

## **Jean Monnet Action as a tool for EU accession in Central and Eastern Europe: Legal Scholarship and Law in the Context of Transformation in Lithuania**

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When I was invited to make this presentation I was asked to speak first of all about my personal experience with the Jean Monnet Action. Since my personal experience in this area is related both with the accession activities in general and the Jean Monnet Action and ECSA's activities in particular, I accepted with the biggest interest and pleasure this invitation of Mrs. Bernaldo de Quirós. As for the accession period, my situation in many aspects was a typical situation of an academician in a small former candidate country, where a number of academicians became the civil servants or the experts in the accession process and at the same time continued their teaching and scientific research in the Universities using knowledge and experience from both areas. It was a kind of reciprocal intellectual and professional enrichment. During this period I was the chairholder of Jean Monnet Chair of the EU law and general director of the European Law Department of the Government of Lithuania checking the compliance of Lithuanian law with *acquis communautaire* and taking part in the EU accession negotiations.

From this perspective, I am convinced that the Jean Monnet Action was an efficient tool for EU accession in Lithuania and other countries of Central and Eastern Europe. Jean Monnet Action became a part of intellectual mobilisation in preparing accession strategy in many candidate countries. Nowadays Jean Monnet Program is a strong actor in European studies. In general, it provided an active forum for the exchange of ideas and methods of study in the field of European integration over 20 years.

First of all I would like to emphasize that the efficiency of the Jean Monnet Action in Central and Eastern Europe during the pre-accession period was due to good organisation of activities of Jean Monnet team of the Commission, personal experience and contribution of the Jean Monnet team (Mrs. Jacqueline Lastenouse, Mrs. Belen Bernaldo de Quirós, Mr. Luciano Di Fonzo and many others), Commission co-financing, and pro-EU and reformist environment and motivation in the recipient countries.

Some facts about the beginning the Jean Monnet Action in Lithuania and other Baltic states:

in Estonia (2001-2003), 1 Jean Monnet Chair and 1 module were established;

in Latvia (2001-2003), 1 Jean Monnet Chair and 2 courses;

in Lithuania (2001-2005), 1 Jean Monnet European Centre of Excellence, 4 Jean Monnet Chairs, 5 courses, 4 modules.

In the Baltic States the areas of European integration covered by teaching were: law, economics, history, sociology, political sciences, human rights and rights of minorities, social policy, and management. In particular, considerable number of Jean Monnet Chairs, courses and modules in Lithuania made European studies comprehensive in our country. In addition, Jean Monnet action worked in the two biggest cities covering big number of students in 4 of its 5 biggest universities of the country. This is a considerable result for a small country. It seems to me that in a relatively small country with limited human resources, such a program could especially play an important role. Number of Lithuanian academicians participating in the Jean Monnet Action also took part in preparing accession studies, reports and drafting legal acts in the process of approximation of Lithuanian law

with the EU law. We tried also to involve our students in studying the courses of the Jean Monnet chairs into the work of national euro-integration institutions for example in our analysis of compliance of national legislation, in preparing the studies concerning chapters of the accession negotiations. Some of them became later the specialists of the same institutions.

Jean Monnet action supported the establishment of national European Community studies associations (the ECSAs) in 2001 (Estonia and Lithuania) and Latvia (2003). Our national associations became a part of an active and well-organized network of and from across the EU studying the core areas of European Union law, economics and politics, sharing the knowledge not only of the EU, but also comparing the experience in accession process. Jean Monnet Action and the ECSAs gave a strong comparative element for European studies and research.

Another considerable aspect was that Jean Monnet Action and ECSA became appropriate forums for the European debate, especially debate about the European future. Naturally, the problems of the Constitutional Treaty became an important topic of our teaching. In Lithuania, the country which re-established its sovereignty after 46 years of foreign rule, the problems of transfer of sovereignty, delegation, sharing and division of competences, direct effect and supremacy of the EC law etc., all this were really sensitive and important issues. The idea of national state, protecting national interests was very strong. The central question here was the future of state sovereignty, "post-integration sovereignty" which has clarified the confrontation between the protagonists of transfer and sharing of powers and competences, on one hand and, with state-centrism, on the other. The discussion whether the EU will undermine or strengthen the powers of member states was not an abstract discussion.

