

Aspects of Implementation¹ of European Law in the Legal System of the Republic of Moldova within the European Integration Process

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Abstract: The author researches in this paper the political, economic and legal trends, concerning the integration of Moldova into the European Union. The researcher pays attention to the principles of freedom and pluralistic democracy, supremacy of national European law over the law, in the non-discrimination and equality before the law, reflected in the European and national acts, as well as the principles of the market economy.

Keywords: implementing the partnership and cooperation agreement; European Union; association agreement

1. General Notions Regarding the Trends of Political and Economic-legal European Integration of Moldova

The issues of integration for the Republic of Moldova has a current and awakens interest for political parties, public bodies, various personal orientations and civil society as a whole. Such trend is dictated not only by the proclamation of the independence and sovereignty of the Republic of Moldova, but also of its geopolitical situation as the neighbor of the European Union in 2007, the democratization of society and building the state of law, which corresponds to the objectives of European integration.

Further, we plan to investigate the process of integration into the European family of treaties concluded under the appearance: the political, legal and social economic of the PCA (The European Union and the Republic of Moldova, Implementing the

¹ Dima, E. & Cobet, D. (2007) explain the word **implementation** vb.I tr.1. to perform, to achieve 2) it indicates projects, technologies, ideas etc., to integrate social practice, to apply. To turn something new in social goods. It comes from English word implement.

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Partnership and Cooperation Agreement)¹, action plan EU-Republic of Moldova (2005-2008)² the Treaties of Rome (1957), Maastricht (1992), Amsterdam (1997), Nice (2001)³ and Council of Europe Statute (1949)⁴ European Convention on Human Rights and Fundamental Freedoms signed in Rome on 04.11.1950, into force in 1952⁵ which contains civil and Political Rights with its additional protocols, implement the Revised European Social Charter, 1996⁶ on economic, social, cultural rights etc.

The Moldova's European integration objective at present is known to most people because it feels a revival for youth, who chanted slogans increasingly European integration at meetings and demonstrations, scroll to the EU flag alongside the national flag. As well as, the coordination structures are created in the Parliament,

¹ The Partnership and Cooperation Agreement between the European Communities and their Member States on the one hand and the Republic of Moldova on the other hand, had been signed on 28.11.1994, in force from 01.07.1998 for a period of 10 years, then extended yet one year, i.e. up to 01.07.2009. Until the signing of PCA, there was economic and commercial Cooperation Agreement EEC-USSR, signed in 1989.

² The Action Plan European Union - Republic of Moldova (2005-2008) was the first step in this process as politic document which established the strategic objectives of cooperation, with the implementation within three years. The Communication of the European Commission of 5 December 2007, entitled "Communication from the Commission *A Strong European Neighborhood Policy*, Brussels, 05.12.2007, COM (2007) 774, http://ec.europa.eu/world/enp/pdf/com07_774_en.pdf." has proposed to extend the Action Plan for Moldova up to 01.07.2009, with similar documents of Ukraine and Israel, whose period was to expire in early 2008. Its implementation contributed to achieving the PCA and further integration in the economic and social European structures. As a consequence, some significant results occur: an adjustment of legislation, norms and standards of Moldova to the European Union'. The Action Plan was the foundation of economic integration based on the adoption and practical application of the rules and regulations to enhance the economic and commercial trade, investment and economic growth, social cohesion, poverty reduction, environmental protection to contribute to sustainable development.

³ With the entry into force of the Treaty of Maastricht on November 1, 1993, it used the term European Union, by that time was called the European Economic Community. See: *Les traités de Rome, Maastricht, Amsterdam et Nice, Paris, La documentation française/The Treaties of Rome, Maastricht, Amsterdam and Nice, Paris, French documentation, Paris, 2002, p.327.*

⁴ *Statute of the Council of Europe adopted on 05.05.1949, in force for France on 05/05/1949, for Romania on 07.10. 1993 and for the Republic of Moldova on 13.07.1995.* The Republic of Moldova became the 35th state-member of this European forum.

⁵ The Parliament of the Republic of Moldova, through the decision nr.298-XIII of 24 July 1997 ratified the mentioned Convention, signed by RM on 13 July 1995 and the Additional Protocols to the Convention No.1 (Paris, 20 March 1952, in force from 09.12.1997 RM, Protocol No. 2 (Strasbourg, 6 May 1963, in force for RM of 12 September 1997).

