SHS Web of Conferences **2**, 00011 (2012)
DOI: 10.1051/shsconf/20120200011

The european union as subjects of law

R. Fila

Rīga Stradiņš University, Latvia

Abstract. At the international level it is recognized that development and progress of the new and unique international organization – European Union – is one of the appropriate form of the international organization's integration. Although European Union was establish as international economic organization, it has gradually integrated the various "best practices" ideas from different governmental systems. Encouragement and motives for cooperation of Member states indicate that member states give more competences of government to the international organization's institutes. Wherewith, it is observed that the economic and political internationalization has led to disappearance of integrity of territory of member states. The above mentioned opinion is not based on research of the European Union as international organization from standpoint of international law, but from standpoint of theory law – could give juridical estimate regarding executive power in European Union and who could define particular source and entity of administrative law of European Union.

Key words: *European Union, governmental system, international organization*

Methods

Science methods – historical, sociological, comparative and logical. The fact of the establishment of "institutions which have been granted sovereign rights" was determined in the European Communities already in 1962. Basic principles of the organisation and operation of the European Union are formulated on the basis of the classic principle of the division of power taking into account the specific nature of the structure and competences of organisation defined in international law. Although the principle of the division of power was not included in the Treaty Establishing the European Community (nor in other treaties) its essence ensues systemically from the interpretation of norms of the given Treaty and it is consistently implemented also in the form of case law of the European Court of Justice. It must be noted that the distribution of state competences and functions among organs of the European Union have features that are characteristic for the classical doctrine of the division of the state that has been formulated in the work of scholars conducting research on constitutional law already in the 18th–19th centuries and retain their definiteness and unchangeability in contemporary constitutional law as well. Currently the function of the legislator in the European Union is successfully performed by the Council of Ministers and the European Parliament, the executive function is performed by the European Commission while the judicial function is performed by the European Court of Justice, the First Instance Court and the Civil Service Court. However, it must be pointed out that that the principal similarities of the constitutional legal "model" of the supreme organs of the public power of the European Union with a democratic constitutional state do not mean that managements models are identical. There are several crucial differences, firstly, in the mechanism of the political power of the European union the organ – the Council of Ministers – that has been established to ensure the representation of interests of European Union member states, has been accorded a much higher constitutional legal and actual status (in comparison with the existing status of upper chambers in parliaments of contemporary federations). The Council of Ministers that consists of representatives of European Union member states and not the

European Parliament that is elected in direct election by nationals of European Union member states is viewed as the main organ of legislative power in the European Union.

The current European Union system of "checks and balances" has one peculiarity – the exclusive right of legislative initiative has been accorded to the executive organ – the Commission. In constitutional laws of contemporary countries the government has been given the legislative initiative only in the area of drafting financial legislation. Moreover, particular attention is paid to ensuring the independence of members of the Commission, firstly, independence form the impact of member states, the justification of the legal responsibility of members of the Commission as well as the procedure for determining the responsibility of members of the Commission.

The assessment of the structure of the internal structural organisation of the Commission unambiguously reveals a similarity with the structure of the contemporary government. Responsibilities are divided among members of the Commission (Commissioners) according to sectors that are to be administered. Each Commissioner coordinates the work of a Directorate General of the Commission which has functions that are very similar to functions of governmental ministries. Besides, the mandate of the Commission – primary and initial – is directly prescribed by Founding Treaties as well as granted – derived or delegated mandate – by legal acts issued by the Council of Ministers or jointly by the Council of Ministers and the European Parliament.

Judicial institutions of the European Union act not only as institutions of the application of law but also as organs of legal creativity. Due to the impact of case law established by the European Court of Justice and the First Instance Court all judicial institutions of EU member states are to ensure the application of this case law as a special source of constitutional law of the European Union. Moreover, during the whole length of the operation of the jurisdiction of the European Court of Justice case law of this particular court clearly manifests the tendency of "constitutionalising" the Founding Treaties.

Within the frame of its jurisdiction the European Court of Justice reviews cases which are reviewed in other countries by constitutional, general, administrative, international, arbitration courts as well as courts of other jurisdictions. Besides legal scholars of West European countries assess the jurisdiction of the European Court of Justice, focusing particular attention to its actions in the role of the "constitution court" of the Communities. One of the principles that characterise the essence of the jurisdiction of the European Court of Justice is the mandatory character of its rulings – neither member states nor other subjects of the European Union enjoy the right to delay the review of a case by this Court or to fail to execute its rulings. In view of the specific nature of cases in the jurisdiction of the European Court of Justice, there are sufficient grounds to believe that its rulings should be defined as sources of administrative law of the European Union structuring them according to the social – political and legal essence in the proceedings where control is exercised on the appropriateness of applicable norms:

- cases brought by the Commission against member states that fail to execute legal acts established by the Community in due manner (the Commission – a member state);
- cases initiated to challenge decisions taken by institutions and officials of the European Communities;
- disputes among member states if any of these states fails to honour commitments ensuing from the Founding Agreement (a member state – a member state);
- disputes concerning employment relations (civil service) (disputes between institutions of the European Union and officials of the civil service of the Communities);
- the dismissal of members of the Commission, officials of the Court, the Ombudsman's Office and other officials of the Communities.

