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Concept of Suzerainty

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Abstract: This article approaches the concept of suzerainty, which, in time, has generated several disputes and disagreements, being also subject of conventions, treaties and international mediations. I have approached this sensitive and especially current since in contemporary international law, the political and legal ground of international personality of state is represented by its suzerainty; also, the integration of states in over-national bodies and structures is possible only for the states having the suzerainty acknowledged. Considering that suzerainty, as essential element characterizing the state, gives expression both to the authority exercised over the community organized in the state and to some directed towards the exterior of community, I have analyzed both the internal and external suzerainty. This articles focuses on determining – as accurate as possible – the characteristics of the concept of suzerainty and of the limits of exercising the suzerainty.

Keywords: internal suzerainty; external suzerainty; suzerain power; absolute suzerainty; state power

1. Introduction

Concept often used currently, grounded on defining and organizing the society we are living in, „suzerainty" is a term with long history. The discussions and controversies generated by the validation and definition of suzerainty as concept were different depending on the currents of thought in philosophy or political science alternating in time. The great theorists in these fields tried to determine the nucleic signification of the term depending on the elements constituting their view about the organization and operation of human society. This day, suzerainty is a wide accepted term representing the exclusive right to exercise the supreme political authority (legislative, executive and/or judicial) over some geographical areas, of a group of people or themselves.

Generally, the notion is inseparable from the state concept, suzerainty being closely related to the foundation of state.

The professor Gr. Geamănu asserted that suzerainty *„as institution, (...) appears when states begin to exist*", (Geamănu, 1967) whereas Gh. Moca stated that *„suzerainty appeared with the power of state, as an essential trait thereof, under the conditions of division of gentilic order (...) and creation of state*". (Moca, 1983)

There are many definitions of state. Practically, depending on the moment in time, on ideology, on different schools of thinking in the international relations, on state interests or other international organisations, specialists provided different significations of the term, ranging from notions situated rather in the area of political theory, to concepts subordinated exclusively to the principles of

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international law. Based on a classical definition elaborated by Jean Bodin, ,, suzerainty is the absolute and perpetual power of a Republic, called by Latin people *majestatem*... Suzerainty is not limited in time, power, content or time". (Năstase & Măţieş, 2002)

In the 20th century, the conceptions of G. Scelle and Ch. Rousseau reconsider suzerainty "as an amount of skills which may be delegated by state to a higher or lower extent to some international bodies".

Currently, suzerainty represents the claim of state to full self-governing, and the mutual recognition of claims to suzerainty represents the ground of international society, the unique, full and indivisible supremacy of the state power, within the limits of territorial borders and independence thereof in relation to any other power, expressed in the exclusive and inalienable state right of determining and elaborating independently the internal and external politics, of exercising the functions, of accomplishing the practical measures of organization of internal social life and external relations based on fulfilling the suzerainty of other states, of the principles and norms of international law accepted based on agreement. (Anghel, 1998)

2. About Suzerainty

The doctrine of suzerainty has developed as part of transformation of European medieval system within a modern state system, process culminating to the Treaty of Westphalia, of 1648. The peace from Westphalia, following the 30-year War, represented the first diplomatic meeting on European level (first European congress), on such occasion being presented the principles of political balance, of state reasoning and people right.

In other words, one acknowledges the suzerainty and equality of states as basic principles of international relations and it is introduced the concept of balance between powers as means of maintaining peace.

The monarchs however continued to be the expression of „state", since suzerainty refers firstly to their person. The constitutions of European states represented the most relevant frame in defining and asserting suzerainty as norm of internal law, whereas the Charter of the United Nations and international and European treaties provided new traits to such norm in the international, respectively European law. Thus, the European constitutions determine that suzerainty (some adding as well the syntagm „national"), or power belongs to people. We encounter such ideas in the constitutions of Spain, France or Sweden. According to other constitutions (Romanian and Belgian), suzerainty belongs to the nation.

By the concept of nation, the inhabitants within the borders of the same state have acquired gradually the consciousness that they belong to a national community, that they share a common history and, very important, that they have common interests which they may defend and promote the best through the national state. In the 18th century, it is performed the most important passing from the suzerainty of monarch to that of nation or people, triggered by the Declaration of Independence of United States of America, consecrated as well in the Declaration of Human Rights and Citizen as well as in the Constitution of revolutionary France.

