

EUROPEAN LAW AS A TERMINOLOGICAL ISSUE

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Abstract

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The European Law is a multiple-value term which is used in several branches of law and other sciences and its understanding is not clear. There are four basic branches of law explaining the concept of the “European law.” One of them is the European law as the law of the EU. Second meaning is the law of international organizations. Then the law of Europe as the continent and the last meaning is connected with functional concept of law. The function is the regulation of competition or public procurement etc. The aim of the article is to contribute to better understanding of different meanings of the European law. Not only for the purpose of legal science but for other sciences as well because the EU law is binding for all the Member states and their activities.

EU, law, European law, EU law, terminology

The European¹ Law is a multiple-value term which is used in several branches of law and other sciences and its understanding is not clear or its meanings overlap. In the Czech culture the term started to be used by Czech citizens and researchers in connection with access of the Czech Republic in the European Union². There are other terms which can confuse as the Law of the European Union, European Union Law, Union Law or the Law of

the Union³ as well as Community Law or *acquis communautaire*⁴.

Contemporary (means 21st century) there are more theories about understanding what the European Law is. According to Schrötter (2003)⁵ European Law is in wider sense law of international integration in Europe and in narrower sense it is the EU Law. Svoboda (2011)⁶ says that the European Law is the EU Law and the Law of EURATOM.

1 The meaning of translation of the EU Law from British English into Czech language is the Law of the European Union; from American English it can be translated into Czech as EU Law or European Law. See discussion “EU” as an abbreviation of “Europe” at <http://forum.wordreference.com/showthread.php?t=1933648>, cited on 17th November 2011.

2 The implementation efforts of the Czech Republic began in December 1991 when the Association Agreement between the Czech and Slovak Federative Republic and the European Communities was signed. This agreement did not enter into effect because of dissolution of Czechoslovakia. The only business provisions came into effect on 1st March 1992 as the Interim Treaty. The provisions were later included in to the European Union Association Agreement between the Czech Republic and the European Communities. The agreement was signed on 4th October 1993 and came into effect on 1st February 1995. In the Collection of Laws it was published as the No. 7/1995.

3 See for example Article 6, section 3 Treaty on European Union that states: The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

4 See for example on-line Slovník cizích slov (<http://slovník-cizích-slov.abz.cz>), cited on 20th November 2011, that states: ACQUIS COMMUNAUTAIRE, i.e. European Law, Law of the European Union, common law of the European Union are fundaments of European integration (European unification).

However *acquis communautaire* is understood wider then Community Law because „*acquis*“ concerns common policies of the European Union.

5 Schrötter, H. J. Aktuální slovník Evropské unie. Prague: Brána, 2003, p. 69.

6 Svoboda, P. Úvod do evropského práva. 4th edition. Prague: C. H. Beck, 2011, p. 77.

Šišková, Stehlík⁷ wrote in 2007 that the European Law is the law of creation and functioning of the European Communities and the European Union and their integration policies. They admitted that the word has several meaning. The meanings are the law of European organizations, the law of legal systems of European states and the law of the European Communities and the European Union. Their theory is very similar to the newest theory of Tichý.

According Tichý (2011)⁸ there are four basic branches of law explaining the concept of the "European law" which will be analysed and add with the opinions of the authors:

1) European law as the law of the European Union

The prevailing understanding of the term "European Law" is as the Law of the European Union. In this sense the European Law is the law of the founding treaties of the European Union like the Treaty on European Union and the Treaty of Functioning of the European Union including legal acts enacted according to these founding treaties.

The Charter of Fundamental Rights of the European Union became the binding part of the EU Law with the effectiveness of the Treaty of Lisbon on 1st December 2009⁹. The Charter is not part of the Treaty of Lisbon (as one act) but it is a part of the Law of the European Union even it is formally separated from the Treaty.¹⁰

The Law of the European Union was developed from the times of foundation of the European Coal and Steel Community (ECSC)¹¹ to the Treaty of Lisbon. In the ECSC (Union Lignite) there was legal regulation which was applicable preferably to national legal regulation. The Law of the European Union was founded as supranational legal system – European legal order.¹² Legal systems of other two European Communities – European Atomic Energy Community (EURATOM) and European Economic Community (EEC)¹³ have the same nature.

Next to this legal system (titled as the Community Law) there is developed by the Treaty of Maastricht¹⁴ another system of law similar to the international public law. This legal system binds the Member

states in foreign and security policy and police and judicial cooperation. There is bifurcation inside the Law of the European Union and it was inevitable to distinguish EU Law of first pillar and having still supranational nature and the Union Law of second and third pillar and the legal norms of these pillars do not have supranational nature. The law of the first pillar is labelled in narrow sense as the Law of the European Union and the law of the three pillars is labelled as the Law of the European Union in wider sense.

