

# EUROPEAN FUNDAMENTAL LEGAL STANDARDS – a Challenge for Georgian Lawyers from the View of the European Union

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Georgia comes - and also has to come, in view of possible alternatives - always closer to the European Union. It has all perspectives to accede to the EU, under the condition of a further approximation of legislation to the EU, although this is not written in the new Association Agreement or in any final declarations of the Eastern Partnership. However, here the EU behaves as in all other former EU enlargement cases. This is a challenge also for all the legal professions in the country, as they have to „think also in the European dimension“, already now and in the future. As in all other countries, the legal profession and the students hereof use to think mainly or even only in the national dimension. Insofar the legal profession is one of the most conservative ones. This is not enough, in view of the finality of Georgia which clearly lies in the European Union. The legal changeover for this cannot be undertaken in one big bang, but only in a step by step technique.

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This is a challenge above all for the legal education at universities, but is also a „life-long learning“ task for every practicing lawyer, be s/he attorney-at-law, prosecutor, judge, in government, administration, banks or business and of course also in university education, but even for teachers in secondary education or journalism. More and more EU standards, above all legal standards, will be relevant also for Georgia, following the way from European Neighbourhood Policy (ENP), the Eastern Partnership (EaP), the Association Agreement (AA), the Deep and Comprehensive Free Trade Agreement (DCFTA) until finally a full accession to the EU, which is visible, without any target date, as a distant objective. Experience shows that once a certain threshold of legal approximation has been adopted, the development of an exponential timeline towards the accession date can be reached.

Therefore, not only the legislation but also its implementation is of significance. For both working fields EU standards are important and should be the measure of everything, if Georgia wants to finish within the European Union.

**Art. 2 of the EU Treaty** (Lisbon Treaty) says about the values of the EU (**“European values“**), that the first is respect of human dignity, and then freedom, democracy, equality, the rule of law and the respect of human rights including the rights of minorities. These values are bound, according to art. 2, to pluralism, non-discrimination, tolerance, justice in the single case, solidarity and equality between women and men. This is a very general but also very clear clause equal to any national constitution.

By the mere size of the EU which has 510 millions of citizens and the media freedom there is a permanent x-raying through all Member States' circumstances by every possible media, and this makes the EU very transparent. This makes an open society, in the best sense of political philosophy. So it is also of interest for the whole EU how jurisdiction and the rule of law function in Georgia, and vice-versa. This is a great challenge for Georgian lawyers, but also Georgian media, and of course for both from the EU.

Besides the EU Treaty (abbreviated EUT) and the Treaty of Functioning of the European Union (abbreviated TFEU), both called the Lisbon Treaty,

there is also the **European Charter of Fundamental Rights** which is attached to this Treaty of Lisbon. It is also a part of the primary EU law. This is a guideline, a strong interpretation tool for every judge in the EU. The European Charter of Fundamental Rights is the most modern and most comprehensive tool of a basic rights catalogue in modern statehood, fully supporting the idea that an integration like the EU is the most innovative cooperation format for states in the world. But it is also most efficient, although there are always temporary setbacks in single areas of cooperation, like in all national systems.

There should also be made reference to the Vienna-based **Fundamental Rights Agency** and its interesting reports and surveys. This agency, however, concentrates on EU Member States only, not on countries in the waiting line, but its reports and papers constitute a clear measure to human and fundamental rights outside of the EU, too. For example, in autumn 2015 a „Handbook on European law relating to the rights of the child“<sup>1</sup> has been published.

The instrument of **Union Citizenship** in the EU which has to be debated periodically, all three years, in the European Parliament, and where public auditions by Internet have been held, is another example. Union Citizenship exists for EU citizens besides the national citizenship, and it encompasses rights like voting in EU and local elections wherever EU citizens live within the EU, to submit petitions to the European Parliament and the EU Ombudsman, diplomatic and consular protection in third countries, as well as the right of free movement in the EU.<sup>2</sup>

And above all the **European Court of Justice (ECJ) in Luxembourg** should be followed. Here an accent is to be laid on the **preliminary rule (art.267 Treaty for the Functioning of the European Union - TFEU)** which offers every single citizen in the EU access to the highest EU justice. This has been effectuated in many significant cases, and it has contributed to a great deal to make EU jurisdiction more perfect and consistent.

