THE 7TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Future of National Sovereignty of the Republic of Moldova in the Perspective of European Integration

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Abstract: By the end of XXth century, important transformations took place in the field of relations related to state structure, especially in relations specific to federalism, affecting the political life of many states. The national principle of constitution of certain states became the cause of many interethnic conflicts (the national principle generates separatism together with the development of underdeveloped nations). Current international situation in the field of human rights protection, protection of the rights of people and fundamental principles of international law, makes it impossible to improve the situations related to the achievement of their sovereignty by nations or, at least, avoid new conflicts, like the one in Yugoslavia. It is impossible only if the „vectors" of international law are not changed, if the visions on the problem of correlation between human rights and rights of the people and achievement of their „sovereignty" by them are not corrected. At the same time we should mention that if national sovereignty is based namely on the right of the nation (not of individuals or of state) to self-determination is such a complex political institution, it will be not necessary to apply it.

Keywords: state structure; political institution; conflict; human rights

Since the XVII[th] century (especially after the conclusion of the Peace of Westphalia) [2] and until present, sovereignty became an issue that raises different political debates. As the professor Antonie Iorgovan said,"...no international scientific session ends without bringing this issue to discussion". (Iorgovan, 1994, p. 146)

Especially as the „non-critical use of the idea of sovereignty has spread similar confusions both in the theory of internal law and that of international law." (Hart, 2004, p. 216).

Therefore, those who are concerned with the issue of sovereignty have one of the most difficult tasks, aggravated by the fact that „pressure to restrict sovereignty is exercised in the contemporary society" (Tămaş, 1996, p. 242).

The following can be mentioned among the phenomena that set these „barriers":

- creation of integrated economic spaces, which implies the creation of political units with supranational institutions as well, fact that means giving up certain prerogatives of sovereignty;

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[2] *Peace* of W*estphalia* is the treaty of 1648, which meant the end of the Thirty Years War (1618-1648). The peace treaty has two parts: the Münster Treaty (signed between the Holly Roman Empire and France) and Osnabrück Treaty (signed between the Holly Roman Empire and Sweden). The Peace of Westphalia reasserted the Provision of the Religious Peace of Augsburg (1555), which regarded the Catholic and Protestant (Lutheran) religions as equally justified, this provision being extended over the Calvin Confession in the Empire by means of the Peace of Westphalia. In 1648, the town of Stettin with its adjacent regions, the town of Wismar, the episcopate Bremen and Verden. Denmark does not obtain the claimed territories. Austria ceases Sundgau to France. France through the conspiracies of the cardinal Richelieu, who was against making peace, becomes the most influent and powerful state in the Western Europe. Large territories of the Holly Roman Empire are devastated by the war, the number of casualties amounting to 3-4 million. The German states became landlocked, being thus excluded from the maritime trade, fact that has influenced the economic development in comparison with riparian countries of that period such as Holland, England, and France.

- technical progress, such as artificial satellites, which make states loose their exclusive control over information on national security or their own natural resources;
- humanitarian interference in the internal affairs of a state, including military intervention for „humanitarian purposes" (Tămaş, 1996, p. 242).)

In our opinion, controversies around the notion of sovereignty are to a great extent determined by the simultaneous circulation of different definitions of sovereignty.

At the same time we must not ignore the different statements made today by the representatives of certain ethnic communities regarding national and state sovereignty, the loudly pronounced statements expressed in an almost separatist manner, as, in most cases, sovereignty is regarded as a product of national (ethnic) self-determination from this point of view.

From this perspective, the situation in the field of relations regarding the state structure or certain forms of state associations can be appreciated as affected by global „ethnitization" of social relations, which, according to some authors, was contested as early as at the beginning of the XXth (Yashchenko, 1912) century, but which appeared again when it seemed that the development of the civilization made society's orientation towards other social values, more important and more fundamental possible.

Finally, we must recognize that we face one of the basic contradictions of modern society:

- between general human integration tendency and national isolation;
- between the etnization of social relations and the need to direct towards general human values;
- between observance of human rights and intangibility of sovereignty (state or national).

Under these conditions, the following question should be raised before scientists and not only: how and by what means (at least theoretically) can these contradictions be solved.

First of all, we should agree on the terminology, beginning the discussion with the notion of sovereignty.

It is known that depending on the historical moment, ideology, different schools of thinking and on state and international organizations interests, the experts provided different acceptations of the debated term.

Generalizing the opinions expressed in professional literature and political-legal language, we see that this notion is used under three aspects (if we do not take into consideration the use of such expressions as: linguistic sovereignty, cultural sovereignty, which are not and cannot be sovereignties in the sense this term will be treated here).