One of the main topics of the studies and research was the problem of European governance. Here, the most popular was the concept of multi-level governance used by scholars of European integration (a kind of umbrella for European political and legal studies). It reflected the process of governance on European, national and sub-national levels. It was also a kind of reflection on European modern state sharing its powers between centre and periphery, between national and supranational institutions. I would describe it as a multi-actor governance on European, national and sub-national levels, overlapping and interacting competencies on these levels. This is a complex concept which asked important questions. Anyway, in this system the decisions made through multi-level governance seem more legitimate than decisions made through only one level of governance. Studies and research under the auspices of Jean Monnet Action promoted a debate on the legitimacy of the European Union, for example, whether it can be solely grounded in 'output legitimacy' (effectiveness, responsiveness) or it must also be grounded in 'input legitimacy' (representation, participation). It was a research of scientific explanations of the creation, evolution and its functioning of the EU. Jean Monnet Action at that time, especially in the contexts of the EU accession and intense discussion on the future of the European Union promoted large number of publications and PHD works devoted to the constitutional problems of the European Union.

In Lithuania, the beginning and development of the Jean Monnet Action coincided in time to the discussion on constitutional amendments related with the EU accession. In fact, it was a long discussion started in 1997 and finished in 2004 after the accession with the adoption of the Constitutional Act on Membership in the European Union. I was a rapporteur of the group of experts of the Parliament on these amendments. Our work reflected not only discussion in the Parliamentary commission, special seminars but also our studies and research under the auspices of the Jean Monnet Action. Finally, it seems to

me that the Constitutional Act created clear constitutional norms of interrelation and interaction between national and EU level. Article 1 of the Constitutional Act provided that Lithuania as a Member State “shall share with or confer on the European Union the competences of its State institutions in the areas provided for in the founding Treaties of the European Union”, Article 2 stipulated that the EU law shall be a constituent part of Lithuanian legal system. It also stipulated that where these arise from the founding Treaties of the EU, the EU norms shall be applied directly, while in the event of a collision between legal norms, the EU norms shall have supremacy. Articles 3 and 4 govern the relations between the Parliament and the Government in respect to the proposals to adopt legal acts of the European Union.

In the perspective of the EU accession the main question which attracted society was the promotion of national interests through supranational level of the European Union. Of course, still important work remains to be done on strengthening explanatory powers of the European integration studies and improving level of understanding not only with regard to the students studying European integration matters but with regard to university studies in general.

When the Jean Monnet Action began in Lithuania, there were already certain academic grounds for the European studies of law, economics and politics. At the Faculty of law of Vilnius University, for instance, we started to teach general course of the EC law and special course on Human rights already in 1991, later we began special course of Substantive law of the European Community. At the Faculty there was already existing institutional structure – Chair of International and EU law and its two years program of studies in international and EU law. When we contacted our colleagues dealing with the European integration in other universities in order to create ECSA Lithuania, we came to the conclusion that basic situation was similar, first of all in Law University of Lithuania (now Mykolas Romeris University) and Kaunas University of Technology. As for Vilnius University, the Jean Monnet Action helped us a lot to bring the teaching and research in the EU law on higher level, to make it comprehensive. The newly established Jean Monnet Chair of the European Union Law started to teach four courses: EU Constitutional Law, Case-law of the ECJ, Human Rights in Europe and Legal Problems of Accession of Lithuania to the European Union.

