

The Concept and Content of Sovereignty

Victor Rusu

University of European Studies in Moldova, Masters in Law, victor_rusu007@yahoo.com

Abstract: Sovereignty is the quality of state power, on the basis of which it is empowered to adopt any political, legal, military and economic decision in all home and foreign affairs, without the interference of another power. The concept of sovereignty was defined in many ways, put in different context by philosophers and legal experts, yet the basic idea remains always the same, and namely – state sovereignty includes 2 inseparable elements: state supremacy within the state and state independence in relation to other powers.

As social phenomenon, sovereignty appeared together with the state; it develops simultaneously with the state and determines state peculiarities. That is why, the origin and history of the concept of state are strongly related to the nature, origin and history of state. In the historical evolution of society, the doctrine on the content of sovereignty was interpreted through various theories and positions.

There are 2 general theories that have confronted each other for centuries as each of them supported a different idea of sovereignty: the theocratic theories or concepts and the democratic doctrine.

Theocratic concepts built upon the idea that the Creator of the world who has all power in his hands appoints and empowers a sovereignty holder represented by the king and the democratic theories target popular sovereignty and national sovereignty.

In the modern constitutional concept, sovereignty is a complex and crucial issue both for international and constitutional law.

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In theory², sovereignty being compared with independence, means supreme power and the quality of being sovereign, being the master of one's own fate. At the same time, a difference should be made between national sovereignty, which is identified with the independence of a state in relation to other states and state sovereignty meaning supremacy of state power within the country and its independence in relation to the power of other countries.

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As a particular trait of sovereignty, supremacy of power refers to the internal aspect, meaning territorial integrity and inviolability of state borders, as well as the fact that state power, constitutionally established, is above any other power. Also, supremacy of state power expresses its quality of being the only authority that has the right to act on state territory and population, to set the system and rule of law within state borders, as well as the directions and ways of achieving domestic and foreign policy according to the aspirations and interests of its people.

Independence, as an element of sovereignty, refers to the external aspect, by which the state carries out a foreign policy, which it establishes independently from another state or another international power.

¹ Ion Deleanu, Drept constituțional și instituții politice, p. 54

² DEX, Academia Română, Institutul de lingvistică "Iorgu Iordan", Ediția II-a, Univers enciclopedic, București, 1998, p. 1049

Independence is explained as the situation of a state or people that enjoy national sovereignty, autonomy and right to freely solve its domestic and foreign problems without interference from outside (observing the rules of other states and the principles of international law).³

Certain doctrinaires⁴ try to mark off state sovereignty from state independence, sustaining that independence is a condition and, at the same time, a criterion of sovereignty. In broad sense of the word, the key elements of sovereignty include, besides independence and autonomy, international “personality”, authority (power), integrity and territorial inviolability⁵. While the term “independence” is used to describe an aspect of sovereignty, sovereignty, once being recognized in relation to a state, becomes a guarantor of its independence.

Though sovereignty and independence have their own peculiarities, still, there is an undeniable link between them, as they determine and complement each other, they are essential to the state and cannot be separated from each other. Sovereignty and independence are basic requirements of statehood.

According to the above mentioned, sovereignty represents the supreme authority a state is endowed with by the people by means of constitutional democratic forms and, as a supreme power of the state, it represents the exclusive competence of the state over the national territory and its independence in relation to any other power from outside. Thus, its results that sovereignty appears:

- internally, consisting in the supremacy of state power over the territory and a certain population, translated into the development of certain rules with of a general nature and their implementation in the daily life;
- externally, consisting in the independence of the state in its relations with other states or with any other powers from outside.

In the modern constitutional doctrine⁶ it is considered that, from internal point of view, the content of sovereignty is characterized by certain general features, such as:

- the original and plenary nature is expressed by the fact that sovereignty is exercised and comes directly from the people and cannot be assigned to other powers outside the country. The prerogatives of sovereignty are plenary as they cover all field of activity of the society organized within a state: political, economic, cultural, social, domestic, foreign etc.
- the unique nature of sovereignty consists in the lack of another power of the same kind, which it would compete with. If people’s sovereignty is unique, it results that state sovereignty is also essentially unique, which still does not rule out the division and separate exercise of the state functions.
- indivisible nature means that sovereignty, being unitary, cannot be divided into separate share parts belonging to different holders.
- the inalienable nature emphasizes the fact that a nation cannot abandon, cede, lend or definitively and irrevocably alienate sovereignty, be it to a state, a group of people or certain international organizations.
- imprescriptible nature means that sovereignty exists as long as its holder – the people or the nation - exists.
- Complete nature means that sovereignty cannot be randomly limited by an internal or external power. The territory of a state can be subjected to a single absolute sovereignty.

