

3. *Congressional record*. – 1968. – Washington.
4. *Congressional record*. – 1969. – Washington.
5. *New York Times*. – 1968. – July 14.
6. ООН. Совет Безопасности. Официальные отчеты. 23-й год. Дополнения за июль, август, сентябрь 1968 г. – Нью-Йорк. – 1968.
7. К событиям в Чехословакии: Факты, документы, свидетельства прессы и очевидцев. – М.: Политиздат. – 1968.
8. *Rachwald A.R.* United States policy in Eastern Europe // *Current History*. – Apr. 1978. – Vol. 74.
9. *East Europe Economics Post-Helsinki*. A Compendium of papers Submitted to the joint Economic Committee Congress of the US. – Aug. 25. – 1977. – Wash., – 1977.
10. Орлик И.И. Политика западных держав в отношении восточноевропейских социалистических государств. – М.: Наука. – 1979.
11. *Rudý právo*. – Praha. – 1982. – Feb. 23.
12. *The Department of State Bulletin*. – Washington. – Apr. 1988.

Translated by S. Vavilova

R. Petrov

THE EUROPEAN UNION CONSTITUTION – A STARTING POINT OF THE NEW ERA OF THE MODERN CONSTITUTIONALISM

The signing of the European Union (hereafter – EU) Constitution could be regarded as the most significant legal and political mile stone of the contemporary European and world history. On the one hand, this event marked the end of the whole era of the European and international constitutional history that encompassed best achievements of European and American constitutional processes. On the other hand, the elaboration of the EU Constitution by the European Convent symbolically launched the new era of the modern constitutionalism. In other words, the EU Constitution represents a unique the best of the world constitutional heritage, underpinned by intricate political compromise between all EU Member States, which could be replicated by many countries worldwide. In particular, the adoption of the EU Constitution has a significant impact on the constitutional processes in so called “neighbours” - countries that share common border with the EU. Ukraine is recognised as an important part of the newly launched EU Neighbourhood initiative that foresees the mutual access of markets and liberalisation of mutual trade [1]. One of the major priorities of the Neighbourhood initiative is to promote European common values to the “close ring of friends”. Therefore, the “export” of the EU constitutional values into legal orders of the neighbour countries including Ukraine will defi-

nately constitute the core of the future Neighbourhood policy since Ukraine occupies seminal geopolitical and economic position on the European continent [2]. In fact, the EU-Ukraine Action Plan prioritises the implementation of the EU common values into the Ukrainian legal order in order to enhance the formal of bilateral EU-Ukraine relations in the future. The achievement of the EU-Ukraine Action Plan objectives depends on effective and rapid implementation of common European democratic values by Ukraine [3]. Unfortunately, no substantive research has been conducted on the historical evolution and scope of the EU Constitution. This work targets to eliminate these lapses. Therein we endeavour to overview the history of the adoption of the EU Constitution and to scrutinise its elements in order to compile a coherent picture of the EU Constitution and its impact worldwide.

1. Historical background of the EU constitutional reform

The last fifteen years of European integration have been marked by considerable revisions of the EC founding Treaties. Such reforms were triggered by the ambitious enlargement programme, whereas the quantity of the Member States increased from fifteen to twenty five. The last two revisions culminated in the signing of the Treaties of Amsterdam in 1997 [4] and Nice in 2001 [5], which directly and indirectly dealt with the forthcoming enlargement of the EU. In particular, wide-ranging institutional reform has been undertaken within the scope of the Treaty of Nice for the purpose to adjust complicated and bulky EU institutional structure to the challenging enlargement eastwards. To respond the imminent constitutional reform within the EU the Declaration on the future of the Union was affixed to the Treaty of Nice at the Nice European Council of December 2000 and called for a deeper and wider debate about the future of the EU.

