Treaty on the Functioning of the European Union (TFEU) void and organs of the EU without power to act since 01.05.2013 ? – The application has been filed !

(press declaration by the plaintiff of 2 BvR 710/12 and 2 BvR 1445/12 on art. 136 par. 3 TFEU)

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Sarah Luzia Hassel-Reusing in front of the International Criminal Court (ICC)

It has happened. At the 01.05.2013, the insertion of art. 136 par. 3, which consists of 2 sentences, into the Treaty on the Funtioning of the European Union has been enacted, after Czechya as the last EU member state has ratified it. The first sentence enables mechanisms for the strengthening of the „financial stability“ of the financial sector (also misleadingly called „stability of the Euro currency area as a whole“) in the euro currency area, among them particularly those for the „European Financial Mechaism“ („Greece Support“, EFSM, EFSF, and ESM) and for the EU economic government (tightened Stability and Growth Pact, Imbalance Procedure, and Budgetary Surveillance).

The second sentence obliges to connect all „financial aids“ within these mechanisms to „strict“ conditions. How strict this is meant, can be found neither in the wording of the article, nor in the recitals of its initiating. The only clear statement on the extent of the strictness is included in the conclusions of the Ecofin council (the economical and financial ministers within the Council of Ministers of the EU) of the 10.05.2010, that the conditions shall be strict as in the „practice“ of the International Monetary Fund (IMF). Besides that, the „task force“ (with all federal financial ministers of the EU member states, with EU currency commissioner Olli Rehn, with the then chairman of the Eurogroup Jean Claude Juncker, with the then ECB President Jean-Claude Trichet, and under the lead of the President of the European Council Herman Van Rompuy) has recommended in no. 49 its report of the 21.10.2010, that the conditions shall be „very strict“. These statements are the most important and most official ones from the time of the developing of art. 136 par. 3 TFEU, which say something on the extent of the strictness, and so they govern, according to art. 31 Vienna Treaty Law Convention, the interpretation of the „strictness“.

At the 02.05.2013, now the application by the civic and human rights activist Sarah Luzia

Hassel-Reusing, to state the voidness of the TFEU, has been filed to the Constitutional Court, because this very obligation to a strictness as in the „practice“ of the IMF incurably violates „ius cogens“ and has as a result, according to the legal point of view of the civic and human rights activist, infected the TFEU with voidness. According to art. 53 Vienna Treaty Law Convention, international treaties, which violate „ius cogens“, are completely void and thus ineffictive. The Vienna Treaty Law Convention does not contain any possibility to heal this voidness.

Before the second senat of the Constitutional Court, there are constitutional complaints against all 3 versions of the StabMechG, against the ESMFinG, against the law on the modification of the law on the administrating of the public debts (BSchuWG), and against the laws consenting to the ESM, to the Fiscal Compact, and to art. 136 par. 3 TFEU; one of them has been filed at the 29.05.2010, one at the 06.04.2012 (both today under file number 2 BvR 710/12), and six of them at the 30.06. 2012 (under file number 2 BvR 1445/12). In addition to that, she has, at the 21.11.2012, filed to the International Criminal Court (ICC) at The Hague a charge against unknown regarding the suspicion of crime against humanity by damaging the health of the Greeks (art. 7 par. 1 lit. k Roman Statute).

To the „ius cogens“ belong prescriptions of international law with validity in many countries of the world, regarding whom the vast majority of the countries holds the legal point of view, that they have a particularly high rank above the normal rank of international law. Among the „ius cogens“ is, as its highest part, the UN Charter (art. 103 UN Charter), but are also the universal human rights of the United Nations (art. 1 no. 3 UN Charter, art. 28 UDHR, art. 29 no. 3 UDHR, no. 279-282 of the judgement of the EU Court of 1st Instance on T-306/01 and the ICJ expert opinion of the 08.07. 1996 mentioned there), the universal criminal law, the Geneva and Hague Conventions of humanitarian law, several resolutions of the UN General Assembly, several unwritten legal principles, i. a. .