From external point of view, national sovereignty is freely exercised, without any restrictions and expands, in terms of dimension, up to the point where the sovereignty of another state begins. Being the only subject of international law invested with sovereignty, the state has the absolute capacity to promote the interests its people abroad, acting according to international norms and principles.

³ Ibid., p. 485

⁴ Popa V.N., *Teoria generală a dreptului*, București, 1992, p.62-63

New York Bar Association, “dezghețarea unui conflict înghețat: aspecte legale ale crizei separatiste din Moldova”, Special Committee for European Affairs, Report presented at the international conference of July 18 2006,

⁶ See: Cristian Ionescu, *Tratat de drept constituțional contemporan*, AAL Beck, București, 2003, p. 306. A. Arseni și alții, *Constituția RM comentată articol cu articol*, Vol.I, Civitas, Chișinău, 200, p. 17

International Law is a law of those who are equal. Currently, international community of states cannot be conceived otherwise than as a system of subjects with equal rights. At the same time, one should not confuse states' equality of rights with their actual equality because, based on the real state of things, none can contest actual inequalities that exist between states. In this sense, equality of rights means legal equality between states, regardless of territorial, economic, political differences.

Equality of sovereign states presumes the observance of the sovereignty of all states and their equality within international relations and it is characterized by the following elements⁷:

- States are bound to observe sovereign equality and peculiarity of each state, as well as all rights inherent to sovereignty.
- Each state is bound to observe the personality of other states.
- Each state is entitled to freely choose and develop its political, social and economic and cultural system, and set its administrative rules and regulations.
- All states have equal rights and obligations.
- All states are bound to observe the right of each of them to determine and exercise, at its choice, its relations with other states according to international law.
- Each state has the right to participate in international organizations and treaties.
- Territorial integrity and political independence of a state are inalienable.
- Each state is bound to fully and conscientiously fulfill its international commitments, as well as to cohabit peacefully with other states.

In most of contemporary countries, Constitution proclaims people owner of national sovereignty. This rule is given the status of a constitutional principle that determines the form of the state.

Under the conditions of the state of law people have the last and decisive word in the process of society organization. According to the Declaration of Sovereignty of the Republic of Moldova people are the source and holder of sovereignty. Art 2, para. (1) of the Constitution of the Republic of Moldova stipulates: "National sovereignty resides with the people of the Republic of Moldova, who shall exercise it directly and through its representative bodies in the ways provided for by Constitution.". Thus, state sovereignty is limited by sovereignty of people, who have the supreme right to determine the political, economic, cultural and social system of the state. International law equally protects sovereignty and independence of all states.

The concept of sovereignty is the object of many theoretical controversies

Peculiarities of sovereignty expounded in democratic theories have engendered many polemics.

Both in constitutional texts and doctrines, one can notice the fact that "sovereignty of people" and "national sovereignty" are often considered as being the same and synonyms with "state sovereignty".

In order to identify the relation between sovereignty of people and national sovereignty it is necessary to clarify the meaning given by the Constitution of the Republic of Moldova to the notions of "people" and "national power". Thus, by the notion of "people" one understands a group of individuals having the quality of citizens by which they have the ability to participate in expressing and exercising national will. While national sovereignty is being compared to political power and means absolute and permanent power of people.⁸

In this context, the main factor, on which the nation is built upon, is important: the material one⁹ - it includes race, language, ethnical origin, culture, religion, common history and customs or the spiritual (psychological) factor that can be expressed through the "desire to cohabit, which is manifested by the fact of holding or adhering to the citizenship of a state". The material factor, that is the ethnical origin is static, usually it does not change, unlike the spiritual factor that is the citizenship, which can be changed

⁷See: Oleg Balan, Eduard Serbenko, Drept internațional public, Vol.I, Chișinău, 2001, p.92; A. Arseni și alții, Constituția RM comentată articol cu articol, Vol.I, Civitas, Chișinău, 200, p. 18

⁸ A. Arseni și alții, Constituția RM comentată articol cu articol, Vol.I, Civitas, Chișinău, 200, p. 34;

⁹ Cristian Ionescu, Tratat de drept constituțional contemporan, AAL Beck, București, 2003, p. 84

at one's choice. It is on these grounds that positions with regard to the relation between national sovereignty and sovereignty of people divide.