Moreover, likewise the gradual establishment of specialised court chambers show, in general, that in the course of the development of the European Union integration processes the balance of power moves towards institutions of Communities that represent "common interests" of the European Union (the European Parliament, the Commission, the Court). In actual fact at present it is a rhetorical question if it

is possible at all in the current context of the development of international law to establish with sufficient degree of precision, to differentiate and define the scale of administrative legal relations of the European Union and the scale of international legal relations to define optimum provisions for the operation of an economic-political international organisation without the implementation of public law within the frame of the international organisation. The development of the institutional system of the European Union can be used as a benchmark to determine what is required and how institutional structure should be developed by using the "best practice" of integration models in other economic-political international organisations as well as in countries with the federal management model to determine the optimal management mechanism as well as, in line with the principle of subsidiarity, to determine the scope of authority for specific subjects of administrative legal relations.

The recognition that the European Union is a unique international economic organisation has developed due to the efforts of member states to gradually integrate "best practice" management mechanisms from government systems of member states. Institutions have been established within the frame of cooperation among member states to exercise oversight over the execution of contractual obligations as well as activities have been taken to define the legal personality of an international organisation. It must be noted that there has been a comparatively extensive discussion of the scope and conditions of the legal personality and the initial definition of the scope of the legal personality of an international organisation has been provided by the European Court of Justice in its judgement of 15 July 1964 in case No. Nr.6/64. It must be noted that the said judgement does not define the scope however, it contains a provision about the existence of a legal personality as such, i.e., pointing out not only the creation of its own legal system which, on the entry into force of the Treaty, has become an integral part of the legal systems of the member states and which their courts are bound to apply. It must be pointed out that the given judgment also indicates that The Community has real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, and the scope of these powers has been established only in some sectors where the member states have limited their sovereign rights. Thus, by clearly manifesting this position and executing prescribed contractual obligations no provision is made for the possibility that subsequent unilateral measures undertaken by states might prevail over the legal system that states have mutually accepted and thus such measures cannot be contrary to the said legal system.

It shows that the definition of the legal personality requires at least two prerequisites of certain character, i.e., the political quality that is determined by the freedom of the social will in the area of international law and the legal quality that determines the scope of the legal personality on the basis of respective norms. The subject of international law is at the same time the bearer of rights and certain responsibilities in international law and its legal capacity cannot, on the whole, restrict itself by the fact that an international organization or its participant countries apply international norms and participate in their formulation. Thus if contractual obligations prescribe duties for member states to implement certain obligations and assume responsibility for failure to execute these obligations in an appropriate manner that it is quite logical that the responsibility of the international organisation towards member states is established within the frame of these contractual obligations. The definition of the scope of such obligations would explicitly show the scope of rights that member states have explicitly agreed to waive and transfer to the management of the international organization thus providing it with the possibility of implementing these rights and effecting legal transactions for the achievement of goals that member states have jointly defined, i.e., to independently acquire and exercise subjective rights and obligations. Thus, the representation delegated to the international organisation should be defined in contractual obligations as it is the representation that ensures the legal capacity to act on behalf of another party and to incur legal consequences for the said party. Representation is characterized by the following three elements:

– the activity of the authorized party in the interests of the issuer of the authority;
– third parties know the authorized party and the scope of its authority;

– activities of the authorized party change the scope of rights and obligations of the issuer of the authority.

Thus it must be concluded that the legal consequences incurred by the representation activity of the authorized party still does not affect the authorized party itself but the issuer of the authority unless, certainly, the authorized party has not violated the limits of its authorization.

Thus the assessment of the scope of authority that ensues from the currently effective contractual obligations, i.e., the Lisbon Treaty, and the analysis of Article 2 of the Lisbon Treaty allows concluding the purpose of an international organisation is as follows:

1. to promote the well-being of the peoples of its member states;
2. to provide guarantees to its citizens in the context of the free movement of persons with common prerequisites of security and legality;
3. to establish an economic area, social policy prerequisites for development;
4. to promote scientific and technological advance.

In their turn, the duty of member states is to refrain from any actions and measures that could jeopardize the achievement of these goals. The next step is the defined exclusive competence, i.e., the scope of the authority of member states granted to the European Union as a legal person and its institutions that is aimed at incurring certain legal consequences for the issuers of the authorization in the following areas:

1. to establish and ensure the operation of a customs union;
2. to form prerequisites of competition for the operation of the internal market;
3. to implement a monetary policy in member states where the currency is the euro;
4. to preserve the biological resources of member states by implementing a common policy in the sector of fisheries;
5. to form prerequisites and ensure the implementation of a common trade policy.

