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ANALYSIS OF THE LISBON TREATY: HOW DOES THE LISBON TREATY REFORM EU INSTITUTIONS

Abstract

The signing of the Lisbon Treaty is indeed a vital event for the European Union, main international actors and global powers. This article focuses on the main institutional changes of the EU after the entry into force of the Lisbon Treaty. In the first part the article will provide a general background of the Treaty. The second part is devoted to the consideration of the Institutional provisions of the document. Furthermore, the article will explain the main interconnections among institutions. In the third section, the institutional part of the treaty in terms of constitutionality will be analyzed and a question whether the Lisbon Treaty can be characterized as a constitution will be answered. To achieve this, the article will assess the relevance of the Treaty with the “thin” and “thick” constitution concepts.

Keywords: *Lisbon Treaty, European Union, reforms, institutions, constitution*

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Lissabon Müqaviləsinin təhlili: Lissabon Müqaviləsi Aİ müəssisələrində necə islahat aparır?

Xülasə

Lissabon Müqaviləsinin imzalanması həqiqətən də Avropa İttifaqı, əsas beynəlxalq aktorlar və global güclər üçün həyati bir hadisədir. Bu məqalədə Lissabon Müqaviləsi qüvvəyə mindikdən sonra Aİ-nin əsas institusional dəyişikliklərinə diqqət yetirilir. Birinci hissədə məqalə Müqavilə haqqında ümumi məlumat verəcəkdir. İkinci hissə sənədin İnstitusional müddələrinin nəzərdən keçirilməsinə həsr edilmişdir. Bundan əlavə, məqalədə qurumlar arasında əsas qarşılıqlı əlaqə izah ediləcək. Üçüncü bölmədə konstitusiya baxımından müqavilənin institusional hissəsi təhlil ediləcək və Lissabon müqaviləsinin konstitusiya kimi səciyyəli təhlil ediləcəyi sualına cavab veriləcəkdir. Buna nail olmaq üçün məqalədə Müqavilənin “nazik” və “qalın” konstitusiya anlayışları ilə uyğunluğunu qiymətləndiriləcəkdir.

Açar sözlər: *Lissabon Müqaviləsi, Avropa İttifaqı, islahatlar, institutlar, konstitusiya*

Introduction

The Lisbon Treaty, the institutional reform agreement of the European Union (EU), entered into force on 1 December 2009. The document was signed in December 2007 by the heads of state or government of the 27 member states of the European Union. Completion of ratification by each member state took nearly two years and was ratified by the Czech Republic on 3 November 2009 (The Treaty of Lisbon, n.d.). The Treaty reforms the EU's governance institutions and decision-making process. The deal grew out of a "constitutional treaty" signed after French and Dutch voters rejected it in a 2005 referendum (Kashkin, 2010).

The Lisbon Treaty was intended not only to strengthen the effectiveness and efficiency of the Union and its bodies but also to strengthen its ideological attractiveness for the peoples of the participating countries and the whole world. This ideology is aimed at the formation of "Europatriotism", strengthening the moral component of European life, and is fully consistent with the growing foreign policy and defense activity of the EU (Ladeur, 2008). The Lisbon Treaty

focuses more on eradicating poverty. It is now included in the Treaty on EU Activities as a key objective of EU development cooperation. Poverty eradication has also become one of the goals of the EU's external movement. This is also reflected in the common values that need to be supported and promoted by the EU. The Council, which today is the main legislative body of the Union, will take, by the provisions of the Lisbon Treaty, a more equal position with Parliament. The most important change for the Council relates to the decision-making mechanism. Thus, the scope of issues on which unanimity in the Council is required is significantly reduced by the Lisbon Treaty, and a qualified majority becomes the general rule for decision-making. In its relations with the wider world, the Alliance protects and supports its values and interests and contributes to the protection of its citizens.

Institutional provisions of the Lisbon Treaty - how does the treaty reform the EU institutions?

The Lisbon Treaty has become a significant reform of the EU from the institutional perspective. It should be noted that the main institutional provisions are considered in the sixth part of the Lisbon Treaty. The institutions listed include the European Parliament, the European Council, the Council of Ministers, the European Commission, the European Court of Justice, the European Central Bank, and the Court of Auditors. Furthermore, we see advisory bodies such as the Economic and Social Committee, the Committee of the Regions, the European Investment Bank. The interaction between institutions is considered separately (Consolidated version of the Treaty on the functioning of the European Union, 2012)

