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Supranationalism vs. Intergovernmentalism in the Actual Organization of EU

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Abstract: In the modern doctrine of law are presented several views that refer to the legal personality of the EU. Some researchers consider that the future of the EU is dominated by some supranational tendencies represented by the deeper supranational integration of member-states within the Union and the diminishing of the importance of member-states governments in comparation with the actual situation. Other researchers note the tendency to increase the role of member-states in determining European policy in the most important areas. This scientists note the increase of intergovernmental tendencies in the EU. This article is a study dedicated to determining the legal personality of the EU as an international organization. This research paper highlights the trends that are present in the current construction of the EU. In this context, we have outlined the following objectives: to identify the legal nature of the EU; to determine the essence of supranationalism as a type of multinational political union; to analyse the concept of classical cooperation in the international organizations; to examine the difference and common aspects of this theories; to determine the areas in which the EU has exclusive competence, shared competence with member states, support competence as well as some domains in which the EU coordinates the policy with the state-members. As a result of the research, we aimed to determine the supranational aspects and those of classical cooperation in this international organization. This research paper focuses on the relation between the supranational and intergovernmental tendencies in the actual construction of the EU by analysing some development trends that would domain in the future development of this organization.

Keywords: *supranationalism, intergovernmentalism, classical cooperation, the EU, institutional unification.*

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1. Introduction

This paper's aim is to understand and analyze the importance of the supranational and intergovernmental theories in the actual construction of the EU. To attend this aim, we should note the essence of these theories as they were defined by the founders of the European Community. According to one of the definitions ("Supranational Union", n.d.), a supranational union represents a type of multinational political union, where negotiated power is delegated to an independent authority by governments of member-states, which actions in the interest of the community. The international community includes members from different states. The supranational organization is founded because of some benefits that it gives to each member-state by setting trade-related standards that help to maintain economic stability in all member-states. The structure of the supranational organization allows the development of political and economic standards that are respected by member-states. It should be noted that the nature of a supranational organization can be changed, allowing the organization to adapt to new political and economic conditions.

Another theory that refers to the construction of the EU is intergovernmental theory. According to one of the doctrinal definitions, intergovernmentalism represents the theory of European integration as a type of multinational political union in which states play a more important role in the decision-making process in comparison with supranational theory. This theory was widely developed in the 1990s in the form of liberal intergovernmentalism. Initially, the intergovernmental theory emerged as a critique of non-functionalism and later evolved into a separate approach to explaining the integrational processes in the European Union. In international relations, scientists who develop this theory treat states, in general, and national governments, in particular, as the main actors of the integration process. According to this doctrine, periods of radical changes in the European Union and periods of stagnating could be explained by appellation to some governmental preferences and national interests (Arpad, 2019) that dominate in the politic promoted by member-states in the one period of time. According to the intergovernmental concept, the main role in the process of European integration is played by the national states that participate in this process, but even at the most advanced stages of this integration, the importance of states in the decision-making process does not diminish.

The empirical component of this report represents the research of the main ideas of the scientists who developed the supranational and

intergovernmental theories, the contradictions between these theories. This research will show the importance of these doctrines in the actual construction of the EU.

2. Literature review

We should note the process of formatting the supranational and intergovernmental theories in the historical context for determining the importance of them in the construction of the European Community. The concept of supranationalism was developed by Albert Einstein, Winston Churchill, Robert Schumann, and Jean Monnet. This concept, in its development, was expressed, on the one hand, from the point of view, according to which it is necessary to be created a supranational organization, which would control the military and nuclear force. On the other hand, these thinkers note the possibility to create an economic supranational union. We should mention that the intergovernmental theory was described by Stanley Hoffmann, Alan Milward, Geoffrey Garrett and Andrew Moravchik. According to these thinkers, the state is the principal actor of the process of European integration and its role could not be limited even in the advanced periods of European integration. The adapts of intergovernmental theory, on the one hand, analyze the importance of the state in the European Community, but, on the other hand, note the process of formatting the preferences in the state's national policy.

