in this dimension we can speak only about a civil law property of European Union. The administrative form of property is not possible today, and, for sure, not in next decades – economy is stronger than politicians.

This idea is strength by the disposition of article 19 of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002, on the Financial Regulation applicable to the general budget of the European Communities:

“1. The Commission may accept any donation made to the Communities, such as foundations, subsidies, gifts and bequests.

2. Acceptance of donations which may involve some financial charge shall be subject to the authorization of the European Parliament and the Council, which shall act on the matter within two months of the date of receipt of the request from the Commission. If no objection has been made within that period, the Commission shall take a final decision in respect of acceptance.”

To administrate the European property (or, more precisely, the property of a political entity to few goods in Benelux and Strasbourg), the Commission is

represented by the “Office for Infrastructure and Logistics in Brussels” (OIB), which in turn is represented by the Director of the OIB.

Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, hereinafter ‘the Financial Regulation’, provides a framework for the establishment of a new type of administrative office.

The results of the analysis undertaken by the Planning and Coordination Group on Externalisation, after taking stock of the situation in the Commission and at inter-institutional level across a number of areas, highlight the main advantages that the creation of Commission offices could bring and the areas where special attention is needed, such as, for example, the need to ensure that operations at the various sites are consistent and to define the minimum critical size of each office.

The type of office selected consists of administrative entities aimed at providing support for the activities of other Commission departments and/or potentially of other Community institutions.

The analysis carried out more specifically in the area of infrastructure and logistics sets out the advantages of entrusting to a single structure the execution of decisions involving administrative support. That structure is particularly suitable for making efficient and economic use of resources while improving the visibility of the services provided, refocusing effective operational responsibilities and keeping pace with the needs and demands of users.

So, the Commission Decision of 6 November 2002 had established the “Office for infrastructure and logistics in Brussels”, which attributions are detailed in the third article, paragraph 1:

- (a) Administering the acquisition, leasing and maintenance of the moveable and immovable property of the Commission together with the associated inventories and questions relating to VAT;
- (b) organizing removals and space management;
- (c) administering:
 - (i) transport services for staff and goods for internal purposes;
 - (ii) incoming and outgoing mail and the internal distribution of documents for the Commission's directorates general;
 - (iii) the reproduction services;
 - (iv) office supplies.

As we can see, the dimension of property in European law is minimum, because we can speak about property of citizens (older than state creation), of about the national state properties.

If the debate about European citizenship is in such dimension that no one is really satisfied about the results, let's imagine a debate about property, when the economic – and, of course, the richness possibilities are evaluated – purposes will dominate the main position. Energy itself and pipelines creates a different member states inside European Union, a real property of EU is a too long dream!

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Contact – email

marius123vacarelu@gmail.com