

ASPECTS CONCERNING A EUROPEAN UNION OPENED OR CLOSED SOCIETY

Claudia Simona Timofte

Department of Law and Public Administration, Faculty of Law, University of Oradea, Oradea, Romania
clau_timofte@yahoo.com

Abstract: *In this paper we tried to underline the decisional process in European Union which is related to the determination of the identity of the Union, answering to a several questions concerning the implementation of the European Union into an organization, the different relations with other organizations and with the international law. Qualifying as an international organization sui generis, EU developed a new legal order, deciding to create a supranational organization, formed by member states and their citizens. The integration process is a permanent challenge opened to new and the developing process for solving all the internal and external problems of the EU. Deepening democracy in the European Union has as a premise the idea that the values of democracy, as part of the European spirit, are basic guidelines for the development of new rules of law for shaping principles to guide the action of the institutions in formulating their acts. In time the European Union despite of the difficulties experiences was concentrated to be as close as possible to the European citizens. One of the nowadays difficulty from the point of our analysis is how to solve the time to wait in a tail to Schengen border? We appreciate that in time this difficulty will have negative effects direct to European Union economy and also with these political decisions the European Union will depart from the mains democratic values to a close European society.*

Keywords: *European Union; democratization; society; rights; identity; decisions*

JEL Classification: K33.

1. Introduction

A remarkable analysis of the democratization process by respecting Union law was realized by Olivier Costa. He notes that "Founding Fathers" were put into operation a hybrid institutional system, in wich the law should ensure coherence and effectiveness of assembly is also at the heart of European integration provides the common language of his actors and inter-institutional relationships regulator. (Costa, 2003)

The European Court of Justice, an institution with the role of interpretation of Community law and supervising the application of legislation, easily played a key role and has raised since 1960, two contradictory discourses. (Dehousse, 1998)

First, emanating from policymakers and resulting from the analysis of the most critical of the process of supranational integration and detailed denounced Court and very liberal fashion whereby judges interpret treaties to serve the purpose of European construction, to ensure the independence of institutions and give its own force of Community law. Judges were accused of openly promote European integration regardless of the permanence of nation states and the opinion of the main stakeholders who were citizens.

A second speech, delivered at the level most enthusiastic European integration, quickly took an opposite of this denunciation of "governance Community judges." He underlined the Court's contribution to compliance of European institutions and economic players and Member States of their commitments in the deliberately entered during ratification of treaties. Equally it falls to the Court "democratization" of the EU institutional system - in particular by strengthening the powers and influence of the European Parliament - and recognition of many rights of European citizens. Costa shows that responding denigrators "democratic deficit in Europe", advocates of European integration have thus relied on the existence of different paths that allow "any natural or legal person" to ask the Court to interpret or review the legality of a rule of Community law, to challenge certain decisions the Community institutions.

In fact, the European Court of Justice held early enough federal character of the Community judicial system and insisted on its implications for European citizens. Taking the European Community as a complete and coherent system of law protecting the rights and interests of individuals, to postulate a rapprochement between the European political system and citizens.

Costa shows that we can not deny the Union the character of "community of law" in the sense that individuals actually received since 1963 a very liberal interpretation of the principle prohibiting discrimination.

Equally, saying the direct effect of Community law, the Court has allowed individuals to invoke before national courts and to rely on a large number of individual rights not explicitly provided for in the Treaties. The Court also encouraged national courts to surround Commission - which has matters prejudicial to highlight the incompatibility of national rights with Community law.

Court has contributed to affirming the rights of citizens in a triple title: protection of fundamental rights, the right to information and the principle of subsidiarity. Equally, the judges favored the access of individuals to a Community legal protection, but it is essentially decentralized national courts and can not be considered as a tool to control the decisions and policies of the Union by individuals.

2. Concepts, achievements and reasons for European society

Deepening democracy in the EU has a premise the idea that the values of democracy, as part of the European spirit, are basic guidelines for the development of new rules of law for shaping principles to guide the action of the institutions in formulating their acts so that the European Union is as close as possible to its citizens.

Over time it establishes a close link between the cultural center of European spirituality, aspiration European citizens to live in an area of freedom, prosperity and security, the European institutions to improve their regulatory framework.

Thus in literature, for example Wiener analyzes three phases of the development of international law of the European Union: 1. integration by building a supranational EU institutions; 2. Europeanization by institutional adaptation to particular rules; 3. Late politization (nachholende Politisierung), as the most complex socio-cultural adaptation process legal institutional vertical and horizontal dimensions. (Wiener, 2003)

As Pierre Jonckheer MEP known highlighted, the EU has developed a model law that allows a stabilization of the democratic institutional system and modernization of European societies.

