ANALYSIS ON THE PRINCIPLE OF NATIONAL SOVEREIGNTY IN THE CONSTITUTIONAL REGULATIONS OF THE EUROPEAN UNION MEMBER STATES

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Abstract*: The accession to the EU implies, for a state, the assignment of a part of its powers, including a series of attributes traditionally considered as being closely linked to the exercise of national sovereignty. In fact, the participation to the Union presupposes the exercising of powers by the supranational institutions established through the constitutive treaties. The Member States faced this problem throughout the evolution of the European Communities, going from strict and specific fields, in the beginning, to increasingly wider areas of competence, by means of a sectoral integration in continuous expansion. The Member States did not uniformly approach the issue of transmitting these powers to the Community.*

Keywords*: European Union, sovereignty, constitution, Euro-skepticism.*

1. INTRODUCTION

From the experience of the Member States, there can be conceived two approaches of the issue of transmitting the state powers to the Union. The first consists of the modification of all constitutional provisions regarding the prerogative totally or partially transferred. This approach presents the inconvenience that it implies new revisions at every future moment in the Union's evolution, when significant additional transfers will occur, which may create difficulties at the political and legal levels. The second possible approach is the insertion in the text of the Constitution of a general clause, authorizing the transfers[1].

2. EUROPEAN PERSPECTIVES

In the last years, the European Union Member States – except for Great Britain, which has no written Constitution – modified the constitutional provisions for the purpose of giving legitimacy to the process of transferring sovereignty to the international organizations, including the European Communities and the European Union. States such as France expressly regulated in the Constitution the possibility to transfer certain attributes of sovereignty to the European institutions.

Thus, the French Constitution orders in its Preamble that, „under the reserve of reciprocity, France consents to the sovereignty limitations necessary for organizing and defending peace". The German Constitution regulated the federation's right to transfer attributes of sovereignty to any international forum through the legislative way (Miga-Beşteliu, 1998:96). Also, in art. 88 para.1 of the French Constitution indicates that: „The Republic participates to the European Communities and to the European Union, constituted by the states that opted freely, by virtue of the treaties that established them, to exercise in common some of their competences".

The French federalists claim that, in order to support a federal Europe, it is necessary the existence, above sovereignty, of superior moral principles, anchored in the transnational European values. In their vision, the Maastricht Treaty fractions sovereignty and is constitutive for a federation. From the

[1] The option of the general authorization clause was put into practice, for example, by Belgium, Germany, Italy, Luxemburg, the Netherlands and Spain

diachronic perspective, the Euro-optimists claim that in the European history, the principle of nationalities has always expressed the thesis, and the European wars constituted the anti-thesis; that is why, at present, there is no other solution than federal synthesis. The national states were able to impose sacrifices in the past because they were able to ensure survival. In what concerns the French Euro-skeptical arguments, extremely complex and moderate-realistic on the matter, we consider the theses of Phillippe Raynaud, who sees Europe as an international intergovernmental regime. His definition of sovereignty, whether we are speaking of a state or of the European Union, is the "power to decide for ones' self in the last resort and to have a domestic legal order with certain coherence …. the final test of the existence of sovereignty being who decides in exceptional situations". To the question "which are today the sovereign political bodies: the European Union or the composing nations?", the answer is the European Union, because the actions of the European Court send to an interpretation of the role of the European institutions as that of the organs of a sovereign political body in the making. But the fact that, through the Maastricht Treaty, the states preserve the right to withdraw sends to the idea that they - in the strictly legal sense – remain sovereign. But Raynaud's problem is that the federation creates a people. And as an example, he develops on the American solution to the problem of secession and the respective right, drawing attention to what could be imagined in the EU in case a state would wish to exit the Union. Raynaud acknowledges the fact that the legalist interpretation of sovereignty collapsed, but, at the same time, he says, we cannot leave the ambiguity created by the European Union, because the hierarchy of legal norms between the Member States and the Union is not clear and in the absence of a European Constitution, the UE Treaty is only valid because it is conform to the national constitutions. Unlike the German federalist visions, even the pro-integration attitude of the British Euro-optimists prefer to see the European Union as a community of states. At the national level, the difference resides precisely in the use of the term *community* rather than of *association* preferred by the British Euro-skeptics. Thus, Christopher Lord considers that the definition of sovereignty, corresponding to the pro-integration attitude, is the following: (i) legality of decisions, (ii) autonomy of the national decisional system from the foreign influence and (iii) the power to obtain the desired results. The supporters of the "community of states" accept the fact that the role of the state is modified under qualitative aspect, and the international economic decision is made at the level of the US – European Community axis. In the conditions in which the world economy creates economic blocks in asymmetrical interdependence, it is better to represent a center that decides, than to remain formally sovereign, but without real influence. At the same time, this line of argumentation, moderately pro-European, insists on restating the right of national veto as a precondition of Great Britain's participation to the European decisional system, accepting, in parallel, the reality of phenomena such as transnational socialization and the collaboration of international regime type. Lord says that the vision on the community of states gives priority to the definition of sovereignty as power (maneuvering margin or control over events), meaning that of politico-economic sovereignty. In Lord's vision, the moderate pro-Europeans illusion themselves when they imagine that the European Union is only a variant of economic interdependence, from which they could eventually withdraw. In fact, the experience of the European Community demonstrated how coercive are the cooperation regimes based on institutional decentralization. Lord claims that this type of regime, apparently little coercive, has among its paradoxical political consequences the release of the national Executives from the legislative control. How exactly does the executive power increase due to the European Union? Through the fact that the treaties formulated at the executive level, as a result of difficult international negotiations must be accepted or rejected *in corpore*. As a consequence, the only solution to avoid both the veto of the national parliaments, and/or the

