

THE TRAINING OF LAWYERS - A CONSTANT IN EU'S OBJECTIVES, IN A SOCIETY OF KNOWLEDGE

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Abstract:

The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity. Also, the Union shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.

Keywords: *Union European, training policy, education, law practitioners.*

Introduction

It is very well known that today's international society is marked by very profound changes which are happening very fast, being often placed at strategic interferences. Increasingly more, economic accumulations are based on information and innovation, both turning into essential development resources, in general. The same society of information that is a source of wealth for some people, represents at the same time, a potential factor of exclusion for others. A careful analysis of realities highlight the fact that the main goal pursued by those who founded the European Union (in 1992, with the signing of the Maastricht Treaty) was and still is to make from this European area, not only a space economically competitive, but equally, a social space, close to citizens and their problems. In this context, lifelong learning becomes crucial. Its stake is to provide

economic competitiveness and social cohesion, development, favouring thus the exercise of active European citizenship. For lifelong learning to become reality, it is essential that the role of professional training is grounded on new bases, including in contemporary Romania, which as far as integration concerns, is related to requirements specific to a new future.

Successive European political structures revealed common themes, offering national strategies, a new element called lifelong learning, reference element for any natural evolution, providing the context for practical cooperation, such as, for example, mutual exchanges and pilot projects.

Obviously, the pace of economic and social development has accelerated. In Europe, more than ever, enterprises need a qualified and thoroughly informed staff. Employers choose, more rarely, unskilled workforce, seeking for capabilities endowed with performant reasoning, including in the

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field of technical competence. The evolution has merely reinforced the role of lifelong learning, which has become crucial for developing a professional career.

2. The right to education¹

Article 165 of the Treaty on the Functioning of the European Union (TFEU) is the legal basis of actions undertaken, both at EU and Member State level, in order to continue training throughout life, for all professional categories, including lawyers, meaning those who, „although representing an autonomous profession, are an integral and necessary part of the judicial activity, fulfilling a central role in the implementation of EU legislation”². The Commission considers that, „in order to foster a genuine European culture in the judicial and law enforcement field, is essential to speed up training on Union-related issues, and this should become systematically accessible for all professions involved in the implementation of the area of freedom, security and justice”³. The Union’s action in the fields of education and professional training aims at⁴:

- developing the European dimension in education, particularly through the learning and dissemination of Member States’ languages;
- favouring the mobility of students and teachers, by encouraging the academic recognition of diplomas and periods of study;
- promoting cooperation between educational institutions;

- developing exchanges of information and experience on issues common to educational systems in the Member States;
- encouraging the development of youth exchanges and exchanges of socio-educational trainers and supporting youth participation to the democratic life of Europe;
- encouraging the development of distance education,
- developing the European dimension of sport, by promoting fair-play and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially of the youngest.

To achieve these objectives, the European Parliament and the Council shall adopt incentive measures, excluding any harmonization of laws, regulations and administrative provisions of the Member States, deciding in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions. The Council also adopted recommendations⁵ to the Commission’s proposal⁶.

The European Union and Member States are making considerable efforts to continuously raise the level of competence in all areas. The efforts that our country should also pragmatically report to, are made in order to reduce the number of young people leaving school without a qualification. Also, solutions are sought for those who drop out of school, to be offered an alternative in the sense of finding a

¹ For details, see Furea Augustin, *Un sistem educațional continuu, articol de autor*, in Revue „Tribuna învățământului”, no. 680 (2561)/2003, pp. 1–2.

² COM (2011) 551 final, p. 4.

³ The Stockholm Programme - An open and secure Europe serving and protecting the citizens (2010 / C 115/01), p. 6.

⁴ According to art. 165 TFEU para. (2).

⁵ About the legal status of recommendations, see Roxana-Mariana Popescu, *Introducere în dreptul Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2011, p. 49.

