

**The supranationality problem in the formation of interstate associations  
(the case of the Eurasian Economic Union)**

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*Abstract*

The formation of the Eurasian Economic Union has given rise to an abundance of opinions regarding various aspects of organization of this new interstate association. The question of the organizational structure of the Eurasian Union, and the basic principles underlying its construction is among the discussed ones. The paper analyzes the concept of "supranational organization". In particular, the different doctrinal approaches to the study of supranational international organizations are given, their basic features are formulated, including reference to legal independence within the framework of its competence and uncontrollability by Member States; the right to make regulations mandatory for execution by Member States; operation of interstate union officials in their personal capacity and not as representatives of Member States; decisions by a majority vote in proportional (weighted) voting; possibility to appeal acts of a supranational authority only in court.

The authors also address the problem of application of the supranational principle elements in the construction of the European Union and the EEU administration system.

The use of such methods of investigation as a comparative legal, systematic and structural, formal and legal, allowed the author to conclude about the absence of

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supranational features to the full extent in the EEU bodies and to identify concerns of countries for the loss of their sovereignty as the main reason for this decision.

*Keywords:* supranational organization, EEU, principles, authorities.

### *Introduction*

Institutional system of any interstate association is based on the principles which have been recorded in the founding documents. The Eurasian Economic Union is no exception. Its organizational structure is based on the general principles which are universal and applicable to all activities of the Union. They are codified in the Article 3 of the Treaty on the Eurasian Economic Union as of 2014 (EEU) in the following terms: respect for the universally recognized principles of international law, including the principles of sovereign equality of Member States and their territorial integrity; respect for differences of political structure of the Member States; mutually beneficial cooperation; equality and taking into account the national interests of the Parties; adherence to the principles of market economy and fair competition; functioning of the Customs Union without exceptions and restrictions after the end of the transitional period [1].

The activities of such a powerful inter-state association as the European Union is founded on the principles reflected in the founding documents, as well as set out in the reasoning of the General Court of the European Union decisions. Among these principles are: legality, subsidiarity, proportionality, transparency, respect for human rights and fundamental freedoms, equality, environmental focus, collaboration [2, p.224-324].

As you can see, a supranational principle is not formulated and is not formally codified in those basic principles of interstate associations. However, the terms "a supranational body," "supranational law" are widely used in legal doctrine. For example, the EU Court of Justice, the EU Commission, EU Parliament, the Court of Auditors are called as the supranational institutions (bodies) in the European Union.

Even at the dawn of the European Communities supranational institutional mechanism has been established (Treaty of Paris in 1951) which "continues to be in force to this day, but as a mechanism of political power throughout the European Union" [2, p.84]. It should be noted that "any international treaties, judicial decisions, as well as in any other sources of law does not give a definition of this concept" [3, p.71].

In this context, the purpose of the work is determined by the need to identify the content of the supranationality principle and its features in the formation of interstate associations. This goal is achieved through the analysis of the legislation of relevant intergovernmental organizations.

### *Methods*

The method of comparative legal analysis of the European Union and the EEU institutional structure allowed revealing a supranational basis in structure of the key bodies of the intergovernmental organizations and highlighting their features.

The use of structured system method of obtaining knowledge has allowed identifying the main features of supranational international organizations.

Formal legal research method was used in determining the content of concepts such as "supra-national", "supranational organizations", "international communication", and others.

### *Discussions*

Supranationality as a principle of organization and activity in its various aspects is actively developed in the doctrine of international law. Such constructions as "supra-national organization", "supranational law", and "supranational authority", used to refer to entities vested with powers specific to the goals and objectives of international organizations, and interstate associations are subjected to analysis. It has been suggested that the term "supranationality" can be used to characterize an international organization as a whole, but not for the law of the organization. It is emphasized that the "supranational law by its nature is none other than a part of the

international legal system that is just not able at this stage to develop to a certain level of statutory self-regulation" [4, p.21].

In this regard, we offer to stay on the notion of a "supranational organization."

