



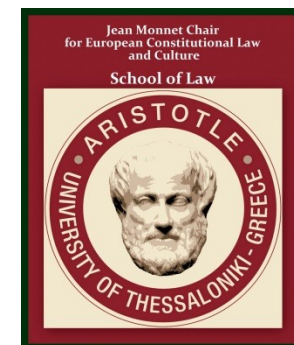
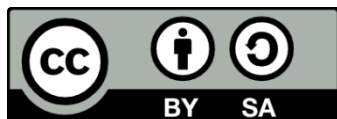
# European Constitutional Law

## Unit 3A: The European Union as a sui generis organization

**Lina Papadopoulou**

Ass. Prof. of Constitutional Law, Law School

Jean Monnet Chair for European  
Constitutional Law and Culture



# Άδειες Χρήσης

- Το παρόν εκπαιδευτικό υλικό υπόκειται σε άδειες χρήσης Creative Commons.
- Για εκπαιδευτικό υλικό, όπως εικόνες, που υπόκειται σε άλλου τύπου άδειας χρήσης, η άδεια χρήσης αναφέρεται ρητώς.



# Χρηματοδότηση

- Το παρόν εκπαιδευτικό υλικό έχει αναπτυχθεί στα πλαίσια του εκπαιδευτικού έργου του διδάσκοντα.
- Το έργο «Ανοικτά Ακαδημαϊκά Μαθήματα στο Αριστοτέλειο Πανεπιστήμιο Θεσσαλονίκης» έχει χρηματοδοτήσει μόνο τη αναδιαμόρφωση του εκπαιδευτικού υλικού.
- Το έργο υλοποιείται στο πλαίσιο του Επιχειρησιακού Προγράμματος «Εκπαίδευση και Δια Βίου Μάθηση» και συγχρηματοδοτείται από την Ευρωπαϊκή Ένωση (Ευρωπαϊκό Κοινωνικό Ταμείο) και από εθνικούς πόρους.



# Περιεχόμενα ενότητας

---

1. Main terms and definitions.
2. Meaning of a European Constitution according to the Treaty establishing a Constitution for Europe.



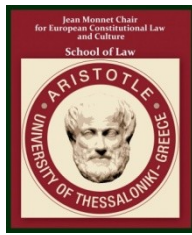
# Σκοποί ενότητας

- Why EU is a sui generis organization?
- What is a Constitution.





ARISTOTLE  
UNIVERSITY OF  
THESSALONIKI



# Definitions

# Why is the EU a sui generis organization? (1 out of 3)

## ➤ Not a State.

- State = Territory + People + Sovereignty
  - Territory of the EU: addition of the territories of the Member states .
  - People: no people but peoples of the European Union. Notion of citizenship is very new and no real feeling to belong to the EU.
  - Sovereignty: all Member states remain sovereigns, EU has its power because of the transfer of competences made by the Member States.
- Costa vs Enel and Van Gend en Loos : the community was established by the states and was built on real powers from a limitation of the competences or a transfer of attribution from the States to the Community.



# Why is the EU a sui generis organization? (2 out of 3)

- **Not an international organization.**
  - No legal capacity : no possibility to sue, no immunity, no real agreements with other states or other international organizations.
  - EU goes further than an international organization: the EU system is an independent source of law with its own legal system and when the direct effect is an exemption in the international organization it's one of the main principles in european law.
  - The european institutions are the best example of the difference with an international organization :
    - Council may vote by qualified majority. Its decisions are binding the Member States.
    - Commission has a near exclusive right of initiating legislation.
    - Parliament directly elected and in co-decision with Council.
    - Independent Court of Justice with binding decisions to the Member States.

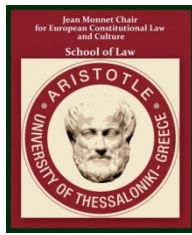


# Why is the EU a sui generis organization? (3 out of 3)

- **A union of States.**
  - ❖ It is a voluntary association group with the purpose to create a community.
  - ❖ For the EU the first objective was economic and now it is politic based on the Member States and the European peoples.
  - ❖ It pretends to become a supranational organization in which the european peoples feel attached by common values.
  - ❖ Article 1 of Maastricht Treaty: «union between the peoples of Europe».
  - ❖ It is in this sense that the European Union is a sui generis organization because it is a union of states with the goal of cooperation but also integration.