This will be introduced to Georgian lawyers step by step by the new **Association Agreement/DCFTA**

1 European Union Agency for Fundamental Rights and Council of Europe, 2015- ISBN (web) 978-92-9239-912-2. Can be downloaded under <http://fra.europa.eu>

2 Art.18-25 TFEU

where the institutions and the common policymaking will only start now. Georgian lawyers should keep a close eye on the possibilities, legal fields and functions of the Association Agreement, which will offer them a lot of work and place for development.

Above all, experience within the EU and third countries tells us that a quantitative focus of practicing lawyers will lie in the field of freedom of goods, services, capital and the freedom of persons including anti-discrimination law.

Besides the existing challenges of the **European Convention of Human Rights**, fixing basic judicial rights in the Council of Europe Member States, and the **European Court of Human Rights**, in the framework of the Council of Europe, in Strasbourg, there is after all a serious and new field for lawyers in Georgia - the field of European Union law. Even if Georgia is (not yet) a EU Member State.

It has to be kept in mind that approximately 85% of all EU legislation has to be implemented by **local government**. Municipal administrations, their relevant ministries, but also local government umbrella organisations will have to adapt to these circumstances. Especially the lawyers in local administrations will have to find ways.

Within the EU it is self-evident that municipalities do have to know about EU law, as it has to be often implemented or applied by them. All bigger towns run an own European Affairs ns office. This meets also the frequent inclusion of cities and towns into EU model programmes, e.g. in transport, environment, renewable energy, social affairs, employment etc. But also villages and small towns are concerned e.g. by agricultural programmes (for instance agricultural ways, landscape diversity etc.). This may be a task for the regional administration, if they supervise rural development. In France, there exist for regions with very many villages sometimes an association covering EU subjects for its member municipalities.

Wherever legislation has to be undertaken, it has to be professional, clear, precise and as short as possible - and in view of any legislative inflation it has always to be asked „Do we need a law at all?“. In this context, the EU is an extraordinary test lab for legislation, with at present 28 possible examples, traditions, different ways. This is also a great opportunity for all acceding states, like Georgia,

where lawyers therefore should study also how other EU Member States deliver legislation.

“**Rule of law**“ does in most of EU Member States not mean a political tool for creating statehood, but in most cases an unpolitical formal principle.<sup>3</sup> It was at first a battle motto for liberal citizens, fighting the nobility which had abused their powers, and fighting for an individual sphere free of the state. While at first „rule of law!“ was highly political, it should later become more formal, however under political auspices. It encompasses, among others, general rules like formal legality in a way close to perfectionism, legality of the executive (civil servants bound to the laws), judicial control of legality - this in connection with judges’ independence and impartiality, and this in several instances, as calculability and reliability. This all creates legal security. Later there were added also calculability and reliability as well as transparency. Therefore, publications of sentences, judgments and legal essays are of a pivotal value for any civilisation under the rule of law.

Also lawyers within the existing EU had to learn that the EU exists with a legal quality and legally binding effects, which go beyond the distinction of a EU Directive from a EU Regulation, two ways of EU secondary law. Some universities took very long to implement this subject. Georgian universities may do it, after all, faster, as the country may run faster through the time where EU law becomes important. In the EU, it sometimes took some decades until this became obvious. And if we become impatient, understandably, it becomes evident that also lawyers who have a European law overview will be needed.

3 see also Theodor Maunz, Deutsches Staatsrecht, München 1969; p. 67.

## RESUME

The author wants to encourage all Georgian lawyers to dive into the new subject of European law. He estimates that Georgia will always come closer to the EU, until an accession. EU law is a challenge to legal education in universities but also for the practicing profession. Education in law is by tradition and in all countries a very conservative field.

In material context, he demands more knowledge about „European values“ as stated in Art. 2 EU Treaty, and of the European Charter of Fundamental Rights. Georgian lawyers should be able to quote the reports of the EU Fundamental Rights Agency, which often delivers interpretation tools also relevant for Georgia. In the forthcoming discourse about the Association Agreement and DCFTA lawyers have to become fluent in the European Court of Justice jurisdiction, and above all in the Preliminary Rule of art. 267

TFEU, which offers access to justice to all citizens or enterprises, via the national jurisdiction.

The author recommends to read the Association Agreement, which offers Georgia great opportunities, and pleads not to lose sight on the European Convention of Human Rights, as well as its court in Strasbourg/France. As most of EU law is implemented on the local level, also Georgian administration, in particular lawyers, should receive training in EU law.

