

The Development of Vertical and Horizontal Division of Power in the European Union as a Composite Supranational Power *Sui Generis*

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Summary: The relations between the EU institutions established by the Treaty of Lisbon, as well as the relations between EU competences and the constitutional sovereignty of the member states, call for constant examination. Through the inductive method of constitutional law, we arrive at the assessment of the European Union as a special composite two-level power. Thus, we use model induction of “form of state”, “form of government” and analysis of types of lawsuits before the Court of Justice of the EU. The internal organization of the EU established in the treaties, as well as the actual decision-making, are dominated by EU bodies of an executive nature. Their executive activity then deepened in several crisis situations, such as the permanent threat of terrorism, the ongoing immigration onslaught on EU territory, the recent COVID epidemic, and the current ongoing aggression of the Russian Federation against Ukraine. The methodology of constitutional law thus reaches the conclusion about the necessity of the positive development of the EU system by improving both horizontal control relations within the EU institutional framework itself, as well as control measures of a procedural nature, especially in relation to derived EU law and possibly also against other interventions (steps) by EU bodies.

Keywords: Treaty of Lisbon, constitutional sovereignty of the member state, EU institutional framework, EU primary law, EU secondary law, vertical separation of powers, horizontal separation of powers, form of government, form of state, division of powers between the EU and Member States, federation, confederation, jurisprudence of the European Court of Justice, lawsuits to the EU Court of Justice, EU Charter of Rights, EU citizenship, internal control system in the EU, crisis situations, territorial sovereignty of the EU

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1. Introduction

Investigations that use the methods of public law and political science, which lead to answers to the questions of legitimacy and public law identity of the European Union and its development by analytical and inductive methods, are permanently relevant. At the same time, this scientific effort is accompanied by hypotheses based on the claim of the “constitutionalisation” of the European Union. The analysis of the legal basis of the European Union thus makes it possible to find out its constitutive elements that once became the substantive legal basis of the draft Constitution for Europe and were embodied in the text of the so-called Treaty of Lisbon in a transferred and synthesized form.¹ The analysis of the legal basis of the European Union thus makes it possible to identify its structural elements. In 2005, they became the substantive legal basis of the “Constitution for Europe” proposal. In a transferred and synthesized form, they were then embodied in the text of the Treaty of Lisbon.²

If we are analysing the power system of the European Union, we consider that it is primarily an international organization. However, this association of states gradually acquires some political-contractual and normative peculiarities in its development. Especially since 2009, when the so-called Lisbon Treaty enters into force, the European Union is no longer a typical international organization.³ It is a vertically organized system of power. At the same time, its contractual basis is based on the sovereignty of states (assume immutable), which is not typical for international organizations. For this reason, it is necessary to use the institutional mechanism of constitutional law to find answers to the question of how this supranational organization of public power can be understood as a composite *sui generis* power mechanism. The process of integration gave rise to common law, which changed relations between states. This system thus created a certain vertical division of power, and thus also a “European

¹ Already in the 1980s and 1990s, the European Court of Justice considered the Treaties on the European Community as the “Constitutional Charter of the Community”, cf. for example decision 294/83 *Parti écologiste “Les Vertes” v Parlement* (1986) ECR I339.

² Since the 1990s, scientific and professional monographs based on the content portfolio of “constitutional foundations” began to be published in professional literature, see for example: DOUGLAS-SCOTT, S. *Constitutional Law of the European Union*. London, 2002, or LENQERTS, K., NUFFEL, P. *Constitutional Law of the European Union*. London, 1999, and BLANCHARD, D. *La constitutionalisation de l’Union européenne*. Rennes, 2001.

³ In 2005, as is known, the “Constitution for Europe” was rejected by two referenda (French and Dutch). The so-called Treaty of Lisbon thus replaced the contractual legal basis of the European Union with a new text version relatively quickly after this political “shock”. In addition, O. Hamulák notes that “... compared to the rejected draft of the Treaty on a Constitution for Europe, the Treaty of Lisbon is not a text that replaces the existing treaties and represents a recodification of the primary law of the European Union. On the contrary, it is a text that belongs to a series of treaties amending and supplementing the law of the European Union, and like the Treaty of Amsterdam or the Treaty of Nice, we can only characterize it as an amendment of the existing contractual framework governing the activities of the Union...”, to that in: *Integrating Europe ...*, *ibid.*, p. 31.

centre” differentiating integration from traditional cooperation between states. The aim of the organization of cooperation between them is to harmonize the external powers of the member states, to carry out foreign policy in a partially joint manner, to improve the environment for the freedom of movement of persons, goods, services and capital, to guarantee the rules of economic competition, to solve crisis phenomena, etc.⁴ The constitutional systems of the Member States of the European Union are thus gradually becoming “open” to public international law. This primarily means that they reflect on supranational power systems and on a certain binding nature of their law. The regulation of the procedure by which a country registers, defines or even connects with a supranational power is gradually being introduced into the texts of the constitutions, including the possible “transfer” of some public law functions to their bodies. At the same time, there should not be a division of the sovereignty of a Member State, or a limitation of sovereignty, or a weakening of sovereignty. From the point of view of constitutional law, the sovereignty of the state is indivisible, which is clearly expressed in every constitution.⁵

The creation of common bodies of the European Union, equipped with delegated powers and their direct applicability and enforceability in the Member States, undoubtedly created certain elements of composite “statehood”. In particular, the binding nature of joint decisions ensured by the decisions of the state authorities of the Member States, in which these are not subordinated to the Union authorities, leads to the belief that it is a blending of traditional constitutional state sovereignty and the power-mediated influence of the supranational power system (see below). Moreover, even if all structural questions of the European Union have the subject character of the usual foundations of the constitutional systems of sovereign states, the traditional criteria of “confederation, federation and unitarism are no longer enough”.⁶

However, the process of accession of individual countries to the European Union had special political contexts (and, of course, political opponents) in practically all current EU Member States. Therefore, it seems logical that a constitutional review of this procedure before the constitutional courts, including the constitutional courts of previously “candidate” countries, has also been called for. In the Czech Republic, this happened in 2005, i. e. a year after its entry into the European Union, in a decision of the Constitutional Court of the Czech Republic known as “sugar quotas”. From the point of view of the decision-making activity of the constitutional courts so far, it is

⁴ If T. Öhlinger writes about the “supranational character” of the European Union, then he considers its elements to be the possibility of majority decisions with binding effect, the issuing of independent decisions by Union bodies, special structural elements of Union law and its autonomous validity, cf. for that, ÖHLINGER, T. *Verfassungsrecht*. Wien, 1999, p. 261 et seq.

