



THE 9TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

**The Transfer of State Sovereignty: Analysis of Constitutional Change in
Macedonia during the EU Accession Process**

Abdula Azizi¹

Abstract: This paper will focus on the need for constitutional changes, and what states must do as a result of their accession to the European Union (EU), according to the rules for admission. Each country has to decide for itself how to identify or create a constitutional basis for membership, limiting its own sovereignty by authorizing the application of sources of EU law within its own legal system. This means the overall preparation for accession and membership, i.e. a provision permitting the transfer of sovereign powers to the EU. So while Macedonia has been a candidate-country for EU membership since 2005, it is logical to analyze the need for the changes to be made, as well as further activities of the state in the process of euro-integration. Since EU membership requires a number of changes which the state should undertake, in this paper the provisions of the current Macedonian Constitution are analyzed, which are questionable and need revision, according to the principles of supremacy and the direct implementation of EU legislation in national legislation. Finally, I draw some conclusions and make some suggestions.

Keywords: constitutional changes; sovereignty transfer; European Union

1. Introduction

Membership in the European Union requires a series of constitutional changes. States, which adhered to the EU, made constitutional changes needed to enable the unimpeded implementation of EU law in national legal systems. In this regard states met their constitutions with new provisions intended European Union, but also changed and adapted those provisions which limited territorial sovereignty only in the framework of their state. In this regard states in their constitutions, predicted separate provisions concerning international organizations. They devoted a special attention the EU, due to the specifications, which relate to the right of the EU, while also devoted attention to the provisions relating to the procedure of ratification of the accession treaty, and provisions for organizing the referendum on EU membership. This paper analyzes the experience of member states, which harmonized their constitutions making the proper transfer of powers to the EU. Also, will be analyzed changes needed to be made in the Constitution of Macedonia, on the transfer of sovereignty to EU institutions.

2. The Transfer of Sovereignty

EU institutions, namely the European Commission during the negotiations for the different chapters, does not suggest candidate countries any concrete model for constitutional change, but suggests how to overcome certain shortcomings in the system as a condition to close any negotiating chapter.

¹Associate Professor, PhD, South East European University, Republic of Macedonia, Address: Ilindenska bb 1200 Tetovo, Republic of Macedonia, Tel.:+38944356132, Corresponding author: a.azizi@seeu.edu.mk.

Transfer of part of power from member states to the EU institutions is an essential point to the existence and functioning of the EU. This transfer must be done through constitutional authorization by Member States, while, over the history of the existence of the EU, there are two ways to transfer: with constitutional provisions Member States give the right to the European Union to sign international agreements; in the absence of provisions for transfer, bringing ratifying acts by qualified majority.

Macedonian Constitution has provisions that affirm the principle of sovereignty, particularly in Article 1 stated that sovereignty is indivisible, not borrowed and non-transferable, and Article 2 states that sovereignty comes from the people, belongs to the citizens, through their representatives, or referendum and other forms of direct and indirect representation. This makes necessary the introduction of a new constitutional norm, which would authorize authorities to sign and ratify the accession agreement, namely to transfer certain rights to EU institutions. Article 121 authorizes the Parliament, by a majority vote to make decisions for membership in international organizations, at the proposal of the government or at least 40 deputies. This provision was used on the country's membership in the UN, Council of Europe, WTO etc. but without transfer of powers. Article 120 also provides the opportunity for accession in community with other states, for which required 2/3 of votes in Parliament, and this decision must be supported by a majority of voters in a referendum. So, the Constitution authorizes the Parliament but also citizens to transfer sovereign rights, to the community with other states in certain proportions for the functioning of the community of states. This step really should be completed before the act of ratification of the accession to the EU. While once ratified an agreement it becomes part of the internal legal system of the state, which means that as a technical process in the implementation of devolved powers.

3. Experience of Member States to the Sovereignty Transfer

So far, are known, some experience of the Member States relating to the transfer of sovereignty. In addition, we will devote attention to each of them.