2.1. Supranational theory

In the process of formation of the concept of supranational union, we can establish several stages. The first stage began in August 1945, when, after the dropping of atomic bombs on Hiroshima and Nagasaki, Albert Einstein promote the idea of a "supranational" organization that would be able to control all military forces, including nuclear weapons. He thought that this supranational union represents a way to avoid nuclear war. Albert Einstein reiterated that "There is only one path to peace and security: the path of the supranational organization" at Carnegie Hall in April 1948. (Einstein, 1954, pp. 118-161; Isaacson, 2007, pp. 487-500). Thanks to his celebrity, Einstein's ideas on the subject generated much discussion and controversy, but the proposal did not generate much support in the West and the Soviet Union viewed it with hostility. (Supranational Union)

At this period, the idea of creating a supranational community was proposed by W. Churchill, who played one of the most important roles in the world political arena, in general, and the European one, in particular. As a staunch supporter of the European Union, W. Churchill proposed to

recreate the European family, endowing it with a structure that would allow Europe to live in peace, security and freedom, in his famous speech of 19 September 1946 at the University of Zurich. The Prime Minister of Great Britain specified that it is necessary to create a type of United States of Europe and the first step to this would be the association of France and Germany. (Revenco et al., 2010 p. 10)

If we speak about the next stage of the crystallization of the concept of supranational union, we would mention the concept promoted by Robert Schumann, the Minister of Foreign Affairs of France, who initiated and promoted the idea of creating a supranational democracy at the signing of the Convention for the Protection of Human Rights and Fundamental Freedoms, (CE, 1950) as well as during other public discussions. In addition, Schumann in his famous statement (The Schuman Declaration, 1950) substantiated the idea of creating a "European Federation" and supranational body, the purpose of which was supranational integration of the European Community. Robert Schumann proposed the creation of the European Coal and Steel Community, in which France and Germany would put their coal and steel industry under the control of a High Authority, with the possibility of entering the Union for other European states. This plan was elaborated by Jean Monnet (Kapteyn & VerLoren van Themaat, 1989, p. 25), as a member of the Commission of Economic Planning of France. Monnet states the inefficiency of the European nation-state economy in the modern world (Bache & George, 2009 p. 24) and affirmed that economic cooperation is the most efficient way to economic development. (Revenco et al., 2010 p. 10) He considered that it is indispensable to create a "large and dynamic common market", "a huge continental market in Europe". (Bache & George, 2009 p. 24)

We should be noted that this plan represented the tendency to restore relations between France and Germany, which had suffered considerably because of the World Second War. Monnet wanted to reassure the French people that they would not be attached by Germany. (Craig & De Burca, 2008, p. 5) Another reason for elaborating this plan was the wish to make the states connected with a binding legal framework necessary for coal cooperation in the Saar and Ruhr regions. (Kapteyn & VerLoren van Themaat, 1989, p. 25) Monnet thought that management of coal and steel production would form the basis of economic development as the first step towards a "European Federation". Monnet was a planner: he did not trust the free market system, which did not bring many benefits to France in the past. He was convinced that the development of supranational institutions was the basis for building an economic community that would adopt

economic policies and rational planning procedures. Monnet aspired to extend integration to all sectors of the Western European economy, but such a project would have seemed too ambitious to suddenly gain approval. (Bache & George, 2009 p. 24)

The concept, introduced and promoted by Robert Schumann, had become a reality when the French government agreed to implement some principles expressed in the Declaration of Schumann (1950), which were limited to specific sectors of vital interest of peace and war. The proposal of Schuman led to the establishment of the European Coal and Steel Community (ECSC), the first important step towards supranational European integration. (Revenco et al., 2010 p. 10) Schumann's plan obtained the support of the European states quite easily because it represented a limited form of integration and served some practical object. (Ththan & Osmochescu., 2003, p. 20)