European legal standards, the Rule of Law, have a very particular historical background. In the article the author enumerates some of its elements, and this not only for legislation, but also for administration. After all, EU law is the „cool“ and remaining component of any accession state legislation - a real challenge for any lawyer in these countries.

### NOTES:

1. European Union Agency for Fundamental Rights and Council of Europe, 2015- ISBN (web) 978-92-9239-912-2. Can be downloaded under <http://fra.europa.eu>
2. Art.18-25 TFEU.
3. see also Theodor Maunz, Deutsches Staatsrecht, München 1969; p. 67.

# ევროპის ძირითადი სამართლებრივი სტანდარტები – გამოწვევა ქართული იურისტებისათვის ევროკავშირის გადასახედიდან

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## რეზიუმე

ავტორი მოუწოდებს ყველა ქართველ იურისტს გაიღრმავოს ცოდნა ისეთ ახალ დისციპლინაში, როგორც არის ევროპის სამართალი. ის ვარაუდობს, რომ საქართველო ყოველთვის დაუახლოვდება ევროკავშირს, მასთან სრულ მიერთებამდე. ევროკავშირის სამართალი სამართლებრივი განათლების თვალსაზრისით არის გამოწვევა უნივერსიტეტებისთვის, აგრეთვე პრაქტიკოსებისთვის. სამართალმცოდნეობა ტრადიციულად ყველა ქვეყანაში წარმოადგენს მეტად კონსერვატიულ სფეროს.

მატერიალურ კონტექსტში, ის მოითხოვს უფრო მეტ ცნობიერებას „ევროპული ღირებულებებისა“, რომლებიც მოცემულია ევროკავშირის დამფუძნებელი ხელშეკრულების მე-2 მუხლში და ადამიანის ძირითად უფლებათა ევროპულ ქარტიაში. ქართველ იურისტებს უნდა შეეძლოთ მოახდინონ ევროკავშირის ძირითად

უფლებათა სააგენტოს ანგარიშების ციტირება, სააგენტოსი, რომელიც ხშირად აყალიბებს საქართველოსთვის მნიშვნელოვან ინტერპრეტაციის საშუალებებს. ასოცირების შეთანხმების და ღრმა და ყოვლისმომცველი თავისუფალი ვაჭრობის თაობაზე შეთანხმების (DCFTA) მოსალოდნელი განხილვისას იურისტებმა სიღრმისეულად უნდა შეისწავლონ ევროპის მართლმსაჯულების სასამართლოს იურისდიქცია და ასევე ეროვნული იურისდიქციის მეშვეობით სასამართლოსადმი მიმართვის უფლების განხორციელება მოქალაქეთა და საწარმოთა მხრიდან ევროკავშირის ფუნქციონირების შესახებ ხელშეკრულების (TFEU) 267-ე მუხლის შესაბამისად.

ავტორი იძლევა რეკომენდაციას იურისტები კარგად გაეცნონ ასოცირების შეთანხმებას, რომელიც საქართველოს სთავაზობს მრავალრიცხოვან შესაძლებლობებს და აღიარებს, რომ მხედველობიდან არ უნდა იქნეს გამორჩენილი

ევროპის ადამიანის უფლებათა კონვენცია, ისევე როგორც სტრასბურგის სასამართლო საფრანგეთში. იქიდან გამომდინარე, რომ მეტწილად ევროკავშირის სამართლის ძირითადი ნაწილი იმპლემენტირებულია ადგილობრივ დონეზე. საქართველოს მართლმსაჯულების წარმომადგენლებმა, კერძოდ კი იურისტებმა უნდა გაიარონ სათანადო ტრეინინგები ევროკავშირის სამართალში.

ევროპულ სამართლებრივ სტანდარტებს, კანონის უზენაესობას აქვთ მეტად განსაკუთრებული ისტორიული საფუძველი. სტატიაში ავტორი ჩამოთვლის რამდენიმე მის ელემენტს, არა მხოლოდ კანონმდებლობისთვის, არამედ ასევე მართლმსაჯულებისთვის. საბოლოო ჯამში ევროკავშირის სამართალი არის მიერთების გზაზე მყოფი ნებისმიერი სახელმწიფოს კანონმდებლობის „კარგი“ და განუყოფელი კომპონენტი — ნამდვილი გამოწვევა ყველა იურისტისთვის ამ სახელმწიფოში.