⁶ The European Social Charter of 1961 includes 19 basic rights, the Protocol of 1988 guarantee 4 additional rights. The revised content of European Social Charter had been opened for signature on 3 May 1996 in Strasbourg guarantees 31 rights.

government, ministries, to include Moldova in the European forum. Thus, the idea of European integration bears a national character, both theoretical and practical.

The foreign policy priorities of the Republic of Moldova are following: the strengthening the country's independence and sovereignty, the territorial integrity, the affirming the country as a factor of regional stability, the contributing to social and economic reforms needed to transition to a market economy and raising the population welfare, building the state of law to be secured and brought to international standards of human rights and fundamental freedoms.¹

Comparing with the Baltic States, Romania and Bulgaria, EU relations with Moldova have developed much more slowly because of ambiguous and unclear policies during the 1994-2009 before the elections of 29 July 2009². Currently, the majority of parliamentarians are oriented towards the European Union. Presently, at the end of the first decade of the XXI century, the membership in this regional forum is a priority of domestic and foreign policy of Moldova to be met because all causes Agreement on EU associate member was in the closing phase.

The Partnership and Cooperation Agreement between the RM and the EU is an old file of history and about the signing on 28.11.1994 then entered into force on 01.07.1998 and 01.07.2009 during performance until it is already discussing the past. PCA transposes in practice the principles of European Community into legal system of Moldova and prepared real prerequisites for the conclusion of the Treaty of Association.

Thus, Art.50 p.1 of the PCA stated: "Parties recognize that an important condition for strengthening economic relations between Moldova and the Community is close to existing and future legislation RM of the community. Republic of Moldova will take the necessary steps to ensure its legislation gradually made compatible with the Community". The legislation further specifies the following areas, such as customs, company law, banking law, accounting and taxation, intellectual property, protection of workers at the workplace, financial services, rules and technical standards, laws and regulations on nuclear energy, transport, etc.

¹ We consider that the concept of Moldova's foreign policy published in *Official Monitor of Republic of Moldova*, No. 20 of 06.04.1995 p.11, going to change in the direction to include as a priority political objective of European integration and especially after the signing of Associate Membership Agreement of the Republic of Moldova to the European Union. Currently there are negotiations on the treaty since 2010.

² The creation of the Alliance of European Integration of right parties has led to accelerating the European integration process in Moldova.

The approach process of political and economic relations and implementation of European Community rules into national law, particularly constitutional reform in Moldova in order to increase the number of human rights and fundamental freedoms. The inserting of a new chapter “Integration into the European Union” will result in transfer of tasks, even some elements of the attribute of sovereignty to European institutions and the common coordination with other Member States of powers stipulated in the European treaties, etc.

The imperative precepts of *jus cogens* of European treaties over domestic laws lead to the supremacy of the general principle of law, primacy of EU law over national law system.

So, we see that the legal aspect, the condition *sine qua non* of Moldova's European integration is to adjust national law to European structures and the creation of national public bodies which provide practical application of this strategy.¹ The European integration process is provided as a continuation of application of EU principles on the national territory in all spheres of activity.

In political terms, Republic of Moldova through its authorities efforts to create economic policies and systems where are respected the rule of law and human rights, including minorities right and functioning of a multiparty system with free and democratic elections and further liberalization of economy to become a functional and irreversible.

A strategic objective represents the involvement in dialogue the policy of employment and of social sector to develop an analysis and assessment of the situation to identify key issues and possible solutions in these policies. As well as, there is necessary to involve the social and civil dialogue, the health and work safety, gender equality, labor law, social protection to achieve EU standards. Being of citizens of RM within other Member States and their employment in the labor market is a integration solution and a financial source and quality of life for their families to contribute to social funds in countries where they work legally, such as Romania, Greece, Italy, Portugal, Spain, France, Belgium, Germany, UK and others.

¹ Currently, there are created some structures within the Government, Ministry of Foreign Affairs and European Integration, the creation of new scientific research institutions within the Academy of Sciences of Moldova “Institute of Political Studies and European integration” and others.

PCA is still based on general principles of law, respect for democracy, as well as principles of international law and human rights as defined in the Helsinki Final Act, 1975 and the Charter of Paris for a New Europe, 1990, including the principles of market economy underlying domestic and foreign policy of the parties. An important factor for Moldova is continuing the process of democratization of society and the political, economic, agricultural, legal, social, health and others reforms in the area, in building the state of law and guarantee of human rights.

As stipulated in the Preamble to the Constitution of the Republic of Moldova in 1994 that *the rule of law, civic peace, democracy, dignity and political pluralism are supreme values considered to be followed¹* in order to maintain a balance between constant and long lasting power and civil society.

