

Univerzita Karlova v Praze
Právnická fakulta

Doktorský studijní program: Teoretické právní vědy
Studijní obor: Ústavní právo

Školitel: doc. JUDr. Jana Reschová, CSc.

DISERTAČNÍ PRÁCE

Parlamentarismus v Evropské unii
(Parliamentarism in the European Union)

JUDr. Martin Soukup
Čílova 1803/2
162 00 Praha 6

Abstract

European integration in the second half of the twentieth century resulted in the unique and inspiring project of the economic and political union called at first European Communities and later European Union. History of this gradual integration is accompanied by intensive professional, political and also lay discussions on nature of the European union of states and on its future.

Institutional separation of powers in the Union and its legitimacy, as well as the issue of vertical separation of powers among the Union and member states have substantial influence on the Union functioning. Its own system of bodies became one of the most significant features of the Communities and later Union. It is typical for the Union bodies as distinct from the classic central bodies of state power that some of them are strongly connected with the member states. Institutional framework of the Union changed considerably after ratification of the Treaty of Lisbon.

One of the central and ruling bodies of the Union is the European Parliament. Its position changed and developed most in the past in comparison with other Union bodies. This thesis examines among others the development of position and powers of the European Parliament and is based on the compact survey and analysis of the current legal regulations of functioning of the European Parliament (institutional, organizational, functional and political) as an institution, which is the platform of power and representation in the Union. Another basis of the thesis is an analysis and evaluation of power and factual relations of the European Parliament with other Union bodies.

Theme and term of the thesis, which is declined here and examined from different points of view, is the question, whether parliamentarianism exists in the European Union and if it does, in what form, how the historical European tradition of parliamentarianism is fulfilled at the Union functioning, in what particular constitutional rules it is shown and what other elements of parliamentarianism should be strengthened.

Parliamentarianism in the European Union is viewed here complexly and taking into account the unique character of this supranational unit. Parliamentarianism in the Union is not connected only with the supreme parliamentary body – European Parliament as a whole, political factions and opinion groups represented therein are also important, as well as the work of individual members of Parliament, relations and presentation of the European Parliament externally. Substantial role is played also by some other supreme Union institutions, which fill wholly or partly some of the typical parliamentary functions. Dynamically developing position of parliamentary bodies of member states is also important and interesting. The term parliamentarianism is therefore used and distinguished herein both in narrow sense – forming the government by majority in the parliament and relation of responsibility of government and parliament and also in wider sense, when traditional functions of the parliament and fulfillment thereof are examined.

At the beginning of integration efforts in Europe a group was established among considerably smaller number of participating states quite unequivocally, which had the character of international / interstate organization. During following years and

decades this group developed in something much more interconnected and de facto independently emancipating. An important moment in this transformation was institution of direct elections in the European Parliament, which strengthened legitimacy of European institutions and created direct relation between citizens of the European Union and its institutions. Since the nineties of the twentieth century it has been quite obvious after other integration steps that the European Union lost the character of the common international organization.

It is typical for EU bodies unlike the classic central bodies of state power that some of them are strongly connected with the member states (this relates in particular to the body with the greatest powers so far – the Council), some shall on the contrary act as their “opponent”, originator and protector of European interests (e.g. the Commission) and other should keep their “neutrality” both in relation to interests of member states and in relation to other main bodies (Court of Justice of the European Union, Court of Auditors). This complex system of power equilibriums thus does not correspond with the so far classic doctrine of separation of powers in the state into legislative power, executive power and judiciary. In the institutional system of the European Union some bodies perform non-typically more functions and in particular the legislative power is not based directly on people, but on institutions, which are legitimized in another manner.

Separation of powers among the supreme bodies in the present Union may not be compared even to the so-called governmental directorial system or the presidential system of government (the office of president does not have tradition in the system of EU supreme institutions). Still it is possible to find certain inspiring elements of power separation in the present form of government in the European Union arising from both above-mentioned systems. Institutional development, through which the European Union goes in last decades, is in my opinion most similar to the form of parliamentary government, although EU in its present form is quite remote to this form either. However some elements of the parliamentary system exist here formally without doubt, constitutional form of government in EU remains in particular the special combination of the so far distinguished systems / models.

