

## HISTORICAL-LEGAL CHARACTERISTICS OF THE EVOLUTION OF THE LEGISLATIVE FUNCTION OF THE EUROPEAN PARLIAMENT

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It has been noted that during the last sixty years, the institutional role of the European Parliament has increased enormously, which puts it on equal footing with the Council of European Union, and serves as an example of the fact that the widening of integration processes can be successfully matched with the democratization of the EU supranational institutional system

**Keywords:** supranationality, parliamentarism, democracy, ordinary legislative procedure, special legislative procedure.

Today, all social, economic, and legal processes are strongly intertwined with the development of integration. Thus, it is not surprising, that the famous American scientist G. Haberler noted that 'We live in the age of integration. Every conceivable – or inconceivable – combination of countries has been proposed, more or less seriously, as a candidate for integration – other planets and outer space being almost the only areas that do not yet figure in any of the many plans and proposals...' [10, p. 1]. In accordance with modern integration processes, the European Union institutions need to be studied in greater detail. One of the priorities in the structuring of the Union lies in the development of the European Parliament, as this is the representative body of the Union and the core element. The European Parliament is a unique, permanent, multinational body, which represents over 500 million people, and does not have any analogues in the world to rival its supranational character. The powers of the European Parliament can be viewed from three angles. First, powers to appoint and dismiss. Secondly, powers to investigate. Thirdly, powers in relation to the budgetary and legislative process. According to Article 14 (1) Treaty on the European Union, the European Parliament shall, jointly with the Council, exercise far reaching legislative and budgetary functions [1].

Historically, the European approach to the separation of domestic powers has its roots in the views of Charles de Secondat Montesquieu, the French political philosopher, who held that '...there would be an end of everything, were the same man or the same body, whether of the nobles or of the people', to exercise the three government powers: enacting laws, executing the public resolutions, and adjudicating crimes and disputes between individuals [15, p. 1033]. This idea, which started to be actively promulgated in the XVIII century, became a cornerstone in the process of emerging nation states during XIX-XX centuries. Gradually, the rights and responsibilities of enacting laws were transferred from European monarchs to parliamentary assemblies, which were elected, or made up of, representatives from the different social classes. It should be stressed that in the views in thinkers of those times, the democratic system of government rested exclusively on the authority of the people: 'The power of the state should be derived from the people'. And the channel for this

lies in the development of a strong parliamentary institution [11, p. 72].

At the same time, the idea of parliamentarism emerged in an all-European context. In 1693, William Penn, the English philosopher, published his work 'Towards the Present and Future of Europe by the establishment of a European Diet, Parliament, or Estate'. According to his proposal, a future 'European Parliament' would have to be an assembly made up of authoritative people, and that it should be convened regularly, listen to all complaints, and eventually issue a verdict inspired by the principle of justice. During the next centuries, the idea of the creation of a European Parliament became popular among intellectuals and politicians, but did not come into existence until the European Community was established in the second half of the XX century, which led to the emergence of the European Parliamentary Assembly, and was composed of parliamentary delegates from EC member-states.

After Ukraine gained independence, a decision was made to initiate closer political and economic relations with the European Union. Several documents were enacted in order to form the appropriate legal framework for such cooperation. The latest one being the Association Agreement, which was signed in 2014, according to which, Ukraine received an invitation to enter the EU internal market, with the eventual prospect of full political integration. The membership in EU internal market requires the adoption of the great number of EU legislative acts which were enacted in the labour sphere, social and consumer policy etc. A better understanding of the genesis and evolution of the EU institutional legislative mechanism will assist Ukrainian MPs in the process of approximation of the Ukrainian legislation with EU law. That's why, the aim of this article is to investigate the development of the EP legislative function in its entirety and complexity.

The above points were evaluated by leading scholars' viz. Prof. G. Haberler, Prof. W. Hallstein, Prof. J. Piris, Prof. A. Rosas, Prof. H. Schmitt, Prof. D. Swann, Prof. O. Vyshnyakov.

Analyzing trends and patterns in scientific literature during the last decade, we see that European Parliament generates much interest in the eyes of numerous experts. Among them, American Professor A. Rosas, who demonstrates a critical attitude towards the Council of EU in his paper

‘Separation of powers in the European Union’, mainly because of its national minister’s composition, praising European Parliament for its formation by direct universal suffrage [15, p. 1034]. At the same time, J. Piris, the former legal counsel in the Council of EU, in his book ‘The Lisbon Treaty. A Legal and Political Analysis’ argues that only the increase of EU’s power can ‘democratize’ the way the EU functions [14, p. 114].