Certainly, it can be stated that the Interim Agreement on Trade², the Agreement on Trade in textiles in 1997, the Partnership and Cooperation Agreement of Action Plan EU-Moldova (2005-2008), the Treaty of Association constitute the legal framework of Moldova with the European forum, the last being the most important on the relations of cooperation with the European Union.

The legal framework establishment with the community means the integration of national economy in the European and world economy. Thus, the economic cooperation is linked to accession and becoming RM as a full member on the World Trade Organization (WTO). With the accession of RM on 08.05.2001 to WTO there had been achieved the clause of the Art.5 of the PCA, which has been providing for the amendment agreement over 3 years after entry into force.

Thus, the rules of WTO form the basis of the global trade system and are harmonized with the consensus of some 150 countries - members of this global forum. The advantage of membership of this organization is to develop world external trade. Such rules facilitate the lives of all international issues, because WTO decisions are taken by consensus, as had been negotiated. WTO agreements are binding on every member state or industrial power or state in transition or developing countries, whether big or small as territory.

¹ See the Constitution, adopted on 29 July 1994, in force since August 27, 1994 as amended and supplemented.

² The mentioned Agreement was signed in Luxembourg on 10.2.1995, in force since 01.05.1996 for the practical application of the terms of the PCA, without waiting for its entry into force. It was necessary to negotiate with the European Union that the Interim Agreement for the operation and performance of PCA clauses.

However, we consider that PCA has played a beneficial and positive role on the integration process of Moldova into the European structures as more focused on political, economic, social, cultural, scientific and legal issues. Thus, this agreement served as a bridge between RM and EU and also created favorable conditions for further European integration, preparing real conditions for signing the Association Agreement between the Republic of Moldova and the European Union.

2. Implementation of Certain Elements of the Action Plan European Union - Republic of Moldova¹ in some Fields

The EU enlargement after 2004, then after 2007 created a historical shift for the Union in political, geographical, legal, economic and social terms, strengthening the cooperation in various fields between the EU and Moldova. The enlargement offers the opportunity to develop close continuing relationships, going beyond cooperation, to involve in significant way the economic integration as a basis, and to deepen the political cooperation. European Union and Moldova are determined to use the opportunity to strengthen relations and promote-established, safety and welfare.

EU-Moldova Action Plan as a political document is the first step in the implementing process. The 3 years implementing term is to encourage and support Moldova's objective aimed at integration into European economic and social structures.

The European Neighbourhood Policy opens new prospects for partnership in areas covered by the PCA, such as:

- the access to the EU internal market and the possibility to participate progressively in key aspects of policies and programs;
- the raising opportunities and enhancing political cooperation, through further development of mechanisms for political dialogue;

¹ The Action Plan EU-Moldova is a political document, laying out the strategic objectives of cooperation between parts. Its will contribute to the PCA provisions and will encourage and support Moldova's objective further integration into European economic and social structures. Such document will advance the adjustment of legislation, norms and standards to the European Union and finally, the Membership Association Agreement negotiating.

- the opportunity for convergence of economic law, mutual openness of economies and the continued reduction of trade barriers which will stimulate economic growth investigations;
- the increased financial support: EU financial assistance for Moldova will be available to support actions identified in this document. For this purpose, the Commission proposes a new European Neighbourhood and Partnership Instrument, which will include very important aspects and trans-border cooperation between Moldova and Member States;
- the possibilities for the gradual opening of or reinforced participation in certain Community programs, promoting cultural, educational, environmental, technical and scientific relations;
- the support, including technical assistance and twinning to meet EU standards and norms, as well as advice and support aimed at legislative approximation through a mechanism such as is the Technical Assistance and Information Exchange (TAIEX);
- the deepening trade and economic relations;
- the establishing of a constructive dialogue on visa cooperation between EU and Moldova, including the exchange of views on possibilities of visa facilities in accordance with the acquis;
- the opening of a European Commission delegation in Moldova.¹

So, the last priority was achieved by opening a European Commission Delegation in Moldova with headquarters in Chisinau on M.Kogalniceanu Street 12, and another is under implementation, continued and accepted by the new Associate Membership Agreement.

The progress in achieving these priorities will be monitored by the structures established by the Partnership and Cooperation Agreement and by European Commission, which at mid-term period of the Action Plan implementation will elaborate a report on this progress. Under this assessment, EU together with Moldova will review the contents of the Action Plan and will decide on its adoption and renewal, including the possibility of new contractual links.²

The aspect of economic cooperation between the European Union and Moldova set out in Art.51, which aims to strengthen existing economic ties to benefit for both parties. In the paragraph 3 of the same article of Agreement, it is stipulated the focusing of cooperation on the industrial field, investment promotion and protection of public procurement, on standards and assessment of conformity level,

¹ For details, see the Action Plan EU-Moldova for the period (2005-2008).