ARISTOTLE  
UNIVERSITY OF  
THESSALONIKI



# Meaning of a European Constitution according to the Treaty establishing a Constitution for Europe

# European Union is still in construction and a Constitution is one more step in a very specific sense

- Respect of the sovereignty of the Member States:
  - Article I-1 established the European Union as a peculiar entity, the expression federal States or federation never appear in the Treaty and in this first article.
  - Article I-2 enunciates the values of the European Union which are actually those of the Member States.
  - Article I-5-1 adds that the EU respects the equality of the Member States before the Constitution and their national identity. It means that the EU doesn't have the Competence of Competence to pretend to have a Constitution which governs all the national laws.
- Reinforcement of the EU as a political entity:
  - Article I-7 gives to the EU the legal personality. It permits an homogenization of the Union, an international representation, and a real reinforcement of the institutions :
    - President of the European Council.
    - Minister of foreign affairs to lead a common foreign policy.
- The norms were standardized with the notions of legal act and legal procedure.
- ☐ It shows the will to become a stronger political entity especially at the international level and not to become a State: the Treaty was not written to widen the competences but to clarify the institutions after the laces of the Treaties of Amsterdam and Nice.

# European Union strives for being a federal State (1 out of 2)

- Many symbols about a State.
  - The choice of the word “Constitution” in the Treaty is not insignificant.
  - European Flag, European hymn, European motto (“Unity in diversity”).
  - “will of the citizens and the States of Europe to build their common future”.
- One single and fundamental Treaty.
  - It goes further than a simple revision of the former treaties: abrogation of these treaties (article IV-437) in order to put the Constitution at the highest level of the European norm.
  - In a formal way it contains all the main important rules of the European Union and its supremacy can be seen with the revision of the domestic constitutions to be in harmony with it.

# European Union strives for being a federal State (2 out of 2)

- The Commission ensures that community law is properly implemented by the Member States that's why they can be sued before the ECJ and sentenced to pay compensation to the individuals for the loss they caused when they didn't respect community law and also when the Member States don't comply with the Court judgments.
- The Treaty establishing a Constitution for Europe could be the cornerstone to the construction of a State because even before the Treaty there were a lot of clues making think to a State like the autonomy of the European law, its supremacy, the direct effects.
- In a material sense we can find the first part of a classic constitution about the rules between the powers, because the Treaty was written to rationalize the institutions and describes their relations between them.

# The major importance of the fundamental rights, clue of the construction of a State

- In a material sense the Treaty looks like a real constitution because of the insertion of the Charter of the fundamental rights in order to protect the European citizens.
- The Chart was signed in Nice but never enforced even if it was applied by all the Member States which are all members of the ECHR. And the ECJ often mentions this Convention to uphold the rights and freedoms of the individuals against a Member State.
- Then in the Treaty it was predicted that the EU could become a member of the ECHR as a different entity of the States already members.
- All the part about the fundamental rights in the Treaty establishing a Constitution seems to constitute the second part of the material Constitution.



# Bibliography

- Hermann-Josef Blanke, Stelio Mangiameli (eds), *The European Union after Lisbon - Constitutional Basis, Economic Order and External Action*, 2012.
- Weiler, *Europe's Constitutional Sonderweg*, in: *European constitutionalism Beyond the State*, Weiler/Wind (eds), CUP 2003.

# Σημείωμα Αναφοράς

Copyright Αριστοτέλειο Πανεπιστήμιο Θεσσαλονίκης, Λίνα Παπαδοπούλου «European Constitutional Law. Unit 3A. The European Union as a sui generis organization». Έκδοση: 1.0. Θεσσαλονίκη 2014. Διαθέσιμο από τη δικτυακή διεύθυνση: <http://eclass.auth.gr/courses/OCRS395/>



# Σημείωμα Αδειοδότησης

Το παρόν υλικό διατίθεται με τους όρους της άδειας χρήσης Creative Commons Αναφορά - Παρόμοια Διανομή [1] ή μεταγενέστερη, Διεθνής Έκδοση. Εξαιρούνται τα αυτοτελή έργα τρίτων π.χ. φωτογραφίες, διαγράμματα κ.λ.π., τα οποία εμπεριέχονται σε αυτό και τα οποία αναφέρονται μαζί με τους όρους χρήσης τους στο «Σημείωμα Χρήσης Έργων Τρίτων».



Ο δικαιούχος μπορεί να παρέχει στον αδειοδόχο ξεχωριστή άδεια να χρησιμοποιεί το έργο για εμπορική χρήση, εφόσον αυτό του ζητηθεί.

[1] <http://creativecommons.org/licenses/by-sa/4.0/>



ARISTOTLE  
UNIVERSITY OF  
THESSALONIKI

OPEN  
ACADEMIC  
COURSES



# End of Unit

Επεξεργασία: Vasiliki Kokota  
Θεσσαλονίκη, Χειμερινό Εξάμηνο 2014-2015