⁵ O. Hamulák’s statement is apt: “...*The entrustment of part of the original powers to supranational bodies does not result in a weakening or loss of sovereignty*”, more details in: HAMULÁK, O. *Integrovaní se Evropa a suverenita České republiky*. Olomouc, 2013, p. 11.

⁶ As stated by prof. V. Klokocká, in: KLOKOČKA, V. *Ústavní systémy Evropských států*. Prague, 1996, p. 238.

so characteristic that they tried to ensure “their” constitutions a certain formal priority in relation to European law.⁷

The constitutional evaluation of the Member States’ relations with the Community, or now with the Union law, often led the states to reassess the importance of the constitution in the process of integration. This was manifested in the fact that the constitutions specify the status of this “European law” in their legal systems, especially the law derived from the so-called primary law, i. e. “contractually European”. The relationship between the constitutions and the law of the European Union is also dependent on the concepts that international law calls “monistic” or “dualistic” as models, which is reflected in the fact that the first mentioned here usually prioritizes (superiors) international law in relation to internal law and the second prefers the constitution and internal legal order in relation to international law. In the dualistic system of international treaties, they operate based on (and through) the law, which gives them such authority as the norm of the receptionist.⁸ In the monistic system, they then acquire the level of “superlegal”.⁹

2. Inductive criterion according to the constitutional concept of the so-called “state form” used in relation to the European Union

To evaluate the character of the European Union, one can first use an inductive approach using the constitutional criterion of the “form of the state”.¹⁰ In this way, the solving hypothesis is set up in the sense that the European Union has elements

⁷ Thus, the Constitutional Court of the Czech Republic stated that “... it does not share the opinion that community law is not relevant for the Constitutional Court of the Czech Republic as a state outside the European Union when assessing constitutionality... One of the sources of primary community law is the general legal principles, which are excerpted from the European court of justice from the constitutional traditions of the member states of the European Union. Their basis is common constitutional values common to all its members. The general principles fulfil the concepts of the rule of law, i. e. basic human rights and freedoms and fair management within them... The Constitutional Court has thus signed up to European legal culture and its constitutional traditions... Primary community law is not the Constitutional Court’s foreign, but shines through – especially in the form of general legal principles of European law, to a large extent into his own decision-making activity,” to which the decision of Pl. ÚS 5/01, vol. 24, Coll. findings and resolutions, C. H. Beck, 2002, p. 79.

⁸ This is (with certain individual peculiarities) the constitutional situation of the Federal Republic of Germany, Denmark, Finland, Sweden, Ireland and Italy.

⁹ This is the constitutional situation according to Article 96 of the Constitution of Spain, based on Article 55 of the Constitution of France, and according to Article 10 of the Constitution of the Czech Republic.

¹⁰ For the definition of “state form”, cf. author in: KLÍMA, K. *Ústavní právo srovnávací*. Prague: Metropolitan University Prague Press, Wolters Kluwer ČR, 2020, s. 59 et seq.

(aspects) of “federalism” or “confederalism”, or in their combination. The statements verifying the stated hypothesis are then the following:

1. “constitutionally confederal” aspects can be seen in:
 - that the treaties based on which the Union operates are by their nature international legal documents, while all members must give their consent to change them,
 - joint bodies are (mostly) based on the principle of delegation and sending representatives to these bodies is a constitutional prerogative of the bodies of the Member States, especially their governments (the exception to the rule is the direct election of the European Parliament by the citizens of the Member States),
 - further possible (contractual) transfer of powers from the Member States to joint bodies depends on possible joint agreements, while the method of democratic confirmation of this will depends on the own constitutional decision of the Member States,¹¹
2. “constitutionally federative” aspects can be seen in the following:
 - that contracts (so-called primary law), and partly also so-called secondary law, bind the Member States directly,¹²
 - that the structure of the vertical division of powers is based on the contractual transfer of some (sectoral) public administration functions to joint bodies,¹³
 - that the joint bodies of the EU (the so-called institutional framework) issue legal acts of a different nature, while these decisions bind the Member States and their bodies,
 - that the Court of Justice of the EU is, based on the Treaty of Lisbon, a body for the protection of common treaties, interprets these treaties and, in disputes based on lawsuits, especially by privileged entities, obliges the Member States to fulfil and comply with them,
 - that the Member States of the European Union can claim justice in relation to the interventions of the European Union authorities in their fundamentally constitutional sovereignty, including the annulment of these decisions, through lawsuits against the decisions and legal acts of the European Union bodies,
 - that the European Union is, from the point of view of international law, a legal entity that thus acts independently on the outside,
 - that the European Union establishes the rules for the accession of other countries and decides on their entry by “consensus” of all its members.

If we also evaluate the European Union with the classic criteria of the general theory of the state, i. e. based on the so-called supporting elements of statehood, then it can be stated that the character of the European Union “reasonably” corresponds

¹¹ For more information, see in: RIDEAU, J. *Droit constitutionnel de l'Union et des Communautés Européennes*. Paris, 1999, p. 467.

¹² See also in: SHAW, J. *Law of the European Union*. London, 2000, p. 98.

¹³ In several fields of law and state policy, the integration of the economy, agriculture, transport, social policy, the environment etc. is observed.

to the usual (doctrinal criteria) of statehood. Our arguments in this direction are the assertions that: a) there is a common administrative territorial-territorial territory, on which common law is applied, b) in terms of the population criterion, there is a certain concept of “EU citizen”, and that c) there is a common mechanism of public authority (quasi-public administration).