According to contemporary scientists,¹⁰ though at different historical times there were differences such as those with regard to voting, form of government, forms of democracy etc, between the theory of popular sovereignty and theory of national sovereignty, then in the period of modern constitutionalism, the idea that there are no more differences between them along with the introduction of universal voting is admitted. Thus direct or semi-direct democracy can be seen along with representative democracy and the distinction between monarchies and republics has nothing to do with the political regime.

Whatever the main factors in defining a nation may be, the conclusion is that, currently, the quality of citizenship is the most important quality for exercising the sovereignty of a (internationally recognized) society, organized in a state, other individual peculiarities of the person, such as ethnical origin, religion, language etc., being secondary. The provisions of Art. 2 relate the term of national sovereignty to the one of sovereignty of people.

As for state sovereignty we have to start from the fact that the notion of state is used with two senses: in the wide sense it means "the society organized on a territory, having an autonomous governing" and in a narrow sense it means an organizational system of authorities that govern the population settled on a certain territory in a sovereign way.

If the notion of "state" is used in a wide sense then there is no distinction between state sovereignty and sovereignty of people or nation sovereignty, except for the case when we do not admit an equal status between sovereignty of people and national sovereignty. If we still use the notion of "state" in a narrow sense, we will have to make clear who the owner of sovereignty is - people or the system of representative state authorities. In this sense the Constitution of the Republic of Moldova uncontestedly stipulates that all powers come from people, thus, state sovereignty is limited by sovereignty of the people whom the supreme right to determine the political, economic, cultural and social systems belongs to, and what people consign to the state is only the exercise of sovereignty.

Another problem of defining the concept of sovereignty is engendered by the setting of limits of sovereignty

It is known that state sovereignty is not absolute, on the one hand it is exercised by the state within the legal limits set at the national level on basis of the sovereignty as well, and on the other hand, sovereign power of a state is limited by the similar power of other states, as all states are equally sovereign.

At the beginning of the new century the new millennium, world interdependence world has increased; many domestic and regional problems became international. There is an increasing tendency of integration and creating a common international political, economic, financial and legal space.

Some contemporary political scientist see sovereignty as a barrier in the way of establishing certain forms of international cooperation¹¹. They believe that only the unification of existing states in a European or world supranational organization could solve the contradictions and problems of the contemporary period, considering that the era independent states has declined or has come to its end, and independence hinders progress.

Promoting the idea of European integration of the Republic of Moldova, we should realize that sovereignty cannot be absolute at the international level. International law is a system of obligations, by means of which states benevolently accept the limitation of their freedom of action and, ultimately, of their internal political autonomy. Being a coordinating law by its nature, international law has certain supranational peculiarities; it includes elements of subordination that are expressed by: the creation of special institutional structures and observance of obligations emerging from the international treaty that was ratified.

Thus, when one speaks about "limiting sovereignty on an international level", one does not understand limiting the power of people. Limitation does not relate to people, but to competences of exercising

¹⁰ g. vrabie - integrarea europeană și suveranitatea de stat, justiția constituțională, nr.1/2006, p.38

¹¹ Marin Voiculescu, Doctrină politică contemporană, Editura VICTOR, București 2000, p.128 (Maurice Duverger, Droit constitutionnel et institutions politiques)

sovereignty of people, competences, which are usually delegated to the state but which can be exercised by the state nowadays, delegated by the latter to community structures or exercised jointly at two levels: state and international institutions.

On the basis of current practice of international law and Council of Europe, one can observe the “globalization” of human rights on the one hand and the limitation of state competences on the other hand. Still, this limitation has to be regarded firstly as a consequence of the benevolent exercise of their will by sovereign states. Thus, we can state that nations integrated by means of international treaties remain sovereign. “Sovereignty” is a natural, imprescriptible and inalienable right. It can be delegated to be exercised temporarily, but the owner can claim it any time.

National acts on the constitution and consolidation of our state – on sovereignty¹², on independence¹³, on power¹⁴, including the Constitution, proclaim the sovereignty and independence as bases of statehood. For instance, the Declaration of Sovereignty of the Republic of Moldova provides in Art.1 that sovereignty is a natural and necessary condition for the existence of Moldovan statehood.

These state characteristics are consecrated by the Declaration of Independence as well: “The Republic of Moldova is a sovereign state, independent and democratic, free to decide its present and future, with no involvement from the outside, according to its people’s saint ideals and purposes, within the historical and ethnical space of its national becoming.”

