

## Constitutional Order of the European Union

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### **Abstract**

*The basics of European construction, as well as ideas that generated it have been diverse. Member States of the first European community took into account in particular the traditions of parliaments as fundamental democratic institutions, as well as the indestructible values of democracy, entrenched in the life and practice of these countries, such as: respect for human rights, independence of the judiciary, free elections, etc. These, and not only these, constituted relevant coordinates that determined that the European idea to affirm fully, to maintain its timeliness, earning the adhesion of the governors, enforcing political and social forces to achieve a better life in Europe, the continent ruined as a result of the Second World War.*

*The European ideal is far from complete, the challenges are getting bigger and the European Union will have to answer categorically to demands, mainly in the field of law.*

**Keywords:** *Constitutional order, traits, fundamental rights*

**1. Introduction.** The international organizations do not have, generally, legislative powers for States Members or for the international society as a whole. Not even the United Nations, which brings together the vast majority of world states, does not represent a government or a world parliament that can take regulatory measures. UNO is a forum for discussion, in which all issues can be approached and discussed according to similar procedures to those of the Parliament with or without the consent of the states concerned. The European Union, as a relatively new structure with its own specific, seems to be an exception in this regard. First, a structure so complex which involves so many new challenges, can not achieve its mission only through the ratification of treaties. The Union was created from the outset, in order to evolve, a sometimes controversial and uninterrupted process. Giuseppe Manzzini, almost two centuries ago, said that Europe is in a crisis because it does not have a unity in purpose, destiny and mission. The future European structure will probably be a role model for other structures for other organisms, perhaps even for a world body, especially under the conditions in which the older forms of international organizations

tend to show their limitations in the face of increasingly complex challenges (globalization, pollution, overpopulation, economic crisis, etc.).

**2. The Specificity of European Structure.** More broadly, EU law contains all the rules of law applicable in Community law [1]. In this sense, European law comprises conventional acts concluded between the Member States in implementing the treaties. The authenticity of the European construction consists of its superiority over the legal systems of Member States; the European Community has not stated a moment that it will supersede the sovereignty or the right of states to decide. The subsidiary principle has remained - and remains - a basic rule according to which an intervention is necessary and desirable only in those areas where the states lack the means to carry out by themselves the community commitments without decisive support from it.

Yet these shared competencies have generated and will generate controversy between conservatives and pro-European, both sustaining with relevant arguments their points of view. Untrusting the democratic European values, Pierre Manent argues: “the meaning of democratic nation has been lost in the very places where this extraordinary form of human association and has appeared, that being, in Europe” [2]. Some of the issues that must find a solution as quickly as possible, within the European structure, are the difficulties in integrating law. One problem that arises is that the introduction of exactly the same rules in different areas as economic development, social-cultural, with the recipients subjects of law so diverse, it is at least ineffective and in some cases may even consist of a severe violation of the subject’s rights. Such challenges that exist even at national level, are generally resolved through specific constitutional mechanisms. The question that arises is whether such mechanisms are possible at EU level and whether they can fulfill a similar role, while maintaining, almost paradoxical, a balance (of increasingly frail yet) between the European legal order and national sovereignty.

According to the findings from the specific literature [3], sovereignty is the basis of contemporary state, the principle of sovereign equality of States, rules of *ius cogens* [4], customary formed, about being enshrined currently through treaties and fundamental documents of international law, such as the UN Charter, Declaration on the principles of international law concerning friendly relations and cooperation among

States in accordance with the UN Charter, adopted by the General Assembly in 1970, or the Helsinki Final Act of the Conference on Security and Cooperation in Europe from 1975.

Although the international judge, as well as the national one, has the role to interpret and apply the law in force and not to create it, in practice the application of the rule is often difficult if not impossible to separate from the creation norm. According to the American Judge C. Ehughes, „we are bound by a constitution, but the constitution is what the judge says it is”.

The origin of EU law is found not only in institutive treaties, but also in the practice of institutions and Member States and in the systematization of the rules, made by the Court of Justice itself [5].

The sources of Community law is the form under which Community legal norms materialize, the rules of conduct applicable in the Community legal relations [6].

The European Union is an original legal structure, based on ratified treaties by Member States. These treaties also constitute the foundation of Union law and are in fact the constitutional order of the EU. All legal texts adopted by the EU institutions must conform to these treaties that rest on fundamental principles (liberty, democracy, respect for human rights) and define the powers delegated to the Member States of the European Union.