If the next set premise is also the constitutional fact that states retain their constitutional sovereignty, the considerations presented above about the character of the EU as a “composite state” can only lead to the conclusion of a combination of confederal and federative aspects in relation to the current European Union.¹⁴ This combination of its kind is confirmed by the special concept set by Article 10a of the Constitution of the Czech Republic confirming the possibility of “transferring some functions of the bodies to supranational bodies” (in this sense, of course, to EU bodies).¹⁵ In principle, this is not about “rewriting” the constitutions, it is done in a contractual way, while the joint agreements thus have the character of confirming the contractual construction of this transfer. Any revisions of constitutional documents did not mean fundamental changes to the constitutions.¹⁶ However, the constitutional systems of the Member States of the European Union are becoming “open”, with the Constitutions responding both to “supranational law” and to the emergence of common supranational institutions.¹⁷

The aforementioned development, which is called the “internationalization” of constitutional texts, thus reevaluates the involvement of the individual state in the supranational system. In that context, the norms of the institutes themselves contain so-called integration clauses, in the form of procedures related to the possible transfer of competences to a supranational unit. This also deepened (is deepening) the use of the theory of “monism” on the basis of individual constitutional systems. The constitutional texts, despite the wording differences regarding the possible transfer

¹⁴ At the same time, international law sometimes recognizes the possibility of “restricting the sovereignty” of a state, cf. in: MONTON, J.-D. *La notion d'Etat et de droit international publique*. Droits, 16, 1992, pp. 45–58.

¹⁵ To this, the author in: KLÍMA, K. *Ústavní právo*. 5., aktualizované vydání. Pilsen: Aleš Čeněk, 2016, p.187 et seq.

¹⁶ It was also followed by the decision of the constitutional courts of the member states, when, for example, the Constitutional Council of France stated that “*France can conclude agreements under the conditions of reciprocity, its participation in international events with the aim of developing an international permanent organization, equipped with international legal personality*”, see decision 92–308 DC (in: FAVOREU, L., PHILIP, L. *Les grandes décisions du Conseil constitutionnel*. 1993, pp. 782–826).

¹⁷ In the Czech Republic, Constitutional Act No. 395/2001 (commonly known as the “Euronovela”) prepared the constitutional conditions for the expected entry (admission) of the Czech Republic into the European Union, which in terms of the “transfer of competences” refers to Article 10 and Paragraph 1 as follows amended Constitution, cf. the author for the first time in: KLÍMA, K. *Ústavní právo*. Dobrá Voda, Aleš Čeněk, 2002, p. 232 et seq.

of competences, do not determine the limits of this transfer (i. e. its scope) or its final form.¹⁸

3. Analysis of the internal power system of the European Union from the institutional point of view

Even the constitutional legal analysis of the internal power system of the European Union should be based on the use of certain criteria of the theoretical manual of the science of constitutional law. At the same time, the assessment of this *sui generis* power system respects the fact that the primary law of the EU, i. e. the so-called founding treaties, as well as the currently valid Lisbon Treaty, are formally typical treaties according to international law. However, the peculiarity in the form of the so-called secondary law adds to this.¹⁹ These are normative acts issued by the bodies of the European Union, whereby the European Union has its “own” legal order. At the same time, this system also has judicial superiority over constitutional systems.

We base our own analysis of the internal power system of the EU system on the criterion of “subject of legislation”. The content of the contracts thus makes it possible to choose the method of institutional induction, i. e. the assessment of this subject from the point of view of institutes (institutions) of constitutional law. In this regard, we ask the following questions:

- a) what is the concept of “vertical division of powers” in the power treaty system of the European Union,
- b) what is the nature of the system of mutual relations between the institutions of the European Union from the point of view of “horizontal division of power” (called in the treaties as “institutional framework”), while from the point of view of constitutional law called as “form of government”,
- c) from a constitutional point of view, how to evaluate the individual bodies of the institutional framework in terms of the nature of their decision-making powers,
- d) what is the nature of the disputes on which the Court of Justice of the EU decides, and what is the significance of its judicial precedent activity,
- e) how to approach the analysis of human rights aspects in the system of European Union law,

¹⁸ For example, Article 93 of the Constitution of Spain, similarly Article 34 of the Belgian Constitution, as well as Article 49 of the Constitution of the Grand Duchy of Luxembourg, which state the possibility of transferring jurisdiction to an institution of public international law. According to Article 20 of the Constitution of the Kingdom of Denmark, transfer is possible, with the aim of promoting cooperation and the development of the international legal order.

¹⁹ On the particularities of secondary law specifically and clearly, M. Slašťan, in: KLÍMA, K. et al. *Encyklopedie ústavního práva*. Prague: ASPI, a. s., 2007, p. 180 et seq.

- f) what is the certain constitutional nature of citizenship of the European Union,
- g) how the constitutional aspects of certain territorial sovereignty of the European Union can be assessed.

4. On the nature of the vertical division of competence in the European Union

The system of the European Union is based on the concept of “vertical division of competences” between the institutions of the European Union and the Member States. This means specifically that it is formally constructed based on a) the so-called exclusive competence of the Union, b) the so-called joint competence of the Union and the Member States, and c) the so-called exclusive competence of the Member States and d) other “auxiliary” competences of the Union. In principle, this is a very general definition of the spheres of public administration functioning, in which public administration bodies operate and exercise powers when deciding on substantive issues.