The Constitution stipulates in Art.1, para. (1) that the Republic of Moldova is a sovereign and independent state.

The appearance of the Republic of Moldova as a sovereign and independent state, after the collapse of the USSR, according to the international law of secession meant:

- 1) The RM has become a subject of international law, being recognized by the international community as a sovereign and independent state, having all the rights and obligations resulting from this statute.
- 2) The state of the RM has replaced the former Federation, being its legitimate predecessor within the administrative and legal limits of the territory, which existed at the time of USSR collapse. It occupies this territory at present as well.
- 3) State succession does not affect the borders set by a treaty, nor the obligations and rights related to the border regime or other territory regimes.¹⁵

After having been recognized by the international community, the sovereignty and independence of the Republic of Moldova as a state cannot be questioned anymore. At this point the problems our people face in exercising and strengthening their sovereignty should be tackled.

Sovereignty cannot be strengthened just by administrative coalitions and legal provisions.

1. Strengthening the unity of people is necessary for the affirmation of the sovereignty of the Republic of Moldova.

The link between the citizens, their community - called unity of people in the Constitution, and citizens’ right to differ from each other on the ground of their ethnical origin, language, religion, which is called the right to ethnical identity is one of the principles, on which state sovereignty is based.

Constitutional proclamation of all citizens’ equality before the law and public authorities, regardless of the race, nationality, ethnical origin, language, religion etc. has laid the basis for the achievement of constitutional principles on human rights and for free development of human personality. Thus, we can assert state that each the right of every citizen to identity is fully observed in the Republic of Moldova.

¹² The Declaration of Sovereignty of Moldova Soviet Socialist Republic, Decision of the Parliament of the RM No. 148-XII of June 23, 1990, Supreme soviet News 1990, No.8, Art.192

¹³ The Declaration of Independence of the Republic of Moldova, Law of the RM No. 691-XII of August 27, 1991, MO of the RM, 1991, No.11-12, Art.103,118

¹⁴ The Decree on State Power, Decision of the Parliament of the RM No.201-XII of July 27, 1990, Supreme soviet News 1990, No.8, Art 208

¹⁵ The Covenant on Succession to Treaties, 1978, Art.11, Art.12

It is true that the objective of unity of people is hard to be achieved in any state, even in democratic states with old constitutional traditions and particularly in those, which have a young democracy, the Republic of Moldova being one of the latter. But as national sovereignty belongs just to a holder - the people, it is natural that legal consciousness and citizens' unity are significant and indispensable in terms of strengthening and exercising of sovereignty (political power) under the forms provided for by the Constitution.

The unity of legal consciousness of the state and people in their aspirations to establish a democratic state of law is the key to success in strengthening sovereignty. The social basis of the unity of people is ensured and determined by citizens' spirit of solidarity. Solidarity represents a spiritual, political and legal link between all citizens of the country, regardless of their ethnic origin, which is expressed by their desire to cohabit sharing common values.

As a result, the revision of Art. 10 of the Constitution and completion of para. (1) with the provision "The unity of the people of the RM and solidarity of its citizens is the basis of the state" would be appropriate.

2. Strengthening of sovereignty supposes ensuring social stability by ensuring Constitution and legislation stability

Stability of the legal system, including the Constitution, which contributes to the social, economic and political stability of the statehood, is a remedy of society development and strengthening of sovereignty. From a psychological point of view, the individual citizen and society in general cannot work in a normal way if the legal rules of tomorrow are unknown.

Stability as a phenomenon does not admit frequent amendments to the Constitution. The frequent revision of constitutional norms has poses many threats, the most serious being social instability, ignorance about the Constitution. For the RM these threats are even more serious as it has not reached an economic stability and a high level of political and legal culture yet.

Currently, to strengthen sovereignty, it is necessary to focus on the development and full achievement of constitutional provisions, as the potential of the Constitution has not been exhausted yet.

3. Another desideratum is giving up to the paternal role o the state and giving more rights to people in taking the most important decisions, thus ensuring transparency of the decision-making process

Exercising sovereignty supposes full confidence of people in the actions of its representatives. For this purpose, it is necessary that public institutions operate in transparent conditions and citizens have free access to information of public interest these institutions hold, to be able to participate in the decision-making process.

Transparency in the decision-making process of public authorities is essential for the strengthening of sovereignty of the Republic of Moldova and, namely for exercising national sovereignty, involving the possibility of citizens to:

- a) receive data and information on social, political, economic, scientific and cultural life to get informed and to understand the phenomena around them and
- b) get involved and take part in the decision-making process with regard to political, economic, social and cultural life.

