

## **Abstract of Content and Conclusions of Dissertation**

### **Constitution for Europe**

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The central subject-matter of the dissertation is the assessment of the Treaty establishing the Constitution for Europe (“constitutional treaty”) and the so called founding treaties, *i.e.* the Treaty on European Union and the Treaty on the Functioning of the European Union (“founding treaties”) from the viewpoint of the constitutional law and the general theory of state. From the same viewpoints I also examine the nature of the European Union itself. When choosing this topic of my dissertation I was inspired by ever growing discussions on the extent of the European integration and its purpose, whether it is at all necessary, and whether the European Union is becoming a state or rather remains an international organization *sui generis*.

I am trying to answer, to what extent the content of the constitutional treaty corresponded to its name and whether this document could at all be called a constitution; the same question is being answered with regards to the founding treaties. I further examine, whether the constitutional and/or the founding treaties lead to the united Europe as perceived not only within the notion of the European integration, but also by the general theory of state, *i.e.* whether these treaties can serve as a fundamental rule of law of the single state of Europe, which is the primary purpose of any constitution.

Consequently, I further examine, to what extent the European Union is able to become a state, or rather whether it already became one. Correspondingly, I examine whether any of the treaties mentioned was, could be or is a constitution.

I begin my dissertation with a brief overview of the main milestones and events of the European integration that are of major relevance to the subject matter of the dissertation, whereas I lay emphasis on the drafting and pre-ratification periods. In my opinion the development of the integration greatly

affects the interpretation of the treaties as well as the examination of the “statehood” of the European Union.

The next part of my work contains the summary of the content of the treaties significant from the point of view of the general theory of state and the constitutional law, which is in the first place the Preamble and Part One of the constitutional treaty, the preambles of both founding treaties, the Treaty establishing the European Union and always the Charter of Fundamental Rights of the European Union.

All preambles give useful hints regarding the interpretation of the Treaties, their *raison d’être* and purpose. I consider the content of preambles and their interpretation significant with regards to the subject of my dissertation. The Preamble of the constitutional treaty speaks literally of the united Europe, whereas the Lisbon Treaty implemented no such notion. The preambles of the founding treaties after the Lisbon Treaty hint to the European Union as an association of sovereign states, although deeply integrated.

The Part One of the constitutional treaty contained provisions of constitutional nature – bodies and institutions of the Union, their competence and mutual relationship, and mutual relationship between the Union and its Member States as its units. Similar content can be found in the Treaty on European Union after the Lisbon revision.

The Charter of Fundamental Rights of the European Union, as part of the constitutional treaty as well as after the Lisbon revision contains the second set of provisions typically contained in the constitutions of the individual Member States – a catalogue of human rights and freedoms.

My further examination aimed to find, to what extent the treaties fulfill the attributes of a constitution as defined by the theory of the constitutional law. I consider the treaties under examination to be the first legal documents establishing a single legal entity associating European states on much broader than just economic or defense basis. Although still mere international treaties, the treaties under examination contained for the first time ever content typical for the Member States’ constitutions.

I further conclude that contrary to the situation within the individual Member States, the people of Europe as a sovereign lacked sufficient influence on the drafting and ratification of the treaties, and continue to lack significant influence on the process of constitution of the Union's bodies and most importantly on their decision-making procedures.

When examining the "state quality" of the European Union I use the test determined by various legal and sociological definitions of the state. In my examination I used predominantly the classic "three-element" definition by Georg Jellinek. In my opinion the European Union fulfills the two elements of this definition – it has its undisputed territory upon which it exercise its organized and enforceable power, able to exclude the exercise of any other power. Of course the European Union is inhabited by permanently settled population, nevertheless this population cannot be considered a third element in the sense of the above mentioned definition; these people in their majority do not consider the European Union a single state. Therefore the European Union does not fit the Jellinek's definition and it is not a state.

In relation to the structure of the European Union, a complex of individual Member States, I examined the quality of their association – whether it is a mere association established by means of an international treaty, a confederation or a federation. After a thorough examination of the presence of the individual elements of the state within the European Union I conclude that the European Union shows strong federative characteristics, such as the supremacy of EU law and its direct applicability and enforceability on the territory of individual Member States, the competence of the EU bodies to sue directly an individual Member State for breach of EU law, the legal personality of the Union, the division of competence between the Union and the Member States in the founding treaties or the citizenship of the Union. I further conclude that the European Union is becoming a federative state; however it is not a state yet, as reasoned above.

The last part deals with the regulation of human rights and freedoms in the EU law. The constitutional treaty contained the Charter of Fundamental Rights of the European Union, whereas the Lisbon Treaty ranks it among the primary sources of EU law only by mere reference. This part further

illustrates some problems in legal application and interpretation resulting from the possible future conflict of the Charter of Fundamental Rights of the European Union and the (European) Convention on Protection of Human Rights and Fundamental Freedoms. The Lisbon Treaty stipulates that the European Union accedes to the (European) Convention on Protection of Human Rights and Fundamental Freedoms. In this respect it is difficult to determine the extent of its accession (particularly as far as the individual Protocols to the Convention are concerned), as the extent of accession of each individual state may differ, and indeed does. It remains to answer, whether the European Union will participate in the activities of the Council of Europe. It may also prove very difficult to file a complaint of violation of the Convention when applying the EU law.