Although the obligation of the European Union to act only within the limits of the conferred competences has been defined in Article 3.b Paragraph 2 as much in good faith as possible, still the contractual obligations do not prescribe any additional conditions in the event of failure to comply with the authorization. Thus the remaining principles are similar to the principles that are binding for the primary subject of law and have been defined by the UN Charter. Upon the assessment of the above contractual obligations ensure the independence of the European Union in the exercise of its contractual rights, including also the exercise of jurisdiction over all persons and things in its territory, including taking into consideration the “best practice” of other countries, immunities recognized by international law.

Thus it is only logical that by respecting for basic principles defined by the UN Charter the international organisation must, within the scope of the prescribed authority, ensure the exercise of certain power. An analytical question is the question if in the respective case this type of power can be called state power even if it corresponds to the mandatory prerequisites defined for state power. It is possible that discussions about this issue have become more topical because according to the dogma of public law state power is one of the four compulsory criteria for the existence of a state and the European Union enjoys certain authority in a certain territory by ensuring certain guarantees to peoples of member states and nationals of the European Union and exercises management through an established institutional (administrative) organ or government assistance. Thus the defined principle of subsidiarity is, in actual fact, nothing more than a type of subordinated (vertical) legal relations that ensure the implementation of certain administrative legal relations and they cannot be unambiguously called the implementation of international contractual obligations but rather be defined as quasi-administrative relations unless there is any justified doubt about their definition as “purely” administrative legal relations because the administrative procedure is implemented among its subjects in the European

Union, that helps to implement not only contractual obligations but also legal norms developed on the basis of contractual obligations. Likewise the contemporary contract theories stipulate that the prerequisite for the exercise of state power is not the law but legality and in this case the basis for the exercise of state power does not meant only the demand for a law that should, inter alia, prescribe that certain state power is to respect rights of subjects subordinated to this state power.

Besides, the establishment of an international organisation may be based on a law that participants of the international organisation agree upon. It ensues from the interpretation of an international treaty (Advisory Opinion on Interpretation of the Agreement of 25.03.1951 between WHO and Egypt (ICJ Reports, 1980). Thus it would not appropriate to express doubt that the establishment of an international organisation has at its basis a mechanism of the existence and implementation of international law that is separated from public law. Every international organisation has its own instrument of constitution, its own participants, its own institutional structure, functions, its own legal personality, its own personnel policy. The fact that differences among organisations are so explicit, establishes a system that the concept of law that is common for international organisations must comply with many and at times crucial conditions. However, the fact that such differences exist does not preclude the possibility that similar conditions may influence the resolution of comparable problems (World Bank Administrative Tribunal, 1981).

Economic integration in the European Union should be assessed from two aspects: on the one hand, as the basis for the development of legal integration, and, on the other hand, as the outcome of the integration itself. The linking of both directions of integration is logical: requirements for the establishment of a single economic space determine the necessity for its participants (states as well as nationals and legal persons) to introduce uniform normative acts regulating activities and behaviour. Moreover, law is the basic means – the instrument that influences the transformation of public (societal) relations in the European Union not only strengthening the existing situations but also ensuring the transformation of public (societal) relations in a certain direction.

Norms of European Union law, including those that have been consolidated in the normative acts of institutions of the European Union as well as rulings of the European Court of Justice, enjoy precedence in the whole of the European Union and within the principle of direct effect, it has the ability to accord rights and set responsibilities for member states as well as for nationals directly. “Irrespective of legal acts of a member state” the principle of direct effect “establishes not only obligations for individuals but also invites to grant them rights that form part of their legal status” (European Court of Justice, Cases *Costa*, 1964).

The development of the system of European Union law results in the expanding of types of regulation objects, norms and institutions undergo structural differentiation. The system of European Union law contains norms that, according to theses consolidated in the foreign legal science corresponds to constitutional, administrative, financial, civil, employment, social security law as well as banking, corporate, customs, procedural and other areas of law.

Integration that basically manifests itself as the transfer of the competence of public law in economic and other issues of societal relations to supranational institutions established by the international organisation is a prerequisite for the development of quality and effective measures in the area of the integration of law. According to findings of several international experts, already at the beginning of the 90ties the European Union issued more legal instructions (the term “legal instruction” could encompass not only legal acts but various recommendatins, strategies, concepts and other documents) annually that in the majority of member states, moreover, approximately 75–80% of national legal acts were issued only after consultations with the European Commission.