⁶ Art. 165 TFEU para. (4).

training opportunity in order to subsequently find a job.

The principle increasingly common in the Member States of the European Union is that according to which each person must have also the right to learn throughout his life: it concerns a lifelong learning, based on the reality of our times. The process of knowledge and lifelong learning requires considerable force. First, it tends to blur traditional distinctions between initial education and continuing education, formal and informal requirements and, not least, general and professional education. Secondly, it is useful to know, now when Europe opens its doors for our country in terms of rights and obligations, that establishing a continuous education system leads to a profound review of the role of vocational training, which includes its modes of transmission, financing and insurance so that education could remain accessible to a larger number of people.

Whatever differences may exist between their systems of continuing education, all EU Member States are working towards the same purpose, more important than any other: to bring this change to an end. The European labour market needs skilled and flexible people because, only in this way, the European Union will become one of the biggest competitors in the field of global competition. Lifelong learning is the source of this success, is the factor that can provide continuous updating of requirements and optimal exploitation of the potential of information. Therefore, now more than ever, vocational training systems in the Member and associated States need to be integrated into a common European strategy.

Retrospectively, we see that, in this area too, the Member States have set common goals. Initially, there was an exchange of ideas concerning the objectives to be achieved and the joint actions they will

develop in order to achieve them. Thus, the Union played an important role in the development of national policies and cooperation. The conjunct views of the social partners served at European level, to develop a common strategy, by aligning first, the national legislation in the very important field of continuing education.

Subsequently, it was concluded that, at European level, a clearly defined policy framework was required for Member States to be able, through efforts both individual and common, to reorganize their national education systems. Such a framework would allow, obviously, to better highlight issues of common interest and the connections between lifelong learning and the European strategy, in favour of the employee. Also, the achieved political framework stimulates the debate on the means used to achieve lifelong learning and contributes to building consensus throughout the Union on training objectives and measures to be taken in order to achieve them. It was also demonstrated, theoretically and practically, that the institutionalized political framework favoured the application of an effective system for the exchange of information and experience at European level, on the one hand, and created the necessary conditions to achieve a forum for examining and analysing the ways in which the decision-making process could be improved.

The European policy framework is not, however, the only solution; it is necessary, but not sufficient. Issues, such as the content and organization of continuing education, are incumbent upon Member (and the associated) States, meaning that they have the freedom to choose how they will develop and implement the policy in the field. The continuing education reform occurs as a result of the fight against the lack of qualification, and also in response to the specific needs of adults who, most often, didn't get the initial education. Thus, for

example, the UK and Ireland are trying to achieve greater flexibility to meet these needs, through networking and learning centres funded by private enterprises, especially created for this purpose. In Finland and the Netherlands, emphasis is placed respectively on long-term planning and cooperation of all partners involved, and Germany tries to make all young people benefit of vocational training through a well-developed and thoroughly organized system. Denmark also attaches to this reform by expanding higher education programs of short duration, with professional vocation.

The future of the European Union is closely linked to economic performance, and more. To this end, the EU launched a genuine structured cooperation framework („Rolling agenda”) consisting of an initiative that allowed the materialization of the role that Community cooperation has in education. The aforementioned structured cooperation framework is not placed in a purely „pragmatic” perspective meant to simplify or relaunch actions already existing, but in this way, it can be considered that the European Union set a new strategic goal, with the purpose of education reform, in general and continuing education, in particular. And that, especially since the development of a society which meets the requirements of the XXI century (of knowledge and innovation) is essential to launch a genuine process of economic and social renewal of Europe. Innovation and knowledge are key factors for the

competitiveness of the Union and for Europe's ability to fight, including against unemployment, so harmful to the entire international society. The investment in human resources is a prerequisite for successful economic and social development.