² *Ibidem.*

mining sector and raw materials, science and technology, education and training, agriculture and agro-industrial sector, energy, environment, transport, telecommunications, financial services, money laundering, monetary policy, regional development, social cooperation, tourism, small and medium enterprises, information and communication, consumer, statistical cooperation and drugs.

It further it supports the idea of promoting and protecting domestic and foreign investment by the capital transfer and exchange of information on investment opportunities. The cooperation is aimed at ensuring the compliance with all provisions to be adopted in trade and national customs regime closer to that of EU. PCA provides for the creation of an institutional scheme of three steps:

- 1) Cooperation Council at ministerial level;
- 2) Cooperation Committee at senior official level;
- 3) The Parliamentary Cooperation Committee at the European Parliament and the Moldovan members. However, the PCA didn't provide for Moldova the broad areas of cooperation a clear purpose for the purposes of its gradual accession to the EU, but it created real conditions for associate membership. Thus, it cannot be equated with agreement of Associate member, the last being at a later stage, because it has a clear purpose - Accession to the European Union.

What is the EU and which is its objective? The Treaty of Rome in 1957, then in Art.2 of the Treaty on European Union states: *“The Union shall set itself the following objectives: to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty; to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence; to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union; to develop close cooperation on justice and home affairs, the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.”*

So, we can conclude that the set objectives are useful for Republic of Moldova in the aims at European integration, and since 2007 it is neighbour of the European Union and such phenomena are common for Moldova too.

What is essential for the Republic of Moldova being accepted into the Union as a full member? Although in practice term PCA expired in July 2009, Moldova follows to achieve in practice all clauses of the agreement, because Europe doesn't have another document that would be stipulated clause gradual accession to the European Union. Therefore, Moldova will execute the clauses according the Associate Membership Agreement, i.e. to follow the path traveled by the Baltic States, Romania, Bulgaria, taking into account the specific geographical situation, the Transnistrian conflict and other circumstances which influence the EU relations with Moldova.

The implementation of EU-Moldova Action Plan has contributed to the development and practical application of policies and measures of economic growth, social cohesion, poverty reduction and environmental protection thus participating in the long run to the development process of society and European integration.

3. Moldova's European Integration according to some Authors Exposed

In the paper "Republic of Moldova and European Integration" (Chisinau, 2001), the author V. Chirila in his article "Moldova's relations with the European Union" tackles the political and economic integration in the community so: "*the Republic of Moldova could propose that the PCA to provide for a transition period necessary to create gradually Free Trade Area of the European Union and to set a precise timetable for the import and export duties abolition as stipulated in the European Agreement*". (Chirilă, 2001, pp. 36-65)

Examining the political aspect of the treaty, Oleg Sereborean states: "In the PCA, strengthen and diversification of trade and economic relations are not already a goal, it is rather a means to create a symmetrical range of development in all areas of cooperation between Moldova and the European Union. However, in spite of the advantages offered by this agreement, it is far from being just as "generous" as "European Agreement" signed in Brussels with other countries from Central, Eastern and South-eastern Europe. If we would do a comparative analysis of the two agreements, we would find that both structure and content as PCA are inspired

by the European Agreement. The PCA takes the majority of current in EA and is based on the same principles, declared essential for the implementation of both agreements, comprises and develops the same areas of the same cooperation model and institutionalization of political dialogue. However, we find that the PCA and EA are two regional approaches of EU which are distinct as final aim and space of application. While the European Agreement gives to the Central and Eastern European countries a clear view of European integration, the Partnership and Cooperation Agreement establishes a partnership based on horizontal development of relations between the EU and former Soviet states, including Moldova.” (Serebrian, p. 223)

In the article “European integration – the foreign policy priority of Republic of Moldova”, 2004, Andrei Stratan, Minister of Foreign Affairs and European Integration of RM said: *“Moldova has accepted the Action Plan as an opportunity to advance beyond the PCA, which involves the gradually access to the EU internal market, the integration into transport networks, energy and telecommunications and long-term benefit for the 4 freedoms of movement - of goods, services, capital and people ...”*¹.