2.2. Intergovernmental theory

Another theory that explains the concept of European integration is intergovernmental theory. One of the most important representatives of this doctrine was Stanley Hoffmann. According to Hoffmann's ideas, the EU is seen primarily as a possibility of collaboration between states. Hoffmann considered that states are rational actors whose internal functioning is governed by the principles of authority and hierarchy. The EU constitutes a deeper form of "international regime" in the context of widespread economic interdependence. This regime was defined as a set of common rules, institutions and policies allowing those states to achieve more effective control in some problematic sectors such as trade, agriculture or the environment. (Hoffmann, 1982, pp. 21-37; Levy et al., 1995, pp. 267-330) Hoffmann considered that "collective sovereignty" does not lead to a diminution of the role of states, but, on the contrary, to a strong role of each state, encouraging their adaptation to the constraints of the international environment. (Bulmer & Christian, 2009, p. 29)

Milward, another representative of the Intergovernmental paradigm, considered that national governments had a decisive impact on the process of European integration. Alan Milward argued that the strong interdependence of coal markets, agriculture and trade determined the European states to organize for providing social protection policies. (Milward, 1995) In addition, the state, instead of being in a weak position as a result of the transfer of sovereignty to a supranational level, had some significant benefits from the integration process. Milward considered that

the ceding of the part of sovereignty represents for each state the way to economic growth. (Bulmer & Christian, 2009 p. 29)

The reappearance of intergovernmental theory was possible due to the theory of rational choice, which has developed in American political science since the 1980s. These scientists considered that European integration represents the collective action whose goal, for each state, is to optimize earnings. (Bulmer & Christian, 2009 p. 29) Geoffrey Garrett's work about the establishment of the single market is a good example of this doctrine(Garrett, 1992). According to his vision, the importance of the political preferences is accorded to the member -states' governs. (Bulmer & Christian, 2009 p. 29)

2.3. Liberal intergovernmentalism

The logical continuation of the theory of intergovernmentalism represents liberal intergovernmentalism. This concept was exposed by Andrew Moravchik in the work "Choice for Europe" in the early 1990s (Bulmer & Christian, 2009 p. 29). Moravchik starts from three research postulates: 1) the state is a rational actor in Europe; 2) power in the EU is the result of negotiations between states; 3) liberal theory is necessary to explain the formation of national preferences within the state. The first two hypotheses are similar to the statements made by Stanley Hoffman, although Moravchik's work involved extensive empirical demonstrations. (Bulmer & Christian, 2009 p. 30) The presentation of the basic role of nation-states in the process of European integration was complemented by the liberal concept of forming preferences at the national level. (Moravcsik, 1982, p. 532.) Therefore, the formation of national preferences is the most original contribution of liberal intergovernmentalism. (Bulmer & Christian, 2009, p. 30) This concept was based on the consideration that governments have a clear vision of their preferences, opting for continued European integration. These preferences at the national level determine progress in the process of negotiations within the International Organization. (Moravcsik, 1982, p. 532) The interests of states are seen as demands of domestic social actors addressed to their "national" governments. (Bulmer & Christian, 2009 p. 30)

2.4. The realization of the supranationalism concept in the legislation of the European Community

It is necessary to analyze the legislative regulation that is based on these theories to determine, on the one hand, the positive and negative aspects of each theory and, on the other hand, to establish the importance of these theories in the actual legislation of the EU. The term "supranational union" appears in the text of an international treaty in the Treaty of Paris of

18 April 1951 which created the European Coal and Steel Community. The aims of this treaty were the creation of a single market for coal and steel by abolishing import and export duties, as well as any trade restrictions, anti-competition practices and state subsidies, the development of common policies of the steel and coal industries. (Revenco et al., 2010 p. 10) The concept of supranationalism defined a new community method within the ECSC that symbolizes the beginning of the reorganization of Europe. This term was used in art. 9 of the treaty, which regulates the duties of the High Authority. According to this article "*The members of the High Authority shall exercise their functions in complete independence, in the general interest of the Community. In the fulfilment of their duties, they shall neither solicit nor accept instructions from any government or any organization. They will abstain from all conduct incompatible with the supranational character of their functions*." (Treaty ECSC, 1951) We can conclude that the supranational character of the ECSC is manifested in the duties of the High Authority, which members should be independent of the leadership of the states that have delegated them and should represent the general interests of the whole community. It should be noted that states introduced a new democratic and legal concept by creating a High Authority. The innovation of the High Authority represents its supranational character that was manifested in the duties conferred to this authority in the decision-making process. (Revenco et al., 2010 p. 10)