The nullity according to art. 53 Vienna Treaty Law Convention results, in this case, from an incurable violation of the universal human rights and possibly from incompability with art. 7 par. 1 lit. k Roman Statute. In addition to that, several charges have been filed to the International Criminal Court (ICC) for the suspicion, that by the conditions, on which the IMF has cooperated as a part of the Troika, particularly in the scope of the Greek debt restructuring via the EFSF, the health of the Greeks has been damaged by large scale, systematical, and intentious damaging of the health system and of the food supply, and that this way a crime against humanity according to art. 7 par. 1 lit. k Roman Statute has been committed. Already at 1988, the IMF employee Davison Budhoo has, in his written notice to the IMF on the cancellation of his job, accused the International Monetary Fund of genocide. In the foreword of the German edition of his written notice „Genug ist Genug“ („Enough is Enough“), which has been published by the Heinrich Böll foundation, Budhoo has stated in 1991, that UNICEF has, after a diligent investigation, confirmed his accusations of genocide, at that UNICEF, in addition to that, has found, that the IMF and the World Bank have, since 1982 (i. e. from a current perspective within a period between 1982 and 1991) been world-wide responsible for the death of up to seven million children under the age of five years. If these numbers are correct, then in the whole history of mankind only the IG-Farben / Nazi regime has, with Holocaust and Second World War, caused more victims than IMF and World Bank, which however, have caused significantly

more victims than Stalin, King Leopold, Mao, or Pol Pot.

In section VI. of the constitutional complaint of the 06.04.2012 and again in section IV.5 of the constitutional complaints of the 30.06.2012, on each about 40 pages, violations by the IMF especially of the universal human rights to social security incl. social insurance (art. 9 UN Social Pact), to food (art. 11 UN Social Pact), and to health (art. 12 UN Social Pact) have been shown, particularly referring to the book „The Globalization of Poverty and the New World Order“ by the economist Prof. Dr. Michel Chossudovsky (Global Research), but also referring to many further sources. This way, it has been proven to the Constitutional Court already at the 06.04.2012, that the „practice“, i. e. the usual behaviour of the IMF, takes nearly no consideration at all particularly to the social universal human rights, so that an obligation to a strictness as in the „practice“ of the IMF is obviously incompatible to the universal human rights, and this, according to art. 53 Vienna Treaty Law Convention, makes the treaty void.

Starvation has been caused by IMF condtions by cuts into food and fuel subventions at Bolivia, Indonesia, Zambia, and Venezuela, by privatization and cuts into agrarian subventions at Somalia, by the prohibition of the financial redistribution between federal level and provinces as well as by the abolition of the family farmer seeds network at Ethiopia, by the enforced sale of the emergency food reserves at Ethiopia, Malawi, and Niger, by the enforced shift from food cultivation to tobacco cultivation at Malawi and Zimbabwe, by the abolition of food and fertilizer subventions at India, by the abolition of agariarian subventions as well as by trade liberalization at Bangla Desh, by the introduction of minimum farm sizes and by currency devaluation at Peru, and by currency devalution and price liberalization at Russia.

One reason of the creation of hunger at Greece has been, that the absolute poverty line related to Greek costs of living has not been investigated before imposing the austerity measures.

The damaging of the health system by IMF conditions has been shown at the examples of Albania, Bangla Desh, Brazil, Peru, Romania, Ruanda, Somalia, Vietnam, and in the name of the euro most detailed at Greece. In addition to that, referring to an article of Prisonplanet on a British study, it has been shown that the increase of the tuberculosis in the 1990ies in the former eastern bloc countries presumably also goes on the account of the imf-like strictness.

The damaging of the pensions has been shown at the examples of Brazil, Greece, Latvia, and Russia. For this purpose, Brazil has even been forced to change its constitution.

Greece has been forced to introduce a blocked account for the preeminent payment to the external creditors, which is going to be entrenched in the Greek constitution at 2013. The blocked account and drastical cuts into the health system have been imposed at February / March 2012, even though the Troika has known about the over-proportionally high indebtedness of the social insurance and of the hospitals at least since its

memorandum of understanding of July 2011.

