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THE DILEMMAS ASSOCIATED WITH THE DEVELOPMENT OF THE EU INSTITUTIONAL SYSTEM

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Abstract: The European Union was established in 1993 on the grounds of the Communities existing since the 1950s. During the past 60 years, the EU has formed a cohesive whole, constituting a combination of law, institutions and politics. The Member States are connected not only by common institutions, but also by over 20 000 legal acts that have different impact on the lives of 500 million citizens. The legal and institutional system of the Union is also of great importance in terms of the relations with the world, because, as a sum of member states, has been an economic power and an important model of socio-cultural potential. The aim of this study is to analyze the principles and the mechanisms of the EU institutional system currently in function as well as to identify those principles and mechanisms, which arouse the most controversy and constitute the subject of the discussion on the need to carry out the necessary changes.

Keywords: political system, institutional system, democracy deficit.

1. Introduction

The European Union was established in 1993 on the grounds of three Communities existing since the 1950s. Over the past decades, it has created a cohesive whole, constituting a combination of law, institution and politics. It is difficult to find a similar structure in the modern world, which poses many challenges for the Member States, resulting primarily from the severalfold increase in the number of entities as well as from the constantly-expanding matter making up the entirety of the integration process. The institutional system plays the key role in this process, because the formal and legal position of individual institutions determines

the intra-system relations, the relationships between the institutions and the Member States, and the interactions with the external environment.

The purpose of the article is to present the principles and the mechanisms of the currently-functioning EU institutional system as well as to identify the principles and the mechanisms that arouse the most controversy and constitute the subject of the discussion on the need to carry out the necessary changes. When constructing the text, the system analysis method was used, in relation to the institutional system of the EU as a whole, and the institutional and legal method, to study the normative acts created by the EU institutions, the ruling line of the EU Court, the law-making procedures and the principles on which the law is based.

2. European Union as a political system

The concept of a 'political system' appeared in 1953, in the work of David Easton titled as such, and has been one of the basic political-science categories denoting the fundamental structure within which political life takes place. There are many definitions assigned to this concept. American sociologists define it as the aggregate of the structures, the procedures and the institutions working together to solve problems, while in the French dictionary of political-science terminology it is defined as the totality of the political interrelationships existing in the global system, that is the society (Podolak, Żmigrodzki, 2013).

Main research trends, in greater or lesser degree, associate the essence of a political system with the State, which raises the question of what the EU is then. There is a lot of controversy in this regard, while the issue analyzed is multi-layered and allows application of various theoretical approaches. When analyzing the EU phenomenon, two terms are most often cited: *sui generis*, which means that it is one of a kind, and *in statu nascendi*, meaning it is subject to constant changes, which indicates the need to discuss the ongoing process rather than the target state reached. Since the EU is not subject to classic categorization, one can agree with the former President of the European Commission – Jacques Delors, who stated that the EU is a politically unidentified entity (l'object politique non identifié) (Demel, 2004). The fundamental dilemma lies in the fact that it is easier to define what the EU is not than what it is: it is not a federal state, such as the USA or Switzerland, just as it is not a classic international organization, such as the UN or the NATO. Its phenomenon lies in its supranationality, that is in the transfer of specific bundles of sovereignty, on the part of the Member States, which entitles the EU institutions to legislate throughout the entire Community. We are, therefore, dealing with the supremacy and the directness of EU law over the national law of the Union members (Opinion of the Court of Justice, 2011).

Marta Witkowska distinguishes four subsystems within the political system of the Union: the institutional, the functional, the communication and the regulatory systems. The institutional subsystem encompasses various organizational structures, i.e. various institutions and bodies of the Member States, to the extent in which they perform the functions entrusted to them by the Union; the functional system, consisting of a generality of the functions fulfilled by individual elements of the institutional subsystem (inward and outward); the communication system, elements of which include, among others: self-control regarding proper fulfillment of the tasks entrusted, interinstitutional agreements, a universal manner of establishing the principles of cooperation in selected areas (e.g. legislative techniques); and the regulatory (normative) system, mainly encompassing all procedural and substantive norms of the Community legislation, as well as national regulations and activity, which constitute the broadly-understood instruments of Community law implementation (Witkowska, 2008).

3. Principles of the EU institutional system

The institutional system is not only a system of institutions and bodies, but it also entails specific rules of conduct that determine the relations between these institutions and bodies. These rules should be understood both as the 'principles of law', i.e. the applicable norms or their logical consequences, which are deemed basic for this system of law or its part, and patterns of specific behavior, indicating some states of things that are going to be achieved by applying the directives of instrumental nature that lead to the achievement of goals (Witkowska, 2008).

