

Summary

This submitted dissertation thesis provides a constitutional comparative analysis of the European Union and the European federations, primarily the Federal Republic of Germany, Swiss Confederation, Republic of Austria and also basic features of the United States of America. I will attempt to determine whether EU is already a federation, or how much closer it has shifted to a federative type political arrangement. In this dissertation thesis I will try to methodically analyze, which characteristics of a federal state the European Union already meets and if we can put the EU under the category of federations, confederations or international organizations.

To achieve better understanding of the context of this dissertation thesis, a comparative analysis of the European Federations is studied from historical, sociological and political science perspective. However the main emphasis here is focused on the analysis of the constitutional and legal arrangements.

The first part of this thesis starts from the scrutiny of the origin and development of the theory of federalism in historical perspective, followed by determining the concept of federalism and federation in constitutional terms. Subsequently provided here are definitions of various types of federations and the reasons for their creation and division.

The second part is focused on the empirical comparative analysis of the European Union and the European Federations on the basis of the general definition of the federal state given by Stephen Woodard. Characteristics of the modern federal state is divided into six categories, each of those categories presents special areas of research. Comparative analysis of the different characteristics (fields of research) is given after a brief historical overview of European integration considering the attempts of federalization that the European states have made in the past.

Fields of comparative analysis include the concept of The Rule of Law, with particular emphasis on the constitutionality of fundamental law, in the case of EU and of its primary law, the supremacy of legal order of the central level of governance in federations and there for the European legal order over national legislation of member states and the issue of legality. The following field of research involves the applicability and direct effect of the laws of the central level of governance in the federations and in EU on individuals in Member States. The subsequent area of analysis is focused on the division of competences between the EU and its Member States and federal center and its constituent units in the European

federations. Following chapter contains an analysis of the independence of the legislative process and the legislative bodies in the European Union and federations. The next chapter provides comparative examination of the enforcement of legal norms of European law in the Member States on individuals, followed by issue of accountability of the EU as a public entity. The last chapter is devoted to the question of democracy and the legitimacy of the European Union as a whole and particularly its institutions.

From the moment of establishment until now, the European Communities and European Union have gone through very extensive development. Today the EU is a highly developed organization which comes very close to a federal type of government structure. The results of comparative analysis presents that the EU currently cannot be defined as a federation, because it does not meet all the characteristics of a federal state. A comparative analysis proves that a large number of the fields examined are showing that the EU only partially fulfills the characteristics of federation.

The key difference between the EU and the federal states can be summarized in the following proposition. That the EU is currently missing the constitutional base which is founded on the principles of theory of constitutionalism. This results in a deficit of input legitimacy. Currently EU primary law meets the characteristics of the material constitution. However, the material constitutional characteristic does not draw the constitutionality of EU primary law from the perspective of the theory of constitutionalism. The primary Union law cannot be characterized yet as a constitutional state law, which is inherent in all other existing European federal states. It is possible to draw this conclusion due to the lack of democratic base and legitimacy of the European institutional system, as well as the absence of a constitutional base. This conclusion supports the current coexistence of several legal orders, namely that of EU and Member States in multi-level systems without a hierarchical structure and the absolute supremacy of European law. This is not at all typical for the legal order of federal legislation existing in federations.

Research in additional specific fields however, suggests that the European Union is very similar to the European federal states as well as the United States. The tenet of the division of powers between the two levels of governance, namely the EU and the Member States, has a large number of characteristics that bring the essence of the EU arrangement close to those of federal states. The European Union also has, at every phase, posed its own independent policy making mechanism and legislative process, which is different from the legislative process in

Member States. The fact is that, unlike some federal states, the EU did not develop a network of specialized "federal" courts established for application and interpretation of European law. Nonetheless legal norms of the European Union are sufficiently enforceable for both Member States and individuals through courts of Member States and ECJ. For all the above-mentioned categories there is just one notable exception, namely the absence of a foreign security and defense policy as the exclusive competence conferred on the Union institutions. Consequently, it affects other functioning processes of the Union as a whole. The result is substantial differences in the legislative process of the EU and the enforcement of EU law in this area of competence, if to compare it with European federal states. This field of competence is transferred to the federal level of governance in all European Federations and in the USA.

For a deeper understanding of the process of European integration this dissertation thesis is complete with a brief overview of the main integration theories combined together with the theory of the federalism influenced integration of the European countries. This submitted dissertation concludes by considering and regarding possible paradigms of the future development of the European integration process, which are divided into three main categories. The first presents the integration of EU Member States into even stronger associations of states, in other words, the transformation to a federation. Development in this direction is very unlikely for several reasons. These reasons mainly concern the current fragmentation of the federalist visions coupled with growing frustration among EU citizens towards the EU. Another alternative is a complete dissolution of the European Union and a transformation back to the original sovereign states. Despite a certain level of skepticism by EU citizens and efforts provided by some of the political groups in Member States, the division of the Union option does not seem like a viable solution. This is primarily due to very close economic and political links of EU member states and as a result very high cost of dissociation, and the colossal negative impact it would cause. Additionally, the current globalization trends impose on governments to cooperate with each other more, and to review their primary domestic intentions in a universal way so as to achieve better economic growth and stability.

Finally, the third direction of EU development is through a flexible integration, (Europe of variable geometry or multi-speed Europe). This is where those Member States which prefer deeper integration in certain areas, will be able to unite more closely in those selected areas. This direction can be viewed as the most probable as well as most stable way of European integration. The primary reasons for reaching this conclusion are, that this solution allows a

more flexible response to the coexistence of heterogeneous member states in a single economic and political association such as the EU. Additionally this unites a greater number of state entities, which could undoubtedly more effectively challenge the current international trends towards globalization.