The separation of the Union Law into three pillars was cancelled by the Treaty of Lisbon, precisely separation into the Community Law and the Law of the European Union (it lost its sense) and the system is called again as the Law of the European Union.

However it is, in our opinion, needed to distinguish between the law as the Law of the European Union and the law of the rest of the Communities as the law of the European Atomic Energy Community because in times before the effectiveness of the Treaty of Maastricht the European Law was the law of the three Communities.

In prevailing understanding of the European Law is the meaning as the supranational Law of the European Union including the parts of law which are based on the principles of international cooperation of the Member states, particularly foreign and security policy (previous it was the second pillar) having from some points of view the characters of international public law.

The EU Law is a new form of transnational law which is addressing the ideals of Europe and the European Union. In our opinion the ideals of the European Union cross the ideals of Europe and that is the reason why the European Law is often understood as the Law of the European Union. According Chalmers, Davies and Monti¹⁵: "the European ideal conceives of Europe as the central place of progress, learning and civilisation, placing faith in humanity and her capacity to improve. ... The idea of European Union sets up a political community in in competition with the nation-state but one, nevertheless through with government policy is carried out."

7 Šišková, N., Stehlík, V. *Evropské právo 1 – ústavní základy Evropské unie*. Prague: Linde, 2007, p. 71.

8 Tichý, L., Arnold, R., Svoboda, P., Zemánek, J., Král, R. *Evropské právo*. 4th edition. Prague: C.H.Beck, 2011. p. 46.

9 Tryzna, J.: *Postavení Listiny základních práv EU v evropském právu a její význam pro český právní řád*. In: Gerloch, A., Wintr, J (eds): *Lisabonská smlouva a ústavní pořádek ČR*. Pilsen: Aleš Čeněk, 2009. p. 309.

10 The Charter of Fundamental Rights of European Union is in accordance with Article 6, section 1 of the Treaty on European Union characterized with legal power as part of primary law. There is written: has the same legal power as Treaties, i.e. Treaty on European Union and Treaty of Functioning of the European Union

11 The Treaty establishing the European Coal and Steel Community was concluded for 50 years and on 23rd July 2002 was cancelled.

12 Tichý, L., Arnold, R., Svoboda, P., Zemánek, J., Král, R.: *Evropské právo*. 4th edition. Prague: C.H.Beck, 2011. p. 47.

13 In the year 1992 the EEC was renamed by the Treaty of Maastricht as European Communities.

14 The Treaty of Maastricht which entered into effect in November 1993 was fundamental change in the system of foundation treaties because of extent of the system of primary law with the Treaty on European Union.

15 Chalmers, D., Davies, G. Monti, G.: *European Union Law. Cases and materials*. 2nd edition. New York: Cambridge University Press, 2010, p. 2.

I: *The presence of the word “European Law” in the process of the European integration from the times of foundation of ECSC to the issue of the Treaty of Lisbon*

	subject	system of law	Presence of the word “European Law”
1	ECSC (1951)	Law of ECSC, Community Law, too	First use of the term European Law
	EEC (1957)	Law of EEC, Community Law, too	
2	EURATOM (1957)	Law of EURATOM, Community Law, too	
3	EC (1965) Merger Treaty	Community Law, Law of EC, too	European Law, too
4	EU (1992) Treaty of Maastricht	Ist pillar: Community Law, Law of EC, too	European Law or European Law in narrow sense for the Ist pillar
		IIInd and IIIrd pillar, Union Law, Law of EU, too	European Law for Ist, IIInd and IIIrd pillar or European Law in wider sense, too
5	EU (2009) Lisabonská smlouva	European Law is supranational law of the EU including the areas of law based on principles of cooperation among Member states of the EU (former IIInd pillar)	European Law – prevailing understanding
6	EU	European Law	European Law – for both of the legal systems, i.e. including EURATOM
	EURATOM	Law of EURATOM, Community Law, too	

Other used abbreviation:

EC European Communities – ECSC, EEC and EURATOM, from the year 2002 only

European Community and EURATOM

EU European Union

Ist pillar – European Communities

IIInd pillar – foreign and security policy

IIIrd – police and judicial cooperation.