disappearance of the control of the legislative on the Executive is, for Lord, the consolidation of the European Parliament. In that concerns the European legislation, it cannot be said that the Great Britain has no control, because its Executive participates to the elaboration of Directives. More than that, the public appreciates these directives, because they have, many times, a social sense more accentuated that the domestic legislation. The Conservatives have been and remain the legatees of British Euro-skepticism. Appanage of the conservatives, but not exclusively, the arguments of the British Euro-skeptics refers to threats towards the traditional British society, the betrayal of the post-imperial relations with the Commonwealth, the danger towards the unwritten law constitutional system, the fact that the Economic and Monetary Union affects a basic precondition of sovereignty, hence, no desire to join the Euro-zone, that the Economic and Monetary Union aggravates the division of Europe by creating a "*rich men's club*". The Euro-skeptics prefer to consider the European Union as an "association of states", any other form being form them a danger that could lead to the creation of a super-state. Their preferred definition is the legal one: the right to national veto, within the EU bodies, internal autonomy at the legal level, supremacy of domestic law, the preservation of the possibility of unilateral action or in other multi-national frameworks (NATO or Commonwealth). Therefore, the EU future, from their perspective must be limited to being a multiplier of forces at the international level, possibly a transfusion of power for the independent action of Great Britain and, if possible, a leading role in the EU for the United Kingdom, under the absolute condition of stopping a deepening of the European integration in the supranational sense (Lord, 1992 : 419-437). The Conservatives oppose the deepening of the integration, which they perceive as an inexorable process with an apparently modest debut, which ends with a complete transfer of sovereignty. Sovereignty for them represents more than simple functions, it is an expression of the identity between the governed and the governing, rejecting the functionalism intentionally lacking a political mission, according to the model of the French Euro-skeptics. Criticizing the politico-economic approach of the erosion of state sovereignty, they argue that sovereignty cannot be lost in favour of the market, but only to other states or to political institutions. The perpetuation of this confusion favours a possible capture of the European super-state by the private interests.

The British Euro-skeptics exaggerate the autonomous action ability of the state and lose sight of the fact that the European Union is very different in relation to the classical European state. Then, the Euro-skeptics deny the possibility of the existence of a dual identity, European and national. This vision exclusively belongs to the British elite, which controls the political institutions, and not to the public opinion in general. The respective vision presupposes a parliamentary absolutism, which never existed in reality.