In the article “It will be an Association Agreement” Natalia Gherman, Deputy Minister of Foreign and European Integration business customers of RM said: *“It will be an Association Agreement that will require the political association and economic integration of RM in EU ... So, we talk about three main fields which are included within the Association Agreement: cooperation in political and security fields, the dialogue on visa liberalization and the creation of a free trade area between RM and EU ... the Republic of Moldova's main partner in the negotiation process is, of course, the European Commission. To the Commission, RM enhances their efforts in bilateral cooperation with many countries of EU. The essential contribution is already seen as well as the will of Baltic States to be involved to support the negotiators' team. The northern countries also offer the assistance in training of the negotiating teams, especially in free trade. We rely very much on the support of each EU member country.*

All three major elements - the Association Agreement negotiations, gradually creating of the free trade zone with the EU and launch dialogue on visa liberalization - are reflected as major objectives in the declaration to launch Eastern Partnership, which was adopted on 7 May 2009 in Prague.

¹ Sovereign Moldova, No. 76 (20,478) of 11 May 2004.

*The strategic partnership with Romania is a natural relationship that should exist between two neighbouring states and requires an advanced political dialogue on all areas of near common interest. Romania is our neighbour and a member of EU and NATO. We need a pragmatic and honest relationship because, ultimately, Romania could help us to fully launch our dialogue with the EU and Euro-Atlantic structures, the more so as Romania remains the most important economic partner for RM. We need investment from Romania in RM economy, we need human interaction. It concerns also the Agreement on Small-scale Border Traffic ...*¹

According to Natalia Gherman, she concluded that foreign policy of the new government from Chisinau could be made including all aspects: - *the first, the European integration is the major objective both internally and externally as well. the second: pragmatism in achieving these objectives. the third: priority remains serving the interest of every citizen of the Republic of Moldova.*

We consider that with the implementation of the Partnership and Cooperation Agreement, the Action Plan EU-Moldova, creates new opportunities for partnership, including a new European Neighbourhood and Partnership with new priorities and an associate member to the Treaty of Union Europe allows us to conclude that Moldova progress towards European integration.

4. The Preeminence of Human Rights - the Rule of Law Principle Reflected in the European and National Documents

The incorporating of the universal and European treaties in the domestic legal system concerning the human rights constitutes the political barometer and the thesis of the harmonization process of national legal system with the European system within market economy environment. The adherence and ratification by Parliament of the international acts in the field of human rights, as part of international law, it has allowed the embedding of these treaties in the internal legal system. Thus, these published documents have not only a lawful force throughout the country, yet the preeminence over the domestic laws when they are not in line with recent European and international regulations.

The Moldova's accession to the Council of Europe 07/13/1995 required to our country the conformity with fundamental principles such as rule of law, pluralist

¹ Newspaper, *Timpul/The Time* of November 27, 2009 Year VIII, no. 215 (1189), pp. 15-16.

democracy, respect for human rights, but the respect for these principles becomes an important step for our country's integration into the European Union. Thus, when we are investigating the preeminence of law in the European integration aspect, we refer to the European Convention on Human Rights which guarantees the respect for the civil and political fundamental rights and freedoms and also to the Revised European Social Charter in place which guarantees the economic, social and cultural fundamental rights and freedoms at the regional level and to other treaties.

The Statute of the Council of Europe is inserted the principle of the law preeminence and that, under which any person of each member state shall enjoy human rights and fundamental freedoms. As well as, Moldova committed to respect the European standards (in the preamble PCA).

A new vision of the Charter revised and opened for signature on 3 May 1996 precise 31 economic and social rights. They relate to the safety (the right to work, right to safe working conditions, right to fair remuneration and non-discriminatory, right of workers to organize, to bargain collectively, to receive information and be consulted, the right to protection for some categories of workers: children, adolescents, rights for mothers, family rights, rights for disabled people, rights for migrant workers and their families, rights for the elderly and social protection for the entire population (right to health protection, right to safety and to social and medical assistance).

The Agreement provides for the protection of economic and social rights on the ordinary citizen. Thus, the article 23 provides that the Community and its Member States would treat the citizens of Moldova, legally employed in the territory of Member States, in a free manner from any discrimination concerning the nationality, working conditions, remuneration or dismissal, as compared to its own nationals.

So, the Article available set is based on the general principle of non-discrimination law and eliminate discriminatory measures in the field of civil, economic and social rights, regardless of the nationality of migrant workers. According to the principle of reciprocity, the same treatment is given to nationals of Member States of the European Union legally employed in the territory of Moldova. Nondiscrimination is stipulated and other global and European treaties, as well (Art. 26 of the ICCPR, the ECHR Preamble, Art.1, Art. 14).