Soon after the signing of the Treaty of Nice, at its meeting in Laeken in December 2001, the European Council announced that constitutional reform to be entrusted to the European Convention. The choice of the European Convention represented a departure from previous practice of negotiations solely by Heads of the EU Member States governments. Thus, the establishment of the European Convention was a considerable institutional innovation in the contemporary history of the European integration. This new type of body was created to enable to involve main EU stakeholders in the transparent and democratic debate. 105 members of the European Convention comprised: 15 representatives of the Heads of State or Government of the Member States (one per Member State); 13 representatives of the Heads of State or Government of the candidate countries (one per candidate country); 30 representatives of the national parliaments of the Member States (two per Member State); 26 representatives of the national parliaments of the candidate countries (two per candidate country); 16 representatives of the European Parliament; and two representatives of the European Commission. The Economic and Social Committee (three representatives), the Committee of the Regions (six representatives), the social partners (three representatives) and the European Ombudsman were invited to take part as observers. The work of the European Convention was directed by a Presidium that played a key role in drawing up draft agendas for the plenary sessions and supervising activities. Finally, the European Convention was assisted by a Secretariat, which prepared the European Convention working documents, drafted discussion papers and summarised the proceedings. To prepare the debates on certain subjects, the European Convention decided to set up 11 separate working groups within the following subject areas: the role of the principle of subsidiarity; the future of the European Charter of Fundamental Rights; the legal personality of the Union; the role of national parliaments; complementary powers; economic governance; external action; defence; the simplification of procedures

and instruments; the area of freedom, security and justice; and social Europe.

The European Convention met for the first time on 28 February 2002 and completed its work on 18 July 2003 with its Chairman, Mr Valéry Giscard d'Estaing, submitting the final draft Treaty establishing a Constitution for Europe to the Italian Presidency. It appeared that work of the European Convention went beyond the initial task and led to the drawing up of a draft constitution in form of consolidated and simplified version of the various existing Treaties, or new founding text. The Intergovernmental Conference that had to give its final agreement has largely taken on board the European Convention's proposals reserved to changes within the scope of qualified majority voting.

2. Structure of the EU Constitution

The EU Constitution is divided into four major parts [6]. Following a constitution-type Preamble recalling the history and heritage of Europe and its determination to transcend its divisions, Part I is devoted to the principles, objectives and institutional provisions governing the new European Union. Divided into nine Titles, Part I covers: definition and objectives of the Union; fundamental rights and citizenship of the Union; Union competences; the Union's institutions; the exercise of Union competence; the democratic life of the Union; the Union's finances; the Union and its immediate environment; and membership of the European Union.

Part II of the EU Constitution comprises the European Charter of Fundamental Rights. This Part contains seven Titles, preceded by a Preamble: dignity; freedoms; equality; solidarity; citizens' rights; justice; and general provisions.

Part III comprises the provisions governing the policies and functioning of the Union. The internal and external policies of the Union are laid down in this Part, including the provisions on the internal market, on economic and monetary union, on the area of freedom, security and justice, on the common foreign and security policy (CFSP) and on the functioning of the institutions. Part III also contains seven titles: clauses of general application; non-discrimination and citizenship; internal policies and action; association of the overseas countries and territories; the Union's external action; the functioning of the Union; and common provisions.

Part IV groups together the general and final provisions of the draft constitution, including entry into force, the procedure for revising the EU Constitution and the repeal of earlier Treaties. The European Convention proposed to annex the following five protocols and three declarations to the Treaty establishing the EU Constitution: protocol on the role of national parliaments in the European Union; protocol on the application of the principles of subsidiarity and proportionality; protocol on the representation of citizens in the European Parliament and the weighting of votes in the European Council and the Council of Ministers (including the declaration on Romania and Bulgaria); protocol on the Euro Group; protocol amending the Euratom Treaty; declaration on the creation of a European external action service; and declaration in the final act of signature of the Treaty establishing the EU Constitution.

3. Innovations and achievements the EU Constitution

In the meantime, the EU functions as complicated three pillar structure that comprises: supranational pillar within the present European Communities (trade, economic, social, cultural and scientific issues) and two intergovernmental pillars (1) common foreign and security policy; 2) cooperation in justice and home affairs). Besides, the present EU has no international legal personality in contrast to the EC[7]. From now on, there will be only one European Union replacing the present

"European Communities" and the "European Union"; the three "pillars" will be merged, even though special procedures in the fields of foreign policy, security and defence are maintained; the EU and EC Treaties, as well as all the treaties amending and supplementing them will be replaced by the "Treaty establishing a Constitution for Europe".