Defining the problem, it should be stressed that with the end of WWII, it soon became evident that the European continent had to reject the primacy of nation-state principles, and to re-establish itself as unified body. On May 9 1950, the French foreign minister, R. Schuman, issued a proposal to pool the Franco-German production of coal and steel, as a whole, under a common High Authority, which would eventually provide an opportunity for other European countries to participate in the venture. J. Monnet, the author of the Schuman Plan, thought that this plan would create a concrete foundation of the Federation in Europe [12, p. 321]. American scientist D. Swann considers a French plan, essentially political in character, because it sought to end the historic rivalry of France and West Germany not only ‘unthinkable but materially impossible’ [17, p. 7]. The Schuman Plan also had the practical advantage of being relatively focused. The Council of Europe, in its political approach, and the customs union, in its economic one, had been too broad too soon and aroused the maximum opposition. Coal and steel were more manageable [8, p. 202]. In less than one year, the Treaty Establishing European Coal and Steel Community (TECSC) [6], was signed by six countries: France, Germany, Italy, Belgium, Netherlands, and Luxembourg. As the American scholar M. Dedman notes, the Treaty of Paris 1951 was a complex commercial treaty establishing the European Coal and Steel Community (ECSC), as a regulated market-sharing arrangement under supranational control. It was designed to balance the six State’s particular vested interests in coal and steel production, and to facilitate the achievement of national objectives in these two prime sectors [7, p. 55]. Following the appropriate ratification procedure, the TECSC came into force, and the ECSC began operations. Within the ECSC institutional structure, the main legislative body was the High Authority, and the supervisory role was attributed to the Common Assembly, which consisted of representatives of the member-states (Art. 20). The creation of the Common Assembly represented both Europe’s parliamentary tradition and the fear of a potentially absolute technocracy. Thus, Members of the High Authority had to attend all meetings and answer all questions put by the Assembly or by its members (Article 23). The Common Assembly discussed general reports submitted by the High Authority, and a two-thirds majority vote was sufficient to carry a motion of censure, after which the High Authority resigned as an acting body (Art. 24). As R. Schuman said: ‘...for the first time, an international assembly would be more than a consultive organ; the parliaments themselves, having surrendered a fraction of their sovereignty, would regain that sovereignty, through its common exercise...’ [7, p. 60]. As opposed to the Consultive Assembly of

the Council of Europe, which from the beginning, has been primarily a forum for a debate, the parliamentary assembly of the ECSC, had real political responsibilities [13, p. 20]. We should agree with German scientist H. Schmitt, which the Common Assembly, then, was a parliament, not a legislature, whereas the national representative organs were determined to maintain their monopoly on the legislative function and preserve the limits of supranational integration [17, p. 128].

On 25 March 1957, two new treaties were signed which increased the scope of the integration processes for the above-mentioned countries. The Treaties established the European Atomic Community [5] and the European Economic Community [4]. For both Communities, decisions were taken by the Council on proposals submitted by the Commission. During that time, the Assembly remained an advisory body, composed of the specifically chosen deputies, and its legislative role was limited to a process known as ‘consultation’, which required that before legislation could be adopted, the Assembly was to be consulted. In case, the Council failed to consult the Assembly, the legislative bill was void. Taking this to account, it is not a surprise that the first President of the European Commission described European Communities as ‘underdeveloped democracies’, from the parliamentary outlook.

The authority of the European Parliament, to some extent, increased after members were elected by the people, as opposed to being nominated by the member-states parliaments. Such elections led to increased prestige and legitimacy. In a resolution on 30 March 1962, the Parliamentary Assembly was renamed the European Parliament. This move was intended to create criteria similar to those of ‘traditional’ parliaments. But still, the European Parliament lacked a representation. The situation has changed on 20 September 1979, when Brussels Act concerning the election of the representatives to the Parliament was adopted. The application of European Parliament elections indicated a significant change in the status of the Parliament. However, the European Parliament remained largely advisory body.

The legislative power of the European Parliament has grown considerably since the adoption of the Single European Act in 1986, which was a huge step towards the creation of the EU internal market. It introduced a process known as ‘co-operation procedure’, according to which the European Parliament was granted the right to reject any draft legislation, voted by the qualified majority Council of European Union. This veto could be overcome only by the unanimous agreement of the Council [3].

The next step in enhancing the legislative role of the European Parliament was made under the Maastricht treaty of 1992, which introduced a procedure known as ‘co-decision’, which allowed the EP to veto, by absolute majority, any proposed legislative measure put forward by the Council. The EP’s powers in the legislative process were transformed from the weak and essentially unconstructive power of delay to a stronger and potentially constructive role in the drafting of legislation [18, p. 57].

Following the fall of the Berlin Wall and the collapse of the Communist system in Eastern Europe, most of the countries of Central and Eastern Europe finally decided that their ultimate destiny lies in joining the European Union. This fact called the necessity to the further strengthening of the role of European Parliament. In 1997, the Amsterdam Treaty was signed, which extended the 'co-decision' procedure to such areas as EU internal market.