As Budhoo has exposed at 1991, also the tightening of credit conditions of the World Bank by the IMF and the illegal addition of further political credit conditions to the states drafted by big banks, additionally to those drafted by the IMF, belong to the „strictness“ of the IMF. This practice is now going to be legalized for the first time within in the state insolvency procedure of the ESM in the way, that the private creditors directly impose conditions on the states on the basis of art. 12 par. 3 ESM Treaty, of „collective action clauses“ connected to this in all new government bonds, and of changes of the national laws on the administrating of the public debts.

It can however, remain debatable, if the strictness of art. 136 par. 3 s. 2 TFEU goes so far, that it systematically or broad scale goes up to the violaton of art. 7 Roman Statute, because already the obligation to make conditions, whose strictness goes up to the incompability with the universal human rights, leads to the nullity according to art. 53 Vienna Treaty Law Convention. And the universal human rights set much earlier limits than the universal criminal law.

Regarding art. 136 par. 3 s. 2 TFEU, it is to be added aggravatingly, that the TFEU even claims to have a rank above the universal human rights (art. 1 TEU, art. 51 TEU, declaration 17 in the appendixes of the TEU and the TFEU).

Regarding the Lisbon judgement of the 30.06.2009, the voidness of the TEU has been avoided at that time by deciding in no. 255 + 342 of the judgement, that all prescriptions of the Common Foreign and Safety Policy (CFSP), among whom art. 21, 22, 42, and 43 TEU (in connection with the EU Safety Strategy) would have allowed military interventions of the EU all over the world on the basis of unclear legal terms like „crisis“ or „failed states“ and would have this way made the prohibition of aggressive war circumvenable, had to stay at a rank of normal international law and so below the UN Charter with its prohibition of aggressive war (art. 2 par. 4 UN Charter, art. 103 UN Charter). The decisive difference is, that at that time the judicial limitation has been done before the enactment of the Lisbon Treaty.

Before the 01.05.2013, the Constitutional Court has had the possibility to judge, that simply the second sentence with the obligation to the „strictness“ must not be enacted, because for the enabling of the mechanisms as such only the first sentence would be enough. Or it could have judged, that the extent of the strictness as in the „practice“ of the IMF only results from an important document of the time of the developing of art. 136 par. 3 s. 2 TFEU, and that it is not included in the text itself. The creation of a more important document, e. g. of a a reservaton of all member states under international law, or even only of a declaration of the Prime Ministers, that the „strictness“ may only go as far, as the universal human rights allow it, would certainly have been more important for the interpretation than the statement of the economical and financial ministers of the 10.05.2010.

This would have been no problem before the 01.05.2013. But it is very questionable, if this is still possible after the enactment.

The second senate of the Constitutional Court has now three possibilites. Firstly, it can ignore the voidness of the TFEU and so pave the way into a Europe-wide dictatorship. Its actions at the 19.04.2013 and the 22.04.2013 according to press declarations of the Constitutional Court hint to this direction.But this has been before the 02.05.2013. Secondly, it can confirm the voidness of the TFEU and so help the EU to get to a temporary inability to act and to a relieving adjournment for a more human new start. Or the senate perhaps still finds a solution, how to limit the „strictness“ even after the enactment of art. 136 par. 3 TFEU. According to the legal point of view of the civic and human rights activist, this, however, would have to been done before the enactment, because art. 53 Vienna Treaty Law Convention does not provide for any later possibility of repair.

At the 12.09.2012, the same senate has had rejected the applications to interim injunction of the other 5 groups of plaintiffs, and has decided, in addition to that, that from that judgement on the senate only applies the structure principle democracy and the basic right to vote (but no other basic rights, structure principles, and universal human rights any more), in order to avoid political or economical damages, which could arise in the case of a bankruptcy of any state of the eurozone.

In addition to that, it has been decided at the 12.09.2012, that Germany has to preliminarily pay every capital requirement by the ESM (without any possibility to withhold the payment for the prior check of the legality of the requirement). And that in combination with the denial of any protection by the Constitutional Court even to life, human dignity, health, or property.