The integration of the Charter for Fundamental Rights into the text, the clear acknowledgement of the Union's values and objectives as well as the principles underlying the relationship between the Union and its Member States, allow us to call this basic text our "Constitution". As a result, the EU legal system shall be changed. Resent EC regulations, directives, decisions, opinions, and recommendations will be substituted by more coherent legislative acts (European laws, European framework laws) and non-legislative acts of general application (European regulations, European decisions, recommendations and opinions) and implementing acts (European implementing regulations, European implementing decisions).

Furthermore, one has to acknowledge that the EU Constitution articulated the EU institution's competences. In particular, it recognises the different missions of the Commission, including its near monopoly of legislative initiative, its executive competence and its function of representing the Union externally, except in the field of common foreign and security policy. The main institutional innovation is the creation of the post of Union Minister of Foreign Affairs, who will be responsible for the representation of the Union on the international arena. This function will merge the present tasks of the High Representative for the Common Foreign and Security Policy with those of the Commissioner for external relations. The Minister of Foreign Affairs will thus be mandated by the Council for common foreign and security policy, while being a full member of the Commission and as such in charge of the Commission's responsibilities in the field of external relations as well as of the coordination of the other aspects of the Union's external action; in addition, he will chair the External Relations Council. The Union's newly acquired single legal personality will also enable it to play a more visible role in world affairs.

The EU Constitution establishes the European Council as an institution, distinct from the Council. The European Council will be chaired by a President, with limited powers, appointed for a period of two and a half years. On the other hand, and in contrast to what had been proposed by the European Convention, the system of twice-yearly rotation among the Member States of the presidency of the different Council formations (with the exception of the External Relations Council) will be maintained, although within a "team presidency" of three countries. This system will be able to evolve in the future since it can be altered by the European Council acting by qualified majority.

As to the composition of the institutions, the IGC finally decided to raise the maximum number of seats in the European Parliament to 750. These seats will be allocated to the Member States according to the principle of "degressive proportionality", with a minimum of six and a maximum of ninety-six seats. The precise number of seats attributed to each Member State will be decided before the European elections in 2009. The EU Constitution devotes the principle of interinstitutional programming to the Commission's initiative. It extends very substantially the scope of the co-decision procedure, which, significantly, will be called the legislative procedure (95% of European laws will be adopted jointly by the Parliament and the Council).

The IGC decided to maintain the current composition of the Commission – one Commissioner per Member State – until 2014. Thereafter, the Commission will comprise a number of Commissioners corresponding to two thirds of the number of Member States. The members of the Commission will be chosen according to a system based on equal rotation among the Member States, which had been already

decided by the Nice Treaty.

The definition of qualified majority for decision-making in the Council was, as is well known, the most difficult question to deal with. As provided by the EU Constitution, the Council will henceforth decide on the basis of the double majority of the Member States and of the people. In other words, the EU Constitution provides that the qualified majority will require the support of 55% of the Member States representing 65% of the population. This definition is accompanied by two further elements. First, in order to avoid the situation where, in an extreme case, only three (large in population) Member States would be able to block a Council decision, a blocking minority needs to comprise at least four Member States. Moreover, a number of Council members representing at least three-quarters of a blocking minority, whether at the level of Member States or the level of population, can demand that a vote is postponed and that discussions continue for a reasonable time in order to reach a broader basis of consensus within the Council.

