

Šišková, N. et al.: Lisbon Treaty and its Impacts on the European, International and National Law of the Member States, Prague, Leges 2012, 284 p.

The readers hereby receive another important work that covers a very interesting range of important issues. The publication is a result of work of a wide team of authors. Its layout is in the form of a monograph rather than proceedings, thanks to Assoc. Prof. JUDr. Naděžda Šišková, Ph.D., leader of the author team. It is divided into six parts, twelve chapters and a conclusion. Part one deals with a general characteristics of the Lisbon Treaty, part two with the Lisbon Treaty in respect of human rights, the third one with the Lisbon Treaty from the viewpoint of enhancement of democratic grounds of the EU, the fourth with the Lisbon Treaty and the EU juridical system, the fifth with the impact of the Lisbon Treaty on the joint foreign and safety politics, and the sixth chapter studies the Lisbon Treaty in reflections from courts of the Member States.

The preface is written by PhDr. Vojtěch Belling, Ph.D., State Secretary for European Affairs.

Despite being products of twelve authors, all twelve chapters are written in styles comparable as concerns literary standards and communicativeness.

In the preface Assoc. Prof. Šišková characterises the Lisbon Treaty as a hastily chosen solution after rejection of the Constitution for Europe.

Part one contains only one chapter, written by Assoc. Prof. JUDr. Pavel Svoboda, Ph.D. (Charles University, Faculty of Law, Department of European Law), titled “Lisbon Treaty is not an example of legal perfectness”. The article, though rather brief, is rich in ideas and presents an analysis of the core problems of the Lisbon Treaty that occur in the law of diplomacy – in representation of its subject of international law in relation to other sovereigns of international law the way it is divided among the President of the European Council, High Representative of the Union for Foreign Affairs and Security Policy, the European Commission President, and the Commissioner for the EU enlargement and neighbour policies. The author highlights that such a division of the law of diplomacy places high demands on the desired EU cohesiveness since responsibility for the cohesiveness is rather problematic, too (in general, all EU bodies are responsible). In the next brief survey, yet very concise and convincing in argumentation, the author analyses other legal impacts of the Lisbon Treaty, relating to general issues of institutional interconnection, systematics, terminology and duplications.

Part two consists of Chapters 1–4. The author of Chapter II – “The Lisbon Treaty and Human Rights – the balance of profit and loss” is the leader of the

author team, Assoc. Prof. N. Šišková, Ph.D. (Head of Department of European Law, Faculty of Law, Palacký University in Olomouc). Already in the first sentences, the author expresses her critical attitude, since as concerns human rights she considers the Lisbon Treaty another partly wasted opportunity for the EU to establish its own coherent and truly efficient system of human rights protection at the level of supranational entities (page 26). In her analysis, she focuses at the legal status of the EU Charter of the Fundamental Rights, its peculiarities as concerns its subject content within the notion of the Lisbon Treaty, distinction between rights and principles through the Explanations Relating to the Charter of the Fundamental Rights and Art. 52(5) newly incorporated into the Charter. The next part of the chapter contains a high quality analysis of horizontal provisions of the Charter, Protocol No. 30 to the Lisbon Treaty and the issues of enforcement of human rights at EU level.

Chapter three (written by Mgr. Králová – Ministry of Foreign Affairs of the Czech Republic, European Law Department) deals at a highly qualified level with the extraordinarily important issue of accession of the EU to the European Convention for the Protection of Human Rights and Fundamental Freedoms and effect of the accession on the EU legal system. The author managed to work out the chapter, founded on extensive source material, the way that fits very organically in the concept of the monograph. From the same viewpoint a certain problem may be found in chapter four, dedicated to the protection of the human right to the environment in the European context based on the Lisbon Treaty (author – Assoc. Prof. J. Jankův, Ph.D. – Department of international and European law, University in Trnava). The author's study, rich in source material and scientific literature, describes the development of the universal international legal regulation of the right to the environment, in particular in the European region, while only two pages of the chapter and partly its conclusion deal with the regulation of this right in the EU Charter of the fundamental rights.