State Sovereignty represents supremacy and independence of state power in internal and external affairs.

In Hart's opinion, the notion of sovereignty „does not apply to a legislative body, to a certain element or person in the state, but to the state itself" (Hart, 2004, p. 214).

In our opinion, the evolution of society was accompanied by certain transformations in terms of the phenomenon of state sovereignty. Today, this term is examined alone, but together with the sovereignty of people.

Thus, state sovereignty can be interpreted as „a quality of state power to be supreme on the territory of the state and independent in relation to any state or international body, a feature expressed in the right of the state to freely solve its internal and external affairs, on the condition of observance of the corresponding rights of other states and norms of the international law (Guceac, 2001, p. 83).

Sovereignty of People as an idea appears in the context of the works of such remarkable illuminists as Locke, Rousseau and other representatives of liberalism following certain conflict between the civil society and absolute power of the state. Under these conditions it becomes necessary and real to recognize the right of the entire population of the state to be the single source of political power. At present, state sovereignty begins to be regarded as a derivate of the sovereignty of people.

Today, sovereignty of people is considered "a concept of international public law evoking the right of a nation to build its national state…" (Iorgovan Antonie, p. 147).

At the same time, we should draw you attention to the following: it should be understood correctly - both notions are interdependent. The integral achievement of sovereignty of people is impossible without the state, situation about which Hegel said: "The nations, who did not create their state, do not belong to history" [Гегель Г.–В. *Философия истории*. Сочинения. Т. VIII. С. 100.]. At the same time, the reverse phenomenon should not be neglected: the prosperity of a democratic and constitutional state that does not recognize, in a way or another, the sovereignty of its people is impossible (of all the people, not of a certain social category, class or stratum) (Umnova, 1997, p.149)

Today, both sovereignty of state and sovereignty of people coexist inseparably in state and social life, such a coexistence representing state quality and capacity to promote independently its internal and external policy observing human rights and rights of citizens, ensuring the rights of national minorities and respecting the norms of international law.

It has been more difficult to define the **national sovereignty**, which can actually be interpreted under two aspects:

1. From *general civic* point of view, national sovereignty is identified with the sovereignty of the state and sovereignty of people, the nation being regarded as a notion that comprises all the citizens of the state, regardless of their national belonging and who in this context act as co-citizens of an indigenous nation. In this context, national sovereignty is considered „a political-legal notion, evoking the political essence of the phenomenon of state, the fact that power belongs to the nation, which is the personal element of the state..."[1].

There have been opinions that such an interpretation of the concept of nation is accepted by international normative acts (UN Statute, Declaration on Principles of International Law, Final Act of the Conference on Security and Cooperation in Europe[2*3] etc.), though this point of view has many opponents.

2. *Ethnical approach to the subject* - giving the possibility of self-determination of ethnos, including the right to choose its form of political organization and state structure is another aspect of the interpretation of the notion of sovereignty. National legislation and mentioned international acts are interpreted from the same, ethnical, point of view. In most cases, such an approach is specific to the states that do not have well defined civil societies.

In general, this way of interpreting national sovereignty can be examined as the first one, from historical point of view, as an attempt of interpreting the nature of supreme power, because ethnical understanding of national sovereignty has been most efficient efficiency in the period preceding the appearance of the state, in times when supreme power was indeed a substratum of ethnical self-consciousness of individuals and national communities could be considered quite independent systems.

However, today, in the period of state values re-evaluation, the hope in past experience of social organization cannot be justified completely.

From this point of view, we agree with the Romanian scientist Antonie Iorgovan, who talks about the attempts of giving the right to self-determination to nations by using the expression „national sovereignty" as a „poetic license", „ignoring the ideological and political connotations as we cannot talk about a nation but within a state, regardless the justification thesis of the concept of nation we choose" (Iorgovan, 1994, p. 146).

[1]This document stipulates (Ch. VIII, par. 2) „.In the virtue of the principle of equality in rights of the people and their right to decide over themselves, all nations have a permanent right, in full freedom, to decide as they will and when they will their political internal and external status, without any involvement from abroad and to achieve according to their will their political, economic, social and cultural development".

[2] *Drepturile Omului. Principalele instrumente cu caracter general/ Human Rights. Main instruments with general feature*, 1998.

In case of ethnical approach to national sovereignty, sovereignty of the state (sovereignty of the people) and national sovereignty overlap, this is inadmissible. Though the sovereignty of the state, people and national sovereignty are not always the same thing, today these syntagms cannot be perceived otherwise than a synthesis unit.