Contemporary legal authority of the EU Law was set down by two judgments of the Court of Justice. The first is *Van Gend en Loos* that states “new legal order of international law for the benefits of which the states have limited their sovereign rights.”¹⁶ The second is *Costa v ENEL* that states “by contrast with ordinary international treaties, the EEC Treaty has created its own legal system which became an integral part of the legal systems of the Member states.”¹⁷

2) European Law as the law of international organizations

The term “European Law” is often identifies as law of international organizations. It covers the law of these organizations, for example the Nordic Council¹⁸, Benelux, the Western European

Union etc. The European Law consists primary of the Law of the Council of Europe, particularly its international treaties. The Council of Europe is after the European Union the second most important integration political union but it has not the supranational character as the European Union. On the other hand many of the treaties concluded among its member states help to harmonize the law of its members. One of its significant initiatives is in the branch of human rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms (signature in November 1950, effectiveness from September 1953) is the fundamental document with the highest values from the view of common European protection of human rights¹⁹. The number of initiated treaties is approximately 160 and one of the most important

16 Case 26/62 *VAN GEND & LOOS v EDERLANDSE ADMINISTRATIE DER BELASTINGEN* 1963, ECR.

17 Case 6/64 *FLAMINIO COSTA v ENEL* 1964, ECR.

18 For example the Nordic Treaty (signed in 1962 in Helsinki) based the cooperation among Denmark, Finland, Iceland, Norway and Sweden in the areas of law, culture, social affairs, economy and transport. The forms of common activities are mutual consultations and coordination of operating panel of deputies and governments of the Nordic states.

19 It is mistake, in our opinion, to connect European integration process only with periods which ended with foundation of the European Union. We should consider as part of the European integration the developments of international organizations after the IIInd World War. Lots of them are tightly connected with the European Union, for example the Council of Europe. The European Communities accepted the European Convention for the Protection of Human Rights and Fundamental Freedoms as an important source for the branch of human rights and as part of the European Law. Member states of the EU are the members of the Council of Europe. The Czech and Slovak Federative Republic ratified the Convention on 18th March 1992 and it was published in the Collection of International Treaties as No. 209/1992.

is for example the European Social Charter, Convention for the Protection of Individuals with regard to the Processing of Personal Data, The Convention against Torture and Inhuman or Degrading Treatment or Punishment, European Convention on Adoption of Children and many others. The legal system of Court of Human Rights founded by the European Convention for the Protection of Human Rights and Fundamental Freedoms is part of the European Law as well. The European Convention for the Protection of Human Rights and Fundamental Freedoms is considered as the first "European Law" in Europe and in the Czech law.

International organizations have different meanings and structures. From the view of their relationships to member states they can be divided into the organizations which claim no exclusive rights or preferential rights and the organizations which are supranational because their member states give them part of sovereign rights. This type of organization is the European Union and European Atomic Energy Community.

3) European Law as the law of Europe as the continent

The term of the European Law is also interpreted as the law of each of the legal regulation which is on the continent of Europe. The meaning of the word should cover regional (European) international law, the Law of the European Union (and EURATOM) including national legal regulations of the European countries.

Shortly said – this meaning of the European Law is understood as assembly of legal orders of European countries.

4) European Law – functional concept of law

The separated category of the European Law is functional concept of law. The function is the regulation of competition or public procurement, European Private Law, European Criminal Law, European Administrative Law etc. These terms are part of the European Material Law. They contain legal regulation of these branches at level of primary and secondary law.

CONCLUSION

The term "European Law" is in its prevailing meaning not clear.

The European Law should be understood in wider context not only as the Law of the European Union but as well as European Convention for the Protection of Human Rights and Fundamental Freedoms issued on 4th November 1950 and all of international treaties of the Council of Europe.

If the term "European Law" is used in the meaning of the EU Law which is the most spread understanding of the term, it is, in our opinion, better to use the term "the Law of the European Union."

However the aim of this article is not to lay down which of the term to use or not to use it. Terminology is human's work so it is imperfect. The aim is to contribute to fruitful discussion with the summary that using the correct term is bound with explanation of the word. Not only for the purpose of legal science but for other sciences as well because the prevailing use of the word "European Law" is used for the EU law which is still developing and in each of the period it had different meaning and today is binding for all the Member states and their activities.

SUMMARY

The European Law is a multiple-value term which is used in several branches of law and other sciences and its understanding is not clear. The European Law should be understood in wider context not only as the Law of the European Union. The article analyses four basic branches explaining the concept of the "European law:" one of them is the European law as the law of the EU. Second meaning is the law of international organizations. Then the law of Europe as the continent and the last meaning is connected with functional concept of law. The function is the regulation of competition or public procurement etc. If the term "European Law" is used in the meaning of the EU Law which is the most spread understanding of the term, it is better to use the term "the Law of the European Union."

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