The preliminary judgement of the 12.09.2012 collides particularly clearly with the state obligation „European integration“ (art. 23 par. 1 s. 1 Basic Law), according to which Germany is obliged, „for the realization of a united Europe“ to be involved „in the European Union“, „which is obliged to democratical, rule of the law, social, and federal principles and to the principle of subsidiarity, and which guarantees a protection of basic rights, which is essentially comparable to the Basic Law.“

Incompatible to this state obligation is letting happen, with open eyes, the voidness of the TFEU, is the unequal conducting of the case in collision with rule of the law, is the denial of the senate's protection for all basic rights, structure principles, and universal human rights – except for democracy and the right to vote, is to let happen fait accompli before the investigation of all decisive and new legal questions.

With letter of the 12.04.2013, Sarah Luzia Hassel-Reusing has filed new urgent applications to interim injunction, in order toe at least preliminary prohibit the imf-like strictness of the conditions.

In addition to that, she examined very concrete further direct and indirect connections of persons of the fincance elitist Bilderberg network to constitutional judges and to the group of plaintiffs using the NGO „Mehr Demokratie“. Finally, she also has shown presumable militarist efforts of parts of the Bilderberg network in order to underline the necessity to distance oneself from that network, and be it by declaring oneself as biased. At the 19.04.2013, the senate has set the oral hearing in the main case for the other 5 groups of plaintiffs to the 11.+12.06.2013. The structuring of the hearing does not include the reapplication of the other basic rights, structure principles, and human rights, but only focuses, based on the preliminary judgement of the 12.09.2012, to further prescribe, how that judgement shall be implemented. And at the 22.04.2013, a delegation of the senate under the lead of the President of the Constitutional Court, Prof. Dr. Voßkuhle, has met, i. a., the President of the EU Commissioin (and Bilderberger) Jose Manuel Barroso. At the 02.05.2013, she has not only applied to state the voidness of the TFEU, but besides that, she also applied to state the suspected bias of Prof. Dr. Voßkuhle with regard to his cooperation, i. a., with Mr. Barroso and with Mr. Minister of Finance Dr. Wolfgang Schäuble at the new foundation for the university of Freiburg. At the same university, Prof. Dr. Voßkuhle is working in his second job.

Since the enactment of the Lisbon Treaty, the existence of the European Union is based on art. 1 TEU, so that the EU, even though the voidness of the TFEU, further exists. The existence of the most important institutions of the EU is based on art. 13 TEU and also remains unaffected by the voidness of the TFEU. Also the other contents of the TEU remain.

Also the EU Basic Rights Charter remains unaffected as well as art. 6 TEU, which makes the EU Basic Rights Charter binding. The protocols and declarations in the appendixes of TEU and TFEU also remain though the cessation of the TFEU, because the TEU still exists.

With the voidness of the TFEU at the 01.05.2013, however, the organs of the EU have, as far as their powers are based on the TFEU, become unable to act and so are given an adjournment. All actions, which are executed on the basis of an international treaty, which is void according to art. 53 Vienna Treaty Law Convention, have to be undone according to art. 71 Vienna Treaty Law Convention, as far as they have been executed since the beginning of the voidness. The creation of a new TFEU requires, according to art. 46 TEU, first a new EU Convent. That means enough time to create a new TFEU, which respects the preeminence of the national constitutions, of the UN Charter, and of the universal human rights.

The legal basis to initiate and to conclude EU regulations, EU guidelines, EU recommendations, and EU opinions (art. 288 TFEU), has vanished at the 01.05.2013. The EU secondary law created before the 01.05.2013, however, remains unaffected by that.

The biggest result ist, that the EU is, until the creation of a new TFEU, unable to conclude EU regulations, neither for obscuring (file number 2012/0011 (COD)), nor on seeds, nor to switch off refrigerators.

The own legal personality of the EU (art. 47 TEU) remains. The legal basis in the TFEU for the EU Commission to conclude international treaties, however, has vanished, so that the EU Commission, since the 01.05.2013, cannot conclude valid international treaties any more. This is important, i. a., for the considered transatlantical economical union and for the cooperation of the EU Commission on memoranda of understanding within the scopa of EFSF and ESM, because also memoranda of understanding are international agreements.