In the classic parliamentary system of power separation the executive power (government) is responsible to the parliamentary body. Such conclusion may not be expressed at examining the character of EU supreme bodies either at the Commission or certainly at the Council, which is not responsible to the European Parliament at all. As for the Council there exists only the intermediated responsibility to the respective national parliaments. The manner of constitution and possible recalling of the Commission by the Parliament is formally confirmed, however as it is mentioned above, this basic principle of parliamentary democracy is weakened considerably in EU and applicable in practice with difficulties. Moreover the European Parliament still does not have proper legislative power (in particular the right of legislative initiative is missing), its position is weak also at constitution of other supreme bodies of the Union.

It may be concluded from the conclusions arisen from examined attributes of the Parliament that the European Parliament in its present form is undoubtedly the parliament in the sense of the supreme body of the representative democracy. Already since 1979 the European Parliament has been formed on the basis of direct

elections by all citizens of the European Union. Also from the point of view of powers it may be stated that the European Parliament has the basic parliamentary roles and functions, i.e. in particular participation in legislative process, partly constituent power towards other bodies, budgetary power, controlling power. However some of these powers are weakened in comparison with traditional parliamentary bodies. The European Parliament was originally drawn up as the controlling and advisory body, its position within the system of European institutions is still strengthening and its position is very gradually approaching the classic parliamentary concept. Trend of the growing importance and extending of powers of the European Parliament was confirmed by every other contractual revision of the primary law.

Institution of direct elections to the European Parliament for the electors / citizens of EU member states represented, in my opinion, one of the most important landmarks in the history of European integration. Legitimacy of EU bodies is based on the elections, from that time the Union institutional framework is gradually though very slowly and insufficiently transforming to the traditional European system of parliamentary democracy. However the European elections are unimpressive and are called as elections of the lower rank. European members of Parliament are elected more on the basis of conversancy of the electors with the internal political system than for their membership of the europarty and program thereof. Unfortunately in the last years interest in elections falls and the elections are becoming the side issues for the Union citizens.

The Union guarantees many rights to its citizens, besides active and passive right to vote to the communal councils of member states and to the European Parliament, also other rights as for example the right to apply with complaints to the European Ombudsman. Adoption of the Lisbon Treaty brought some new important elements of the participatory democracy. Besides the rise of the right to petition EU institutions, as the direct relation of EU citizens to the Parliament and indirect relation through the institution of the European Ombudsman, the so-called citizens' initiative is one of the most significant innovations, new form of public participation for European citizens. These instruments and institutes strengthen undoubtedly elements of parliamentarianism in EU.

Thinking of the parliamentarianism and evaluating separation and creation of powers among individual EU supreme bodies, also the strengthening position of lawmaking bodies of individual member countries must be mentioned, to which the important role at creation and implementation of law at the Union level is gradually attributed. Role of national parliaments in the integration process is more significant in comparison with the situation more than twenty years ago. New elements for inclusion of national parliaments in the Union democracy were integrated by adoption of the Lisbon Treaty. These are in particular mechanisms of multi-colored cards at subsidiarity control.

National parliaments have the important role at changes of primary law, where the Parliament does not intervene. I consider their role on national level as crucial, where the internal government and its representatives in the Council are responsible to them and where they are directly consulted. Timely informing of national parliaments on legislative proposals means in its consequence the preliminary control of legislative acts and possibility to avoid the subsequent complications during

application thereof. National parliaments endeavor more and more for coming close to the Parliament. Within these activities the national parliaments try to regain part of their lost influence and jointly to reach the Union still being built according to democratic principles. However the increasing influence of formerly weakened national parliaments raises the apprehension of members of the European Parliament as well as the experts that the position of national parliaments might gradually create in fact, besides the Parliament and the Council, the so-called "third chamber" and disturb the principle of Union institutional separation of powers. Thus it will be necessary in future to consider very sensitively, whether and where the position of national parliaments will move.