The institutional framework of the European Union is based on the heterogeneity of its bodies forming the system of EU bodies, while their vertical action towards the bodies of the Member States creates a certain parallel of functions with the activity of “national” constitutional bodies. In real activity, the division of powers between the Union authorities and the authorities of the Member States turns into a vertical “penetration” of the public administration of the Union into the current state policy of the Member States. This manifests itself both in the legislative and in the executive sphere.²⁰

From the point of view of the peculiarities of the EU institutions, one of the questions raised here is primarily their “legitimacy”. The criterion of the method of their formation is solved and assessed in this way. A certain part of the EU institutions is thus based on the so-called delegation principle. This means that either the representatives of the Member States sit in them by virtue of their current constitutional function,²¹ or they are created on a parity basis based on the proposal of candidacies depending on the decision of the authorities of the Member State on specific candidates.²² Thus, only the European Parliament, directly elected by citizens in the EU

²⁰ This also includes the search and cooperative activity of “law enforcement authorities”, namely in the Europol system, cf. more details in: JELÍNEK, J. et al. *Trestní právo Evropské unie*. Prague: LEGES, 2019.

²¹ The European Council can be compared to a “general assembly” of heads of government (and the president of France) with the essential role of key political decisions. The Council of the EU is a “multi-line” (from the point of view of the public administration sector) delegation-type body, composed (composed) in variants: heads of government, respectively ministers of ministries of the same name.

²² In that context, it cannot be overlooked that personnel candidacies for filling these bodies depend on the governments of the member states, i. e. they necessarily reflect the specific political composition of these “national” governments at a certain time and in a certain EU member state.

Member States, has direct legitimacy. On the contrary, the body of the “executive power” of the EU, called the European Commission, is clearly an EU body, similarly the Court of Justice of the EU, the European Central Bank. It should also be remembered that the multiple system of secretariats, or the professional apparatus of the European Union (including the so-called *Correper*, as well as agencies) makes the entire mechanism a sectorally branched apparatus typical of the governmental and ministerial structures of the public administration of the Member States.

Following on from the previous “European Communities”, the European Union created several powers and responsibilities of public administration during development for the benefit of common institutions. At the same time, in some substantive areas of competence, these are matters entrusted to joint institutions, while in some issues, these are areas of competence “divided” in a certain public law sector. The diversity of competence situations makes it difficult to draw a dividing line between the substantive scope of the European Union’s competence (on the one hand) and the Member State’s own public administration.²³ In this way, in the European Union, we can speak of a “two-layer” public power (public administration) realized by two systems of basically independent bodies. However, even the relationship between typical public administration bodies, i. e. European Commission bodies and Member State governments, does not have the character of a “federal government” and a “subordinate” government in a “federal” system. The decision-making of the bodies of the European Union, also within the competences entrusted to them, has a binding effect on the state policy of the Member States, often in the form of mediation competence of the Union bodies. In several areas of the Union’s administration, its bodies do not have normative powers to bind Member States directly, but Member States are invited (by EU directives) to coordinate their activities in accordance with the perspective of integration goals, based on the principle of loyalty.

The Court of Justice of the EU now plays a key role in enforcing the legal order of the European Union. With his precedent-setting activity, he significantly contributed and contributed to the creation and development of the concept of “multi-level quasi-constitutionality”. At the same time, it is an interpretive development of the competences of the European Union based on common treaties and their enforcement on the principle of direct effect of common law. A special issue is the possibility of the participation of territorial administrative units of individual states in the implementation of Union decisions.²⁴ Particular attention should be paid to the norm-setting activities of the Member States. This function of the state is primarily based on the powers of the parliament of the Member State and remains the exclusivity of the state to enact laws. Each parliament chooses such spheres of legal regulation that are related to its program policy (in addition, influenced by coalition agreements). The

²³ Some competences have already been defined as exclusive by the earlier European Court of Justice.

²⁴ Only the Netherlands has institutionalized the involvement of territorial units by creating a consultative group.

norm-making function of the state, however, in relation to the directly applicable law of the European Union, partly moves in the sphere of so-called competing legislation. In particular, the legislation of the Member States acts in principle in parallel with the legislation issued by the European Union authorities.

A special vertical relationship in the European Union between the legislative creation of a Member State and the legal order of the European Union is the so-called notification obligation of a Member State. The purpose of this notification obligation is to protect the single internal market of the EU so that a situation does not arise in the territory of a Member State that creates obstacles for trade exchange in the internal market of the European Union. This measure of the European Union determines the obligation of the Member States and the corresponding authorities of the Member States to ensure that, through the national “control point”, they notify the upcoming legal regulations of a so-called technical nature even before approval.²⁵ The legal consequence of a completed notification is the beginning of a “work suspension” period of 3 months, during which the Member State may not accept the notified standard. This means that during this period the Member States and the European Commission can comment on the standard and make any comments.

5. Possible approaches to the “form of government” in the European Union

In the approach to the solution, the nature of the powers of the bodies of the institutional framework of the European Union must be assessed, as well as their mutual relations. The set criterion is thus the point of view of “horizontal division of powers”. The reason is caused by the fact that the European Union has its “own” legal order, its bodies manage the system politically and administratively, and the EU’s power system institutionally and procedurally guarantees the decision-making of disputes in both horizontal and vertical lines. The analysis of the “horizontal” division of decision-making activities is based on the usual concept of the division of authorities’ powers according to their fundamental difference in power in the constitutional system of separation of powers. From the point of view of the general theory of “political science”, these are bodies with normative, regulatory, executive and judicial powers.²⁶ This approach will allow you to answer the question whether the EU system in the

²⁵ The legal regulation of the so-called notification obligation applies to regulations of a “technical nature”. It is regulated, among other things, by Directive 98/34 EC of the European Parliament and Council, provision of information in the field of technical standards as amended by Directive No. 98/48 EC.

²⁶ To this, the author in: KLÍMA, Karel et al. *Státověda*. 2., rozšířené vydání. Plzeň: Aleš Čeněk, 2011, p. 199 et seq.

form of institutional power contains elements of the “forms of government” in its traditional conceptual concept of constitutional law.

