
КОНСТИТУЦИЈАЛЫҚ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО CONSTITUTIONAL AND INTERNATIONAL LAW

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On the question of the European Union's international legal personality

In a scientific paper based on the analysis of the European Union's founding documents, the European Court of Justice decisions, scientific literature, as well as changes in the founding treaties attempted to identify the legal basis of the international legal personality of the European Union. This article deals with the conceptual foundations and European legal regulation of the international legal personality of the European Union. On the basis of a comprehensive analysis of the reform of the European integration model describes the elements of the international legal personality of the EU, analyzes the specific features of the EU international legal capacity, the development of its normative fixing in the euro-legal legislation is studied.

Keywords: European Union, European law, international law, constituent treaties, international legal personality.

The history of formation of the future European Union started with the emergence of the European Coal and Steel Community in 1951, which included six countries. Today, the Union already includes 27 European countries (during a referendum in June 2016 the majority of the Great Britain people (52%) voted against European Union membership).

In the juridical literature a lot of attention is paid to the issue of the European Communities' international legal personality. Since the establishment of the European Communities most researchers did not question the international legal personality of the Communities. From the very beginning of their activity, science and practice proceeded from the fact that the Communities are subjects of the international law. As to the European Union — for a long time there was no consensus on the subject of the EU legal personality.

Some authors rightly believed that a number of provisions of the EU Constituent Treaty, in particular, objectives, organizational and legal means, created for the European Union a possibility of independent significant legal acts in the international arena.

Other authors argued that the EU is not a legal entity and does not formally have an international legal personality, therefore it cannot conduct international negotiations and sign international treaties and agreements. It was noted that the European Union under the provisions of its constituent treaty did not have legal personality neither in domestic nor international law. It is difficult to agree with such statements. Consider the legal basis of the international legal personality of the European Union.

Treaty establishing the European Coal and Steel Association (ECSC) was signed on 18 April 1951 by six countries — France, Germany, Italy, Belgium, Luxembourg and the Netherlands (the treaty is often called the Paris Treaty due to the location where it was signed). The European Coal and Steel Community began its activity on August 10, 1952.

The Paris Treaty established that the ECSC is a legal entity. In international relations it has been endowed with the legal capacity necessary to perform its functions and achieve its objectives. The broadest term of the Communities' international legal personality is given in the ECSC Treaty, which did not only establish that «Community» is a legal entity, but also decreed the general rule according to which «Community

has the necessary legal capacity in international relations to perform its functions and achieve goal». Furthermore, the ECSC Treaty stated that in each of the states-members the Community has the highest legal capacity granted to legal persons in that respective State. The Community may, in particular, acquire or dispose of movable and immovable property and be a party in a trial (Art. 6).

Later on new Communities emerged — the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). The same six countries that formed the ECSC joined both communities at the time of their creation. Signed 25 March 1957 agreements came into force after ratification by the Member States of 1 January 1958. Due to the location where were signed they are listed in the history of European integration as the «Treaties of Rome».

Thus, three communities were established in Western Europe: the ECSC, EEC and Euratom. EEC was the major, most important community in determining the status and development of all integration from the very beginning. The subsequent renaming of the European Economic Community into the European Union, carried out by the Maastricht Treaty, followed the established practice.

The authority of EEC in the Community system has been predetermined by the EEC Treaty status among the sources of communities' law. This treaty was the main constituent document of the European Communities; it is most often called the constitution of the Community.

All three Communities have international legal capacity. This means that they, as subjects of international law, are the carriers of the international legal rights and obligations. Communities' legal capacities are secured by all three constituent Treaties of Communities.

Treaties of Rome of 1957 almost repeated the provisions of the ECSC Treaty. Article 210 of the EEC Treaty and, accordingly, Article 184 of the Euratom Treaty contain the same text: «The Community shall have the rights of a legal entity». In a similar way the Communities' legal capacity limits are defined: In each of the Member States Community has the most extensive legal capacity recognized by the national legislation for legal entities; it can, in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings (article 211 and 185 respectively).

But the Treaty of Rome did not contain a clear and defined provision that the Community's legal capacity enables it to carry out all the functions necessary to achieve its objectives.

Therefore, the international legal personality in a distinct form is established only by the ECSC Treaty of Paris of 1951 (p. 2, Art. 6), while the Treaty of Rome, the EEC and Euratom in 1957 established in detail international contractual capacity of these communities.