The existence of the currency euro, which is based on art. 3 par. 4 TEU, remains unaffected by the voidness of the TFEU, also the existence of the ECB, which is based on art. 13 TEU. Also protocol no. 4 on the European system of central banks remains. The basical obligation of the EU member states to the euro, however, has vanished with the TFEU. All powers of the ECB, as far as they are based only on the TFEU, have fallen apart at the 01.05.2013.

The prescriptions of the TFEU on the euro have become void at the 01.05.2013. Among them is art. 126 TFEU, so that any further steps regarding the Stability and Growth Pact since the 01.05.2013 are illegal because of the vanished legal basis in the EU Primary Law, even though the respective EU regulations further exist. With the vanishing of art. 121 TFEU, also the regualtions on the imbalance procedure and on the preventive component of the Stability and Growth Pact have lost their basis in the EU Primary Law. While these regulations to a large part, but not completely, have already been ultra-vires in comparison to art. 121 TFEU and to art. 126 TFEU (sections V.2 – V.7 of the constitutional complaints of the 30.06.2012), they may not be applied any further in view of the vanishing of art. 121 and art. 126 TFEU, at least until the creation of a new TFEU with respective new legal foundations in EU Primary Law. Art. 122 TFEU as the basis in the EU Primary Law for the „Greece Support“ and the EFSM has also vanished.

The EFSF Framework Treaty and the ESM Treaty as such remain even though the vanishing of the TFEU. Another question is, if the EFSF Framework Treaty and the ESM Treaty have to be prohibi-ted for other reasons. The EU institutions (EU Commission and ECJ), however, cannot be lent any more to these mechanisms within the scope of enhanced cooperation (art. 20 TEU), because the establishing of the areas of shared competence in art. 4 TFEU, for which an enhanced cooperation according to art. 20 TEU is possible, has vanished with the vanishing of the TFEU, so that the authorization in art. 20 TEU points to nothing.

The far-reaching inability to act of the organs of the EU also results from the vanishing of the prescriptions of art. 2 TFEU to art. 6 TFEU, which contain the distribution of powers between the EU and the member states.

The statutes of the ECJ further exit. The powers of the ECJ, as far as they are based on the TFEU, have, however, vanished at the 01.05.2013. Decisions of the ECJ before the 01.05.2013 remain unaffected by this.

The supranationality from the perspective of the EU law has ceased to apply since the voidness of the TFEU. Because declaration no. 17 to the TFEU and the TEU prescribes, that the TFEU stands above the national constitutions. According to art. 51 TEU, declaration no. 17 remains valid and equal-ranking to the TEU. But with the cessation of the TFEU, there is no TFEU any more, which could stand above the national constitutions. And art. 1 TEU, which prescribes the equal rank between TEU and TFEU, points into a vacuum. But this does not refer to the existence, but only to the rank of the TEU. As a result, the TEU and the protocols and declarations in the appendixes to it have fallen to a rank of normal international law.

So the greed of the self-appointed „markets“ and the ignorance of decision-makers in policy and judiciary regarding the universal human rights have, with their short-sightedness, destroyed the TFEU and have so unwillingly paved the way for a possible more human new start of the EU in conformity with the constitutions and the human rights, or even for the winding up of the EU.

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Links:

status of ratification of art. 136 par. 3 TFEU

http://consilium.europa.eu/policies/agreements/search-the-agreements-database?command=details&lang=en&aid=2011030&doclang=EN

constitutional complaints of the 30.06.2012 with file number 2 BvR 1445/12 (incl. referral to sources on the human rights violations of the IMF)

http://netzwerkvolksentscheid.de/wp-content/uploads/2012/07/Klage-Hassel-Reusing-komplett.pdf

constitutional complaints and letters to the court

https://sites.google.com/site/buergerrechtemenschenrechte/euro-stabilisierungsmechanismus

article „wie ein Bannkreis der Angst“ on the draft obscuring resolution of the EU (2012/0011(COD)

http://unser-politikblog.blogspot.de/2012/03/wie-ein-bannkreis-der-angst-ein-europa.html