The sovereign exclusivity of any public authority is primarily the existence of a generally binding legal order, which regulates the status of particularly public law, as well as private law. The law of the European Union is a structured legal order in terms of several own sources. Above all, there is no unity of normative resources at the European Union level. Indeed, the normative authorities of the EU bodies are divided between the EU Council, the European Commission, as well as the European Parliament, and the regulations are issued together by two of these bodies. The phenomenon of the sources of the European Union law is the so-called secondary right, which is “subordinated” to the primary rights. Thus, the standard activity of the institutional framework of the European Union creates a “two-level” system of the EU law, which has the character of the “decretal” and “constituent” relationship constitutional (here meant as internationally contractual). The EU Court of Justice is a special role among the sources of the European Union law. In accordance with integration, this judicial authority developed a binding interpretation of the EU law sources and thus established the authority of the above-mentioned judicial law of the precedent type. This law thus creates a related (yet autonomous) source of derivative law (see below).

Based on the above, the question is whether we will verify the criterion (constitutional) “forms of government” in the European Union system. In this context, as mentioned above, we consider the “internal power structure” of the European Union itself. Thus, the classic constitutional law thus sets the criterion of “legitimacy” of the top power bodies of a certain constitutionally sovereign unit, as well as their responsibility to the entities that created them (established, proposed, etc.). This is assessed by the model of “internal power” in the European Union, inserting into the system “key” criterion of division of power, namely the evaluation of the form of government. In the summary response, we can conclude that there are elements and institutions of “parliamentary forms of government” in the European Union system.

In European constitutional systems as systems of the nature of the so-called representative democracy, it is essentially the construction of the “will of the people”. However, this criterion in relation to the nature of the European Union is not directly applicable. Although the EU contracts are established by the European Parliament and it is also regularly established (renewed) by elections, this “classic” constitutional body is limited to the original normative regulatory function. That is, primary law is a special normative nature as a right of contractual domain procedures dependent on the will of the Member States (states are “masters of contracts”). The European Parliament is thus actually functionally directed as a political-consultative institution with approval prerogatives in relation to secondary law (which has other bodies of the EU executive character).

However, it is necessary to recognize the composition of the European Commission as well as the approval of the European Union’s budget as the Quasi-Constrictive

Function of the European Parliament. However, its own administration of the European Union is presented primarily by the European Council, the Council of the European Union and the European Commission. In this sense, the “performance of the will” of the citizens of the Union is actually presented indirectly (not i. e. MEPs of the European Parliament) by the external representation of the constitutional bodies of the Member States. In terms of the establishment and functioning of these bodies, it is a currently established political set represented by the executive power - Prime Minister of the Government and Ministers of these bodies, respectively “European Commissioners”. However, it should be comparatively supplemented that some gradual involvement of national parliaments exists and develops.²⁷ The “institutional framework” of the European Union is a special system in principle autonomous bodies. While contracts determine the powers and factual competence of these bodies, they adapt these authorities the powers and thus also expand the decision -making (expand). From a constitutional point of view, the problem of this institutional framework is primarily the absence of control links between them.²⁸ It is a very strong penetration of the functions of the EU executive power (including numerous agencies of the European Union) to the national executive. These are bodies, such as the EU Council and the European Commission as an institution in principle of an executive (executive) nature. In fact, these authorities do not have a substantive defined power. Their normative and specifically decision -making powers are essentially “decree”.²⁹ At the same time, they also issue acts of application of law in individual matters: for example, in the areas of competition law, technical homologation, regulation of agricultural policy of Member States, security, health-epidemiological, transport, immigration, etc. In the case of the EU Court, of course, this is another type of decision. However, although the judicial power remains the exclusivity of the Member States, it must count on the potential binding of the case law of the EU Court of Justice in legal affairs where the EU law takes precedence. In particular, his decision on the so-called “preliminary question” in a particular judicial case is obliged by the Court of Member State, which sent this question to the court, and for the futuro, Erga Omnes undertakes all entities in the European Union.

²⁷ In this context, J. Kysela stated the so – called “deparlamentarisation”, ie as a reducing the role of national parliaments as a result of the gradual expansion of European integration groups.

²⁸ See in: Zbiral, R. *Institucionální rámec Evropské unie*. Prague: Linde, 2007, p. 19 et seq.

²⁹ Here the concept used synonymic ally to the legal acts of government and executive (ordering) state power.

6. Judicial Model of Justice in the European Union system in the form of a Court of Justice of the European Union

Especially since the 1960s, the activities of the previous European Court of Justice (ESD) have been developing in the development of European communities. In particular, its interpretative creativity has gradually exceeded significantly and has permanently deviated from the role of the usual international court.³⁰ Thus, the current position of the EU Court of Justice is also a follow-up to the gradual expansion of the ESD in the interpretation of the so-called primary law. In terms of legal intensively and extensively, the European Court “completed” certain characteristic features of the then “community” contractual system. The courts are part of every public service system, but in the case of international organizations, the European Union is a very exceptional institution.

The Court of Justice of the European Union is thus one of the “external” bodies of the EU with the characteristic principle of judicial independence. Given the unique form of the EU legal system, the previous court (ESD) previously conceived principles of direct effect, or the advantages of EU law before national law, as well as by obligation and obligations for domestic courts.

The EU Court of Justice ensures uniform interpretation of EU law by national courts. It is only appropriate for special types of management.³¹ The main task of the CJEU is to ensure the exercise of its powers of compliance with the right to interpretation and carrying out contracts (Article 19 (1) of the SEU). The SDEU activity is governed by its status, which is connected to contracts in the form of a protocol.³² The Court does not act on its own initiative, all cases must be based on the submission of other entities. The SDEU decision is final and there is no appeal against it.

Individual types of proceedings before the EU Court of Justice have their procedural form. They fall into two categories, such as a) direct lawsuits and b) proceedings on the so-called preliminary question. For direct action, the Member States and the EU institutions, possibly natural and legal persons, are legitimated.³³ In the preliminary proceedings, the “interviewers” at the CCEU are domestic courts (pursuant to Article 19 (3) of the SEU). Direct lawsuits have the character of the so-called determination

³⁰ Cf. The “textbook” case of *Cassis de Dijon*, from 1964, established by France’s action on Germany due to the limitation of the import of liqueur Germany.