The European Communities are endowed with international legal personality by the constituent treaties. This means that Communities have the rights to negotiate and conclude international treaties and agreements with third countries, both bilateral and multilateral; to cooperate with international organizations and enter into their composition; maintain diplomatic relations with third countries and international organizations.

The Community legal capacity in the field of the international law, which is manifested in relations with third countries and international organizations, on one hand, is determined by parameters, which are incorporated in the constituent Treaties and other legal acts, the amend and supplement them. The communities' authority scope in the realm of international relations is set precisely by these documents. Important to note that it is done by the Member States which have the exclusive right to expand or contract this scope. Communities themselves cannot make any changes to the content and scope of their international legal capacity. They are not entitled to neither expand nor reduce this capacity. This defines one of the essential differences between the Communities from the states in both theoretical and practical sense.

The Member States of the European of Communities gave them a significant amount of international rights and obligations to achieve the objectives of Communities, allowing them to play an active role in the conduction of their policy in the international arena (this applies especially to EES).

The international legal basis of the Communities' international legal personality is based on a high degree of their organizational and legal independence as the founding states have established the appropriate authority of Communities institutions in the constituent acts, and the EU Court of Justice allowed their expansion and development by rendering the relevant contractual powers, thereby contributing towards approval of the autonomy of the Communities in international relations. Furthermore, the international legal status of the Community received confirmation and development in the practice of international relations, which was reflected in the recognition of the Communities' legal personality by third States and other international intergovernmental organizations.

On the other hand, the international legal capacity of Communities is affirmed or rejected by their partners — third States and other international organizations. They recognize the international legal capacity of

Communities first of all by concluding international agreements, and partly by transferring universally recognized norms of interstate relations to the Communities. This recognition is manifested in the exchange of diplomatic representatives, negotiations, conclusion of international agreements.

In addition, the Court of Justice in a number of cases («Costa-ENEL», «ERTA» et al.) insisted on the recognition of the international legal personality of the Communities. European Court of Justice decided on the case 22/70 — Commission of the European Communities v. Council of the European Communities of 31 March 1971. Judgment of the Court of 31 March 1971 had great importance for the EU. In this decision European Court of Justice by using the doctrine of implied powers came to the conclusion that the Communities' institutions have all the powers necessary to carry out the mission entrusted to them by the founding Treaties. As a general rule, whenever an agreement with third States appears necessary for the implementation of the «internal» EU competence, the Community institutions are empowered to conclude such agreements. Moreover, since these general rules came into force, and these rules can regulate virtually all spheres within the jurisdiction of the Communities, «only the Community may take on and fulfill contractual obligations towards third countries affecting the scope of the Community law application».

A conclusion, which had great importance in determining the foundations and limits of international legal personality of the European Communities, was drawn from this decision. It consists in that the Community have powers to conclude international agreements in the field of external relations, if they are a continuation of the Community's internal competence.

International legal practice of the European Communities left no doubt that communities are subjects of the international law as well.

Thus, analysis of the provisions of the Treaties, the EU Court practice, the international legal doctrine and existing practice of the Communities' institutions on the implementation of the contractual capacity, the rights of the embassy, the rights to participate in international forums, delictual capabilities, and some other international rights and obligations fully convince that the European Communities are derivative subjects of the international law, whose large part of the legal capacity was established by the will of the Member States and the need to perform the functions assigned to the Communities.

Treaty of the European Union, signed in 1992 in Maastricht, initiated a new stage of integration in Western Europe [1]. In accordance with article A of the Treaty, the European Union «is based on the policy of the Community, complemented by new directions and forms». In particular, it is about: 1) the implementation of the common foreign and defense policy; 2) on cooperation in the field of justice and home affairs.

The Maastricht Treaty does not change and does not affect the existing legal personality provisions on all three Communities: they are entirely preserved. As for the question of the European Union legal personality, it was kind of left behind the scenes. Strictly speaking the Treaty does not contain any provisions which clearly define the status of the Union [2; 150].

Maastricht and Amsterdam treaties, which established the European Union, instituted the joint common foreign policy of the Member States, but didn't touch on the question of the Union's international legal personality.

Nonetheless the Maastricht Treaty contains provisions that talk about Union's certain international legal personality. For example, the article «O» established rules for admission to the Union, and the entering states are called the Union members. The Treaty does not transfer the powers vested in the Communities to the Union, but provides some competence to the Union in the areas of common foreign policy and common security policy, internal affairs and justice.