The legal constitutional framework on the principle of transparency was adjusted to international standards in the field of human rights to a great extent.

4. Another objective is the improvement of democratic forms of exercising sovereignty

At this point attention should be paid to the republican referendum, including the constitutional one, according to which the Constitution can be changed by people, according to the procedure set by the Constitution.

According to the Electoral Code¹⁶, citizens can initiate, under constitutional conditions, the referendum for the revision of the Constitution. If the revision of the same provisions of the Constitution is initiated simultaneously by the Parliament and by citizens, the examination of the proposal on parliamentary revision is suspended. A constitutional law subjected to a republican referendum is considered approved if it was voted by at least half of the total number of people registered on the election lists.

The legislative republican referendum, introduced with a pilot statute in our constitutional system in 2002, which originated another democratic form of exercising national sovereignty by people, should be mentioned as well.

5. A primarily important problem in strengthening sovereignty is related to ensuring the exercise of sovereignty in relation to the territory

State territorial sovereignty means the capacity of the state to exercise its authority according to people's will and international law, both in relation to assets and situations, people and activities that are located or carried out within its territory.¹⁷ State territorial sovereignty has a general nature as a sovereign state carries out all attributions inherent to public authority within its territory.

Art.1 of the Constitution proclaims the sovereign, unitary and indivisible nature of the state. Actually, since the proclamation of its independence and within the 12 years since Constitution adoption, the Republic of Moldova faces difficulties in achieving this desideratum, as the conflict in the Eastern region of the country, which was artificially initiated by the separatist elements, has not been settled yet.

This situation creates big difficulties to our young state in exercising sovereignty both at the national level and in relations with international community. For instance, the Parliament of the Republic of Moldova admitted a reserve when it ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁸ where it stated that the Republic of Moldova would not be able to ensure the observance of the provisions of the Convention in terms of negligence and acts committed by the bodies of the self-proclaimed Transnistrian republic on the territory, which is under their control until the final settlement of the conflict in this region because the Constitution and the laws of the Republic of Moldova do not operate *de facto* on the left part of Nistru river.

This reserve was imposed by the harsh reality and it seemed to be a just solution for our state, still it was not recognized by the European Court in the case of Ilascu and Others versus Moldova and Russia¹⁹, and by the international community, being appreciated as a reason for state's exoneration from fulfilling its commitments, which result from international treaties to which Moldova is party.

Among other things, the European Court stressed that the Transnistrian region, in which the separatist regime that is not recognized internationally had installed, and which was artificially created and supported by foreign authorities, is an integrant part of our country. And the state – the Republic of Moldova, which was recognized by the international community within the administrative borders that

¹⁶ Election Code, Art. 148

¹⁷ Dupuy P.-M., *Droit international public*, 3 ed., Paris, Editions Dalloz, 1995, nota 52, p.48

¹⁸ DECISION OF THE PARLIAMENT OF THE REPUBLIC OF MOLDOVA on ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as certain additional protocols to this Convention No.1298-XIII of 24.07.97, *Monitorul Oficial of the Republic of Moldova No.54-55/502 of 21.08.1997*

¹⁹ ECHR decision of 08.07.2004 - Ilascu and others versus Moldova and Russia. The Right to Life (Art.2). Fair Process (Art.6 para.1). Free Access to Justice. Observance of the Human Rights, Freedom and Dignity. Apprehension. M.O., Special Edition of 21.09.2004

existed at the moment of its creation, being part of ECHR, is responsible for the observance of the Convention on the entire territory of the country.

It is also difficult to accept the term of “referendum” for the actions carried out on September 17 in the Eastern region of the country, as according to the international law and legislation of the RM, the provisions on state’s sovereign, independent and unitary nature can be revised only with their approval by republican referendum, with the vote of the majority of the citizens registered on the election lists²⁰.

The settlement of the regional conflict has become a priority problem both for our state and for international community, with the aim of strengthening and ensuring the exercise of national sovereignty in relation with all the population on the entire territory of the Republic of Moldova.

We could conclude that the legislative framework of the Republic of Moldova in terms of content of national sovereignty is formed *de jure*, recording continuous progresses towards perfection and alignment to the democratic standards of the democratic standards of contemporary constitutionalism. However, there are barriers in strengthening and exercising sovereignty according to the forms set by the constitutional framework, which could be overcome by observing the international principles and provisions to which we are party.

²⁰ Art. 142 para. (1) of the Constitution