³¹ The basic legal provisions relating to the SDEU are found in Articles 19 of the European Union (SEU) Agreement and in Articles 251 to 281 of the Treaty on the Function of the European Union (SFEU).

³² Protocol No. 3 on the Statute of the Court of Justice of the European Union (Official Bulletin C 83) of 30 March 2010.

³³ So-called. Unfortunate plaintiffs are possibly legal persons in situations where the acts of the EU bodies relate (for example, not to grant subsidies, decisions in the field of competition, fines, etc.).

lawsuits. Thus, the main “determination action” is the action for invalidity (Articles 263 to 264, and 266 *Seu*). The reviews are subject to acts issued by the European Parliament (along with the EU Council or the Commission), the EU Council (itself), the European Commission (alone) and even the European Central Bank. Furthermore, the CJEU can review the acts of the European Parliament, the European Council and other EU institutions if they have effects on “third” persons (so-called passive standards). The action is entitled to (also always) Member States, the European Parliament, the EU Council and the Commission. The reason for the cancellation of the legal act (which is the meaning of the appointment) may be the lack of factual competence for the issue of the act, the violation of the formal requirements of the process, or the abuse of authority.

Another type of action is the so-called action for failure to fulfil the obligation (Article 258 to 260 *SFEU*). This action leads to the CITEU to review situations where, by its actions, the Member State violates its obligations arising from contracts.³⁴ In this case, it is a legitimated entity of the Commission or, on the contrary, individual Member States. The Commission may propose to the CSEU the imposition of a sanction, the amount of which the SEU also decides.

The overall concept of the petitions is still completed by less frequented action. Thus, the so-called action for inaction (Article 265 *SFEU*) is based on the assumption that the institutions of the European Union did not take a decision or solution. The court also decides on other types of action such as compensation for damages based on non -contractual liability of the EU (Article 268 *SFEU*), or disputes resulting from the arbitration clause contained in the EU contracts (No. 272 *SFEU*) as well as in disputes concluded by the EU and its employees.

“Preliminary issue proceedings” is the only possibility of communicating the national courts of Member States with the EU Court of Justice. It is a so-called indirect action, i. e. rather an “application for interpretation” of the EU law in the direction of whether in a certain court of the Member State, the use of the EU law is required. In principle, it is a statement whether the EU law is “superior” in a given particular judiciary and therefore binding and decisive for the national law of the Member States. It may also be an opinion of the court on the validity of the secondary law and its binding in the legal matter. The Member State will decide on the merits of the Member State, but the CJEU will determine the substantive right for his decision “on the merits”. In fact, there are several disputes in which EU law is contained in domestic lawsuits. Therefore, in these cases, it is up to the courts of the Member States to use and properly apply the EU law and thus ensure the protection of natural and legal persons in situations where EU right provides them or provides them in a higher way.

To harmonize the interpretation of the EU law and its uniform interpretation in all EU court systems, the EU Court has the exclusivity of this interpretation. However,

³⁴ The Commission initiates a series of its own proceedings every year, most of which are resolved by an administrative (political communication) manner.

asking the so-called preliminary question is entirely in the authority of any court of the Member State. At the same time, the parties to the proceedings (or the EU Court) cannot force the courts of the Member State to decide.³⁵ However, asking the preliminary question is compulsory when the decision of the National Court is no longer an appeal. Overall, the concept of “preliminary questions” has a vertical constitutional effect of the judiciary’s relationship in Quasi composed. First, it ensures that the National Courts decide consistently with the EU law and correctly interpret this right. This procedure also allows (indirectly) so that people who are not legitimized to access the CJEU can use this contact.³⁶

In terms of the nature of the European Union (as an international organization), the EU Court of Justice is primarily an “international court”. However, in the evaluation of its factual decision-making competence, as well as based on the types of action, it is possible to conclude on the uniqueness of this authority. The proceedings before the CJEU are in principle and above all “questionable”, which is a conflict based on the alleged violation of the EU law. Therefore, if we set up as a criterion aspect of possible parties to the dispute (lawsuits), then we reach the following versions of legal conflicts between privileged prosecutors, in the following variants:

1. When the EU institutions are suing a different EU institution at the SDEU (the nature of the “horizontal” action). In this situation, it is a conflict of the nature of the division of power, hence the dispute over the competences between the top authorities of the system (Quasi-system dispute), with the possibility that the CSEU can cancel the contested decision,

2. When the EU institutions are sued by some EU Member State at the CSEU (the nature of the “vertical” action). In this situation, it is a dispute over the competences in the EU law system systemically superior to a lower system level. It is obviously a dispute quasi-federal, because here, even here, the CSEU can order a certain performance or non-processes in operation or order the situation, the situation,

3. When the Member State is suing the EU body (the nature of the so-called vertical action). In the power composition of the European Union system, it is necessary to respect the constitutional sovereignty of the Member States, so it is rather a “confederate” dispute. Here, too, the CJEU may decide on the invalidity or suspension of a particular EU institution,

4. When, the Member State is suing another Member State (the nature of the so-called horizontal action), which is essentially an “internationally legal” dispute.

³⁵ In situations where the answer is obvious from the previous case law (the so – called *ACTE Éclairé* doctrine) or the interpretation is “clear” based on logic or general legal knowledge (doctrine *ACTE claire*), of course there is no need to interrupt the proceedings, see in: *Evropské právo ... Ibid.*, p. 326.

³⁶ Based on the former lawyer’s practice of the author of this article and his experience with the Czech courts, it is probably the art of convincing a specific court (Senate) and hence the “help” to formulate the preliminary question.

5. When the EU Court of Justice is the “Supreme Court” of the European Union when it interprets the EU right to address the so-called preliminary issues.

The decision -making and creative activities of the CJEU are also approached by the possibility of application for the report (Article 218 (1) of the SFEU). This application may be submitted by the Court of Parliament, the EU Council, the Commission or the Member State if the European Union is going to conclude an international agreement with other comb or international organizations. This measure is of obvious nature of “constitutional”, when it is to find out the compatibility of such an intention with contracts, so it is aimed at ensuring and protecting the identity of the European Union.