Further evolution of the status of the European Parliament is linked with the preparation and adoption of the Lisbon reform treaty, which clarified and expanded the competence of the European Parliament. The consultation procedure remained within a very narrow field of application, while the use of the cooperation procedure was discontinued. According to Article 289 Treaty on the Functioning of European Union [2] (former Treaty establishing European Economic Community), any legislation can now be adopted in two ways. The 'ordinary' legislative procedure (former co-decision procedure) has now become the main legislative procedure by which Union acts are adopted, and involves the Commission submitting a legislative proposal to both the Council and the European Parliament. The scope of co-decision has been extended to about thirty more cases of variable importance and provided for in fourteen new legal bases. The most significant sectors of extension are the area of freedom, security and justice (FSJ area), co-ordination of social and security for migrant workers, culture, measures necessary for the use of the euro, the structural and cohesion funds, the establishment at EU level of intellectual property rights and other centralized regimes, common organization of the markets and general objectives in agriculture, definition of the framework for implementing the common commercial policy, amendments to the Statute of the Court of Justice and rules on 'comitology' [14, p. 118]. If both the Council and the European Parliament approve the proposal, it will be adopted. In the absence of consensus between the European Parliament and the Council about the proposal, a conciliation committee will be convened by the Commission in order to draw up a joint text, which is acceptable to the both parties. If consensus cannot be achieved within six weeks, the proposal will be rejected. The second is a 'special' legislative procedure' which is used in special circumstances stated in the TFEU. Special procedure provides an adoption of the regulation, directive or decision by the European Parliament with the participation of the Council or by the Council with the participation European Parliament (Art. 289 (2) TFEU). This procedure operates in 33 areas such as social security and protection (Art. 21 TFEU), justice & home affairs

concerning passports (Art. 77 TFEU), taxation (Art. 113 TFEU) etc.

Legislative initiative still belongs to the Commission. Discussions based on three readings of any bill are instrumental in the relationship of the Parliament and the Council, and the final decision depends on the consent of both parties in this process (Art. 294 TFEU). As a result, a number of important legislative decisions, including those related to international relations; depend on the general consent of the Parliament and the Council. This procedure was introduced during the signing of the Treaty of Nice (2001), in which most policy areas have a so-called principle of 'joint decision', in which the European Parliament and the Council of the European Union have the same powers, and every legal draft submitted by the Commission, should be subject to two readings. Differences should be resolved within the third reading.

It should be stressed that, even taking into account the significance of the EP legislative powers within ordinary legislative procedure, its formal influence is still more limited than those of national parliaments, most of which have formal approval over all national legislation. But, as the British scholar R. Scully argues, the second and more important point is that the EP actually uses its powers to a greater extent than do most national legislatures. Parliaments in most national chambers are bound by strong ties of party loyalty to support or oppose a government, whereas the European Parliament, with more diffused party loyalties, seems to have a greater willingness to exploit available powers to the full [9, p. 167]. In comparative perspective, it is possible to say that EUP influence actually ranks even higher than many of its national counterparts.

In conclusion, it is necessary to stress that the legal and political role of the European Parliament, within the whole institutional structure of the EU, shows a significant tendency to widen and acquire new powers. From a purely consultative role, it has now become an equal partner of the Council of European Union in any legislative process. The EU now possesses a system of two-chamber-legislation, similar to that of the Bundestag and Bundesrat in Germany or Senate and House of Representatives in the USA. Along with the expansion of powers, the Lisbon Treaty established a number of limitations, among which, the European Parliament does not have influence in such key area as EU foreign policy. The supranational and democratic nature of the EUP gives it a unique role in facilitating integration processes. The increase in the legislative powers of the European Parliament can also be considered as an important step towards further constitutionalization of the European Union, which could result in creating a purely federal state – the United States of Europe.

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## **ІСТОРИКО-ПРАВОВА ХАРАКТЕРИСТИКА ЕВОЛЮЦІЇ ЗАКОНОДАВЧОЇ ФУНКЦІЇ ЄВРОПЕЙСЬКОГО ПАРЛАМЕНТУ**

### **Анотація**

Було досліджено, що протягом останніх шестидесяти років, інституційна роль Європейського парламенту значно збільшилась, що ставить його на одну ступінь з Радою Європейського Союзу, та слугує прикладом того, що поглиблення інтеграційних процесів може успішно супроводжуватись демократизацією усієї наднаціональної інституційної системи.

**Ключові слова:** наднаціональність, парламентаризм, демократія, звичайна законодавча процедура, спеціальна законодавча процедура.

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### **Аннотация**

Было исследовано, что на протяжении последних шестидесяти лет, институциональная роль Европейского парламента значительно увеличилась, что ставит его на одну степень с Советом Европейского Союза, и служит примером того, что углубление интеграционных процессов может успешно сопровождаться демократизацией наднациональной институциональной системы.

**Ключевые слова:** наднациональность, парламентаризм, демократия, обычная законодательная процедура, специальная законодательная процедура.