It is an integration process by rules leading to a constitutionalisation construction, but at the same time is an approximation of various European companies leading to a more united EU institutions. (Pierre Jonckheer, [www. etopia/varia](http://www.etopia/varia))

The idea of "European citizenship" appeared soon after the formation of Communities but its institutionalization took place only after the European Council in Luxembourg, at which they decided the final form was introduced in the Maastricht Treaty in 1992.

Among the reasons that led to the introduction of European citizenship, the major looked encouraging free movement, reducing the democratic deficit within the European Union and the basis for building a European identity.

Of course they have expressed opinions that the European citizenship and identity are seen as a secondary fact, without interfering in any way nationally. The concept of "multiple citizenship" has been introduced to indicate that a person can take part at the same time, different plans.

The examples given in practice shows that some people recognize that part of the two communities. Migrants are often described as being of Scottish / British or Bavarian / German.

Hofstede said that "almost everyone belongs to a number of groups and categories of people at once".

Let us not forget the benefit that EU citizens have the right to reside in any Member State. Since the entry into force of the Schengen Agreement, which abolished internal border controls EU (not in Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom) can pass easily from one country to another.

Lisbon Treaty promotes a Europe of rights and values, introducing the Charter of Fundamental Rights into European primary law and protect citizens. Also the Lisbon Treaty introduced to the citizen the right of legislative initiative. Therefore, a number of one million citizens coming from several Member States may request the Commission to submit a legislative proposal in areas falling within the competence of the European Union. (Cocoşatu, 2012)

Therefore, European society is a European company reformed and which gives more democratic rights to its citizens. In these circumstances, the European citizen has a fully rights and reciprocal obligations according to European norms. (Herchi, 2017)

3. Intensification of border controls - a viable solution for the future?

It is true that lately intensified terrorist attacks in Europe. As a result, the EU institutions are working to protect our citizens from international crime and terrorism and to ensure access to local justice system and respect for citizens' rights across the EU.

Effective access to justice is a fundamental right, one of the founding principles of European democracies. In much of the EU - Schengen - people can move freely without controls at internal borders, but the flow of refugees has led some Member States to reintroduce border controls with other EU Member States. Just as the arrival of migrants affect some Member States more than others, the number of asylum applications is not distributed equally among them. In 2015, 75% of all asylum applications were recorded in only five Member States (Germany, Hungary, Sweden, Austria and Italy).

Recently, the EU has reached an agreement with Turkey to stop the uncontrolled flow of migrants. The agreement also provides legal channels through which

refugees come into Europe. Consequently, the number of refugees and migrants arriving in Turkey has been reduced significantly. For the moment, European officials appreciate that the wave of migrants is stopped in Turkey.

But the focus of our research is centered on current decisions taken with regard to the integration of Schengen border control. These controls are really the solution? Or, on the contrary, these causes make us to see the European space as a closed space?

To make an analysis, we took actual data by comparing how many people crossed in April 2016, and how many trucks transited through the Bors custom (one of the largest crossing points of the western border) by April 2017 after the decision (the Regulation (UE) 2016/399).

But the focus of our research is centered on the current decisions taken with regard to the integration of Schengen control at the Schengen borders. If these controls on the border are a real solution? Or does it, on the contrary, they cause us to see the European space as a closed space?

To make an analysis, we took concrete data by comparing how many people crossed the border in April 2016, and how many people went through Bors customs (one of the largest crossing points of the western border) in April 2017 after making the decision to intensify the controls.

According to the data provided by the authorities authorized at the Bors border crossing point in April, a total of 622,065 persons went to Hungary, out of which 164,528 by cars and 105,273 by auto trains. Compared to April 2017, a total of 725,658 people went to Hungary, out of which 185,773 were cars and 85013 auto trains.

We must mention that in April 2016, European citizens did not wait to cross the Bors border and at any other border, as expected in April 2017.