Court Judication (in connection with the previous ESD), the so-called Case Law, is a special source of EU law. As a type of source of law formed by a court, it is a “precedent” right. The main type of interpretation is, in particular, the use of the “teleological” interpretation method, where the court assesses the provisions of contracts on the basis of their intention and objectives.³⁷ In general, however, it should be stated that the interpretative activity of the EU Court of Justice is very “expansive”, as there are many of his decisions not only for additional contracts (filing “gaps”), but also by changing joint law, strengthening the nature of integration, etc.³⁸

7. Human rights aspects of the European Union’s legal system

The concept of human rights and freedoms of the European Union has a practically direct connection with the constitutional systems of Member States. Of course, it has logical reasons, because the European Union is based on democratic systems, so respect for human rights is one of its many essential values. So-called. Although the founding treaties did not know other freedoms other than the freedoms of economic nature (freedom of movement of persons, goods, capital and services), gradual jurisdiction (formerly) of the European Court of Justice focused on the development of several human rights issues, and the court also referred to the national constitutional traditions and the Convention on human rights and fundamental freedoms of the Council of Europe.³⁹ In the so-called founding contracts, only a slight part of the Catalogue

³⁷ Thus, according to the decision 22/70 *Commission v. Conseil (Eta)* (1971): “... It examines the context of each provision of community law and interprets it in the light of community law, while considering the objectives of community law and its current development”.

³⁸ For example, the judgment on *Achmea* (2019) has excluded institutions of international economic arbitration (UNCITRAL system within the UN) in resolving disputes of this kind if the dispute is kept between the entities “within the EU” and ordered their jurisdiction to the general (state) courts States.

³⁹ Here we refer to the Back Treaty L. Mokrá in: *Evropské právo ...* *ibid.*, P. 394 et seq.

of Fundamental Rights and Freedoms can be found, and in the original contract for the establishment of the European Economic Community, the equality of men and women, or the prohibition of discrimination for gender, was modified.⁴⁰ Another specific law developed was the prohibition of discrimination for nationality, i. e. equal status of nationals of Member States. Based on the recognition of fundamental rights and freedoms as part of the general principles of community law in the case-law of the European Court of Justice, the then authorities in 1977 adopted the declaration on the protection of fundamental rights and the Convention.⁴¹ In this declaration, the importance of fundamental human rights arising from the Institute and the Convention was emphasized. A certain own catalog of human rights was also formulated by the European Court in its case-law based on specific decisive matters.

The legislation of human rights and freedoms also follows from the legal acts of the so-called secondary law. In the protection of fundamental rights as general principles, the Court of Justice (formerly the European Court) is obliged to base mainly on the common constitutional traditions of Member States and international documents concerning the protection of human rights on which the Member States have agreed or cooperated, or to which they joined.⁴²

The current Treaty on the European Union also regulates human rights issues, as a principle of respecting human rights, including the rights of persons belonging to minorities (see Article 2 of the Treaty). In Article 7, the means to protect these values are provided.⁴³ The actual compliance with the values set out in Article 2 of the European Union Treaty is a condition under Article 49 of this Agreement for the submission of an application for membership in the European Union. It is also necessary to recall the prohibition of discrimination for nationality, enshrined in Article 18 of the Treaty on the Functioning of the European Union (SFEU), and this Agreement also implies the authority of the Council unanimously (on the Commission and after the European Parliament) measures in the fight against discrimination based on gender, racial or ethnic origin, religion or faith, disability, age or sexual orientation. In other provisions, this sea expresses respect for social rights (especially in the so-called Turin European Social Charter). It determines the obligation of the European Union and Member States to support the employment of workers, to improve life and health conditions to achieve their compliance while maintaining the achieved level, reasonable social

⁴⁰ It is this right that is considered one of the most sophisticated within the European Union legal order.

⁴¹ See in J. Syllová in: Syllová, J., Pítrová, L., Svobodová, M. et al. *Ústava pro Evropu. Komentář*. I. edition. Prague: C. H. Beck, 2005, p. 121.

⁴² It is mainly the European Convention on Human Rights and Fundamentals, see Decision: Kadi 402/05, Wachauf 5/88, National Panasonic 136/79, Connolly v. Commission 274/99 etc.

⁴³ This allows the EU Council on a proposal of one third of the Member States, the European Parliament or the European Commission of a four-fifth majority of its members, and after obtaining the consent of the European Parliament, decide that there is a clear risk of serious violations set by Article 2, some Member State.

protection, social dialogue and dialogue between social partners as well as develop human resources with permanently High employment and fight against excretion from the labour market. The comprehensive issue of human rights and freedoms is contained in the Charter of Fundamental Rights of the European Union as part of the so-called Lisbon Treaty, valid since 1 December 2009.

The European Court of Justice (ESD) was important to the doctrine development of human rights issues in the European Union. The case -law of the ESD has gradually hit the entire spectrum of fundamental rights and freedoms, with guarantees both procedural and institutional.⁴⁴ The importance of the case law of the European Court of Justice for the “Community” and then “EU” formation of human rights is that the court confirmed in its interpretation that fundamental human rights and subsequent freedoms are an integral part of the guaranteed rights of the then “community” and therefore Thus, the joint court must also ensure their protection. The anchoring of the binding catalog of human rights and freedoms of the European Union in the form of a charter (formulated in the so-called Nice Treaty of 1999) was to contribute to the elimination of certain “gaps” and, of course, to ensure the coherentness and complexity of this regulation.