By the end of XXth century, important transformations took place in the field of relations related to state structure, especially in relations specific to federalism, affecting the political life of many states. The national principle of constitution of certain states became the cause of many interethnic conflicts (the national principle generates separatism together with the development of underdeveloped nations). (Chirkin, 1997, pp. 71-81)

Current international situation in the field of human rights protection, protection of the rights of people and fundamental principles of international law makes it impossible to improve the situations related to the achievement of their sovereignty by nations or, at least, avoid new conflicts, like the one in Yugoslavia. It is impossible only if the „vectors" of international law are not changed, if the visions on the problem of correlation between human rights and rights of the people and achievement of their „sovereignty" by them are not corrected.

At the same time we should mention that if national sovereignty is based namely on the right of the nation (not of individuals or of state) to self-determination is such a complex political institution, it is not necessary to apply it.

In the virtue of the transformations that take place, some experts admit the division of sovereignty under two aspects: political-economic and legal[1].

Political-economic sovereignty is related to the phenomenon of globalization. Thus it is said that "The State will disappear, all economic sectors will be globalized and technological changes in communications will create a "global state"[2]

Globalization affected even the process of accomplishment of basic state functions. Thus, state cannot ensure any more an efficient control of its territory and national sovereignty looses its functional potential of political-local management. The legal capacity of state authorities is reduced and, as a result, democratic justification of public stockholders decreases more and more. The power of the national state highly developed in the XIXth century through the cohesion between the need in identification and unity and the need of an efficient functionality looses its value more and more.

As for *legal sovereignty*, the constitutions of certain European states stipulate that sovereignty (some of them including the word "national") or power, belong to people. For example, the Constitution of France (Art. 3 par. 1) stipulates: "National sovereignty belongs to people, who exercises it through their representatives and by means of referenda". (Constitution of France, 1998)

Article 1 of Italian Constitution stipulates that "Sovereignty belongs to people, who exercise it in the forms and limits provided for by the Constitution". (Constitution of Italy, 1998)

In the Fundamental Law of the Federal Republic of Germany (Art. 20, par. (2) of the Fundamental Law): "All state power comes from people". (The Fundemental Law for the Federal Republic of Germany, 1998)

Spanish Constitution, in Art. 1 par. 2 provides: "National sovereignty consists of the people of Spain, those who give the powers to the state." (Constitution of Spain, 1998)

In the Constitution of the Russian Federation, Art.3 par. 1 „multinational nation" is recognized as „the bearer of sovereignty and the only source of power". (The Constitution of the Russian Federation, 1999)

[1] Dorina Năstase, Mihai Mătieş, *Viitorul suveranităţii naţionale a României în perspectiva integrării europene/ Romania's national sovereignty future in the European integration perspective*, studint.ong.ro/Nr7_Rom.htm.
[2] Dorina Năstase, Mihai Mătieş, *op. cit.*

Alos, the Romanian Constitution (Art. 2 par. 1) stipulates: „National sovereignty belongs to Romanian people, who exercise it by means of its representative bodies..." (Constitution of Romania, 2003)

The constitutional legislative body in the Republic of Moldova undertook, at its turn, the generally recognized principles of the European constitutionalism, stipulating in Art. 2 par. 1 of the Constitution: "National sovereignty belongs to the people of the Republic of Moldova who exercise it directly and through its representative bodies, in the forms provided for by the Constitution". (Constitution of Romania, 2003)

At the same time, states have discovered that they would have benefited from the signing of treaties, conventions and agreements only if they had acted on their own and, on the other hand, if the limitation of some attributions of sovereignty contribute to their common good.

In this context, it is very important to underline that the delegation of some competences of sovereignty to international organizations or institutions does not mean giving up sovereignty, which remains indivisible and inalienable (cannot be taken away), but only represents a convention, by which its lawful holder, the people delegate it to another authority. Conversely, states have consolidated their sovereignty by means of international cooperations, sharing both the costs and the benefits (Deleanu, 1992).

In our opinion, the efforts of the states that have contributed to the creation of the European Union were based on bringing sovereignty in line with the imperatives of international interdependencies and those resulting from the development of European organizations formed of these states, and not a legal solicitation of national sovereignty limitation.

At the same time, the issue on the extent to which the transfer of sovereign rights required by Community constitutive agreements is constitutional, remains open for discussion, as well as the constitutional ground for recognizing the peculiarities of community law, in particular, its primacy over any internal norm, even a subsequent one.

A significant part of European states have expressly stipulated the possibility of transfer of some attributions of sovereignty to European institutions in their constitutions. Para. 15 of the Preamble to the French Constitution of 1946 stated: "In terms of mutuality, France agrees to the limits of sovereignty necessary for peace organization and defence". (Constitution of France, 1998)

The Preamble to the Constitution of 1958 makes reference to the provisions of the old Preamble, so that this document must be understood as being part of the Constitution of October 1958.