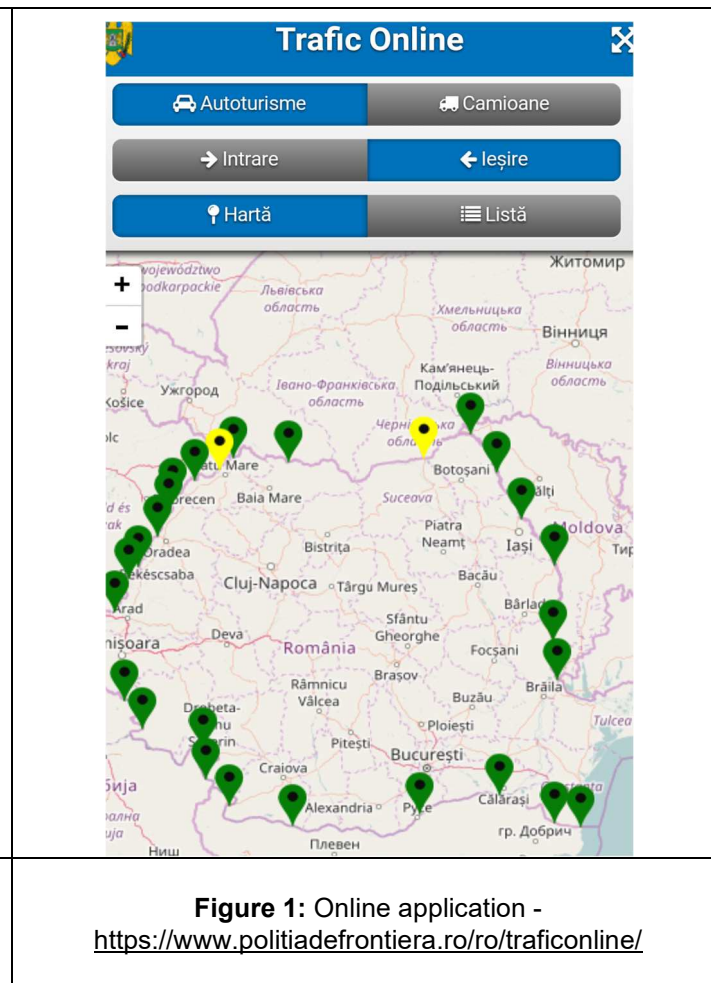
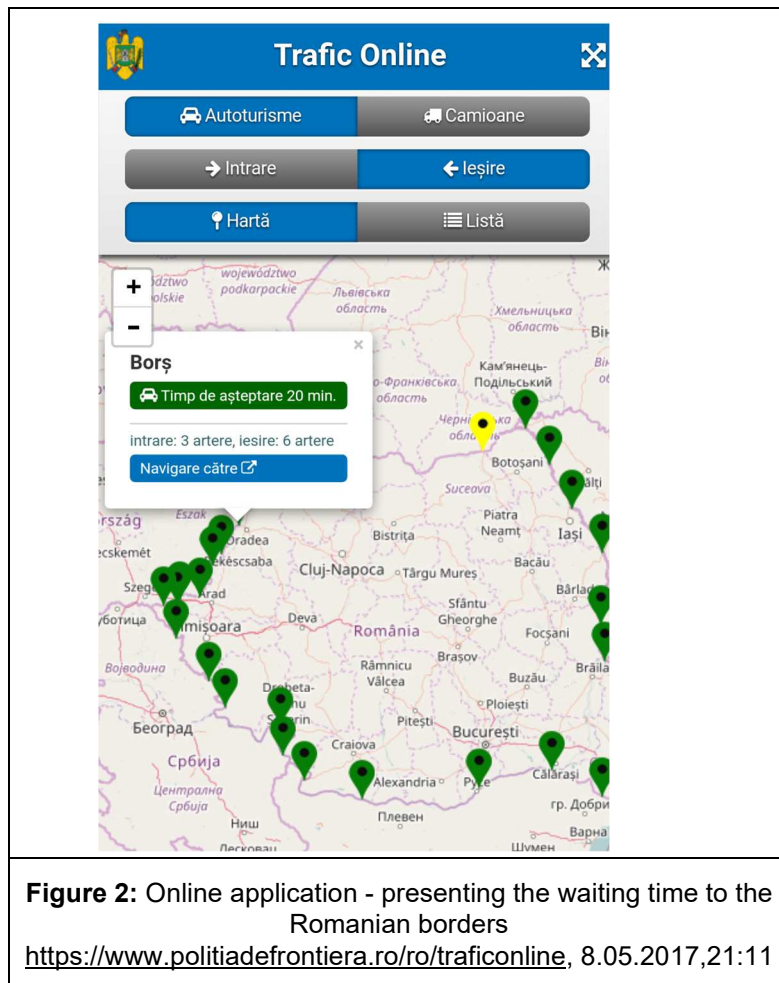
Analyzing the data, we are indeed seeing a decrease in the number of border crossings at Bors in April 2017 compared to April 2016. This is due to the opening of the Nadlac border crossing point, being connected to the highway. But, on the other hand, on cars there is a significant increase.