The Lisbon Treaty has given the European Union competence⁷ to „support the vocational training of magistrates and judicial staff⁸” in the field of judicial cooperation in civil and criminal matters. The entry into force of the Lisbon Treaty enables the Union „to show more ambition in responding to the daily concerns and aspirations of European citizens”⁹. And this is due to the strengthening of the role of the European Parliament, as co-legislator and to a greater involvement of national parliaments, and also to the introduction of qualified majority voting in the Council, in most policy areas¹⁰.

3. The initial and continuing vocational training of lawyers according to provisions of the European Union.

According to a press release from the European Commission¹¹, its target is to train 700,000 specialists in EU law by 2020. This happens in the context in which „there are about 1.4 million law practitioners in the European Union (...). The Commission wishes to create conditions for at least half of these legal practitioners to participate to European judicial training at local, national

⁷ For details on the division of powers, see Augustina Dumitraşcu, Roxana-Mariana Popescu, *Dreptul Uniunii Europene. Sinteză și aplicații*, second edition, revised and enlarged, Universul Juridic Publishing House, Bucharest, 2015, p. 183-190.

⁸ See Elena Ştefan *Brief considerations on the disciplinary liability of the magistrates*, Lex et Scientia International Journal nr.2/2013, p.109-114.

⁹ Commission Communication *Delivering an area of freedom, security and justice for Europe's citizens. Action Plan for implementing the Stockholm Programme*, COM (2010) 171 final, 20 April 2010, p. 3.

¹⁰ On these issues, see widely Augustina-Mihaela Dumitraşcu, *Dreptul Uniunii Europene și specificitatea accestua*, Universul Juridic Publishing House, Bucharest, 2013, p. 61.

¹¹ IP / 11/1021.

or European level by 2020¹². It has also been established as additional objective that „all legal practitioners should benefit during their careers of at least one week training in EU law¹³.

The objective is not new. In 2006, the European Commission stated in its *Communication on judicial training in the European Union*, the need to develop vocational training for lawyers and to make more effective and visible the progress recorded in creating an area of freedom, security and justice.

To this end, the Commission itself emphasizes the need to train legal practitioners in the field of European Union law, by inviting „national governments, high Councils for the Judiciary, professional organizations and educational institutions in the field, both at EU and national level¹⁴, by asking them „to commit in order to integrate EU law into their training programs and to increase the number of classes and participants¹⁵.

The Commission shall facilitate access to EU funding to support quality training projects, including the e-learning type modules. Under EU multiannual financial framework, the Commission proposed that the European judicial training should become a top priority in order to prepare more than 20,000 legal practitioners per year, by 2020. Training half of the legal practitioners of the European Union until 2020 is a shared challenge.

It is very important to remember that „in order to help creating a European judicial culture based on mutual trust, the Commission has launched since 2014, an

exchange program for new judges and prosecutors, lasting two weeks. The Commission supports the training through the European e-Justice portal - which is the „single window of the EU” for legislation and access to justice in all EU countries - and by sharing practical guidelines on training methodologies and evaluation¹⁶.

We cannot ignore the fact that, as determined by the Commission in its Communication, „the European judicial training can take place either during the initial training or in the permanent training. This training concerns the following aspects: EU law, including substantive and procedural law, together with the related case law of the Court of Justice of the European Union and knowledge of national judicial systems”.

The primary legal basis of vocational training is the Treaty on the Functioning of the European Union which, in Article 81 paragraph (2), section (h) and Article 82, paragraph (1), section (c) invites the EU to „support the vocational training of magistrates and judicial staff in both civil and criminal field”.

The judicial training is, essentially, a national responsibility, as outlined in the Council Resolution on the training of judges, prosecutors and judicial staff in the European Union¹⁷.

A similar significance has the report of 9 May 2010 of the former European Commissioner Mario Monti, entitled „A New Strategy for the Single Market¹⁸ which required European leaders to eliminate remaining bottlenecks affecting

¹² *Id.*

¹³ According to press release IP / 11/1021.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 2008/C 299/01 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:299:0001:0004:RO:PDF>)

¹⁸ http://ec.europa.eu/bepa/pdf/monti_report_final_10_05_2010_ro.pdf

innovation, and hampering the growth potential of the EU.