Part three is introduced by Chapter Five – “The notion of the European citizenship and its transformations in the post-Lisbon era” (author – JUDr. Jiří Georgiev, Ph.D. – Section for European Affairs, Office of the Government of CR). The subject of interest of the author are concisely worked up innovations of institutional and competence nature as concerns the concept of EU citizenship, brought by the Lisbon Treaty, even though they change nothing in the derived and complementary character of the EU citizenship, as the author highlights. Further, the author deals with the strengthening of the position of the European Parliament, newly conceived as a body of European citizens and also by introduction of the European citizen's initiative that reflects the effort to approximate decision-making at the EU level to the citizens. The author pays a special attention to the interpretation of the EU Charter of Fundamental rights

by the EU Court of Justice, which, in his words “already in the past significantly developed the immediate relationship between the Union’s citizen and the institutes of the European law, with the use of general legal rules (in particular non-discrimination)” (page 120). High appreciation belongs to Chapter six which following a very brief introduction analyses impacts of the Lisbon Treaty to legal regulation of the European ombudsman (author – Mgr. et Mgr. M. Příklad – Office of the Public Defender of Rights). The focal point of Chapter seven (author – JUDr. M. Hodás, Department of legislation and law, Ministry of education, science, research and sport of the Slovak Republic, and the Faculty of Law, Komenský University in Bratislava) lies in the topic of a principal importance – critical review of the changes that the Lisbon Treaty brings about in relation with the national parliaments.

Part four contains only one chapter – chapter eight – with the title Lisbon Treaty and the EU system of courts (author – JUDr. V. Stehlík, PhD. – Department of European law, Faculty of Law, Palacký University in Olomouc). The topic is of an extraordinary importance and the author offers concise study elaborated on the grounds of rich source material and scientific literature. The author sees the benefits of the Lisbon Treaty in establishment of a firm base for still stronger protection of human rights a) by enhancement of powers of the EU Court of Justice in the field of the third pillar, b) by integration of the EU Charter of Fundamental Rights into primary law. What I consider a positiveness of the study is the fact that the author limits the necessary description to minimum and the article thus presents an analytical set of assessments and reflections, well balanced and coherent in content.

Part five is introduced (chapter 10. – author dr. E. Ruffer, Ph.D., European Law Department, Ministry of foreign Affairs of the Czech Republic) by an extensive analysis of changes in the field of contracting international treaties within EU after the Lisbon Treaty’s coming into effect. The chapter is apparently the work of an experienced expert both in theory and practice, since it is not of only an analytical-descriptive nature, but deals as well with occurring problems and their solutions. Further, Part five includes chapters 11 and 12, devoted to the European External Action Service (author – dr. J. Kušlita – Department of International Law and European Law, Faculty of Law, Trnava University) and the Stockholm Programme including Action Plan for its implementation, and EU Internal Security Strategy (author – Assoc. Prof. JUDr. B. Pikna, CSc., Department of International law and Security Studies, Metropolitan University in Prague).

Part Six consists of one chapter (No. 12, written by dr. O. Hamul’ák – Department of European Law, Palacký University in Olomouc) titled Union versus republic (On the nature of the European integration, erosion of the state

sovereignty and the Czech Lisbon saga). This chapter is a set of carefully selected and well formulated issues, the solution for which the author offers in the light of reflection of Constitutional Court case law, seen from the comparative viewpoint (cf. in particular pp. 238–252).

Undoubtedly, the reviewed book is, in particular thanks to extraordinarily creative contribution of Assoc. Prof. N. Šišková, the leader of the author team, a valuable benefit to recognition of the current stage of development of the European Union. Critical assessment of the Lisbon Treaty, shown in many chapters of this monograph, in our opinion reflects the current conditions of the EU, which supporters of the rejected Constitution for Europe may call development retreat from the set objectives, stagnation and an unsuccessful compromise, while opponents of the EU strengthening, either from the viewpoint of mere consolidation of the EU Member States cooperation and more extensive bolstering of EU bodies, or from clearly anti-federalisation viewpoint, will consider the reached level of the EU development stipulated in the Lisbon Treaty and supplementing acts as a desirable a long-term step of the EU development.

