FUNDAMENTALS AND FEATURES EMBEDDED IN THE CONCEPT OF SOVEREIGNTY

Gabriela NEMŢOI

DOI: https://doi.org/10.18662/eljpa/2015.0203.07

European Journal of Law and Public Administration, 2015, Volume 2, Issue 3, pp. 77-83

Published by:
Lumen Publishing House

On behalf of:
Stefan cel Mare University from Suceava, Faculty of Economics and Public Administration, Department of Law and Public Administration
Abstract

The notion of “sovereignty” cannot be assessed only in the concept of state organization because it is a term that cannot operate singular; he only fits in the concept of the three constituent elements: population, territory and political power of the state. As a phenomenon, political power is conceived as a global power exercised within a community, its defining purpose being to organize it, to maintain it and even to defend it. In a general sense of the literature, “power is the ability of an organized and sustainable social agent to impose others to meet or achieve the decisive objectives it proposes in personal or general interest”. The concept of “power” must be judged in terms of institutional; in this case, the people or positions of power identify power in various bodies to which powers are delegated. Seen in this context, institutionalized power takes the form of state power and is exercised by him as a whole, particularly by different bodies of public authority. Therefore, in this case, the state appears as the exclusive holder of force control and domination that routinely wear out.

Keywords:

Sovereignty, state power, institutionalized power, the exercise of power.

JEL Classification K10, K19

1 Associate professor, PhD, „Stefan cel Mare” University, Suceava, Romania, gabrielan@scap.usv.ro.
INTRODUCTION

State sovereignty was regarded at all times as an argument for states to decide on power management.

People generally do not accept the sovereignty and are not subject to the sovereignty, yet they accept and obey the authority or power of authority or power. The two phenomena are realities of equal seniority value and are ubiquitous. The term of sovereignty, originally and for a long time, expresses the idea of the existence of an ultimate and absolute authority in the political community.

The concept of sovereignty was met with resistance, but could not be ignored when the conditions of rapprochement between society and government or exacerbations distance between society and government have led the assumption that the government and the community are, or should be identical.

In modern political societies, constitutional domain experts felt that, such sovereignty, the state itself is only a concept, even though it started from the idea that “is no state power, but the power of individuals”.

The term of sovereignty is rooted in the association made between the two elements: the State in development and the community and civil society participating in government.

Sovereignty is a manifestation of each state nationalism. With the current spread of European integration, national sovereignty is at the heart of the community states from its effects of “national sovereignty in a unified Europe”.

Therefore, the term of sovereign only works if placed near the term of state. Following, the literature reserves the right to define a state from many perspectives, namely, the political, sociological, and legal.

Thus, from the perspective of political science - state is presented with emphasis on the political, concrete, element, institutionalized political power is identified with state power. From a sociological point of view - the state is the equivalent of a human society directed by certain behaviour, and from

---


4 Ionescu, C., Tratat de drept constituțional, contemporan, Editura. ALL BECK, 2004, p.54

the legal point of view - State implies a system of legal norms, it is the holder of rights and obligations.\textsuperscript{6}

In this regard, we do the assessment that regardless of sophistication, which the literature addresses to the definition of the state, it must include three elements: social, political and juridical.\textsuperscript{7}

The opinions expressed on sovereignty have been and are the most diverse, going down from it, to total up, to complete his denial. Although the situation of theoretical concepts are extending over a wide spectrum, in reality the science of law managed, by convergence of views of most authors, to be true constant in value almost axiomatic, shared and recognized by the general scientific community.\textsuperscript{8}

**CONNECTIONS BETWEEN THE CONCEPT OF “SOVEREIGNTY”, STATE, POPULATION**

Sovereignty can be defined as an essential feature of state power, representing the fact that it is the only power-state within it, being supreme over other non-state powers of nature that exists and manifests in a delimited territory. Sovereignty has two dimensions, one internal and one external or another concept “supremacy” and “independence” or in French terminology “state sovereignty” and “sovereign state”.\textsuperscript{9}

“Supremacy” or the internal aspect of sovereignty is manifested in a relation with branches of state powers, recognized by institutionalizing, in public authorities, authority with the right to exercise power.

“Independence” or the external aspect of sovereignty is the absence of power subordination of authoritarian bodies it exerts; it can be found in the relationships created with international organizations, intergovernmental or other subjects of international law, with the consequence of sovereign equality of states.\textsuperscript{10}


\textsuperscript{7} Craiovan, I., *Introducere în filosofia dreptului*, Bucureşti: Editura. All Beck, 2002, p.65


As a central feature of state, the sovereignty is identified with state power. The evidence of state sovereignty is present in the elementary source of constitutional law - the Constitution. (Romanian Constitution of 1991, which under Article 1, paragraph 1 says that “Romania is a (...) sovereign state”.

Sovereignty is an exclusive and effective political authority, which is the prerogative of the state, unlike any other subjects of law, in particular the various local authorities, local, international or international bodies (European Parliament), which can only benefit from a transfer of powers of government state.