The European Convention did not modernise all the Union's policies. The content of most provisions that govern the Union's policies thus remains unchanged. However, the EU Constitution significantly updates provisions in the field of Justice and Home Affairs, in order to facilitate and improve the establishment of the area of freedom, security and justice. In fact, the Community supranational method will from now on apply to all the areas in question. Nevertheless, the EU Constitution retains or introduces some special features in these areas, namely in the area of judicial cooperation in criminal matters and in the area of police cooperation. The provisions regarding external relations have been re-written, but in substance, the difference between common foreign and security policy and the other aspects of EU external action still reflects the respective roles of the EU institutions. As it was already mentioned, the creation of the post of Union Minister of Foreign Affairs, with the task of developing mutual confidence and common foreign policy of the Member States, undoubtedly strengthens the Union's role in world affairs, in all areas. Moreover, the possibility of providing more ways for the Member States to cooperate more closely in the field of defence will underpin the credibility of the Union's foreign policy in long term perspective.

For some other policies, such as economic governance, the Commission would have liked to strengthen the Union's means of action (issues of competence, impact on the Member States). However, the essential changes are limited to a further extension of the scope of qualified majority and a near generalisation of the codecision procedure [7]. On the opposite, the principle of unanimity is retained in fewer areas: taxation and, partially, in the field of social policy and common foreign and security policy.

In the end it is necessary to stress that the EU Constitution introduces, or confirms in a fundamental text, an important number of provisions aiming at more democratic, transparent and controllable EU institutions that are closer to the citizen. As an example, the EU Constitution provides citizens with the right to invite the Commission to submit an appropriate proposal to the legislator, if they manage to collect one million signatures in a significant number of Member States. The proceedings of the Council, when exercising its legislative function, are to be open to the public. The role of the European Parliament has been strengthened. National parliaments are to be informed about all new initiatives from the Commission and, if one third of them consider that a proposal does not comply with the principle of subsidiarity, the Commission must review its proposal. New provisions on participatory democracy and good governance have acquired constitutional status. The Charter will guarantee better protection of fundamental rights of EU nationals and third country nationals.

In legal terms, however, the EU Constitution remains a treaty. Therefore, it will enter into force when only all Member States have ratified it, which implies popular

consultations in some Member States. It should be noted that any modification of the EU Constitution at a later stage will require the unanimous agreement of the Member States and, in principle, ratification by all. For some modifications, however – for example with regard to the extension of the scope of qualified majority voting – a unanimous decision by the European Council will be sufficient.

4. Concluding remarks

The EU Constitution lays out important improvements within the constitutional order of the EU. Instead of the complicated three-pillar structure the EU Constitution creates the single pillar EU as an international organisation with distinct legal personality. Thereby the EU Constitution strengthens supranational nature of the EU and lays down solid foundation for further federalisation of the EU. Nevertheless, the EU Constitution does not create a new “super – state” on wreckages of intergovernmental three pillar EU. On the opposite, the EU Constitution ensures that the new EU functions within the principles of proportionality and subsidiarity. The inclusion of the Charter on Fundamental Human Rights into the main text of the EU Constitution is an important step forward towards the effective implementation of human rights standards into the EC law and the ECJ case law. One of the most significant achievements of the EU Constitution is articulation of common values shared by the EU Member States. In addition, the EU Constitution promulgates common values to be applied within the EU external policy. It means that, henceforth, the EU will pursue more consistent and persistent policy to promote its common values into legal orders of third countries.

The adoption of the EU Constitution will contribute to the enhancement of bilateral EU-Ukraine relations too. Undoubtedly, the EU common values and principles must be taken into account by the Ukrainian legislature and judiciary. It is argued that the EU Constitution must serve as a fundamental source of interpretation for the Ukrainian Constitutional Court and common courts. It is the shortest road to build up the European constitutional order in Ukraine, and, consequently, to ensure the integration of our country into the EU in the medium term perspective.

1. *Communication from the Commission to the Council and the European Parliament* “Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours”, COM(2003) 104 final.

2. *European Neighbourhood Policy*. Country Report. Ukraine. COM(2004) 373 final.

3. *Communication from the Commission to the Council on the Commission proposals for Action Plans under the European Neighbourhood Policy (ENP)*. COM(2004) 795 final.

4. *O.J. C* 340 1997.

5. *O.J. C* 325 2002.

6. *O.J. C* 310 2004.

7. *Європейський Союз: консолідовані договори*. За ред. Муравйова В. І. – К., 1999. – 206 с.

Translated by R. Petrov