It is significant that the accession topics, especially the topics of the accession negotiations were directly included into the teaching of the European law, economics and political sciences courses under Jean Monnet Action. In this sense, it was dynamic teaching which followed the progress in negotiations, gave broad knowledge of existing economic, legal and political problems of the accession. In my opinion, it was very useful, first of all for the law students, in the framework of their EU law program: here the EU law was not an abstract legal discipline. On the other hand, to some extent our task was facilitated with the high level, high degree of approximation of Lithuanian law with the EU law. The norms of *acquis communautaire* was to a large extent a part of national law already at that stage of accession process. At that extend, it was included into teaching of other more traditional legal disciplines: civil and commercial law, administrative law, labour law, environmental law, etc. On the other hand, teaching law became much more complicated and detailed. Some areas became hardly teachable because of multiplicity of the acts of parliament (statutes), regulations of the Government, ministerial decrees, etc. In some areas there was a lack of consolidation of legislation. We shall not forget that legislative culture in Lithuania took very regulatory approach, excessively multiplying number of legal acts, especially their amendments. On one hand, it was a necessary part of modernisation and europeization, on other it became a part of reformist legislative culture. From 1990 to mid April 2004, just before the accession, the Parliament enacted 582 eurointegrational

statutes, including civil, administrative, criminal and other codes. Thousands of the decrees of Government and ministerial decrees were adopted. It was a deep process of euro-integration and modernisation. The result was very positive: after the EU accession on 1 May 2004, according to the Internal Market DG scoreboard, Lithuania achieved the best score in the EU with regard to its level of transposition of internal market directives.

Judicial reforms totally created a new system of the courts of justice comprising the courts of first instance, district courts, the Court of Appeal and the Supreme Court. Administrative jurisdiction was transferred to newly created system of administrative courts. The Constitution of 1992 established the Constitutional Court. As a comparison: whereas in 1990 in Lithuania there were about 150 judges, nowadays there are more than 800 judges.

Formal reference to the text of law – is it a sufficient justification or reasoning of the judgements? Traditional approach was that the task of judges was to apply statutes as they are written, without considering statutory purpose or legislative intents, and without attempting to apply statutes to changing circumstances. Today, the courts refer to general principles of law, to *travaux préparatoires*, they use the argument of evolution of a legal statute. There is a general trend to more openness on the level of justification. The biggest contribution to development of this tendency was made by the Constitutional Court. It was the Constitutional Court who first introduced in the case law general principles of law coming from European constitutional traditions and developed by European Court of Justice and European Court of Human Rights. The principles of proportionality, legal certainty and protection of legitimate expectations, non-discrimination became a part of the case-law of Lithuanian courts. Creation of a complex legal system of a modern democratic society led to a fundamental revision in the traditionally conceived relation between law and statute. Another element was a method of comparative constitutional jurisprudence broadly used by the Constitutional Court. The case-law of the European courts was applied in the judgements and rulings of Lithuanian courts, especially Constitutional and Supreme Court. 5 requests for preliminary rulings of the ECJ were made from Lithuanian courts, including the Constitutional Court, also the courts of general and administrative jurisdiction. This step made by the Constitutional Court seems to me very significant – not only because the Court regarded itself inside the scope of the Community law and Article 234 EC, through admitting to be court in the meaning of Article 234 EC. In a broader sense it means the openness of Lithuanian constitutional law and jurisprudence to the EU law. It became a part of the process of constitutionalisation of Lithuanian legal system. All these elements were present in the teaching under the auspices of the Jean Monnet Action of EU law, human rights, the case-law of the ECJ.

Openness of the legal system was an other result achieved during a period of 19 years since the re-establishment of independence. First of all monistic model of the effect of international treaties created by 1992 Constitution, direct effect and application of the European Convention on Human Rights, case-law of the Constitutional Court, the approximation with the EU law and finally – the accession to the European Union – all this created the basis for the openness of Lithuanian legal system. Studies of the EU law under the auspices of the Jean Monnet Action in Lithuanian universities was also a great contribution to such openness, modernisation and europeization of Lithuanian legal scholarship and, indirectly legal system in accession process.