Moreover, what do we do with European citizens who work in Romania and live in Hungary beyond the border? For the moment the answer to this question is that they wait as the others to the border.

Any analysis of the factual situation on the ground leads to the conclusion that the Romanian border police implements and respects the decision taken at the level of the European Union, as do the Hungarian police.

But on the other side of the border, the Hungarian police lack personnel, so even if the decision to open more traffic arteries at the Bors border crossing point, only the border police in Romania could answer this request.

As an example of good practice, it is possible to give support to European citizens through the online study system of border crossing traffic, which may be the waiting time at the border. (<https://www.politiadefrontiera.ro/ro/traficonline/>)



We mention that this system offers only the waiting time for exiting Romanian borders and not the other ones. We are proposing joint cooperation in this respect, especially in nowadays case of intensify the border control.

4. Appreciations and conclusions. The year of 2017 have shown that political decisions in Europe were taken without any real, concrete analyze. We appreciate this decision as a decision determined by the fear of terrorist attacks. We appreciate this decision as a decision taken by the fear of terrorist attacks, which for a strong and united European Union should not be a fear. We also appreciate that if we look at the statistics at EU level, we see that the EU's gross domestic product in 2015, which reflects the amount of goods and services produced for the European economy, was higher than that of the US; EU GDP in 2015 being 14 600 billion. Let us not forget that approximately 62% of the total trade of Member States made within the EU. We believe that citizens in Romania and Bulgaria, who are Europeans like the Germans or Italians, are affected by the intensification of border controls, which began on April 7, 2017. After starting 1992, the EU area was transformed slowly in an area of free movement in the true sense of the word, the European citizenship, single currency, without customs control at the borders was introduced this additional control borders Schengen.

We appreciate that the European Union must build their security system, but consider that a detailed check at the border is not a barrier to terrorists or terrorism. Do not forget that those who have caused various terrorist attacks were Europeans of Muslim origin who resided in the EU for some time. So, growing up the border controls is not a barrier against terrorists but a high barrier to free movement of people and capitals. We hope, after a period of analysis, that policymakers reconsider border control from the perspective of building an open European Union and not closing it between "walls". We consider it appropriate to increase internal security by taking measures at the level of public order inside the European area and not at the borders.

In the European Union, because of its specific ways in which was built as a group of independent and sovereign states, are required contemplated other determinations of the concept of democracy is required to understand its content in relation to characteristics Union as international organization of states, even if it does not fit this category rigorous international law. Union and has always been, throughout its history, to the pressure of the socio - economic, the people of Europe are increasingly close and even linked, obliging it to seek institutional forms capable of ensuring the organization and her leadership, decision-making procedures to implement it on the one hand, efficient and on the other closer to the requirements of people living on the continent. From the point of view of the analysis, the intensification of border controls is not a barrier against terrorists but a high barrier against the free movement of persons and capital. We hope, after a period of analysis, that policymakers reconsider border control from the perspective of building an open European Union and not closing it between "walls". We consider it appropriate to increase internal security by taking measures at the level of public order inside the European area and not at the borders. We hope that the next decision won't be to introduce visas for citizens outside the Schengen zone.

References:

1. Cocoșatu, M. (2012) „*International public law*”, Editura Prouniversitaria, București, 2012
2. Costa, O. (2003), „*The European Court of Justice and Democratic Control in the European Union*”, in: *Journal of European Public Policy*, vol. 10, Issue 5, p. 740-761
3. Dehousse, R. (1998), „*The European Court of Justice: The Politics of Judicial integration*”, New York, St. Martin's Press
4. Herchi, Ș. (2017), „*Drept internațional public*”, Editura Prouniversitaria, București, 2017
5. Wiener, A. (2003), „*Toward a Transnational Nomos*”, Thr J.M. Program, NY., School of Law
6. Jonckheer, P., „*Un futur pour l'U.E.*”, www.etopia.be, [5.03.2009]
7. <http://www.consilium.europa.eu/ro/press/press-releases/2017/02/07-prolongation-border-controls/>, [8.05.2017]
8. <https://www.politiadefrontiera.ro/ro/traficonline>, [8.05.2017]
9. REGULATION (EU) 2016/399 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ,9 March 2016 on the Union Code on the crossing of frontiers by persons (Schengen Borders Code) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>, [8.05.2017]