In actual, institutions of European Union member states are in a state of subordination that is effected by subordination to institutions of the European Union and by the direct execution of decisions of these institutions even in cases when due to some reason the member state does not agree to such a decision. It must be noted, that the research literature that discusses integration issues does not deny the fact of the transfer of the authority of state power, including the sovereign authority that until the

beginning of the accession process was unambiguously viewed as a competence of an institution of state power, to the institutions of the European Communities and the European Union. It must be pointed out that conditions for the transfer of authority are included not only in contractual relations. Appropriate conditions are included in the constitutional laws of European Union member states as well as rulings of constitutional courts of member states as well as the European Court of Justice. References to European Union legal made acts made in rulings of the Court as a result of the development and influence of case law practically indicate that European Union legal acts although within a certain scope insofar as it has been permitted by member states by delegating their own management, still not have the nature of international law. Likewise, the European Court of Justice has set a precedent in several rulings that Founding Treaties have created a new type of relations for the benefit of which member states of the European Communities have restricted their sovereign rights on a larger scale than ever before and subjects of these relations are not only member states but also their nationals.

Results

As a result of the development of integration processes an increasingly larger number of scholars in West European countries, Russia who study public law and international law as well as representatives of these areas view the federalism of the European Union within the frame of a "paradigm". In this case the European Union is not called or directly treated as a federation, it is only pointed out that the international organisation has a set of elements of federal management.

Basically the management system of the European Union developed under the direct impact of the idea of the founding countries about single economic cooperation. The federal management form as the theoretical concept of the legal political structure, organisation and administrative legal relations of "single Europe" played a crucial role in the initial process of the establishment of the European Communities as well as in the contemporary integration process of the European Union. In actual fact, it was characterised in conceptual terms as "the first step in the establishment of European Federation" in the 1950 memorandum of the French minister of foreign affairs ("Schumann plan") according to which the first of the European Communities was established in 1951 – the European Coal and Steel Community (ECSC). The new direction of development with the aim of taking over a federal management model was incorporated initially in the draft of the Treaty on European Union however; this provision was deleted from the final version of the Maastricht Treaty taking into consideration objections expressed by the government of the United Kingdom.

The strengthening of a special single constitutional system of the European Union among all member states and the organisation in general is confirmed by the amendment made by the Treaty of Amsterdam to the Treaty on European Union that provides that "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States" (Treaty of Amsterdam ARTICLE 1 8) (a)). The organisation undertakes further to perform the function of the guarantee of these principles, authorized by the decision of the Council of Ministers and the European Parliament to impose sanctions on a member state which has "significantly and systematically" violated principles set by the organisation. Moreover, compliance with these principles becomes a mandatory requirement for any country desiring to accede to the European Union.

Conclusions

European Union has been created as a federal state structure. Therefore, the EU law's control system should be similar to the state control mechanism. But, such a mechanism is the basis for the administration of the governmental system, rather than an international organization.

Discussion

If cooperation exists in the model of societal relations between the state and the society, where its quality and degree are determined by the efficiency of political activity in the area of management and the public administration (the government) pursues the goal of acquiring success, the government must be capable of providing comfortable conditions of existence for its citizens in line with promises that were the basis for the recognition of the legitimacy of this government. It must be noted that to ensure an effective and responsible solution of this task public structures (branches of government) have been established in several countries which in general should be viewed as inadequate in appropriate) within the management system for the execution no the prescribed functions and tasks. Still a question arises in this situation if the respective vision of the administrative legal relations could be referred to nationals of the European Union and if nationals of the European Union can be considered to be full-fledged subjects of the administrative relations of the European Union?

References

[1] Anonymous (1981) World Bank Administrative Tribunal.
[2] Consolidated Version of the Treaty on European Union. Accapted in Maastrich; to became valid. *Official Journal of the Europena Communities*, p. 325. http://eur-lex.europa.eu/lv/treaties/dat/12002M/pdf/12002M_EN.pdf
[3] Ress, G. (1994) Democratic Decision making in the European Union and the Role of the European Parlament. In: Curtin, D. and Heukels, T. (eds.), *Institutional Dynamics of European Integration – Essays in Honour of Henry G. Schermers*. Vol. 2, p. 153–176.
[4] ICJ Reports, 1980. Advisory Opinion on Interpretation of the Agreement of 25.03.1951 between WHO and Egypt.
[5] Lenaerts, K., Arts, D., Maselis I. (2006) Procedural Law of the European Union. London: Sweet&Maxwell.
[6] Treaty of Amsterdam, Official Journal of the Europena Communities. http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:LV:pdf
[7] Hartley, T. (1994) The foundation of European Community Law.
[8] Harrison, V. Subsidarity in Article 3b of the EC Treaty, Gobbledygook of Justicable principle? *International and Comparative Law Quarterly*,vol,45, part I, 1996