3.1. The Constitutional Basis for the Transfer of Sovereign Rights

Some countries like France, Germany and Italy with the constitutional provisions limited their sovereignty by transferring it to the international organizations and institutions, even before they become part of the European Community. Thus, in paragraph 16 of the preamble to the French Constitution (1946) were pointed out that... based on the principle of reciprocity France will limit its sovereignty sufficiently during peacekeeping. Italian constitution (1948), Article 11 states that... Italy may agree to the same terms with other countries to limit the sovereignty to some extent to protect the peace, security and justice among nations and will support the international organizations which have such a purpose. German Constitution (1949) Article 24, entitled "Transfer of sovereign power - the system of collective security," says... federation, can legally carry sovereign rights to the international organizations. These constitutional provisions were necessary for these countries to enter the European integration process, with the Treaty of coal and steel as a simple international treaty. This formula of a transfer of sovereignty to international organizations, regardless of whether it comes to peace, or other matter was incorporated in the constitution of the Netherlands(1963)¹, Luxemburg(1956)¹,

¹ Of all the Member States of the European Communities the Netherlands has gone furthest to ensure a constitutional acknowledgement of the supremacy of Community Law. By an amendment to the Constitution of the Kingdom of the Netherlands, made in 1963, it is expressly provided that in the event of a conflict between a domestic statute and a provision in a treaty, the latter shall prevail, whether the treaty is concluded before or after the passage of the statute, provided only that

Belgium(1970)² etc. In most countries the international agreement for the transfer of sovereignty any international organization or institution, may be ratified by qualified majority in national parliaments, while in the case of the EU, with the referendum. The authorization for transfer of sovereign rights EU had first mentioned the Constitution of Ireland (1972) which emphasizes that Ireland can become a member of the European Communities. No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State (art. 29.4.3). The Irish Constitution was amended before any ratification, future agreements the EU.

After the Maastricht Treaty, Germany and France were estimated to have made other constitutional changes, which will be concretized their participation in the EU, specifying the basis for transfer sovereign rights, and regulation of the power-sharing relationships.

Germany, except for article 24 had brought a new article entitled “European Union” which was explicitly defined authorization for the transfer of state sovereign rights in the EU, to achieve the objectives of integration. France also had specified the Constitution, after Lisbon with a new chapter XV, Article 88-1 which contains the state will to participate in the EU, which have freely chosen to exercise some of their powers in common by virtue of the Treaty on European Union and of the Treaty on the Functioning of the European Union, as they result from the treaty signed in Lisbon on 13 December, 2007.

Also Portugal during the Maastricht Treaty established the constitutional provision (Article 7) for clear constitutional authority of the EU sovereign rights.³

3.2. The Constitutional Basis for EU Accession

In the constitutions of the ordinary member state, there was no provision which differed ratification of agreements separate from any decision for membership. The transfer of sovereign power and the establishment of the ECSC were a single act of signing and ratification of international agreements without special requirements. In the stages of EU enlargement, which followed later, most member states brought special decisions for EC membership through referendum. In Ireland, accession to the European Communities (1973) and the acceptance of further changes to the founding treaties, represents a decision to change the constitution through a referendum.

Specific is that the constitution changes in a referendum on any transfer of powers, as well as membership.

the provision binds natural or corporate persons. A similar rule is established in the case of a conflict between a statute and a rule duly established by an international organization in the exercise of legislative, administrative or judicial powers.

¹ The Constitution of Luxembourg was amended in view of the establishment of the European Communities but only after the creation of the European Coal and Steel Community. In the case of Luxembourg the amendments were made to Articles 37 and 49 of the Constitution, by a Law of 25 October 1956.

² The Belgian Constitution (1830) was amended in 1970, in view of Belgian membership of the European Communities, by the addition of a new provision (now Article 34, Article 25 bis in 1970). The following are provisions from the Constitution in its 1994 version.

³ Portugal shall make every effort to reinforce the European identity and to strengthen the European states' actions in favor of democracy, peace, economic progress and justice in the relations between peoples (paragraph 5). Subject to reciprocity and to respect for the fundamental principles of a democratic state based on the rule of law and for the principle of subsidiarity, and with a view to the achievement of the economic, social and territorial cohesion of an area of freedom, security and justice and the definition and implementation of a common external, security and defense policy, Portugal may enter into agreements for the exercise jointly, in cooperation or by the Union's institutions, of the powers needed to construct and deepen the EU (paragraph 6).