To define the state is essential to use the notion of sovereignty, a feature that gives individuality to the State as a subject of law and that determines the decisive political and legal organization.\(^\text{11}\)

The sovereignty is the nation understood as a group of people joined together by common elements of both an objective and subjective elements that create solidarity and the common will to exist are distinguished from other communities or other nations. So, it is understandable that the state - society is attracted to the state - power, to achieve coordination and the state - power, integrates into the state - society in order to act.

The principle of nationalities does not question the sovereign state, it changes the origin of state power (must be taken into account the governance of the state) and not state power, which cannot disappear nor can change in international relations.

According to this principle of “nationalities theory” derives from the right of peoples to dispose of themselves for sovereignty to be effective, every nation has the right to form a sovereign state.

The meaning of sovereignty is yielded by the historical, social and political context in which it evolves, the space with population element, makes a presentation or more specifically the emergence of the nation state - nation. Through a symbiotic form of “nation” can equate to the term “people”. Such constitutions stipulate that the sovereignty (some national added) or power (political power and state power) belongs to the people.

Sovereign power can only work if they are an emanation of the people. The second structural element of the state is the people. The population is a specific form of organization of authority or after specialists conception in constitutional law it is “one of the inherent size of the state”\(^\text{12}\).

---


Due to social power, any form of institutionalized power requires accurate assembly of people on which it manifests itself.

Nation - state relationship is often viewed in a particular unit, so naturally strong links resulting from their closer or traits that sometimes removes them but on a pool. Linking people - state is in legal language the most important in applying state-legal mechanism. The reason is justified by the fact that the importance of the indivisibility or the identity of the people and state interests should not lead to legal confusion of these two categories. The people and the state are separate subjects of constitutional law. For people to exercise political power make the state as a completely systematized body (legislative, administrative, judicial etc.)

The terminology of “sovereignty” is found, under the Constitution, in the synapse with the term “State”, with “nation” and “people” without providing criteria for distinguishing them.

The nation is a moral person, distinct from the individuals composing it and has a will of its own. The legal status of the nation is the Constitution, and as representatives of the nation are not only elected, but also “declared” in this Basic Law. Given that, they represent the nation as a whole. Quality representative is assigned to the deliberative organ and not its members individually.

This design has several practical consequences including: sovereignty cannot be alienated, it only belongs to the people and cannot be divided, but is regarded as a nation as a whole.

Contemporary society tends to form an international society comprising a juxtaposition of sovereignty of States from a particular geographical area. If this sovereignty cannot be absolute, but each state must respect the sovereignty of other States and public international law or a modicum of international order\textsuperscript{13}.

State sovereignty cannot be regarded as absolute nor in terms of national image, the most obvious example today is widely accepted human rights. Equally, at European regional level, the absolute nature of sovereignty yields to democratic political system, and in terms of local autonomy. Sovereignty would be arbitrary if is not restricted by law\textsuperscript{14}.

As a finding, we can consider the existence of three types of “limits” of sovereignty in relation to the level where they arise and manifest. Such are the intrastate “limits”, state “limits” and supra-national “limits” of national sovereignty.

\textsuperscript{13} Vrabie G., \textit{Organizarea politico-etică a României}. Iaşi: Editura Cugetarea, 1999, p. 35
Intra national “limits” of sovereignty are human rights and protection of minorities; local authority and trends towards regionalization. Even at the state level, we find that the limit of sovereignty is state limitation by state law, namely the rule of law. At supranational level, there are national sovereignty “limits” towards international communion as a whole and to future generations - the right to peace, the right to a healthy environment, rational exploitation and sharing of planetary wealth, protection of cultural property, protection of genetic patrimony of humanity, defence against international crimes, outer space research.

It should be understood that all such manifestations do not deny the existence of State sovereignty, does not lead to its disappearance or of the state to which it is attached, but re-launches a new look to this concept.

Contemporary society, both nationally and internationally, remains fundamentally focused on the state and its sovereignty.

**CONCLUSIONS**

We conclude on the idea that the issue of sovereignty and adjacent elements that generate it disregards the type of state. This is a single, individual, concrete entity, which represents the status of a society from a certain space.

State being the consistent support of judiciary, is analysed from a sociological point of view, because its components are required in applying science of law.\(^{15}\)

The suggestion of “sovereignty” as terminology, relate to people as a whole and not eroded by time, does not change its essence and content and forms of exercise are using policyholder mandated by the people.

A product of the traditional state doctrine, the traditional concept of sovereignty expresses the right of the state to hold and exercise supreme authority throughout its territory. It is independent of other types of power within the state or relations with other states and involves creating rules governing the life of the state.

Sovereignty is an attribute of the state that aims to represent national interests.

---

\(^{15}\) Titirişcă Cristina, Dumitrescu Marieta-Valerica, Pascariu Liana- Teodora, *Drepturile şi libertăţile fundamentale în jurisprudenţa Curţii de Justiţie a Uniunii Europene*, Editura Hamangiu, 2010, p.80
REFERENCES