If we speak about failures of the supranational theory, we should mention the European Defense Community and the European Ministry of Defense. The development of the idea of supranationalism was manifested in the tendency to develop a common policy in the military and political spheres. It was proposed to create a European Defense Community (EAC), according to the Pleven Plan of 1950. This plan was presented by France. According to it, the European army should be placed under the control of the European Ministry of Defense, with a common budget and common institutions. This treaty was signed on 27 May 1952 by the six ECSC member-states. This plan was followed by the creation of the European Political Community (EPC) because the implementation of the European Defense Community determined the necessity of creating a common foreign policy. The draft statute was completed in 1953 and represented an effort to create a European Federation with an institutional structure and ambitious goals, including a coordinated foreign policy and possible economic integration. However, these developments were stopped by France, whose General Assembly refused to examine the ratification of the EAC Treaty. (Revenco et al., 2010, p. 11) This has caused considerable stagnation in the pursuit of European integration and only over thirty-nine years states have

ratified another treaty, signed at Maastricht in 1992, according to which a European Union has been established.

2.4 Supranational and intergovernmental tendencies in the actual construction of EU

In order to determine the aspects of supranationalism and intergovernmentalism in the EU, we should analyze the process of European integration. This process was started with the signing of the Treaty of Paris in April 1951 (Treaty ECSC, 1951) by the governments of Belgium, France, Germany, Italy, Luxembourg and the Netherlands. This process shows that member states' economies and other policy sectors were becoming co-administered. Decisions that were taken exclusively by national governments become decisions that are taken together with other governments and specially created European institutions. Governments transfer the exclusive right to draft legislation on certain categories of issues (national sovereignty) in favour of co-administered decision-making processes with other governments (shared sovereignty). (Bache & George, 2009, p. 21) The result of European integration represents the implementation of political integration as part of a new political community. (Haas, 1968, p. 16)

Referring to the legal personality of the European Union (EU), it represents a new type of supranational organization. Members of the European Parliament are elected by the universal, equal, direct, secret and free expressed vote by citizens of the member-states of the EU according to the EU's status. We should note that the construction of the EU as an international organization goes beyond the level of political integration provided by classic international treaties. Thus, we can say that supranational current is manifested only in the two European Communities: The Economic Community and The European Atomic Energy Community. Supranational communities provide powerful, but generally untapped and innovative means for Democratic foreign policy by mobilizing civil society towards the Democratic objectives of the community.

The supranational and intergovernmental character of the EU is regulated by the Treaty on the Functioning of the European Union, which in articles 3-5 establish the EU's competence. According to this treaty, "*the Union shall have exclusive competence in the following areas: a) customs union; (b) the establishing of the competition rules necessary for the functioning of the internal market; (c) monetary policy for the Member States whose currency is the euro; (d) the conservation of marine biological resources under the common fisheries policy; (e) common commercial policy.*" (Treaty Roma 1957) According to article 2 of this Treaty "*only the*

Union may legislate and adopt legally binding acts" in this domains "*the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts*". (Treaty of Rome, 1957) This competence shows the supranational construction of the EU because in the domains established by treaty states do not have de right to legislate.

The Union has a competence shared with the Member States in the following principal areas: *"(a) internal market; (b) social policy, for the aspects defined in this Treaty; (c) economic, social and territorial cohesion; (d) agriculture and fisheries, excluding the conservation of marine biological resources; (e) environment; (f) consumer protection; (g) transport; (h) trans-European networks; (i) energy; (j) area of freedom, security and justice; (k) common safety concerns in public health matters"*, (Treaty of Rome, 1957) according to the article 4 of this Treaty. In these areas "*the Union and the Member States may legislate and adopt legally binding acts. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence*." (Treaty of Rome, 1957) It should be note that in these domains both EU and states could legislate, but states could adopt the legislative acts only if EU does not do this.