The EU institutional system is based on four principles that are related to the functioning of the institutions themselves, their mutual relations and the relations with the Member States. These principles include:

- the principle of a uniform institutional framework, i.e. promotion of the Union's values, serving the Union's interests and the citizens of the Member States, ensuring coherence, effectiveness and continuity of the Union's policies and activities (Article 13 (1) TEU) (The Treaty of Lisbon amending, 2007),
- the principle of institutional balance – obligeng each institution to act within the limits of Treaty powers, in accordance with the procedures, the conditions and the objectives set out in the Treaties (Article 13(2)),
- the principle of loyal interinstitutional cooperation – which assumes responsibility not only for exercising the competences of a given institution, but also for facilitation of task implementation by other institutions (Article 13(2)),
- institutional autonomy – which means that each institution defines its own internal structure and detailed operating regulations.

The Lisbon Treaty (LT) introduced many important changes affecting the legal nature of the EU and its status at the level of international public law. It gave the EU legal personality (Article 47), which ended the several-years-long discourse on this subject (Łazowski, 2013). Concerns whether the granting of legal personality would lead to a limitation of Member States' competence were dispelled by Declaration No 24 annexed to the TEU, stating that this fact in no way empowers the Union to legislate or act outside the competences conferred upon it by the Member States in the Treaties (http://oide.sejm.gov.pl).

In accordance with Article 13 section 1, LT divides the EU institutions into main and advisory institutions. The first group includes: the Parliament, the European Council, the Council, the Commission, the EU Court, the European Central Bank, and the Court of Auditors. The institutions that are advisory to the Parliament, the Council and the Commission include: the European Economic and Social Committee and the Committee of the Regions (The Treaty of Lisbon, 2019).

From the perspective of this analysis and its subject, the principle of institutional balance, which derives from the ruling of the Court in 1958 (ruling in the case of Meroni v High Authority (Galster, 2014) and prohibits interference of one institution with the competences of another, is quite significant. It refers to the relation between the three main institutions: the Parliament, the Council and the Commission. Over the years, along with adoption of new treaties, the dynamics of the relations between these institutions have evolved significantly. The Parliament's powers have been particularly expanded, equipping it with the right to co-decide with the Council (in accordance with the ordinary legislative procedure) regarding most EU policies. The Parliament has also gained more budgetary powers.

4. Division of competences within the EU

In so far as the rules of the institutional system do not raise much doubt, the division of competences between the EU and the Member States entails a serious dilemma, which results from the interpenetration, within the EU structure, of the Community sector (the Commission, the Parliament, the Court) with the intergovernmental sector (the European Council and the Council). Article 5 TEU, which sets out three principles of exercising EU competences: the principle of conferral (only within the limits conferred in the Treaties), the principle of proportionality (not being able to go beyond what is necessary for achievement of Treaty objectives), and the principle of subsidiarity (taking action only when the EU can act more effectively than Member States), tries to regulate that issue.

The conferral of competences can take on a vertical character, i.e. how many competences lie within the EU and how many remain under the authority of the Member States, or a horizontal character, i.e. which of the areas covered by the integration process, and to what

extent, remain the competence of these, not other, EU institutions, and which are under the authority of the Member States. The Lisbon legal order has adopted a vertical division of competences, into the following: the assigned competences, the shared competences, and those with authorization to undertake supportive, coordinative and complementary actions. Within the scope of the shared competences, the legal order takes into account the criterion of functionality, i.e. what actions, on the part of the Union, and which, on the part of the Member States, are necessary to achieve the objectives and fulfill the Treaty tasks.

Definition of the conferred and the shared competences is of key importance in terms of this division. With regard to the competences conferred, the LT provides that:

- the Union shall pursue its objectives by the means appropriate to the scope of the competences conferred upon it by the Treaties (Article 3(6));
- The limits of Union competences are governed by the principle of conferral. The exercise of these competences is subject to the principles of subsidiarity and proportionality (Article 5(1));
- (…) competences not conferred upon the Union in the Treaties remain within the power of the Member States (Article 4(1)).

With reference to the above-cited fragment of Article 5 paragraph 1 (The limits of Union competence are governed by the principle of conferral), Article 2 clause 1 of the Treaty on the Functioning of the EU (TFEU) provides that:

If the Treaties grant the Union exclusive competence in a particular area, only the Union can legislate and adopt legally binding acts in this area, while Member States can do so only with the authorization of the Union or for the purpose of implementing the Union law (http://oide.sejm.gov.pl).

The competences conferred on the Union include: the customs union, establishment of the competition rules necessary for the functioning of the internal market, the monetary policy in relation to the Euro area, preservation of marine biological resources under the common fisheries policy, the common commercial policy, conclusion of international agreements within the scope specified in the Treaty.

With reference to the overarching principles, on which the formula of the competences conferred by the TEU should be based, it is stated that the Union recognizes (Article 4 (2)):

- equality of the Member States in terms of the Treaties,
- national identity of the Member States, inseparable from the basic political and constitutional structures, in relation to regional and local governments,
- the basic functions of the State, in particular the functions aimed at ensuring its territorial integrity, maintenance of public order and protection of national security (it remains within the exclusive competence of the Member States).