Thus, the 26th article of the ICCPR provides: *“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”*.¹

To ensure the compliance and implementing of the nondiscrimination principle, it is necessary to state the content of the “discrimination” term. Thus, Art.1 of the Convention on the Elimination of All Forms of Discrimination against Women in 1979 has: ... the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The notion of discrimination has been interpreted consistently by the European Court of Human Rights in its case to 14. In particular, this case law has clarified that not every distinction or differentiation of treatment leads to discrimination. As the Court has stated, for example, the decision on the *Abdulaziz, Cabales and Balkandali v. United Kingdom* case, “[a] difference of treatment is discriminatory for the purposes of Article 14 if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized. (Decision of 28 May 1985, series A, nr. 94, paragraph 72)².

According to this principle, equality requires that equal situations are treated equally and unequal situations - in particular. Any damage in this respect will be considered discrimination unless there is objective and reasonable justification. As a general principle of law is inserted in Article 5 of Protocol No. 7 to the ECHR etc.

¹ The International Covenant on Civil and Political Rights was adopted and opened for signature by the United Nations General Assembly on 16 December 1966 in New York, by Resolution 2200A (XXI), in force on 23 March 1976. Romania has ratified the Covenant on 9 December 1974. Republic of Moldova according to Article 49 had joined the Covenant by: Parliament Decision no. 217-XII, of 28.07.1990, the instrument of accession No. 5 01.12.1992, stored and in force in the 26.04.1993.

² See: European Convention on Human Rights and Fundamental Freedoms signed in 1950 and in force since 1952 with additional protocols.

The principles of the state of law have been reflected in the Declaration of Helsinki Summit of the high level meeting in 1992 which provides that the Heads of States of the Convention obligations of all OSCE participating States welcomes the support system of values such as respect for human rights, democracy, preeminence of law, economic freedom, social justice and environmental responsibility.

Translating these principles into practice and performance of these obligations provides the basis for cooperation and participation in the work of regional organizations, including OSCE, representing the cornerstone of future development of our society.

Recognition of the principles of the international law preeminence on the domestic human rights is enshrined in Art. 4 and 8 of the Constitution and became the *sine qua non* of direct employment of international law, including European law, within domestic law system.

The superiority of European Community law have been admitted to determine which rules of law are supreme in the community in a conflict between European law and legal system of a Member State.

Some authors confirm this principle in their conclusions: "... in terms of international law, the Member States may retain dualistic conception within community relations - member states, dualism has been removed, and original or derivative Community law is immediately applicable in domestic law of the Member States or in a formulation appropriate Court, it is an integral part the law, applicable in each Member State, which has three consequences: - the Community law is naturally integrated into the internal legal order of states, without requiring any special forms of introduction; - EU rules in order of their ranks domestic law, as Community law; - the national judges are obliged to apply Community law ". (Filipescu & Fuerea, 2000, pp. 54-55)

According to the preeminence of the European law, rules of law in an EU treaty provisions, directly applicable measures of national institutions and legal system of Member States and EU consist of follow: the premiums automatically make inapplicable any conflicting provision of national law and exclude the applying of national measures. The supremacy of European law is stipulated in Art.234 of the Treaty on European Union. The Court affirmed the obligation of national courts to apply European law as a whole and to ignore the particular, any rule of national

law which may prevent the implementation of a Community rights of member states nationals.

The Treaty on European Union amended by the treaties of Amsterdam and Nice 1997, 2001, Art.6, paragraph 1 states that the European Union is founded on the principles of liberty, democracy, human rights and fundamental freedoms and the state of law, principles common to the Member States.¹

Although Moldova is not a party to the Treaty on European Union, however, we conclude that such rules may be regarded as tacit *non scriptum* customary rules and the *jus cogens* norms recognized as general legal principles, inserted in the conventional rules of European law. According to the principle of direct application European legal norms, these are recognized as domestic legal system of Moldova.

The European regulations on matters of human rights on the studies of youth are the following: the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, adopted in Lisbon on 11.04.1997², the European Convention on the Equivalence of Diplomas leading to Admission to Universities adopted on 11.12.1953 in Paris³; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, adopted in Strasbourg on 04.11.1993 etc.

Therefore, the accession of new countries to the European Union in 2004, then in 2007, expanded the area in geographical, political, economic, legal aspects, creating the real conditions of approach and neighborhood of Moldova and the European Union. The ongoing EU enlargement process gives an opportunity, it creates and continues to develop the relations of permanent cooperation on integration into European structures for security and the state and the Moldovan people welfare.