The issues of rights and freedoms have been and are also developed by the acts of secondary law at the same time in terms of the structure of the so-called secondary legislation, this achieves the rights of all three generations, with a predominance of rights regarding economic issues. In particular, the Regulation and Directive of the EU Commission and Council regulating the prohibition of all types of discrimination, free movement of persons, freedom to settle, freedom of providing social services, social security rights, asylum rights, etc. Institutive law is one of the most outstanding legislations on the principle of equality that It has been extensively elaborated and concreted within the secondary right.⁴⁵ The legal acts of secondary law not only contributed to the unification of national legal regulations of the Member States, but also within the meaning of the doctrine of direct usability and direct effect, the rights can be enforced by courts.⁴⁶

⁴⁴ For example: a) In the field of fundamental human rights, it is mainly the general protection of personality (Staucier, 69/71), freedom of religion (Prais 130/75), Protection of Ownership (Hauer, 44/79), freedom of expression (Flämische Bücher, 63 /82); Hofman-La Roche, 85/76), the right to a proper process, including hearing (Pecastaing, 98/79), or a ban on “double punishment” (Walhelm 14/68). See more specifically in: Outlá, V., Hamerník, P., Bambas, J. *Judikatura Evropského soudního dvora*. Pilsen: Aleš Čeněk, 2005, p. 263 et seq.

⁴⁵ In this sense, the basis is primarily a directive on racial equality No. 2000/43 EC, as well as a directive on equal treatment at work, No. 2000/78/EC

⁴⁶ In the opinion of B. Fridrich in: *Evropské právo...* Ibid., p. 404.

8. Public law nature of the so-called European Union citizenship

The starting point of considerations of a very special, yet political-legal nature of the concept of “citizen of the European Union” is the development of the usual institute of citizenship. In the case of citizenship of a particular state, it is a legal institute linked to the sovereignty of every state. Of course, states in a modern sense have been established and are based on the population, as on a certain historical, homogeneous ethnic group, as a settled groups of cultural, linguistic, religious and other integrating motivations. The concept of “citizenship of the European Union” is quite legally “artificial”, a political construction, which is mainly related to the civil legitimacy of the electoral establishment of the European Parliament. The construction of the civil legitimacy of the elections is in this way, in principle, the nature of the constitutional, but not the institute from which the citizens would be based on the rights guaranteed by the state power, in particular, in particular the right and passive rights right.⁴⁷

Therefore, only certain political rights (electoral and petitions) are bound to the EU citizenship concept. It is also a special right to contact the European Ombudsman. In any case, they are Member States that define the conditions for admission to the citizenship, which is constitutional and international “maximum”. In accordance with the Amsterdam Treaty (cf. Article 17), it should be noted that the citizenship of a Member State is the primary and derived citizenship derived. Thus, the European Union respects the identity of the Member States and thus the diversity of social political. However, if the European Parliament is a common body for the whole organization of the European Union, then its direct elections are evidenced by the citizens of the Member States of the European Union with a clear parallel with a constitutional way of constitution of parliaments of several federal states.⁴⁸

9. “Constitutional Law Aspects” of Territorial Sovereignty of the European Union

Since 2009, the European Union has been a legal entity under the international public law as an international organization of regional type. This identity makes the European Union an entity operating in international relations externally, as it harmonizes and represents a certain external policy of the “association” of states externally. In Lisbon

⁴⁷ Perhaps it is only possible to add that in relation to consular assistance, it is possible for a citizen of an EU member state in the event of difficulty in any part of the world to request assistance from the consular office of another EU member state, which is located closest to the event.

⁴⁸ The parallel model of the electoral system thus creates a similarity in the situation of the so – called proportional system, as is partly used in the elections of the Federal Assembly of Germany.

Treaties, it is not defined what the “space of the European Union” means. However, we are based on the fact that the direct usefulness and enforceability of EU law means that this right is directly related to all territories that are located under the sovereignty, legal order and jurisdiction of Member States. In addition, the traditional and original foundations of community law linked principles (especially all used “freedoms of movement”) with the operational transmission of the borders of the Member States, directly spatially integrate all territories of EU Member States into a comprehensive existential unit. This, of course, also applies to the airspace, seashore and “sovereign waters” of the EU coastal states.⁴⁹

10. Conclusion

The power system of the European Union summarized by the conclusion is evaluated as vertically organized, with direct binding of law in the Member States. Moreover, in this system there are, and the authorities are also being promoted, in principle of an executive (executive) character. It is the inductive methodology of constitutional law that can infer a certain imbalance between the constitutional sovereignty of Member States and operational expansion (and extensions) of the EU executive power in the implementation of the EU contractual rules. In the past period, unexpected crisis phenomena of global character such as the permanent threat of terrorism, immigration waves from different directions, the recent Covid epidemic, as well as the lasting aggression of the Russian Federation towards Ukraine. EU Member States are reasonably awaiting an action solution from the European Union bodies. This logically leads to the search for measures precisely the power of the executive EU that necessarily affects Member States (for example, compulsory “immigration quotation”). Possible further operational overlaps and stripping from the powers of EU bodies can thus be expected in the future.

In principle, the European Union’s power system is manifested as the Lisbon Treaty (SEU, SFEU and Charter of Rights). This returns a fundamental research question to addressing known from the beginning of the millennium, namely, how to solve the “deficit of democracy”. Obviously, the question has changed the factual development of the EU somewhat, with two aspects: 1. How to strengthen the control function against the executive “inside” of the EU power mechanism, especially by the European Parliament, and 2. How to strengthen the control function against the EU mechanism by the Member States acting on their sovereignty issues.

The integration development of the European Union has reached such a stage of integration that “there is no way back”. European integration of this type is also

⁴⁹ The Community accepted the international rules of the 1982 Marine Law Convention: United Nations Convention on the Law of the Sea. Ratified: 28.03.1998, EU Council decision.

necessary regarding the development of the global world and the continuity of certain crises. Partial political slogans and ambitions sounding from some states about performances are unrealistic to bewildered, and any “Europe’s” is not constructive and does not solve anything. The author such analogues to the “floskuli” used more for energy and environmental protection in the form of “sustainable development” this intention also applies to the question here. The further development of the European Union also requires maintaining sustainable development of this system. In the form of a resolution of permanent balance between the effective centralization of some functions at the level of integration and in relation to this, the functioning of the vertical division of power, in which the constitutional sovereignty of Member States allows to solve independently the amount of real administration problems.

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