In practice, the European Union actually has this legal personality, especially considering that the political authorities and institutions are established for all three Communities. These Communities, while participating in international treaties or having membership in international organizations, represent de facto the Union as a whole. Diplomatic missions formally act as the European Commission's representatives, regarding the Communities and the Union as a singular institution. Within the Union, a specialized unit of foreign policy cooperation was created, and the head of a Member State, presiding in the Union, acts as the Chief Representative of the Union in the sphere of international relations.

It should be noted that a number of provisions of the Constitutive Act of the European Union contains provisions on the possibility of the European Union of independent actions in the international arena (para. 2 Art. 2, para. 4 Art. 6, para. 1 Art. 11 of the Maastricht Treaty) [1].

In order to achieve its objectives in the field of common foreign and security policy, the Union came into contact with other subjects of the international law (third countries, other international intergovernmental organizations), which meant its limited international legal personality.

The Maastricht Treaty gave the Union broad rights in the fields of common foreign and security policies. The relevant authority on behalf of the European Union is entrusted to the Council (Art. 13–15, 17, 18 etc.), the Commission (Art. 20–22, etc.), the presiding State (Art. 18, 21, 22, etc.) the General Secretary of the Council in the role as the Chief Representative for the common foreign and security policies (Art. 18) and some other EU bodies.

All of these bodies and EU officials have repeatedly exercised this right in solving the acute political problems in Europe and the international arena. Furthermore, the Treaty provides the possibility to conclude agreements with one or more States or international organizations and, accordingly, to conduct negotiations for this purpose to implement the provisions of the relevant sections of the EU founding treaty (Art. 24).

The European Union does not act as a single entity in international organizations, where its Member States are residing, however, in accordance with paragraph 1 of Article «J».5 Presiding Member State represents the Union in matters related to the common foreign and security policies. The latter provision allows Member States that are not members of some international organization, to nevertheless be represented in it.

European Union countries made an attempt to adopt their own European Constitution. The draft of the Constitution was signed in 2004, but not entered into force, since it has not been ratified by all EU countries. Therefore, many of the provisions of the draft Constitution in 2004 were transferred to the new treaty, which brought changes and additions to the Treaty of the European Union and the Treaty establishing the European Community [3; 44]. The new treaty was signed in 2007 in Portugal, and was called the Lisbon Treaty or the Treaty on reform.

The Lisbon Treaty in 2007 introduced amendments and additions to the text of the Treaty on European Union (the Maastricht Treaty in 1992) and the Treaty on the functioning of the European Union (the former Treaty establishing the European Community - the Treaty of Rome 1957).

The Lisbon Treaty has significantly strengthened the international legal personality of the European Union. Provision by the Treaty on reform that grants the European Union legal entity status (Article 47 of the Treaty on the European Union) substantially strengthens its positions in the world as well as negotiations with third countries and international organizations.

The Lisbon Treaty is based on the recognition of a unified legal personality of the new Union, thus, the European Union becomes a unified subject of international law. Questions on the legal personality are regulated in new Article 47, included in the section of the final provisions of the Treaty of Lisbon. The article established that «The Union shall have legal personality». The interpretation of the Art. 47 provisions of the Lisbon Treaty allow considering it as a legal basis for simultaneous international and domestic legal personality of the Union.

The constituent treaties of the Union clearly define the goals in the foreign sphere. In particular, Art. 2 of the Lisbon Treaty states that the Union has as an objective to promote peace, its values and the well-being of its nations [4]. In its relation with the rest of the world the European Union approves and promotes the establishment of its values and interests and contributes to the protection of its citizens.

It contributes to peace, security, sustainable development of the planet, solidarity, mutual respect among people, free and fair trade, eradication of poverty and protection of the human rights, especially the rights of the children, as well as strict respect for and development of the international law, and respect for the principles of the UN Charter in particular. It is also provided that the Union pursues its goals by appropriate means in accordance with the competencies conferred on it by the treaties.

The Lisbon Treaty in addition to the general issues of the international legal personality regulates a number of particular issues, which indicates the development and enrichment of the concept of the international intergovernmental organizations' international legal personality. According to Art. 8 of the Lisbon Treaty the European Union is developing relations with neighboring countries in order to establish an area of prosperity and good neighborliness, founded on the values of the Union and characterized by close and peaceful relations based on cooperation. For these purposes, the Union is able to conclude special agreements with these countries. These agreements may involve mutual rights and obligations, as well as the possibility of implementing joint actions. Their application is a subject to periodic approvals.