The EU-Moldova Action Plan was the first step of this process, but also remains a political act that determines the strategic objectives of cooperation of Moldova with EU. The implementing of Action Plan has contributed to the incorporation of European standards in legislation and rules Moldova's legal system.

¹ The Nice Treaty was signed by foreign ministers of 15 Member States of the European Union on 26.02. 2001, in force on the 01/02/2003.

² This Convention had been signed in Lisbon on 11.04.1997 , it was in force for Moldova since 01.01.1999

³ In force for Republic of Moldova since 29.09.1999

The idea of legal education of citizens remains a key objective and a necessary condition for achieving European and international law. Much more valuable is the training and practice of human rights protection mechanism which is based on independent and effective judiciary, a legislative democratic body and administrative available authorities controlled by the civil society. The principle of the priority of the universal and European acts was confirmed by the Constitutional Court Decision No.55 of 14 October 1999 “On the interpretation of provisions of Art.4 of the Constitution” that the ECHR¹ is part of the national system and it must be applied directly to any other law of the Republic of Moldova with the difference that the ECHR has priority over domestic laws which conflict with the rest.²

Thus, the ECHR has become the Constitution of the Europe and it represents the model of training and a mechanism to protect the citizen’s rights of Member States of the Europe Council and the European Union in the field of civil and political rights and liberties.

Along with public bodies it is necessary to enable the ombudsman institution, NGOs, mass-media, including television and radio, who could function independently to monitor and promote the guarantee of those rights. Such institutions are meant to be a counterbalance to observe the social balance between citizen and public authority. Thus, the activity of RM ombudsman (Member of European ombudsmen) is intended to ensure the constitutional rights and freedoms of these human rights by local and central public authorities and officials of all levels (art. 1 of Law 1349-XIII of 10.17.1997).³

The decision adoption of the courts on behalf of law and not on behalf of the State, as no-till practice court in the '90s during soviet period, it is an achievement of democratic society and recognition of the law preeminence, even the state. Thus, Art.114 of the Supreme Law states: “The justice shall be rendered only on behalf of law courts.”

¹ The ECHR also provides for rights such as right to life, prohibition of torture, prohibition of slavery and forced labor, the right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, the exemption in case of emergency, etc.

² The Law on the Ombudsmen (The Official Monitor of Republic of Moldova no. 82-83/671, 11.12.1997).

³ *Ibidem.*

The primary objective in the field of application of the Convention has the national courts and not the European Court of Human Rights in Strasbourg. In case of civil and criminal cases judging, the national courts must determine whether the law or act to be applied and the rights and freedoms guaranteed by the ECHR and protocols nr.1,2,3,4,5,6,7,8,9,10,11,12,13,14 in force are compatible with its provisions, and in case of incompatibility, the court will apply directly invoking the ECHR and precision in this sentence or taken decision. Human rights are under continuous development, their numbers increased, both in law and in the EU. Thus, on the Constitution of Republic of Moldova are inserted 31 civil, political, economic, social and cultural rights and liberties, but European Social Charter (revised) consists of 31 economic, social and cultural rights, which reveals a much wider development of the rights, stated in the Charter than in the Constitution contents.

So, we consider timely to increase the number of fundamental rights and freedoms of the Constitution of the Republic of Moldova.

Thus, there are appearing new problems and dangers such as violating the right to inviolability of private life with achievements and performance of science and information technology development. With the emergence of new rights and freedoms is sought to ensure more efficient and prevent their violation by public authorities. The more robust democracy is the more numerous and more powerful non-governmental organizations defending human being power attacks.

a) Freedom

The Universal Declaration of Human Rights proclaims in its political and moral standards to a common standard to which must strive the peoples and all nations so that every individual and organ of society to strive by learning and education to promote respect for these rights and freedoms. It is necessary to ensure it by progressive national and international measures the recognition and their universal and effective application, both within Member States themselves and in territories under their jurisdiction. Such freedoms are shared by Member States of the Council of Europe and the European Union.

Further in Art.18, 19 of the UDHR stipulate the right of everyone to freedom of thought, conscience and of religion. Each person has freedom of opinion and expression, which means respecting the right to not be disturbed for his opinions

and that to seek, receive and impart information and ideas through any medium of expression regardless of frontiers.