The Italian Constitution authorizes the transfer of certain national competences. Thus, Art. 11 of the Italian Fundamental Law of December 27, 1947 stipulates the following: "Italy agrees, in terms of equality with other states, to accept the limits of sovereignty necessary for a system that would ensure peace and justice between nations; it supports and favours international organizations having this purpose." (Constitution of Italy, 1998)

Article 24 of the German Constitution stipulates: «The Federation can transfer, by legislative ways, certain sovereignty rights to international institutions", and Art. 23 expressly provides for this possibility with regard to the European Union. (The Fundemental Law for the Federal Republic of Germany, 1998)

Spanish Constitution of December 27, 1978 (Art. 93) stipulates: „An organic law can authorize the signing of the treaty, providing an international organization or institution with competences resulting from the Constitution".

The Romanian Constitution chose even to include a special chapter (Chapter VI - Euro-Atlantic Integration) where it is recognized that "The accession of Romania to constitutive treaties of the European Union for the purpose of transferring certain attributions to community institutions, as well as jointly exercising the competences provided in these treaties with other member states is done by means of the law adopted at the joint session of the Chamber of Deputies and the Senate…(Constitution of Romania, 2003)

The Constitution of the Republic of Moldova (Art.8) recognizes the obligation of the state to observe the Charter of the United Nations and the treaties it has ratified, the entry into force of an international treaty that contains provisions contradicting the Constitution, followed by the revision of the latter. It is clear that our Constitution does not address the problem of transfer of sovereignty, Art. 2 para. (2), stipulating that nobody "can exercise state power on one's own behalf".

In June 2004, the Council of Europe in Brussels adopted the European Constitution, which, according to the program communicated by the Secretariat of the Summit, had to be signed officially by the heads of states and governments within the period of October-November 2004 and then ratified by all 25 member states according to their own constitutional rules (approved at parliamentary level or by means of national referendum), so that it enters into force after these procedures.

Without doubt, the adoption of the European Constitution (officially the Treaty establishing a Constitution for Europe)[*] was an important step for the European Union - in its extended format - to deepen significantly the political integration at the Union level.

All these changes, presented briefly, allowed community law to get involved directly into fields that had been previously the exclusive competence of states and address directly the citizens of other states under their jurisdiction, making clear that national state authorities participate in the enforcement and application of community law.

As for our country, we must acknowledge an undeniable truth: the influence of the European Union on the Republic of Moldova, in the process of accession and integration into the Union, will overcome to a great extent its possibilities to express its opinions. However, the Republic of Moldova will have to design its own identity in the Union.

Firstly, the Republic of Moldova will have to adopt a modern approach to sovereignty and understand that *sharing the attributes of sovereignty* with the Union is an advantage.

As for the changes that will take place in the field of *legal sovereignty,* we should remember that this should emerge form the understanding of the fact that the nature of legal sovereignty has suffered certain changes and that the notion of sovereignty defined in the XIXth century became obsolete a long time ago by the experts in law and politicians.

Introduction the acknowledgement of the supremacy of the European law and its direct enforcement in the Constitution is one of the important problems that should be approached. Another aspect would be the acknowledgement of the possibility to delegate certain national competences to the European Union. For this purpose, it is necessary for the authorities of the Republic of Moldova from different fields of activity to know in details the legislation and attributions of the Union in order to know "what and how much" should be delegated under the jurisdiction of the Union.

From the series of amendments that both the Constitution and other legislative acts will be subjected to, we should mention here the guarantee of the right of any European citizen to elect and to be elected to national and local public positions in the Republic of Moldova, the translation of principles of the community law into the national legislation and namely: the principle of subsidarity, the principle of proportionality, the principle of liability of the state of the Republic of Moldova before its citizens for the violation of community law provisions, etc.

[*]The treaty grants legal personality to the EU in terms of international law (as a subject of international law), community law an domestic legislation of member states. The structure of the constitutional Treaty is a quadripartite one (the four parts being preceded by a *Preamble*), a set of Protocols that will be considered necessary will be added after the ending of discussions. Also, the Charter of Fundamental Rights, which was transposed as the IInd part of the Treaty, has its own Preamble. Thus, Part I regulates the basic aspects of the European Union: definition, objectives, structure, competences; Part II comprises the Charter of Fundamental Rights, adopted at Nice in 2000, Part III regulates the policies and functioning of the European Union, while Part IV contains the final provisions of the Treaty.

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