Although the Treaty has created a unified international legal personality in terms of the EU, it divided the competence of the Union in the external sphere between two treaties. This suggests that the character and the nature of these agreements vary, since they are intended for different purposes in the foreign sphere (political, diplomatic and security issues, trade and economic, humanitarian, etc.).

The provisions of Art. 3 of the Treaty on the functioning of the European Union indicate that the Union also has exclusive competence to conclude international agreements, when their conclusion is provided in a

legislative act of the Union or is necessary in order to make the Union capable to carry out its internal competence, or its conclusion may affect general rules or change their sphere of action [4].

Furthermore, the fifth part of the Treaty on the European Union functioning, includes a special article 216, which establishes that the Union may conclude an agreement with one or more third countries or international organizations, when it is provided by the Treaties, or when conclusion of the agreement is necessary in order to achieve, within the framework of the Union's policies, one of the purposes specified in the Treaties, or it is provided for in a legally binding Union act or is likely to affect common rules or change their scope. Agreements concluded by the Union are binding for the institutions and Member States.

Thus, the analysis of the provisions of the European Union Constituent treaties convinces us that these treaties create the legal basis sufficient for the recognition of the international legal personality of the European Union.

Professor S.Yu. Kashkin rightly points out the following important prerogatives, which expressed the international legal personality of the European Union: a) The European Union is considered as a unified subject of competence provided by Member States; b) this competence is implemented through a system of its own institutions, bodies and agencies; c) a unified system of legal acts (regulations, directives, etc.) published in all spheres of its competence was formed; d) it is recognized that the European Union has the most extensive legal capacity of a legal entity, and its tort ability, i.e. the ability to bear the responsibility for contracts and other obligations; e) the rights of the Union to conclude international agreements with third countries and international organizations, to have privileges and immunities in the territory of the Member States, to create diplomatic missions and representative offices are provided; f) the existence of the Union's own budget, financed by its own resources, also testifies to its specific financial autonomy [5; 66].

In the modern legal literature are discussed issues related to the problems of the international legal personality of the European Union, as well as features of the EU legal system. So, Deryabina E.M. considers that the EU has no international legal personality, no sovereign power in respect to its own territory. This is reflected, in particular, in that the European Union does not have the right to negotiate the territorial changes and cannot review the European Union's borders [6; 8].

According to other authors, the EU can regulate the spatial scope of the European law application through the establishment of exceptions and limitations [7; 103]. In our opinion, the absence of the sovereign authority of the European Union in respect to the territory that is both European Union's and one of its 27 European countries', does not mean that the European law does not apply to this total area.

In this regard, professor M.N. Marchenko emphasizes that the law of the European Union operates in the territorial space of an entirely different legal regime, the essence of which is based on the fact that the legal regime of the EU's total territory is characterized by the absence of any sovereign power in contrast to the legal regime of the territories of the national states — components of the EU territory on which sovereign power operates [8; 11].

It is also necessary to take into account the specificity of European law. According to prof. Topornin, distinction between the international law and the European Communities' law is manifested, in particular, in the law interpretation methodology. In the international law the basic principle is the sovereignty of the states, and the law of the Communities adopted the opposite approach. The practice of the European Court of Justice shows that the priority of the Communities' law as the integration law is a generally accepted principle, a deviation from which in each case needs serious motivation [2; 297].

International law and the law of the European Union operate in different systems. International law regulates the relations of the interstate system participants, and the EU law covers relations developing both in interstate and domestic systems, as it regulates the relations of the Member States with each other and the relationship between the subjects of the domestic law of the member countries [3; 44].

The decision of the Court of Justice on the case of the EU Commission / Italian Republic, adopted on February 26, 1976, introduces the concept of the Communities' law autonomy, which includes independence from both the international and domestic law in the opinion of the Court of Justice. Although the EC Treaties are concluded by the States, the legal order based on them is objectified and does not depend on the will of the individual member states. The EU law acts equally and in the same way on the territory of all the Member States and should be applied by national judicial authorities in their original form [3; 44]. A similar opinion was expressed by Gornig G. and Vitvitskaya: this is mostly determined by the general principles underlying in the European Union's legal system, according to which the EU legal acts, due to having a direct effect, are subject to mandatory application in the territory of the States which are members of the European Union [7; 43].

Thus, there is sufficient evidence of the existence of the EU international legal personality, and it can be argued that in the light of all these circumstances, the European Union is a subject of the international law.