The Stockholm Programme¹⁹ adopted by national governments in December 2009, sets out measures aimed at creating a single area of justice in the EU and requires effective action at European level to support training efforts and to develop training mechanisms at EU level. In turn, the European Parliament has consistently emphasized that a qualitative judicial training contributed significantly to improving the functioning of the internal market and facilitated the exercise of rights by citizens.

In late 2010, the Commission consulted the Member States, members of the Justice Forum, the European Judicial Training Network and its members²⁰.

Currently, we are in the third development phase of EU programs of education, training and youth (Lifelong Learning and Youth in Action), of which also institutions of vocational training in the legal field can benefit²¹.

On 13 September 2011, the European Commission presented the Communication entitled *the Establishment of a climate of confidence in justice at EU level. A new dimension of European judicial training*²². From the first pages, the Commission recalls one of its objectives, namely to allow half of European Union lawyers to participate in European judicial training activities by 2020, by using all available resources at local, national and European level in accordance with the objectives of the

Stockholm Programme. To achieve this objective, the participation and cooperation of all stakeholders, at national and European level, are required.

According to the European Commission, „the European judicial training in the field of the EU *acquis*, both at national and at European level, is still modest”²³. For example, in May 2011, 51% of judges and prosecutors declared that they had not participated before to judicial training activities in the field of Union law or of the law of another Member State, while 74% declared that the number of cases involving the Union law increased over the years. 24% of judges and prosecutors have never participated in training courses on EU law because such courses have not been at their disposal. Activities vary greatly from one Member State to another, the annual number of trained judges or prosecutors ranging from 240 to 13 000. The Commission funded or co-funded 162 projects involving almost 26 000 participants from 2007 to 2010²⁴.

Regarding the training of lawyers, it must include initial and continuing training. „Every new lawyer should know right from the start EU law. The initial training, organized before the employment or when getting the job, must be complemented by lifelong learning, to help legal practitioners have knowledge up to date and to know where and how to acquire new skills and information „”²⁵.

In order to achieve these goals, each Member State should take all possible measures to ensure that its national bodies

¹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:RO:PDF>

²⁰ According to the press release, *cited above*.

²¹ The Commission’s Decision of 26 April 2007 on the responsibility of Member States, the Commission and the National Agencies for the implementation of the Lifelong Learning Programme (2007-2013), C (2007) 1807 final, not published.

²² COM (2011) 551 final.

²³ COM (2011) 551 final, p. 4.

²⁴ *Id.*

²⁵ *Id.*, p.8.

responsible for training lawyers, disseminate information on legal systems, develop and stimulate direct exchanges between lawyers in different Member States, including by taking an active role in the Exchange Program of the Judiciary, by promoting projects of „twinning” and by any other appropriate means²⁶.

Only by pursuing such training programs in Romania, as is the case of all Member States of the European Union, we can talk about recognition of diplomas and professional qualifications under the existing *acquis* in the field (Directive 2005/36 / EC of the European Parliament and the Council on the recognition of professional qualifications).

3. Conclusions

At EU level, it is considered that for the construction of a European area of justice for citizens and businesses, it is necessary to improve European judicial training. The European training of lawyers must be based on joint actions of: Member States; European partners and the European Commission.

We conclude by showing that lifelong learning is the starting point to promote active European citizenship and of a society based on social inclusion, not exclusion, leading to fulfilling a wish difficult to accomplish, but not impossible, namely that of a finality corresponding to efforts made so far. This finality will be translated through a united Europe, a Europe of all people, from which, in no case, Romania and Romanians, with all their potential, often confirmed, shall miss.

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²⁶ Resolution of the Council and of Representatives of the Governments of Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union (2008 / C 299/01), pt. 3.

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