If we briefly consider the main institutional powers and roles after the Lisbon Treaty, it should be noted that the European Parliament has expanded its legislative powers due to the expansion of the joint decision-making procedure and increased influence in budgetary procedures. It plays a crucial role in the election of the President of the European Commission, establishes the core of the Commission, including the new High Representative for Foreign Affairs and Security Policy. The European Council may adopt binding (non-constitutive) acts that may be challenged in The European Court of Justice; it is chaired by the president. The Council is the main decision-maker, legislative meetings are held in public, and the composition is determined by a decision of the European Council. Besides, there are sectoral councils chaired by three Member States for a period of eighteen months. The European Commission is responsible for initiating and monitoring the application of Union law, it provides an external representation of the Union (except certain cases provided in the Treaty). Its president is elected by the European Parliament and appointed by the European Council. The European Court of Justice has been given extended jurisdiction (renamed the Court of the Union), and an advisory committee has been set up to appoint judges and Advocates-General. Each institution must act within the powers conferred on it by the treaty. Institutions work on the principle of "mutual sincere cooperation". Co-decision is the ordinary legislative procedure. In the following sections of this chapter, the article would like to consider changes in the institutional reform within the Treaty more deeply, from the perspective of the balance of main powers (Tobler, 2008).

T.Christiansen considers the concept of "institutional balance". It means a balance between the three main EU institutions, Parliament, the Council, and the Commission. That is, none of these institutions has more weight, influence, and does not outweigh the other two. Before the signing of the Lisbon Treaty, a certain balance was achieved due to the following factors: Parliament and the Council work together as two chambers of the EU legislature, the Commission is the sole executive body of the Union; The Commission and the Council (Secretariat) are bureaucratic and composed of administrative officials, while the European Parliament is the only parliamentary body in the EU; The European Parliament and the Commission, as supranational institutions, represent common European interests, while the Council, as an intergovernmental institution, upholds the collective interests of the Member States. That is, the imbalance is considered in the framework of the supranational/intergovernmental gap (Christiansen, 2011).

As part of the institutional changes within the Lisbon Treaty, many innovations have been introduced from the perspective of cooperation. The structure of it has quite changed. The creation of a semi-permanent President of the European Council and a European External Action Service, a new role for the High Representative as Vice-President of the European Commission, and President of the EU Foreign Affairs Council were approved. They form the new configuration of the Council of Ministers, which is formally separated from the General Affairs Council. Furthermore, the powers of the European Parliament have been expanded, policy areas such as agriculture, trade, justice, and home affairs are subjects to the co-decision procedure. The European Parliament has been given the power to approve the Union's international agreements and elect the President of the European Commission, which contributes to the further politicization of the EU's decision-making process. It was decided to maintain the connection between the Commissioners and the Member States, giving the smaller Member States a permanent opportunity to influence the decision-making process in the EU (Christiansen, 2011).

A key change in the institutional reform of the Lisbon Treaty is the establishment of the President of the European Council and the High Representative for Foreign Affairs. The President of the European Council convenes a meeting of the European Council; ensures the preparation and continuity of the work of the European Council in cooperation with the President of the Commission and on the basis of the work of the General Affairs Council; promotes cohesion and consensus within the European Council; submits a report to the European Parliament after each meeting of the European Council; provides the Union's external representation on matters relating to its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs/Vice-President of the European Union. Regarding the High Representative, he conducts the Union's CFSP (and CSDP) and makes proposals for the development of this policy that is conducted with the Council; votes in the Council of Foreign Affairs; represents the Union for CFSP matters; conducts political dialogue with third parties on behalf of the EU and expresses the Union's position in international organizations and at international conferences; provides assistance to the European External Action Service, coordinates civil and military aspects of conflict management; ensures the coherence of the Union's external action; is one of the Deputy Chairmen of the Commission and is responsible for external relations and coordination; is bound by Commission procedures for Commission-related responsibilities (Christiansen, 2011; Consolidated version of the Treaty on the functioning of the European Union, 2012). They form a new set of EU inter-institutional relations. Accordingly, the previously mentioned "institutional balance" between the three main EU institutions disappears and is replaced by complex relations (Christiansen, 2011). At the same time, the three main branches of government of the EU are represented by The Council of the EU (legislative), The European Commission (executive), and The Court of Justice of the EU (judicial). Along with the deepening of institutionalization, new internal challenges arise that affect the effectiveness of the foreign policy, which in turn influences public opinion. It is interesting to know that with the adoption of the Lisbon Treaty, the trust of Europeans in all major EU institutions (except the European Court of Justice) began to decline (Nancy, 2016). Of course, one can justify the phenomenon by the crises that the EU has faced since then, but apparently, the data only prove once again that the creation of a "strong/thick" constitution in the framework of the formation of the EU federation would be the most effective solution today.

Analysis of the Lisbon treaty from the perspective of constitutionality.

After analyzing the institutional provisions, it is worth focusing on the constitutionality of the Lisbon treaty in this section. The main question that the article will answer in this particular point will be whether the Lisbon treaty can be defined as a constitution or not. To answer this question, the article will present the main arguments in favor of and against the mentioned claim.

