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Course: Introduction to the EU (European Union) Law

[2] Sources of the EC/ EU Law

* the European Communities and the European Union are *something* between international organisation and federation

* their law must be hybrid of international and national (state, municipal) law.

It is often talked about the third type of law

Please discuss nature of both national laws and international law!

State law(s)

State law is addressed to individuals (persons or entities under state jurisdiction).

* Key source of law is an act (written document issued by legislator): however, names for them can differ: law, code, decree, regulation etc.

* Legislator creates it as binding for entire population. Population itself has not participated at all (monarchy, tyranny) or participated only indirectly with their representatives (democracy).

There must be some legislative authority: monarch or parliament.

Everybody - even individual which oppose the legislation - is bound by it.

Requirement of consensus is absurd if millions of individuals are involved.

* Law of a modern state is hierarchical (constitution, law, decrees, by-laws).

* State law is enforced by state authorities, coercion of individuals is common.

* There are many states, i.e. there are many state laws.

International law

addressed to states.

The key source is international treaty (convention, agreement).

International treaties binding only for contracting parties (states agreeing with them). There is no homogenous international law. It is mixture of bilateral, plurilateral and multilateral treaties.

Only basic principles of international law are mandatory for every state.

An additional important source until today: custom.

International law has no central enforcement: pressure of states or international community.

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Hierarchy of EC/EU law

* Primary law: treaties agreed and ratified by the Member States

* Secondary law: acts of EC/EU institutions

* subsidiary law, external law, basic human rights (especially European ones)

Primary law

* offspring of international law

* several founding treaties, treaties-revisions and accession treaties (cluster of them, later treaties amending earlier ones).

* concluded by the states involved in integration process (founders, members, candidates).

Agreed by state executive officials (prime ministers, ministers etc. at intergovernmental conferences „summits“) and ratified (approved as international obligation of particular states) according to constitutional provisions or practice (including assent of parliaments or entire nations)

The most important founding treaties:

* **EC Treaty (ECT)**: Treaty Establishing the European Community (1957 in Rome): principles, institutions, secondary law, procedures, economic freedoms, specific economic policies (1st pillar)

* **EU Treaty (EUT)**: Treaty on the European Union (in 1992 in Maastricht): non-economic integration, common foreign and security policy, justice and internal matters (2nd and 3rd pillar).

* **Treaty of Accession** (in 2003 in Athens): legal base for Czech (and other) membership.

„**European Constitution**“ intended to replace almost all recent treaties. No real constitution, but „Treaty establishing a Constitution for Europe“ (Constitutional Treaty)

Primacy of EC treaty rules (only if self-executing, if directly applicable)

* Direct effect

EC Treaty to be applied mostly by executive and judiciary of the member states

It creates rights and duties for individuals)

* Priority if contrary to the member state law

(absolute priority: even towards state constitution!)

* both principles established by caselaw of the Court of Justice

(van Gend en Loos, Costa/Enel and Internationale Handelsgesellschaft)

Traditional approach towards international law: international treaties are binding for contracting parties. They decide whether and to which extent these treaties are applicable on individuals.

EU Treaty: traditional approach

Secondary law

Regulations – addressed to everybody (all persons and entities) under jurisdiction of the member states.

Direct effect and priority expected by EC Treaty.

Used if single community-wide rules needed and unity shall be visible.

Regulations are used in agricultural, regional and transport policies, for coordination of social security and cooperation of civil judiciary.

Regulations usually to be accompanied by institutions, sanctions and procedures of state law.

Directives – addressed to member states.

The Member states are required to introduce or maintain their standards in their state law.

Instrument of state law can be selected by themselves (new act, amendment, decree, by-law). Certainly, it must be law.

States held responsible if fail to transpose correctly until deadline.

Directives used for tax, labour, environmental, regulatory affairs.

the Court of Justice developed the doctrine of direct effect if not transposed in time. Individuals can claim directly applicable rules towards state (widely understood) or be saved from application of rules of domestic law which shall not exist (Ratti). Direct effect not expected if relations among individuals (Faccini-Dori).

Decisions – binding for states or individuals addressed to them

Recommendations, opinions – not binding, only indirect legal effect.

Acts of the 2nd and the 3rd pillar: many different documents established by EUT common positions, common actions, decisions, framework decisions) binding for member states

Subsidiary law: Treaties concluded by member states (sometimes not all, sometimes including non-member states) for enforced integration or cooperation.

External law Treaties concluded by EC or EC and its members states with non-member states or other international organisations.

Basic rights the EC/EU has not its own catalogue of basic human rights. Therefore, it gradually accepted standards of international law, especially

European Convention of Human Rights of the Council of Europe as understood by its European Court of Human Rights.

Linguistic regime of the EC/EU law Primary law written in 21 authentic language versions. Same high number of official languages – regulations, directives and other acts have (or shall be – many documents not translated into all languages) 21 official versions. How to resolve dissonances of various linguistic versions?

Publication of the EC/EU law

Official Journal of the European Union – publication in OJ as condition of validity

EURLex – www service of the EU <http://europa.eu.int/eur-lex/lex/en/index.htm>

Celex numbers for identification of documents

+++ Homework ++++++

Read judgement of the Court of Justice: Van Gend en Loos (No. 26/62), celex.n. 61962J0026 !