The content of the book induces new asking of questions that were raised at the very establishment of the European Communities and were formulated over and over again during the European process of unification.

Though fully realising that the process of development of the society and its organisational and governing arrangement is something never ending and the only objective thereof is development as such, it may be useful as concerns the EU future, to consider a certain perceivable level of development that will mean an important divide in the current EU status. Many very experienced scientists and politicians already in early 1990's envisaged establishment of European federation through it unifying tendency. A well-known political scientist and lawyer (originating from a German family in Prague), professor of Harvard University Karel Deutsch at the first conference of foreign experts on the preparation of the new constitution for (then) ČSFR, held by the Salzburg Seminar of American Studies in April 1990, predicted that the establishment of the European federation may not be expected before late 2090's. Another participant to the conference, Canadian ex-prime minister Pierre Trudeau fully shared this consideration. Several years later Jacques Delors called the then established European Union "an unidentifiable legal object". In our opinion, this is given by the fact that EU has been transforming, with certain twists and phases of stagnation, from originally internationally legally established Communities into a community that gradually acquires attributes of statehood (a state is characteristic by a complete set of all attributes of statehood, not only by one or several of them), therefore into a subject of constitutional law that is not a subject of only international law, but also a subject of constitutional law,

legal sociology, theory of state, and constitutional legal comparatistics. Further, this consideration raises more questions. Will the European Federation, so far hidden in a misty future, be a classical federation as we know from the constitutional models defined during 18th – 20th centuries? While asking that question, we must add that asking thereof evokes the current actual development of constitutional and international arrangements, in which we clearly see that the reality of functioning of the state power and international relationships noticeably move away from the original arrangement model.

The process of globalisation, currently running worldwide, raises considerations on the establishment of a global constitution – global constitutionalism (cf. the recently established *Global Constitutionalism*, a journal published by Cambridge University Press, that has become very popular), its character and its particular function that will substantially differ from the models of constitutionality on which constitutions of states founded in 18th – 20th centuries are based.

Constitutional arrangement of the European Union becomes the centre point of interest for constitutionalists and internationalists namely for the reason that nowadays it is clear that the process of constitutional globalisation in its initial stages will be distinguished by global regionalisation. Most probably, the European region, with regard to the scope of historical constitutional experience and democratic traditions, will become a laboratory to create a global constitutionalism.

Anyway, we may envisage that the function of the emerging EU constitutional system EU will be completely different from the functions of traditional state powers as they are fixed in still valid state constitutions and the way they are defined by modern theory of state and constitutional law. This function of the EU constitutional bodies will acquire features of the conception of governance formulated at the turn of 1980's and 1990's. According to the Commission on Global Governance¹, “the process of governance at global level should be approached in particular as interstate cooperation, including collaboration of non-governmental organisations (NGO), civil movements, private supra-national corporations and capital market. The concept of governance is not viewed institutionally but from the viewpoint of process. It is the actual functioning of public power, emphasising that public power is considered the power that in practice exercises the public power, not the one that is exclusively defined by the constitution and laws. The reason may be seen in the fact that from the beginning 1990's the private sphere began to exert influence over the

¹ The Commission on Global Governance, *Our Global Neighbourhood*, Oxford University Press, 1995, pp. 2–3.

lagging state- and international institutions to the extent that practical solution of many issues, formerly belonging to the state power and international institutions established by the states, factually devolved over to the private sector that thereby acquired many attributes of public power”.

One of the key questions that in our opinion arise before the authors of this reviewed book and its readers is the future determination of the European Union: will it grow towards the classical concept of statehood or towards the above mentioned concept of governance?² That question is asked by both theory and practice still more often today. Our opinion is that the future development will be characteristic by permeation of both the development trends.

In conclusion, we would like to acknowledge the author team led by experienced scientist N. Šišková for the creation of a valuable work that will enrich both theory and practice.

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² Eriksen, E. O., and Fossum, J. E., *Europe at a Crossroads: Government or Transnational Governance*, (in Joerges, Ch., Sand, I. S., Teubner, G., *Transnational Governance and Constitutionalism*), Oxford and Portland, 2004, pp. 115–143.

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