M. Bedjaoui considers that supranational organizations have the power over the states, and their goal is creation of supranational legal standards (and sometimes even against the will of states) which should be applicable in the relations between all the actors in the territories of the Member States of the organization. The author believes that supranational sovereignty is transferred to international organizations [5, p.71].

According to P. Pescatore, a supra-national organization should be regarded as "an organization that was created in order to respond to the common needs of several states, consists of community institutions that are endowed with autonomy in decision-making, as well as endowed with necessary standard-setting, executive and control powers that have an effect on states and private persons" [6, p.171].

Also there is another position in science that supranational international organizations currently do not exist at all, because they are international, and intergovernmental organizations [7, p.47]. Thus, it is believed that the International Civil Aviation Organization, the International Telecommunication Union, and the Universal Postal Union are supranational organizations, as Member States of those organizations do not run the risk to extend away from the rules laid down by those organizations despite the fact that their constituent documents have no indications about their supranationality [5, p.71].

Let's consider that the above points of view do not correspond to reality. In our view, L. Malloun asserts right that supranational organizations are a relatively new milestone in the development of international law. According to him, "supranational organizations are the result of the division of powers between the Member States and the organization to which they gave a part of their sovereignty" [8, p.45].

Indeed, an international organization would be able to realize its supranational properties if its bodies (institutions) will have the right to adopt binding acts in force

in the territory of all member states. This is understandable, because without granting a body of an international organization the appropriate authority, it is difficult to achieve the purposes for which the community of nations has been created. According to A.S. Feshenko "supranationality is a set of powers that the States give to some international body for targeted regulation of their relations, and these powers have priority concerning the respective competences of the Member States, including the possible adoption of decisions binding to them" [9, p. 170].

Transfer of sovereign powers of a state to bodies of an international organization is possible and necessary, but the question is what should be the scope of those powers and the manner in which they would be implemented. A range of transferred competence should not put the state in the "non-returnable" dependence on the international organization. Preservation of sovereignty is provided by the possibility of revocation of the delegated powers without any conditions. In this respect, of the key importance is Article 4 of the Treaty on European Union that states the following: "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State" [10].

On the other hand, there is the problem of realization of decisions made in the practice of international relations. Without the enforcement mechanism, it is difficult to achieve fulfillment by Member States of the prescriptions of an international organization body.

Development of the "supranationality" concept in all its forms allows finding a balance between the interests of States and the need to achieve the goals and objectives of an inter-state association. M.M. Biryukov believes that a "supranationality is "a set of structural, functional and procedural characteristics of an

international organization determining the priority of its competence in specific areas in relation to the respective competences of the Member States. It seems that at the forefront here is a possibility of adoption by an international authority of decisions binding for the Member States " [11, p.140].

Describing an interstate association body as a supranational, a number of features which it should have, must be noted. Firstly, it acts as a legally independent entity within its competence and not controlled by the Member States. Secondly, such a body is entitled to adopt acts which are binding for Member States even in the event of a negative attitude toward them on the part of one or several states. Thirdly, officials of intergovernmental associations act in their personal capacity and not as representatives of Member States. Fourth, decisions are taken by a majority vote by proportional (weighted) voting. Fifth, the acts of the supranational authority can be challenged only in court. The criteria are met by supranational EU institutions. Although this practice has met strong resistance from some member states, "by the end of the 1980s, all supreme courts of the Member States formally agreed with this doctrine" [11, p.104].

The situation is different with the bodies of the Eurasian Economic Union.

The treaty establishing the EEU on 29 May 2014 included to a number of bodies of the Union the Supreme Eurasian Economic Council (Supreme Council), the Eurasian Intergovernmental Council (Intergovernmental Council), the Eurasian Economic Commission (EEU Commission), the Court of the Eurasian Economic Union (Court of Union). The Commission consists of the Council and the Commission Board. Of these, only two bodies could be considered as supranational: the Commission Board and the Court of EEU. The rest, the Supreme Council, the Intergovernmental Council, the Council of the Commission, shall consist of representatives of Member States and are intended to reflect the interests of their states.