In other countries, the referendum decision of EU membership differs from the ratification of the agreements. In Latvia, constitutional amendments (2003) Article 68 made a distinction between the authorizations to transfer sovereign rights to international institutions through international agreement on the one hand, and on the other hand, the constitutional authorization for citizens to decide for EU membership. There is also an optional possibility that, for any other changes to the treaties, should be decided in a referendum. On the proposal of the Sejm, citizens in a referendum voted for Latvian EU membership. Similarly, in the Czech Constitution (Article 10), although the ratification of the agreement on accession, and the transfer of constitutional powers, should preliminary approval by Parliament, alternatively is required confirmation by referendum. On this basis, were approved constitutional law for referendum on EU accession? Differently, in other countries like Slovenia ratification of the EU accession treaty, was made in parliament, then the citizens decided in a referendum, while in the end, was ratified the accession treaty. The decision to join, and the ratification of the accession agreement are separate acts, therefore it enables, after any future reform of the EU, the Parliament can evaluate if it is enough just the ratification or referendum is needed. A special case is Croatia, which makes the distinction between base for the transfer of sovereign powers of the state to international organizations, and the basis for approval of the decision to join the EU. Article 133 states that “international agreements through which international organizations are granted authority under the Constitution, the Croatian Parliament confirms them with 2/3 vote of the deputies”. The legal basis for EU membership and transfer of constitutional power is found in chapter VII A “European Union” where it is said that... Croatia takes part in EU affairs and gives constitutional powers to EU institutions for conducting appropriate functions. So Croatia's constitution treats the EU as a community of states, and constitutional basis for membership and the realization of the referendum, can be found in the provisions for entry into the community of states, while not in provisions for accession to international organizations. In this unique model cannot be done fusion of transfer of authority act and act for membership, nor that the referendum is a form of ratification of an international agreement, as it was in other cases. Similar provisions for entry into the community of states through referendum, has a Slovak constitution (Article 7) which also provided provisions for transfer of powers to the EU with international agreements, the ratification of which does not need a referendum.

3.3. Procedures for Transfer

Most of the member states in their constitutions provide qualified majority (2/3 or 3/5) to make ratification of EU treaties, some foresee the referendum (Ireland, Poland, Latvia, Slovenia) and some other countries (Ireland, France) require prior amendment of the constitution, to delegate authority.

3.4. Constitutional Transfer Limits

In some countries (Germany, Italy) in the past, the constitutional court was established principle that... in the exercise of power by national or international institutions must respect the basic values and constitutional principles. The EU could decide only on matters that are transferred through a national act of ratification of agreements, while in addition and should not endanger the Germany constitutional order. As a result of the ratification of the Maastricht Treaty, Germany had amended Article 23 of the Constitution, provides the basis for the transfer of powers (Article 24), is elaborated Germany's membership in the EU, by defining formal and material conditions for transfer and its limits... to achieve a united Europe, Germany participates in the development of the EU which is

committed to the principles of democracy, rule of law, federalism and social principles, and the principle of subsidiarity, and ensures protection of fundamental rights as does the Constitution. To this end, Germany may give the sovereign rights through law, in accordance to the Bundesrat. For future changes in the EU treaties, the law may be brought by two thirds in the Bundestag and the Bundesrat (Article 79). Anyway, are prohibited whatever changes associated with the separation of the federation in Lande, their participation in the legislative process, human dignity, rule of law, democracy, welfare state. Constitution of Portugal, insists to respect basic principles of democracy, rule of law, and the principle of subsidiarity. In Slovenia, by international agreement, can be transfer of sovereign rights to international organizations, which are established to protect human rights and fundamental freedoms, democracy and the principle of the rule of law. Sweden in Part X, Article 5 of the Constitution authorizes Rikstag, to transfers the EU the right to adopt decisions, while the EU ensures the protection of the rights and freedoms so as defined by the Constitution and the European Convention on human Rights. Czech Constitution (Article 9) prohibits the change of the essential criteria of a democratic state based on the rule of law, and thus prohibits the transfer of powers in this regard. Estonian Constitution prohibits the EU to conclude agreements which are contrary to the Constitution (Article 123) and its fundamental principles (Article 1 of the Constitutional Act for EU membership). Constitutions of Bulgaria, Romania, Latvia, Poland and Croatia have no specific restrictions on the transfer of sovereign rights to the EU.

Restrictions mentioned in some constitutions of member states of the EU regarding the transfer of sovereignty towards the EU are rather theoretical, since in practice this does not happen given that the EU is based on the rule of law and protection of effective human rights. When it comes to the EU today, most member states have the right attitude that... the EU has no position on the constitution of the state, but the constitutional limitations are intended to do with mutual adaptation of EU law with constitutions of member states. Since the constitution of Poland had not defined the borders of the transfer of powers to the EU, the constitutional court concerning the accession agreement, had estimated that the agreement must be consistent with fundamental constitutional principles, and if there are contradictions, the constitution will be amended or will be negotiated to amend the agreement, or recently Poland will withdraw from membership in the EU.