If we speak about intergovernmental tendencies, we should note the domains, in which "*States shall coordinate their economic and employment policies*" with EU as economic policies, employment policies, social policies. In this domains, member-states of the EU should promote the same policies and standards at the EU's level. More other, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States" in the such areas as: *"(a) protection and improvement of human health; (b) industry; (c) culture; (d) tourism; (e) education, vocational training, youth and sport; (f) civil protection; (g) administrative cooperation.*" (Treaty of Rome, 1957) This domains are managed by member-states and EU could support some initiatives in this areas.

It should be noted that the concept of classic cooperation in the organization of the EU is manifested by the Common Foreign and Security Policy (CFSP) that was introduced by the Treaty of Maastricht (1992). Subsequently, it was nuanced by the Treaties of Amsterdam (1997) and Nice (2001). Actually, member-states promote the concept of the Common Security and Defense Policy (CSDP, 1992).

One of the most important treaties in this area is the Treaty of Lisbon (2007), which introduced permanent cooperation in the domains of security and defense policy. The cooperation in this domain gives the member-states possibility to develop defense capabilities, invest in some projects and improve the contribution and operational readiness of their armed forces.

The strong intergovernmental character of the CFSP makes this policy the result of the national policies of the member-states, ensuring solidarity and unity of position and action in the main dossiers on the international agenda. (CSDP, 1992) In addition, the adoption of decisions by unanimous vote shows that member-states cannot be obliged to participate in those actions that one of them disapproved. (Ththan & Osmochescu., 2003, p. 33) The actions of states as a part of CFSP take the form of common strategies unanimously agreed by the European Council. (Ththan & Osmochescu., 2003, p. 33)

Speaking about some critics of these theories, we should mention that the method of the supranational community was attacked, not only by de Gaulle but also by other nationalists and communists. In the post-De Gaulle period, governments held and continue to hold separate national elections for the European Parliament, rather than holding pan-European elections under a single statute, as specified in all treaties. They favoured major parties and led to discrimination against smaller regional parties. The difference in the organization of elections, the signing of the Treaty of Amsterdam (1997) and the Treaty of Maastricht (1992) and the creation of 3 communities ECSC, EEC, EURATOM, led to the confusion of the Intergovernmental and supranational structure.

It should be noted that the Constitutional Treaty (2004), and later the Treaty of Lisbon (2007), led to a reduction of the democratic supranationalism in the direction of intergovernmentalism and of politicization of the institutions that are controlled by the ruling political parties in the member-states. The commission as a supranational institution determines the necessity of the respect of the special status of its members, who must be independent of the commercial, Labor, consumer, political or lobbying interests of the states (Article 9 Treaty ECSC, 1951). The commission should be composed of a small number of impartial personalities with great experience in this domain. Moreover, the first Presidents of the Commission and the High Authority were strong defenders of European democracy against the national, autocratic practice. The Constitutional Treaty (2004) and the Treaty of Lisbon (2007) promote the idea of intergovernamentalism that was favourable to state's Governments, which would prefer to have a national member in the Commission. According to the original concept, the commission should act as a single impartial College of independent and experienced personalities. Thus, the members of the commission become predominantly attached to political parties although this attachment contravenes the principle of supranational democracy.