The Supreme Council is the authority of political leadership that makes decisions aimed at implementing the objectives of the Union. It is composed of the heads of the Member States. The Supreme Council considers fundamental questions on the Union's activities, determines the strategy, integration development trends and prospects (Article 12 of the Treaty). Decisions of the Supreme Eurasian Economic Council shall have precedence over the decisions of the Eurasian Intergovernmental Council and the Eurasian Economic Commission.

The Intergovernmental Council is a body of the Union that consists of the heads of the Member States' governments. Its meetings are held as necessary, but at least 2 times a year. An extraordinary session of the Intergovernmental Council may be convened on the initiative of any Member State or the Chairman of the Intergovernmental Council.

The Council of the Commission composed of representatives, one from each member state who is the deputy head of the government and endowed with the necessary powers in accordance with the laws of the state. Thus, the Council of the Commission consists of officials who have a certain status in the government of a Member State and authorities of the Union do not affect on their appointment. The Member States shall only notify each other as well as the Commission Board on their representatives in the Council of the Commission.

Another procedure is used for formation of the Commission Board. It is composed of representatives of the Member States on the basis of the principle of equal representation of the Member States. The number of members of the Commission Board and the distribution of responsibilities among its members is determined by the Supreme Council. One of them is the Chairman of the Commission Board.

The members of the Commission Board work in the Commission on a regular basis. In exercising their powers, they are independent of government bodies and

officials of the Member States and can not seek or receive instructions from authorities or officials of the Member States.

Members of the Commission Board are not allowed to combine work in the Board with the other work or engage in other paid activities, except for teaching, scientific or other creative activities for the entire term of their office.

Thus, the Commission Board may be considered for eligibility which is characteristic for a supranational body. However, on closer acquaintance with the powers of the Board and the organization of its work it can be found close collaboration between the Commission Board with the Commission Council and other bodies of the Union turning on the most important issues into relations of the hierarchical subordination.

Thus, the Board annually reports on its work to the Commission Council, and its meetings may be attended by representatives of the Member States. Execution of the decision of the Board may be suspended by the Intergovernmental Council, and amended or repealed by the Supreme Council. Thus, it is clear that the Commission Board does not have full autonomy in the adoption and implementation of its decisions, and therefore it can not fully be called a supranational body of the Union.

The only body corresponding to criteria of a supranational body is the Court of the Union. It has rights of a legal entity, keeps its own documentation, has a seal and letterheads with its name, establishes its official website and the official bulletin. It consists of two judges from each member state. They all have equal rights. Control of its activity is executed by the President of the Court which has a deputy. They have been elected a seat in the Court by judges from the Court in accordance with the Regulations and approved by the Supreme Eurasian Economic Council.

When taking up their posts, a judges ceases to be a representative of the State which nominated him/her for the post. The judges also are not representatives of the territories, nations, nationalities, social and religious groups, and individuals.



After the appointment, a state is not able to demand the release of judges from office except for the grounds specified in the Statute of the Court. Therefore, its impact on a judge is objectively insignificant.

### *Conclusions*

Founders of the Eurasian Economic Union have tried to exclude from the organizational structure of the Union the bodies with a pronounced supranational character. One can speculate on the reasons for this decision, but the fact remains that Member States are committed to neutralize any attempts to attack on their sovereign right to influence the content of binding acts of the Union. This approach is based on the simple assumption that any supranational body gets powers from sovereign states and upon a transfer of the powers to the body the states lose a part of their sovereign powers. It is hardly possible to share those fears, since upon transfer of its powers a state does not lose its sovereignty and can always get out of the interstate association (to terminate membership in an international organization).

That's exactly right that only states may possess attributes of sovereignty, and that an international organization is not independent and has no the political will [13, p.1032]. Only a state has the right to decide what amount of authority could be given to the bodies of an international organization. The judgment is fair on that only a sovereignty creates so-called supranational organizations such as the European Union [14, p.38]. The lack of political will of an international organization eliminates the unconditional imposition of decision-making by supranational bodies of Member States. The very nature of an international organization implies voluntary compliance by Member States of a supranational law (its rules) on their territory. Withdrawal from an integration association eliminates the need to follow the requirements of the Union bodies. Only federalization could lead to the transfer of sovereign rights to supranational bodies.

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