**3. The Treaty of Establishing a Constitution for Europe, a Failure or a Step Forward Towards a European Constitutional Order?** Primary sources are the Community treaties and other fundamental documents which, along with secondary sources, represent the Union law, narrowly. The treaties determine the area of applicability of Union law, *ratione materie*, *ratione loci* and *ratione temporis*, empower institutions and sets out the principles and procedures to be followed to achieve the referred purpose and objectives [7]. The authority of European treaties result from their rank, prevailing in comparison with all other sources of EU law. The containing rules are applicable through themselves, the origin right hands the institutions the task to follow up the objectives set by providing them for this purpose, a wide range and complex set of legal instruments. The change of institution treaties was required several times, mostly due to the expansion of communities, through the accession of new states [8].

More broadly, EU law contains all the rules of law applicable in Community law order[9] and are considered sources of European law and the following categories:

- The General principles of law;
- Jurisprudence of European Court of Justice;
- The international agreements concluded by Member States to the extent that they provide rights or impose obligations for EU institutions, Member States or their nationals;
- Internal regulations, institutional acts, resolutions and declarations of the Community institutions that are complementary sources of Community law [10].

In terms of jurisprudence, we note that one of the major tasks of the European Court of Justice is ensuring the proper training and respecting of European law and the interpretation and application of treaties. The Court was faced with a nascent legal system, consisting often of rules and legal concepts containing an undetermined, general, sometimes incomplete or inaccurate content. The Court had therefore the mission to complete or form the legal norms adopted, ensuring the legislative function of the EU. Therefore, we can say that there are strong similarities between the Constitutional Courts, at national and C.E.J. level. The Court was concerned with achieving a coherent judicial practice and, to this end, to solve new cases it is considering solutions pronounced in earlier cases. This consistency results from the overview of the purpose of the Community Treaties [11]. Constituents traits are not subject to judicial review under European law, the C.E.J. being competent on the interpretation thereof, not having the opportunity to establish new treaties. The competence conferred to the Court of Justice is to ensure the uniform interpretation and application of Community law [12]. For the purpose of uniform application of European law, the Court was vested with the mission of authentic interpretation of both the original law and secondary law. The Court thus contributes decisively to the formation of a coherent and structured European law, system within which jurisprudence is a spring for formal law. In the Decision of the Court from 1986 (“Les verts” against the European Parliament, C-294/83), the Court held that CEE is a community based on the rule of law, because neither the Member States nor its institutions can avoid the review of control according to the „basic constitutional charter” which is the Treaty.

Community legal order consists of the set of rules governing relations between the community states, EU states, and relations between the EU and states that make up this supranational structure. Depending on the importance of the legal law they have, rules of European law were classified [13] into two categories:

- Norms that have a value of fundamental laws, constitutional (institutive and modifying treaties);
- Norms with value of ordinary law rules drawn up by various EU institutions.

Founding Treaties have therefore a privileged position compared to any other rule of European law. These treaties can not be amended by European judges, with the existing presumption that they are legitimate.

A unifying role in the Union, in terms of jurisprudence, is held by the European Court of Human Rights. Starting from the particular cases it refers to, the Court (CEDO) supports its decisions on a number of rules regarding: legal security, legitimate expectations, the effectiveness, accountability, non-discrimination and, in particular, proportionality.

A moment of utmost importance for U.E. is the Lisbon Treaty in 2007, which was adopted as a result of the failure of the adoption of the European Constitution. The Treaty signed in Lisbon on 13 December 2007, which would enter into force on 1 December 2009, it is one of the most important sources of European Union law. The treaty was signed by representatives at the highest level of all 27 Member States of the European Union, the declared purpose being to complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and improving the coherence of its actions. By changing art. 1, paragraph three, shall be determined exactly the legal legitimacy of the EU and its international legal status, noting that: „The Union is founded on the present Treaty and on the Treaty on the Functioning of the European Union. These two Treaties have the same legal value. The Union shall replace and succeed the European Community. „In the preamble of the Treaty on European Union has been introduced a new recital on the necessity of the existence of the Union, inspired and based on” cultural heritage, religious and humanist inheritance of Europe, from which have developed the universal values which constitute the inviolable and inalienable rights of

the person, as well as freedom, democracy, equality and the rule of law". Affirming the values and objectives of the Union, as well as the rules underpinning relations with Member States, there is highlighted the inclusion of the Charter of Fundamental Rights, in the content of the Constitutional Treaty [14].

