

## REVIEWS AND ANNOTATIONS

### **Pavel Svoboda et. al: Supranational Elements in the European Union and its Legal System. Prague: Leges, 2022, 166 pp.**

A subtle but rich monograph written by a team headed by the experienced and knowledgeable European law expert Pavel Svoboda, deals with the thorny topic of European integration and European law, namely supranational principles standing in opposition to the principles of intergovernmental cooperation. The head of the authorial team is a guarantee that the reader would be provided with a work of a high quality. Pavel Svoboda has been an academic and researcher in European law for more than thirty years. He obtained extensive executive experience as a minister of the Government of the Czech Republic and served as a Member of the European Parliament and the Chair of its legal Committee for several years. Other members of the authorial team, namely Lenka Pítrová and Václav Šmejkal, are considered to be experts in European law through their significant publications. It is encouraging to see that young colleagues were invited to the team of authors, namely Miroslav Jakab and Petr Mádr, who have proved to be promising researchers even in the beginning of their academic careers as Ph.D. candidates at the Department of European Law of the Charles University Faculty of Law.

The authors describe the enforcement of the supranational principle within the EU as a battle. The main conflicts among various political streams are fought on its battlefields during debates focused on the further development of the European Union: What policies should be decided by a qualified majority in the Council? Should there be joint supranational lists of candidates for European elections? Should the Court of the EU have powers to decide regarding the common foreign and security policy (“CFSP”)? These are some issues dealing with supranationality in the functioning of the EU and its law. The common undertone of such questions is legitimacy of the EU and its powers and decision-making processes. It should be noted that the battle has continued since the establishment of the first European integration entity, namely the European Coal and Steel Community (ECSC).

The Paris Treaty 1951 constituting the Community transferred the regulation and management of the common market in coal and steel to the High Authority which was built upon the supranational principle. Its members were appointed from among citizens of each of the ECSC member states; however, the members of the High Authority were independent in their decision-making of their country of origin. In that respect, the Paris Treaty represents a nucleus of the supranationality of European law, its binding nature and enforceability against member states.<sup>1</sup> The authors precisely describe the historical development of the supranationality principle within the European integration processes; using many examples, they demonstrate how the enforcement of the supranational principle within the EU differs from systems in “common” international organizations. That is why the European Union is designated as a supranational organization.

In addition to using a historical method in considering the period before the horizon of the establishment of post-war European integration entities, a comparative method is extensively used in the book. Various methods of supranationality as applied within other entities of international law are considered primarily with respect to their international courts. A comparative analysis is made of individual areas where conflicts among supranational and inter-governmental elements arise, such as the protection of health, area of freedom, security and justice, common trade policy, etc. Had the reviewer been a member of the authorial team he would have added his opinions regarding the clashes between supranational and intergovernmental elements in the area of economic and

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<sup>1</sup> TOMÁŠEK, M. *Statě o Evropské unii*. Praha: Codex, 1994, pp. 9–12.

monetary union. Despite its title there is just one union within the EU based upon supranational decision-making, namely the monetary one. There is no EU economic union; budgetary and economic policies function upon the principles of inter-governmental policy. Supranational elements are hard to be implemented there, which gave rise to repeated reasons for crisis of the single euro currency and its functioning. Let us recall, for example, the Stability and Growth Pact 1997. It was the failure of supranational instruments of the Stability and Growth Pact that led to the situation when traditional cornerstones of international law were applied including the principle of inter-governmental action.<sup>2</sup> It became obvious that the denial by the supranationality principle of a basic cornerstone of general public international law, namely the principle of a sovereign equality of states, need not exclude the application of the latter within EU law in situations when EU member states return to classical international agreements in order to solve problems that cannot be solved by primary EU law. That is what happened in the area of economic and monetary union as two key international treaties were adopted, namely the Treaty Establishing the European Stability Mechanism 2012 and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union 2013 (the fiscal compact).<sup>3</sup> It can be deduced that the supranationality method does not necessarily always function reliably, and that there may be situations which should be solved by using intergovernmental instruments in the spirit of “old” international law, or at least to attempt to solve them in that way. However, it should be noted that both treaties contributed only partially to mitigation of the euro crisis, with the European Stability Mechanism being much more useful than the Fiscal Compact.

Conclusions of the reviewed book, as well as the monograph as a whole, clearly suggest that the authors are supporters of the idea of supranationality. Such opinion is favoured even in alternatives within the EU, but it also has to face also opposition. It should be appraised that the authors present rational arguments to support their position including opinions of other authorities favouring supranationality. They suggest that this is “a battle between Europeanism and nationalism, between supranational and interstate elements in the system of administration of relations among states and their citizens, a battle with its roots in the recent state-forming role of a nation: since the 19<sup>th</sup> century we have lived in the environment of national states where the state appears to be a product of the will of the nation. Considering the history of our continent it has been a relatively short period; however, we have no other experience regarding state-forming environment but that formed by national states. This is why we cannot see any other alternative as possible.” Czech lawyer Petr Jantač writes: “Europe has nothing to put against the idea that a nation is state-forming. Political structures of the European Union only pretend that they stand outside the gravitational field of political nationalism; supranational European integration has been intertwined in its foundations with the principle of the state-forming role of a nation. ... If it came to the point within the supranational bodies “national interest” always emerges as the heaviest calibre of political argumentation. ... Europe is our spiritual fatherland. However, the spiritual fatherland is not necessarily a political fatherland. ... The idea of Europe has not been yet state forming. ... The unification of Europe cannot dispense with the state-forming idea which would create its political identity.”<sup>4</sup>

Attention should also be drawn to the contrasting ideas of Austrian political scientist Robert Menasse and the visions of Jean Monnet. Menasse writes that the task of today’s political generation is to invent a system of government for the period after national states, and claims that a Europe of

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<sup>2</sup> PETRÍK, D. Intergovernmentalism as a Response to EU Challenges: Threat or Solution? IN: In: Naděžda Šišková. *The European Union – What is Next?* Prague, Wolters Kluwer, 2019, pp. 98–107.

<sup>3</sup> TOMÁŠEK, M. Le droit international: un pontage pour le cœur du droit de l’Union en temps de crise économique. In: David Petřík et al. (eds.). *Évolution des rapports entre les ordres juridiques de l’Union européenne, internationale et nationaux*, pp. 771–784. Bruxelles: Bruylant, 2020.

<sup>4</sup> JANTAČ, P. *Hledání Evropy*. Praha: C. H. Beck, 2011, pp. 424–425.

regions would be the solution.<sup>5</sup> Jean Monnet, after two world wars, finds the solution of difficulties in effective inter-generation transfer of experience in the construction of institutions.<sup>6</sup> Such idea is considered by the authors as compatible with Menasse's vision since there is no other way to reach the goal but through democratic institutions of a new generation. The authors admit that even mere supranationalisation of national elements of government could eventually reach the aim, but if we do not try it in practice nothing can be certain.

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<sup>5</sup> MENASSE, R. *Evropský systém – občanský hněv a evropský mír*. Praha: Novela Bohemica, 2014, p. 85.

<sup>6</sup> MONNET, J. A Ferment of Change. *Journal of Common Market Law Studies*. 1962, No. 1, pp. 147–156.

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