With regard to the shared competences, the LT states (Article 2(2) TFEU) that the Union and the Member States may legislate and adopt legally binding acts in this field. Member States shall exercise their competence, to the extent in which the Union has not exercised its competence or has decided to cease exercising it. Shared competences include, among others: internal market; social policy, in relation to the aspects set out in this Treaty; economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of marine biological resources; the natural environment; consumer protection; transport; trans-European networks or energy.

With regard to the shared competences, the ‘occupied field' doctrine is exercised, which means that if the Community law sufficiently regulates a given field, the field is occupied and national regulation is unacceptable, as it could lead to legal uncertainty. This is in conflict with the subsidiarity principle, which states that some cases may be transferred from the supranational level to a national level, but the Court, in most cases, settles certain matters for the benefit of the community.

5. The issue of democracy deficit in the EU

Most legal and political analyses of EU-related issues indicate the democracy deficit within the EU as one of the fundamental dilemmas that may be decisive when it comes to the orientation of the entire integration project. From the beginning of the Community’s functioning, adjustment of the main institutions to the legal order of a traditional system was difficult. The very establishment of the legislative and the executive powers by the Treaty of Rome of 1957 was problematic, while changes in the competences of some institutions under the influence of political pressure (i.e. outside or next to the letter of the Treaties) only enhanced these problems (Craig, 2011).

The problem of democracy deficit results from the differences which, with regard to the form of exercising the power, exist in the Member States and the structure of the institutional system in the EU, where there is no classic separation of powers. It mainly boils down to the fact that the Parliament does not fulfill the role of an independent legislator and must share its power with the Council, in which ministers of Member States have seats. This results from the fact that since the beginning of the integration process, the Union's institutional system has been based on the State as the basic link in the Union’s political system, while the interests of the States are formulated by the ministers sitting on the Council. This deprives national parliaments of their full independence, which in recent years has been compensated by an increase in the role of the Parliament which includes representatives elected in universal and direct elections (Herdegen, 2004).

One of the leading theories of democratic deficit points to the vacuum that emerges in the process of transferring the competences that are at the discretion of national parliaments to the institutions that, by their power and source of origin, are representatives of the EU's executive branch. As a rule, this is accompanied by a lack of sufficient control by national parliaments and courts, especially with regard to controversial competences (Szymborski, 2012). Meanwhile, development of the integration processes requires harmonious and sustainable relations among: the authority representing the interests of the Union citizens (the Parliament), the authority representing the interest of the Member States (the Council, the European Council), and the authority representing the interest of the entire community (the Court, the Commission) (Brodecki, 2006).

EU citizens have the opportunity to express their EU preferences in two ways: direct and indirect. The first entails election of authorities in their own country (the national parliament, and consequently the government and its representatives in the EU institutions), while the second entails direct election of their own representative to the European Parliament.

The key complaint that can be raised against the EU lawmaking mechanism is the excessive participation of directly non-electable institutions, such as the Commission and the Council, in the absence of mutual institutional responsibility. The Parliament, as the only institution formed by direct elections, only has the right of co-decision-making, although – which cannot be overlooked – its role, under the LT regime, has increased immeasurably (Vanhoonacker, Neuhold, 2015).

The 'comitology' procedure, which enables the Commission to make implementation-related decisions without having to launch the legislative process, has also been in the center of criticism. Before making a decision, the Commission only consults expert committees, which, according to the Members of the European Parliament, results in a lack of transparency and democratic oversight. EU institutions also often regulate matters previously regulated by national parliaments, which is not without impact on the Member State citizens' perception of those matters. The Union has also been criticized for its lack of transparency and for its excessive complexity (many decisions are made behind 'closed doors'), while implementation is carried out through legislative procedures that are very difficult to understand (Ritterfeld, 2014-2015).

The EU institutional system is often criticized, which, in many cases, is completely justified. It should be remembered, however, that the EU is not a being in itself, but an association of States that co-decide on the structure and policy of the Union. It is by the virtue of those decisions that the current system operates and it will depend on the States to solve the dilemmas mentioned.

6. Conclusions

The EU countries lack a uniform vision as to the orientation of changes in the institutional system. This state of affairs is a derivative of the differences in political views on fundamental issues: to what extent the Union is to be a supranational organization, how competences should be shared between EU and national institutions, and finally – the issue that has been an unresolved subject of discussion since the beginning of the integration process – should the integration process be oriented at construction a sort of a federation or a confederation.

If the EU is to constitute an efficient integration mechanism, Member States should at least develop a general outline of the key objectives and the ways to achieve them. This is difficult because, as a result of constant political changes (governments) in the Member States, the views on the integration process are subject to constant fluctuations, preventing treaty adjustments, which requiring unanimity. For this reason, the President of the Commission, in the White Paper on the future of Europe published in 2017, presented five scenarios for the future of the Union up to 2025, beginning with reduction of that future only to the framework of the Common Market, with limited supranational powers, up to activities aimed at rapid construction of a structure of federal nature (White Paper on the Future of Europe, 2017). Before Member States make appropriate decisions in this regard, however, it will be difficult to carry out significant reforms in the institutional system that would make the EU a more functional structure.

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