Список литературы

- 1 The current international law: a collection of documents / Compilers Y.M. Kolosov and E.S. Krivchikova. In three volumes. — Vol. 3. — Moscow: Publ. house of the Moscow Independent Institute of International Law, 1997. — 832 p.
- 2 *Топорнин Б.Н.* Европейское право: учебник. — М.: Юрист, 1998. — 456 с.
- 3 *Ержанова Ф.А.* О понятии и особенностях европейского права // Вестн. Караганд. ун-та. Сер. Право. — 2015. — № 2. — С. 42–47.
- 4 Европейский союз. основополагающие акты в редакции Лиссабонского договора с комментариями. — М.: Инфра-М, 2008. — 920 с.
- 5 *Кашкин С.Ю.* Лиссабонский договор — новый этап развития права Европейского союза // Государство и право. — 2008. — № 9. — С. 59–66.
- 6 *Дерябина Е.М.* Характерные черты и особенности источников права Европейского союза // Государство и право. — 2014. — № 7. — С. 5–10.
- 7 *Горниг Г., Витвицкая О.* Право Европейского союза. — СПб.: Питер, 2005. — 256 с.
- 8 *Марченко М.Н.* Понятие и основные особенности источников права Европейского союза // Вестн. МГУ. Сер. 11. Право. — 2009. — № 2. — С. 3–15.

Ф.А. Ержанова

Еуропалық одақтың халықаралық құқықсубъектілігі жөніндегі сұрақ жайында

Мақалада Еуропалық одақтың құрылтай құжаттарын, Еуропалық әділдік сотының шешімдерін, ғылыми әдебиеттер және де Еуропалық одақтың құрылтай келісім-шарттарының өзгерістерін талдау барысында Еуропалық одақтың халықаралық құқықсубъектілігінің құқықтық негіздерін анықтауға ұмтылыс жасалған. Еуропалық одақтың халықаралық құқықсубъектілігінің концептуалдық негіздері мен еуропалық-құқықтық реттеу сұрақтары қарастырылды, еуропалық интеграциялық үлгі реформаларына кешенді талдау жүргізу негізінде Еуропалық одақтың халықаралық құқықсубъектілігінің элементтеріне сипаттама берілді. Еуропалық одақтың халықаралық құқықабілеттілігінің ерекшеліктері белгіленіп, еуропалық-құқықтық заңнамада нормативтік бекітілуінің дамуы зерттелді.

Кілт сөздер: Еуропалық одақ, Еуропалық құқық, халықаралық құқық, құрылтай шарттары, халықаралық құқықсубъектілік.

Ф.А. Ержанова

К вопросу о международной правосубъектности Европейского союза

В статье на основе анализа учредительных документов Европейского союза, решений Европейского суда справедливости, научной литературы, а также изменений учредительных договоров предпринята попытка выявить правовые основы международной правосубъектности Европейского союза. Рассмотрены вопросы концептуальных основ и европейско-правовой регламентации международной правосубъектности ЕС. На основе комплексного анализа реформы европейской интеграционной модели дана характеристика элементов международной правосубъектности Евросоюза, проанализированы специфические особенности международной правосубъектности ЕС, изучено развитие ее нормативного закрепления в европейско-правовом законодательстве.

Ключевые слова: Европейский союз, европейское право, международное право, учредительные договоры, международная правосубъектность.

References

- 1 *The current international law: a collection of documents*, compilers Y.M. Kolosov and E.S. Krivchikova. In three volumes, 3, Moscow: Publishing house of the Moscow Independent Institute of International Law, 1997, 832 p.
- 2 Topornin B.N. *European law*, Moscow: Yurist, 2001, 455 p.
- 3 Yerzhanova F.A. *Bulletin of Karaganda State University. Series Law*, 2015, 2, p. 42–47.
- 4 *European Union. Fundamental Acts in edition of the Lisbon Treaty with comments*, Moscow: Infra-M., 2008, 699 p.
- 5 Kashkin S.Yu. *State and Law*, 2008, 9, p. 59–66.
- 6 Deryabina E.M. *State and Law*, 2014, 7, p. 5–10.
- 7 Gornig G., Vitvitskaya O. *European Union Law*, Saint Petersburg: Piter, 2005, 256 p.
- 8 Marchenko M.N. *Bulletin of Moscow State University. Series 11. Law*, 2009, 2, p. 3–15.

Репозиторий КАРГУ