4. The Transfer of Sovereignty in the Case of Macedonia

Macedonian Constitution mentioned in a general way, the limitation of sovereignty in favor of international organizations, without mentioning the EU. Therefore, it should be specified that “has to do with the European Union” to eliminate ambiguities and misinterpretations. Regardless of the option referred to in Article 120 of the Constitution (accession in association with other countries), as a basis for EU membership, and the transfer of constitutional powers, however it needs to be envisaged in the Constitution a provision with general authorization to the competent authorities, for signing and ratification of international agreements, to transfer to the EU of certain sovereign rights.

If, be determined that EU membership should be made by decision in the referendum, then it would have to be amended Article 120 paragraph 3, to reduce the limit for the validity of the decision (whether to vote a majority of the total number of voters), to be changed as... the majority of citizens that have emerged in the referendum. While it is also possible not to change Article 120 (it can be applied to situations other than the EU), but should definitely be added to the Constitution a new article for EU membership.

5. Conclusions

No doubt that Macedonia should follow the path paved by the member states of the EU, which devoted appropriate attention to constitutional changes before they joined the EU, all this in order to accelerate the negotiations with the European Commission after it received date to start the negotiation. This will have a positive impact on the time aspect (to compensate for the time lost so far) and for the preparation of institutions to accept the obligations arising from the application of EU law and European standards.

EU has no preference for any system of constitutional changes, but states themselves must choose how you will organize their constitutions, while during this is preferable to follow the experience of member states. In this case, for Macedonia, it would be appropriate to do a combination of the special chapter for the EU and to make changes to some articles of the Constitution.

During this, it would be more appropriate, in particular the constitution to include the main issues related to EU membership, as follows:

- should change the part of “International relations”, to strengthen the procedure for ratification of EU agreements, thus, would be transferred to the sovereign rights to EU institutions, by determining the two thirds majority in Parliament.
- should be provided the constitutional basis for EU membership, and the obligation to Macedonia to participate in the construction and development of the EU;
- transfer of constitutional powers from national to European ones as well and the way of Macedonia's participation in EU institutions;
- determination of specific procedures for European Affairs, where acts of the EU institutions should take priority alongside national acts which are contrary to European ones;
- determination of the rights and freedoms that citizens should have it in the territory of the EU, particularly those related to the EU Convention of Fundamental Rights, which are not provided for in the Constitution of Macedonia;
- implementation of the right of citizens of Macedonia for passive and active participation in local elections in EU member states where they live, as well as citizens from EU member states who live or stay in Macedonia;
- guaranteeing the right of movement and residence of citizens of Macedonia in the territory of all member states, as well as guaranteeing the right to consular and diplomatic protection of citizens of the country in any of the Member State of the EU;
- the right to lodge a petition from citizens of Macedonia to the European Parliament; the right of submitting complaint to the European Ombudsman; and the right to write to the EU institutions in the native language and in other official languages of the EU and takes answer in the same language, respecting the conditions and limitations established in the EU.

In this regard, it can be concluded that the transfer of power under the contemporary concept of the EU, will not threaten national sovereignty of member states, though sovereignty can no longer be seen as absolute and indivisible.

6. References

Basic Law for the Federal Republic of Germany, Federal Law Gazette of 23 May 1949.

Constitution of the Portuguese Republic, 2 April 1976.

Constitution of the Republic of Croatia, Official Gazette No 56/9; 135/97; 8/98; 113/2000; 124/2000; 76/2010.

Constitution of the Republic of Macedonia, Official Gazette of the RM No 2/01 of the 22 November 1991 and the Amendments 1/02; 31/98; 01/01; 84/03; 107/05; 3/09; 49/11.

Constitution of the Slovak Republic, 1 Sept.1992.

Czech Republic-Constitution, 16 Dec.1992.

Fifth Amendment of the Ireland Constitution Act, No1972.

Preamble to the French Constitution of 27 October 1946.

Text de la Constitution du Grand-Duche de Luxemburg, 25 October 1956.

The Constitution of Bulgaria, Official Gazette No56/1991, of 12 July 1991.

The Constitution of Romania, 21 Nov.1991. As amended by No. 429/2003.

The Constitution of the Italian Republic 1948, as amended on 12 June 2003. Official Gazette 27 Dec.1947, No. 298.

The Constitution of the Republic of Estonia, 28 June 1992. As amended No29/174 (2003); 64/429 (2003); 33/210 (2007) and 1/2011.

The Constitution of the Republic of Latvia, 27 January 1994. As amended in 4 Dec.1997; 15 Oct.1998; 30 April 2002.

The Constitution of the Republic of Poland, Official Gazette No78/483, of 2 April 1997.

The Constitution of the Republic of Slovenia, Official Gazette RS, No 33/91-I. As amended in 66/2000 and 24/03.