The respect for freedom of thought, conscience, religion and belief are inserted in the Final Act on Security and Cooperation in Europe signed in Helsinki in 1975 that political and moral norms of regional dimension, stating that States promote and encourage the effective exercise of civil, political, economic, social, cultural and others liberties and rights resulting from the inherent dignity of the human person, which are essential, free and integral.¹

Such rules have become for Moldova more recognized by the act of proclaiming the sovereignty and independence, and the fundamental imperative rules, as the Constitution of 1994. Thus, the Art. 31, 33 of Constitution stated: “*The freedom of conscience is guaranteed. It must be manifested in a spirit of tolerance and mutual respect*”. Further, Art. 32 provides: “*All citizens are guaranteed freedom of thought, opinion and freedom of speech in public by word, image or other means possible.*”

The freedom is inserted in the constitutions of other states, members of the European Union. Thus, the **Constitution of Romania**² provides for individual freedom (Art.23), freedom of conscience (Art.29), freedom of expression (Art.30), freedom of assembly (Art.39) and economic freedom (Art.45). The Constitution of Germany provides that all Germans have the right to freely choose their profession, workplace and place of training. The exercise the profession may be regulated by law or under a law. (Art.12, paragraph 1).³

Art.9 of the ECHR recognized that domestic law provides that “*everyone has the right to freedom of thought, conscience and religion this right includes freedom to*

¹ Conference on Security and Cooperation in Europe, Final Act, Helsinki, 1975, p. 208, in force for the Republic of Moldova on 30. 01. 1992.

² The original content of the Constitution of Romania was adopted in the Constituent Assembly meeting on 21.11.1991, was published in the *Official Monitor*, Part 1, no 233 of 21.11.1991 and entered into force after its approval by national referendum in 08/12/1991. Then, modified through the Law of Review nr.429/2003 Romanian Constitution, published in the *Official Monitor*, Part 1, nr.758 of 29 October 2003, republished by the Legislative Council under Art.152 of the Constitution, with updating names and the texts a new numbering (Art.152 became the published form, 156). Law Review nr.429/2003 of the Romanian Constitution was approved by national referendum of 18-19 October 2003 and entered into force on 29 October 2003, its publication in the *Official Monitor*, Part 1, no. 758 of 29.10. 2003 Decision of the Constitutional Court No. 3 of 22 October 2003 for the national referendum of 18-19.10.2003 Law of Review on the Romanian Constitution.

³ See the (Basic Law for the Federal Republic of Germany, 1998).

manifest religion or belief individually or collectively, in public or in private, worship, teaching, practice and observance”.

The freedom and political pluralism have been found in the Charter of Paris for a New Europe of 1990 and represents indispensable elements of our common goal - the development of market economy towards economic stability, social justice, increase efficiency, public employment, and effective use of economic resources.¹

Currently, the Treaty on European Union Art.14, paragraph 2 provides four economic freedoms, recognized *non scriptum* for Moldova as customary rules² binding after the entry into force of the Association, but eligible, only 27 Member States and their citizens stating: *“The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty”.*

b) Democracy

Democracy is the unique system of government based on the will of the people, expressed regularly in the free and fair elections. The basis of democracy is respect for human personality and the rule of law. Democracy is the most valuable guarantor of freedom, free expression of his views, tolerance of all social groups and equal opportunities for everyone.

So, we see that democracy is an indispensable element of the state of law. If the starting point is not authority, but the right is obvious that the value of separation of powers principle is dominant and there is actually a decentralization of the functions and therefore a simple technique of government. By way of example is the preamble of the Partnership and Cooperation Agreement, went into history, and refers to the capital preeminence of law and human rights, establishing a multiparty system with free democratic elections and economic liberalization in order to create a market economy.

Brought to the rank of mandatory rules, the democracy in the content of Constitution is inserted as follows: “Democracy in Moldova is exercised in conditions of political pluralism, which is incompatible with dictatorship and

¹ In the content of the Charter of Paris for a New Europe of 1990 had been established the following principles of rule of law: human rights, democracy, rule of law, economic freedom and the environment protection.

² It will take into account the customary rules of the new Association Agreement between the RM and the EU after signing up to its entry into force. After the date of the entry into force of the Association of Moldova to the European Union they will acquire the conventional character.

totalitarianism.” But the objectives of this partnership are included to support Moldova's efforts to strengthen democracy, market economy development (e.g. Art.1 PCA). So, the investigations allow us to conclude that democracy as a regime of governance has been supported and inserted in the PCA Action Plan EU-Moldova, whose rules are contained in the Associate Membership Agreement, the Constitution and other organic laws. Democracy maintains its position on the authority of the rule of law, on the functioning of public institutions in the state and on the conscience of citizens.

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