The institutions are called to represent the nation defending such suzerainty which they have elaborated, legislated and supported. In order to serve the best the interests of people, within a democratic system, the power must divide the attributions in „Holy Trinity" of Executive, Legislative and Judicial Power. (Năstase & Măţieş, 2002)

Jean Jacques Rousseau stated, in the „Social Contract", that „*suzerainty is inalienable and indivisible*", but he acknowledged further on the fact that „not being able to divide suzerainty in its principle, they divide it in its object, they divide it in force and will, in legislative and executive power, in rights of duties, justice and war, in internal administration and the power to deal with the foreigner; sometimes they intermingle all these, other times they separate them".

Although Enlightenment, by the theoretician of social contract, has certainly determined the manner of delegating the suzerainty of people to governors, currently, the suzerainty of state power is presented as supremacy and independence of power in the expression and achievement of the will of governors as state will. Although it is a unitary notion in essence, suzerainty involves two elements: external suzerainty and internal suzerainty.

2.1. Internal Suzerainty

Internal suzerainty means the right of the state to organize the political power, namely the right to legislate, to achieve justice and politics. It is about the state supremacy concretized in the right of the state to adopt legal norms, obligatory rules for all its citizens and to assure their application.

In what concerns Romania, the principle of suzerainty is elaborated in the Constitution of Romania. Therefore, „Romania is a national, *suzerain* and independent, unitary and indivisible state" (Art. 1, par. 1 Romanian Constitution), which expresses the supremacy of state power nationally and independence of it opposite to another power on international plan, whereas „National suzerainty belongs to Romanian people (...)" (Art. 2, par. 1 Constitution of Romania).

We notice that the constitutional disposal stipulated by Art. 2, par. 1 of Constitution of Romania includes a contradiction of terms. National suzerainty belongs to the nation not to the people. Constitutionally speaking, the people may be regarded from two different perspectives: as suzerain holder of power and as an amount of citizens with voting right. From the first perspective, the people represents all individuals (citizens), regardless the nationality declared by each of them. From the first perspective, the people is represented by the citizens enrolled on electoral lists.

The option of constituent for the concept of „national suzerainty" is motivated by the fact that the nation accumulates, within a procedural synthesis, as prof. Ion Deleanu states „the past, present and future" of the generations of Romanians, whereas the people would represent an arithmetic amount of individuals, each of them with a (equal) share of suzerainty. (Deleanu, 92)

However, the Constituent has associated the term of national suzerainty to that of people within a theoretical hybrid with social valences relevant in constitutional practice. Considering that suzerainty belongs to the people, and that it cannot exercise it directly, it entrusts the exercise of attributions of suzerainty to Parliament and President, the people being the holder of power. The traits of suzerain power are: inalienability, indivisibility, imprescriptibility, wholeness and unity.

The inalienable character of suzerainty shows that it cannot be alienated definitively and irrevocably, to some individuals or international organizations. The state is entitled however under certain conditions to waive certain prerogatives of its suzerain power. Indivisibility reveals that suzerainty, being unitary, cannot be divided in shares, in distinct units and exercised separately. This phenomenon is explained by holding and exercising the voting right considered a natural, subjective right of any individual. The voting right belongs to the individual not to the nation. The imprescriptible character reveals that suzerainty exists as long as such nation exists. The wholeness reveals that suzerainty cannot be arbitrarily limited. The unity of suzerainty results from the qualitative and integrating synthesis of the shares of suzerainty of every individual. (Ionescu, 2008)

2.2. External Suzerainty

External suzerainty means competence, independence and judicial equality of states. The concept is normally used to include all issues when every state is allowed by international law to decide and act without intrusions of other suzerain states. Such issues include the selection of political, economic, social and cultural systems, as well as the formulation of external politics.

The suzerainty and equality of states represent the basic constitutional doctrine of the right of nations, which governs a community consisting, mainly, in states with a uniform legal personality. The main corollaries of suzerainty and equality of states are:

1) a jurisdiction, exclusive *prima facie*, over a territory and permanent population living therein;
2) an obligation of non-intervention in the area of exclusive competence of some states;
3) dependence on the obligations resulted from common law and treaties agreed by debtor r.

The principle of suzerain equality of states stipulated by the Declaration of the General Meeting of United Nations of 1970 has the following contents:

„All states enjoy suzerain equality. They have equal rights and obligations and they are equal members of international community, despite the economic, social, political or other differences.

Particularly, suzerain equality includes the following elements:

1) the states are juridically equal;
2) every state enjoys full suzerain inherent rights;
3) every state has the obligation to observe the personality of other states;
4) territorial integrity and political independency of state are inviolable;
5) every state is entitle to choose and develop freely its political, social, economic and cultural systems;
6) every state has the obligation to achieve completely and with good faith its international obligations of living peacefully with other states."

