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LEGAL SYSTEM OF THE EUROPEAN UNION: SOURCES, PRINCIPLES, STRUCTURE

The EU law was formed at the intersection of international law and national law. It is a separate, special sui generis legal system, which combines legal institutions, principles and mechanisms of international and national law, in case 26/62 Van Gend en Loos, the Court of Justice proved that «the Community creates a new legal order in international law in favour of which States have restricted their sovereign rights, albeit in limited areas, and which subjects are not only member States but also their citizens». The same approach was developed in case 6/64 Costa V. ENEL, which emphasized: «Unlike conventional international treaties, the Treaty establishing the European Economic Community has created its own legal system which has become an integral part of the legal systems of member States and to which their courts are bound» [1, p. 271].

European Union law is a unique legal system, operating in parallel with the legislation of the EU Member States. The rules of EU law have direct effect within the legal systems of its member states and in many areas regulate matters covered by national law, especially economic and social policy. The EU is not an intergovernmental organization or a federal state. It establishes a new legal order within the framework of international law with a view to the mutual social and economic growth of the Member States. EU law was based on the desire to preserve peace and create better living conditions Europe by developing closer economic ties [3, p. 100].

European Union law has an original system of sources. Forms (sources) of European Union law form a holistic system of sources with a hierarchy of acts inherent in such a system. The system of sources of law of the European Union includes two groups of acts – acts of primary law and acts of secondary law.

Acts of primary law include all the founding treaties of the European Union. By their legal nature, acts of primary law are international treaties. The rules of primary law have a higher legal force than all other rules of the European Union contained in acts of secondary law [3, p. 106-107].

The peculiarity of the European Union is that it is based on several international treaties of a constituent nature. These are, first of all, the Paris Treaty establishing the European Coal and Steel Community of 1951, the Treaty of Rome establishing the EU in 1957, the Treaty of Rome establishing the European Atomic Energy Community (Euratom) in 1957, and the Maastricht Treaty on European Union in 1992., The Lisbon Treaty of 2007, the so-called «founding treaties in the narrow sense» [4, p. 59-60].

Acts of secondary law include acts adopted by the institutions of the Union, as well as all other acts adopted on the basis of the founding treaties. In defining the sources of secondary law, there is a clash of approaches to understanding sources in continental and general (Anglo-Saxon) legal families (recognition as sources of jurisdiction), as well as the impact of the concept of sources in international law.

Secondary law of the European Union has its sources in various categories of law-making forms. The first category of acts of secondary law are normative acts; these include regulations, directives, framework decisions, joint decisions of the European Coal and Steel Community, recommendations of the European Coal and Steel Community. The second category is individual acts, which include decisions (other than joint decisions of the European Coal and Steel Community). The third category is recommendation

acts, which include recommendations (other than those of the European Coal and Steel Community) and conclusions. The next category of acts of secondary law are acts on the coordination of the Common Foreign and Security Policy, as well as cooperation between the police and the judiciary in the criminal law sphere. This category of acts includes principles and general guidelines, common position, common action, common strategy. A separate category of acts consists of jurisdictional acts – decisions of the Court of Justice. Sources of secondary law include acts sui generis – «informal» forms of law, not provided for in the founding treaties acts issued by the bodies of the Union (usually expressed as a decision of a particular body or resolution) [4, p. 61-63].

The general principles of European Union law are general principles of law which are applied by the European Court of Justice and the national courts of the member states when determining the lawfulness of legislative and administrative measures within the European Union. General principles of European Union law may be derived from common legal principles in the various EU member states, or general principles found in international law or European Union law. Amongst others the European Court of Justice has recognized fundamental rights, proportionality, legal certainty, equality before the law and subsidiarity as general principles of European Union law. General principles of law should be distinguished from rules of law as principles are more general and open-ended in the sense that they need to be honed to be applied to specific cases with correct results. Accepted general principles of European Union Law include fundamental rights, proportionality, legal certainty, equality before the law and subsidiarity [1, p. 107-111].

Fundamental rights, as in human rights, were first recognized by the European Court of Justice based on arguments developed by the German Constitutional Court in *Stauder v City of Ulm* Case 29/69 in relation to a European Community scheme to provide cheap butter to recipients of welfare benefits. When the case was referred to the European Court of Justice the ruling of the German Constitutional Court, the European Community could not «prejudice the fundamental human rights enshrined in the general principles of Community law and protected by the Court».

None of the original treaties establishing the European Union mention protection for fundamental rights. It was not envisaged for European Union measures, that is legislative and administrative actions by European Union institutions, to be subject to human rights. At the time the only concern was that member states should be prevented from violating human rights, hence

the establishment of the European Convention on Human Rights in 1950 and the establishment of the European Court of Human Rights. The European Court of Justice recognized fundamental rights as general principle of European Union law as the need to ensure that European Union measures are compatible with the human rights enshrined in member states' constitution became ever more apparent [5, p. 16].

The concept of legal certainty is recognized one of the general principles of European Union law by the European Court of Justice since the 1960s. It is an important general principle of international law and public law, which predates European Union law. As a general principle in European Union law it means that the law must be certain, in that it is clear and precise, and its legal implications foreseeable, especially when applied to financial obligations. The adoption of laws which will have legal effect in the European Union must have a proper legal basis. Legislation in member states which implements European Union law must be worded so that it is clearly understandable by those who are subject to the law [6, p. 147].

The legal concept of proportionality is recognized one of the general principles of European Union law by the European Court of Justice since the 1950s. The General European Advocate provided an early formulation of the general principle of proportionality in stating that «the individual should not have his freedom of action limited beyond the degree necessary in the public interest». In its ruling the European Court of Justice held that by virtue of the general principle of proportionality the lawfulness of the Directive depended on whether it was appropriate and necessary to achieve the objectives legitimately pursued by the law in question. When there was a choice between several appropriate measures the least onerous must be adopted, and any disadvantage caused must not be disproportionate to the aims pursued. The principle of proportionality is also recognized in Article 5 of the EC Treaty, stating that «any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty» [3, p. 61-63].

The complex structure of the European Union is best represented as a superstructure based on three pillars – this is the essence of the so-called «theory of three pillars». The first pillar is the European Communities, the second is the common foreign policy (human rights, democracy, foreign aid) and security policy (European security and defense policy, EU military units, the European Rapid Reaction Force, peacekeeping), and the third is police and judicial cooperation. in the field of criminal law (fight against drug trafficking

and arms smuggling, terrorism, human trafficking, organized crime, bribery and fraud) [2, p. 11].

The European Union is the institutional structure of what we usually call European integration, which in turn is a long process of building «an even closer union between the peoples of Europe». Its nature is unique and has no precedent in the field of international law and international relations.

EU law is characterized by its own structure and sources of law, forms of lawmaking and law enforcement, specific mechanisms for protection against possible violations. EU law has direct effect in the national law of the Member States. In accordance with the principle of direct action, EU law confers subjective rights and obligations not only on Member States but also directly on individuals and legal persons who can defend their rights guaranteed by EU law by bringing actions in the courts of the Member States., ie within the national legal system.

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