We should mention that Governments promote the concept of secret deliberations in the Council of Ministers and in European Council. These EU's institutions discuss the most important issues for European citizens. While some institutions such as the European Parliament have debates open to the public, others bodies such as the Council of Ministers and many committees keep deliberations secret. (Supranational Union) This trend is opposite to the idea of Schumann, who in his book "Pour L'europe" (For Europe) mentioned that in a Democratic supranational community "councils, committees and other bodies should be placed under the control of effective public opinion, without paralyzing their work or useful initiatives". (Schuman, 1963, p. 146)

3. Methodology

This research paper is based on the analysis of various empirical researches, mainly aiming to describe the construction of the EU from the prism of the supranational and intergovernmental theories. Thus, we started by analyzing the definition of the supranational theory and its development from the point of view of different researchers. We analyzed an intergovernmental concept and the role of member-states, according to it. An important part of this research was dedicated to the question What tendency is dominated now in the actual construction of EU? In order to find answers to these questions, we analyzed the legal regulation of these tendencies in the actual legislation of the EU. Another important part of the study is dedicated to a comparative method that gives us the possibility to determine the advantages and disadvantages of each theory. Thus, we analyzed a series of treaties that created the European Community and EU to establish the institutions that implement the principle ideas of these theories. In addition, this research paper focuses on forecasting dominant trends within the construction of the EU in the near future.

4. Limits and discussions

In this paper, we would like to mention the discussions initiated by the representatives of supranational and intergovernmental theories. The founders of the European Community aimed to create the European Federation, which will be achieved through deep integration in several areas including political, economic, social, military. The supranationalism was criticized by supporters of the idea of intergovernmentalim, especially by Stanley Hoffmann. Criticism of neofunctionalism was based on three ideas. Hoffmann believed that European integration should be treated in the

global context, (1) but regional integration represents one of the aspects of the evolution of the global international system. The neofunctionalists thought that the progress of the integration process is constant, but this statement was based on an internal dynamic and the presupposition that the international context is constant. This criticism became relevant in light of the changes in the global economic situation of the 1970s. (2) National governments represent actors with unique influence in the process of European integration: they conduct the nature and rapidity of integration that depends on the "national interest". (3) Although, European integration is possible only in the domains with "national interests" of different states coincide. In these domains, national governments could accept close integration, for example, into some technical sectors such as defence and national security. (Bache & George, 2009 p. 24; Hoffmann., 1964, pp. 85-101) Scientists that promote the intergovernmental theory considered that the integration process runs smoothly in areas where the political element is not so obvious, for example, in the field of Economics. However, they note that in problems that affect national interests all state should express their opinion. (Wiener & Diez, 2009.) In other words, from their point of view, the integration of EU's member -states could be achieved in areas where all state simultaneously observe some positive effects, for example, the implementation of the Common Market had some benefits to all EU's member-states. However, the integration process will face serious obstacles in those areas where is detected the conflict between the national interests of the states and the community's interest, for example, the "empty seat" crisis in the EEC. (Milward, 1992, p. 466)

If we speak about the critics of intergovernmental theory we should mention some crucial aspects. Firstly, Moravchik neglects the state's internal diversity (multi-party coalitions, relations between Central, executives and local authorities, rivalries between agencies and bureaucrats, presidential versus parliamentary system and so on) looking at EU's member-states only through the prism of central governments. Therefore, Moravchik simplified decision-making processes by noting that the EU is the arena on which the "big" states exercise their power. In addition, Moravchik sees European institutions as some agencies created by the member-states for increasing the initiative and influence of national governments, although the EU's institutions represent organizations that develop their own ideas and interests in connection with the states' interests. Finally, Moravchik believed that the interests of states could be known only through the national government and not by other ways, such as lobbying directly in Brussels. (Bulmer & Christian, 2009, p. 30)

Conclusions

The variety of competences assigned by the member states of the European Union, as well as the different role played by the EU institutions in the decision – making process (for the realization and implementation of these competences), reflects the dual character of the EU-supranational and intergovernmental. Thus, the EU has exclusive/supranational power is strictly limited areas and sovereignty is shared with the EU institutions that have executive authority for the vast majority of economic areas. On the other hand, in the CFSP area, the EU remains a classic international organization, with state's cooperation is based on consensus. We should mention that after 2009, when the entry into force the Treaty of Lisbon (2007), which awarded the EU a legal personality, no new transfer of powers/policies has occurred from member states. Moreover, member-states have stepped up practices aimed at prioritizing their sovereign national interest to the detriment of the development and amplification of the supranational European integration process.

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