However, there are certain limits of the principle of suzerainty, widely accepted in international law. Chapter VII of the Charter of United Nations allows the Security Council to take measures, including military, in case of acts of aggression, breaches of peace or international security or threatens against them.

Suzerainty may also be restricted by common law or obligations undertaken by treaties. The states must observe the international obligations undertaken, not being allowed to claim its own suzerainty as excuse for not accomplishing the duties agreed.

In addition, the membership to United Nations (Buzatu, 2012) involves a restriction of suzerainty of members. Article 1 of Charter stipulates that one of the objectives of United Nations is: „to achieve international cooperation in solving the international issues with economic, social, cultural or humanitarian character, in promoting and encouraging the observance of human rights and fundamental liberties for all, regardless race, sex, language or religion", the United Nations being „a centre which harmonizes the efforts of nations in reaching such common objectives". Consequently, being brought in the international sphere, such economic, social, cultural and humanitarian issues, as well as the human rights, by ratification of Charter, the national governments can no longer claim that such issues are exclusively internal. Suzerainty cannot protect the internal violations of human rights which argue against the international obligations. Therefore:

- –the states must secure to the foreigners on its territory the rights stipulated by the common and conventional norms of international public law;
- –the state has the obligation to reject to be undertaken, on its territory, of some acts which endanger the security of other state;
- the state has the obligation to observe the immunities of foreign states – meaning that the acts of a state cannot be submitted to the internal jurisdiction of other state – and the immunities of execution enjoyed by the goods property of other state encountered on its territory. The county court of a state can no longer take constraint measures against the goods of a foreign state. (Năstase & Mătieş, 2002)

3. Conclusions

Consequently, suzerainty is a characteristic of state power – an essential element of state – and consists in the supremacy of state power on national plan and its trait to represent the state in international relations, under equality conditions and without international interference. It is the most important trait of the state power and involves the supremacy internally and independence externally. Suzerainty belongs to all states, regardless the size, power, stage of development and it is the fundamental concept of international law, being the main element on which it is currently founded the state and international organization.

4. Bibliography

Anghel, Ion (1998). *Subjects of International Law*. Bucharest: Lumina Lex.

Buzatu, Nicoleta-Elena (2012). *Illicit Drug Trafficking and Consumption. Multidisciplinary Aspects*. Bucharest: Universul Juridic, p. 182.

Deleanu, Ion (1992). *Constitutional Law and Political Institutions, Vol. II*. Iaşi: Fundaţia Chemarea.

Florea, Elena (1977). *Independence and Suzerainty: Contemporary Political Concepts*. Bucharest: Politica

Geamănu, Grigore (1967). *Fundamental Principles of Contemporary International Law*. Bucharest: Didactic and Pedagogic Publishing House.

Ionescu, Cristian (2008). *Treaty of Contemporary International Law, 2nd edition*. Bucharest: C.H.Beck.

Mihăilă, Andra (2008). Modern Concept of Suzerainty. *Scientific annals of „Al. I. Cuza" University Iaşi*, Vol. LIV. http://laws.uaic.ro/docs/pdf/articole/2008/Anale2008_art11MihailaAndraConceptulModernDeSuveranitate.pdf, visited on: 23.07.2013.

Mitran, Ion & Lotreanu, Nicolae (1977). *Nation, Suzerainty, Independence: Studies and Communications*. Bucharest: Politica.

Moca, Gheorghe (1970). *State Suzerainty and Contemporary International Law*. Bucharest: Ştiinţifică Publishing House.

Moca, Gheorghe (1973). *State Suzerainty*. Bucharest: Politica Publishing House.

Moca, Gheorghe (1983). *International Law*. Bucharest: Politica Publishing House.

Năstase, Adrian; Jura, Cristian & Coman, Florian (2012). *14 Lectures of Public International Law*, Bucharest, C.H.Beck Bucharest, Politica.

Năstase, Dorina & Mătieş, Mihai (2002). Future of National Suzerainty of Romania in the Perspective of European Integration. *National Suzerainty and European Integration*. Iaşi: Polirom, pp.21-80.

Pereş, Gabriel (2008). Suzerainty in international European rights, *Strategic impact, No. 1 [26]*. Bucharest: Politica Publishing House of „Carol I" National University of Defence, pp. 102-106.

Verga, Crina Mihaela (2011). The National Sovereignty in the Context of the Integration of States in the European Union. *Logos - Universality - Mentality - Education - Novelty, International Conference, Department: Law, Vol. 2*. Iasi: Lumen, pp. 117-136.