Although neither in the Treaty nor its chapters the word of the constitution is not used, analysis of the Treaty offers that the constitutionality is observed in the exercise of the constitutional functions. Riekmann notes the continuation of the social contract tradition in the Lisbon Treaty and

believes that the Treaty possesses all key characteristics of a constitution by regulating the relations between the state authorities and people, dividing the power among institutions, respecting the rights of citizens, etc (Ciongaru, 2017).

With reference to the thin and thick constitution concepts, Griller states that currently the European Union has a constitution, and this constitution is based on not only thin but also thick definition (Griller, 2008). According to the definition of a (thick) constitution provided by J. Raz, the first characteristic is being “constitutive” which refers to the fact that a constitution forms a political and legal system of the state (Reh, 2009). Although the European Union can not be defined as a state, the Lisbon Treaty theoretically complies with the mentioned characteristic. Besides defining the competences between the European Union and member states, the treaty also formed the separation of power among the Council, the European Council, the European Parliament, and the European Commission, and clearly defined the roles of each power branch. As defined by Raz, being a stable ground for the political and legal institutions is one of the main characteristics of a constitution (Reh, 2009). This characteristic is also actual in the context of the Lisbon treaty after which institutional stability is being observed. Furthermore, the Lisbon treaty has a binding effect for both, the member states as well as for their citizens. Another main characteristic that should be mentioned is the justiciable nature of thick constitutions. This characteristic means that the lawfulness of other laws and rules can be tested via constitutions (Reh, 2009). Analysis of the Lisbon Treaty shows that the Treaty also indirectly possesses a justiciable nature. Because the Treaty establishes a mechanism of control proceeded by the European Union Court of Justice over the laws both in the adoption and implementation processes. This control mechanism covers a wide range of acts adopted by the Council, the European Parliament, the Committee, as well as the Central European Bank (Ciongaru, 2017).

In addition to the arguments that make us define the Lisbon Treaty as a constitution, there are several strong arguments that support the opposite idea. One of the main arguments is related to the issue of the future of the EU as a polity. As it is known in academia, constitutions are generally related to nation-states. From that perspective, calling the Treaty a constitution leads to the understanding of the EU as a state by people. Considering the divided opinions on the question of the European state, scholars recommend not to use the constitution term referring to the Lisbon treaty in order to avoid controversies (Griller, 2008). In addition, the symbols of the European Union were not presented in the Treaty for the same reason (Ciongaru, 2017). It should be mentioned that avoiding the use of constitution term and the Union’s symbols does not mean that the Lisbon Treaty can not be defined as a constitution. This rational choice leaves the question of the constitutionality of the Treaty open for debate (Griller, 2008).

Another distinctive feature of the Treaty was its ratification process. It was ratified in the Parliaments of the member states (except Ireland) while a Constitution would demand a referendum. This point makes the majority characterize the Lisbon treaty as an international treaty rather than a constitution. Furthermore, the amendments to the Treaty can be made via ordinary legislative procedure while constitutions require to follow a special procedure in general practice (Bremner, 2010).

Ciongaru thinks that the reason for not calling the Lisbon treaty a constitution stems from the intention of officials not to equip the European Union with a constitution in its traditional meaning although the Treaty possesses many constitutional features. Doing so, the European Union achieved to balance the member states that oppose the idea of a federal Union. The result of this rational move is that the member states which voted against the Constitutional treaty favored the Lisbon treaty despite the fact that the latter included the main innovations presented in the former. The main from the Constitutional Treaty was the elimination of symbolism. Some analysts characterize this logical move as a “supranational hypocrisy” (Ciongaru, 2017).

After analyzing the Lisbon Treaty from the point of constitutionality, we consider the Treaty as a constitution in both thin and thick definitions of constitutions. The Treaty includes the main features that generally belong to constitutions such as establishing the vertical and horizontal

division of power, defining a mechanism of control over the laws and rules, playing a role as a stable ground for the legal and political system of the polity, etc. Furthermore, we share the opinion that it was a rational move not to call the Treaty a constitution taking into consideration the possible side effects of such an action under the political condition of that period (Hofmann, Wessels, 2008; 12).

Conclusion

In this paper, we have considered the institutional reform of the EU under the Lisbon Treaty in terms of constitutionality. To do this, we first considered the Lisbon Treaty and the preconditions for its emergence. Then we analyzed the main institutional changes after the signing of the agreement. We have found that the structure of the EU and its bodies has changed with the inclusion of new actors and the expansion of competences of traditional ones. Such changes have become quite drastic and the institutional balance of the three main EU institutions has disappeared. However, this has opened up new opportunities for cooperation and internal monitoring. At the same time, the EU faced new internal challenges, in particular the management of the entire structure in reality. In turn, an uncoordinated internal structure is an obstacle to tackling external challenges affecting the EU as a whole. In the third chapter, we conclude that the Lisbon Treaty is constitutional from a "thin" and a "thick" perspective. Moreover, we believe that the creation of a written strong constitution would strengthen the EU and contribute to its effectiveness in response to risks at various levels.

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