Germany remains the most fervent supporter of federalism – for historical reasons – building its concept of sovereignty around the politico-economic meaning, seeing in the European Union a vehicle for protecting the national economies in the context of globalization (Milward, 2000). Germany supports the deepening and expansion of the EU since it copied the German model of economic-financial efficiency (the independence of the Bundesbank and the European Central Bank, the EU monetarist model.). The German Euro-optimists favour the EU enlargement because their country is the first to benefit from the investments made in the new EU space, wishing and obtaining direct influence especially over the central European states (Poland, the Check Republic, Slovakia and Hungary). Germany's Constitution, in article 24 para. 1 indicates expressly the fact that: "The Federation may, by law, transfer sovereign powers to international organizations". Art. 9 para. 2 of Austria's Constitution establishes the fact that, through law or treaty, there can be transferred federal competences to the international law organizations. In the situation in which completions or modifications are brought to the laws in effect, they require the Parliament's approval, according to a special

procedure regulated by art. 50 para. 1. The Belgian Constitution also comprises a regulation in this sense. Thus, according to the provisions of art. 33 and 34[2], the transfer of certain competences determined by law or treaty to the international public law organizations is possible. The Constitution of the Netherlands allows transfer to the international organizations of „legislative, administrative and judicial competences" by means of international treaties. In the situation when the international treaty comprises dispositions contrary to the constitutional provisions, art. 91 para. 3 stipulates that the treaty must be approved with a majority of two thirds by both Chambers of the Parliament[3].

In what concerns the Italian Constitution, after establishing in art. 1 that sovereignty belongs to the people, who exercise it in the forms and limits established by the Constitution, it regulates - in art. 11 – the fact that on the basis of reciprocity with other states, limitations can be imposed on sovereignty in order to ensure peace and justice among nations. In this sense there will be supported the international organizations that have such an objective[4]. The Constitution of Greece refers to the assignment, through treaties, of certain competences established within its content, to certain international bodies. Greece can freely proceed to refrain the exercise of its national sovereignty to the extent to which such restraints are imposed by an important national interest, do not affect human rights and are executed observing the principle of equality, on condition of reciprocity[5].

In Portugal's Constitution it is states that the norms originating from the competent bodies of the organizations to which Portugal participates enter directly in the domestic legal order, if such an effect is explicitly established in the constitutive treaties. Also, the Luxembourg Constitution stipulates that the exercise of the attributions reserved for the legislative, executive and judicial powers can be temporarily transmitted, through treaty, to certain international law institutions (Manolache, 2005).

6. CONCLUSIONS

Gabriel Andreescu and Adrian Severin consider that the doctrine of sovereignty can no longer be conceived in its classical parameters, being necessary rather the acceptance of the idea of a federation of national states, in which certain prerogatives would be transferred to the European family, on the basis of free consent (Andreescu, Severin, 2001).

BIBLIOGRAPHY

1. Andreescu, G. & Severin, A. (2001). Un concept românesc al Europei federale. In *Un concept românesc privind viitorul Uniunii Europene.* Iaşi: Polirom.
2. Lord, C. (1992). Sovereign or Confused? The ‚Great Debate' about British Entry to the European Community 20 Years On. *Journal of Common Market Studies.* Vol. XXX, No. 4, December. 419-437.
3. Manolache, O. (2005) Puncte de vedere privind limitările de suveranitate în procesul de integrare europeană. Communication defended in the *Scientific Session of the Institute for Legal Research*, Bucharest.
4. Miga-Beşteliu, R. (1998). *Drept Internațional, Introducere în dreptul internațional public*. Bucharest: All Publishing House.
5. Millward, A. (2000). *The European Rescue of the Nation State*. London: Routledge.

[2] Art. 33: "All powers emerge from the Nation. This power is exercised in the manner established through the Constitution", Art. 34: "The exercise of determined powers may be assigned, by treaty or by law, to international public organizations".

[3] This constitutional provision is much more flexible than the one comprised in the Romanian Constitution, according to which „the international treaty or agreement established as being unconstitutional cannot be ratified" (art. 147 para. 3).

[4] The Constitution of Italy, through this text, is the first Constitution that opens the road to the European Union.

[5] The Constitution of Greece establishes, in article 1: "(2) Popular sovereignty is the fundament of governance. (3) All powers emerge from the People and exist for the People and Nation; they will be exercised as established through the Constitution", and in article 28(2): "The prerogatives established by the Constitution may, by treaty or agreement, exercised by agencies of the international organizations, when this serves an important national interest and promotes cooperation with other states. A majority of three fifths of the total number of the Parliament members will be necessary in order to vote the law for ratifying the treaty or the agreement".