The Brussels Convention would amend the modification of the 'three community pillars' and the establishment of a constitution, with the introduction, as we have shown, of the Charter of Fundamental Rights of the European Union as part of the Constitution. Another goal, of particular importance, was to give the EU legal personality.

The Charter of Fundamental Rights of the European Union is a complex document that combines and declares a large number of fundamental rights and freedoms guaranteed for EU citizens. The Charter, adopted in 2000, at the Intergovernmental Conference in Nice, has initially remained a political statement, not invested with legal power, although in practice it turned out that its provisions have often influenced by jurisprudence, doctrine and public opinion. The Charter has acquired legal force through art. 6 of the EU Treaty, in aggregate form, as a result of the amendments brought to this Treaty and the Treaty on the Functioning of the EU by the Lisbon Treaty. Art. 6 of the Treaty on U.E. in consolidated form provides that the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adopted on 12 December 2007 in Strasbourg, which has the same legal value as the Treaties. The provisions of the Charter do not extend in any way the Union's competences as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions of Title VII of the Charter regarding its interpretation and its implementation taking into account the explanations referred to in the Charter that set out the sources of those provisions.

The Charter reaffirms, with due regard for the powers and tasks of the EU and the principle of subsidiarity, the rights resulting from the constitutional traditions and international obligations of Member States, of the European Convention on Human Rights and Fundamental Freedoms, of the Social Charters as well as from the case law of CEJ and C.E.D.O. The legal force of the Charter extends only to the European Union. The fundamental rights of European citizens in this document are grouped into six major headings: dignity, freedoms, equality, solidarity, citizens' rights and justice.

One of the main concerns of the Member States, referring to the Charter was that of a too strong interference in national legal systems. According to art. 51 para. (1) the provisions of the Charter are addressed to Member States „where they are implementing the Union law”. However, CEJ [15] case law envisages a broader sense of the application of the Charter. The Court considers that the provisions of the mentioned document apply to Member States also when they act „according to the purpose of Union law”.

Much of rights contained in the Charter are consistent with those provided in the Convention. Often drawing rights is made in a form more suited, in a modern form (for example, where property rights or the right to protection of personal data). Recognition of rights in the Charter was based on the recognition of these rights in national constitutions of some Member States (eg., Art. 49 stipulates the principles of legality and proportionality of criminal offenses and penalties and recognizes retroactive criminal punishment if more favorable) . Although the Charter does not recognize entirely new rights (most of them had already been recognized in national constitutions, law, treaties or pacts), but it is a reaffirmation of the rights and freedoms initially recognized, in this document recognition is more categorical on an imperative a tone.

Article 2 para. (1) of the Treaty on European Union states that: „When the Treaties confer the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so only if so empowered by the Union or for the implementation of Union acts „. But the Member States still have a strong influence from outside the Community. The most important influence on national legal systems at this time seems to exert the recognition principle and that of guaranteeing fundamental human rights.

As regards the legal personality of the EU, from the provisions of the Treaty of establishing the European Union it is clear that the Union does not replace the European Communities [16]. The recognition of legal personality by the Treaty of Lisbon (Art. 46A), specifically, is an important step forward in European integration.

According to art.2 para. (1) of the Treaty on the Functioning of the EU, in aggregate form, in areas falling within its exclusive competence assigned by the Treaties, only the Union may legislate and adopt binding acts, the Member States having this ability only

to implement Union acts, or when they are empowered by the Union. The article is a recognition of the fact that it is directly applicable in national legal systems. The direct application of EU rules in the national law systems can lead to law conflicts, conflicts that will always be resolved in favor of the Community law, as it applies with priority. At the same time, some provisions of the Treaty on the Functioning of the EU (and the Treaty regarding EU) clearly expresses maintaining national sovereignty and Member States' constitutions [ie. art. 223, para. (1), Art. 357].

Union law has triggered a new legal order - the Community, for which the Member States of the European Union agreed to limit their sovereign powers in some areas, expressly provided by the EU treaties.

New Community legal order is based, simultaneously on classical international law, on the federal law known models, borrowing cumulatively from them, and on the national law of the Member States, intending to popularize, at Community level the best national regulations. The relatively new structure that we call U.E. call into question some concepts considered so far as true axioms, such as sovereignty and constitutional order.

Even if establishing a Constitution for Europe was a failure and even if the future existence of such a Constitution is dubious, many provisions of the Treaty establishing a Constitution became a reality. Also, I think that in the UE there is a „constitutional order”, understood not only as a sum of national constitutions but also by recognizing the primacy of European treaties, by recognizing the direct applicability of European Community law.

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