

THE STATE SOVEREIGNTY ISSUE IN THE EUROPEAN UNION

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Abstract

The following article touches upon the issue of state sovereignty in the European Union and their correlation. Analytical, historical and generalizing methods, as well as a number of specific methods, such as historical-legal methods, were used during the following research.

In the beginning of the article a reference is made to the concept of state sovereignty and its development during time. Moreover, the article highlights the importance of sovereignty in any state and indicates that sovereignty is a necessary legal and political property and indeed an important attribute to a state. Although state sovereignty is a fundamental principle of international law, the precise meaning of the term sovereignty is not clearly defined so far. Views and approaches about state sovereignty may vary from time to time, as changing times necessitate various approaches. Scholars believe that the concept of sovereignty has become highly adaptable and that sovereignty is a collective term, which indicates the rights and duties that a state is granted by an international law at a certain given time. Although it seems impossible to give an overall definition of sovereignty, however, there are two major points of view with regard to the concept of sovereignty that can continuously be identified. The first view is that sovereignty means absolute power above the law and that absolute sovereignty is one of the most powerful and inviolable principles in international law. The second view is that it is of utmost significance that states – as the most important subjects of international law that do not claim that they are above the law or that international law does not bind them.

Later, the author highlights the core idea of the following article and presents the correlation of state sovereignty and the European Union. A short highlight is given to the historical development of the European Union and the idea behind the creation of the supranational entity. The sovereignty issue in the European Union is not a new idea and it is possible to distinguish between three specific perspectives concerning sovereignty in the European Union. The first

approach claims that state sovereignty diminishes through the EU membership, the second one analyses the transformation of sovereignty through regional integration and finally, the third approach discovers the disappearance of sovereignty as an object of study.

Within the framework of the following article, the author comes to the conclusion that the state sovereignty continues to stay on the top of agenda of European Institutions and despite different approaches it can't be stated that by joining the European Union, its Member State loses its sovereignty. The country transfers some powers to the Union; however, this cannot be considered as a deprivation of sovereignty.

Keywords and phrases: state sovereignty, internal and external sovereignty, European Union, Member State, founding treaty, world order, international law, supranational international entity, European integration.

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Համառոտագիր

Սույն հոդվածը անդրադառնում է Եվրոպական Միությունում պետական ինքնիշխանության հիմնախնդրին: Հետազոտության ընթացքում օգտագործվել են գիտական ուսումնասիրության վերլուծական, պատմական, ընդհանրացման մեթոդներ:

Հոդվածի սկզբում հղում է կատարվում պետական ինքնիշխանության հասկացությանը, տարբեր գիտնականների կողմից տրված սահմանումներին: Հոդվածում նշվում է ինքնիշխանության՝ յուրաքանչյուր պետության կարևորագույն հատկանիշ լինելու փաստի մասին: Չնայած պետական ինքնիշխանությունը միջազգային իրավունքի հիմնարար սկզբունքներից է, այնուամենայնիվ **ինքնիշխանություն** հասկացության համընդհանուր և ճշգրիտ սահմանում մինչ այժմ չի տրվել: Պետության ինքնիշխանության վերաբերյալ տեսակետներն ու մոտեցումները ժամանակի ընթացքում ենթարկվել են փոփոխությունների: Գիտնականները հակված են այն կարծիքին, որ ինքնիշխանությանը հարկավոր է վերաբերվել որպես հավաքական հասկացության: Թեպետև անհնար է տալ ինքնիշխանության հստակ սահմանում, այնուհանդերձ ընդհանրացնելով մեր կատարած ուսումնասիրությունը, հոդվածում տրվել է ինքնիշխանության հասկացության վերաբերյալ երկու մոտեցում:

Հոդվածում կարճ ակնարկ է տրվում Եվրոպական Միության պատմական զարգացման և վերջինիս՝ որպես միջազգային վերպետական միավորի ստեղծման գաղափարի վերաբերյալ: Այնուհետև ներկայացվում

է Եվրոպական Միությունում ինքնիշխանության հասկացության վերաբերյալ երեք տարբեր մոտեցումներ: Առաջին մոտեցումը պնդում է, որ պետության ինքնիշխանությունը թուլանում է Եվրոպական Միությանը անդամակցելիս, երկրորդը՝ վերլուծում է ինքնիշխանության հասկացության փոխակերպումը տարածաշրջանային ինտեգրման պայմաններում, և, վերջապես, երրորդ մոտեցումը բացահայտում է ինքնիշխանության անհետացումը՝ որպես ուսումնասիրության օբյեկտ:

Հոդվածի շրջանակներում հեղինակները գալիս են այն եզրահանգման, որ պետական ինքնիշխանությունը շարունակում է մնալ առաջնային կարևորության խնդիր Եվրոպական ինստիտուտների օրակարգում, և չնայած տարբեր մոտեցումներին՝ չի կարելի պնդել, որ անդամակցելով Եվրոպական Միությանը՝ անդամ-պետությունը կորցնում է իր ինքնիշխանությունը. անդամ-պետությունը որոշ լիազորություններ է փոխանցում միությանը, սակայն դա չի կարող դիտարկվել որպես ինքնիշխանությունից զրկում:

Բանալի բառեր և բառակապակցություններ. պետական ինքնիշխանություն, Եվրոպական Միություն, անդամ-պետություն, հիմնադիր պայմանագիր, աշխարհակարգ, միջազգային իրավունք, վերապետական միջազգային կառույց, Եվրոպական ինտեգրում:

ПРОБЛЕМА ГОСУДАРСТВЕННОГО СУВЕРЕНИТЕТА В ЕВРОПЕЙСКОМ СОЮЗЕ

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Аннотация

Статья затрагивает вопрос государственного суверенитета в Европейском Союзе. В ходе исследования были использованы аналитические, исторические и обобщающие методы научного исследования.

В начале статьи делается ссылка на понятие государственного суверенитета и определения, данные различными учёными. Несмотря на то, что государственный суверенитет является одним из основополагающих принципов международного права, универсальное и точное определение понятия суверенитета до сих пор не дано. Ученые склонны считать, что суверенитет стал достаточно гибким и что к нему следует относиться как к коллективному понятию. Хотя невозможно дать чёткое определение суверенитета, тем не менее, обобщая проведенное нами исследование, в статье были представлены два подхода к понятию суверенитета.

В статье дается краткий обзор исторического развития Европейского Союза и его идеи создания как наднациональной международной организации. Затем представлены три различных подхода к понятию суверенитета в Европейском Союзе. Первый подход утверждает, что суверенитет государства ослабевает при вступлении в Европейский Союз, второй анализирует трансформацию понятия суверенитета в условиях региональной интеграции, и, наконец, третий подход выявляет исчезновение суверенитета как объекта исследования.

В рамках статьи автор приходит к выводу, что государственный суверенитет продолжает оставаться на первом месте в повестке дня европейских институтов, и, несмотря на различные подходы, нельзя утверждать, что, вступая в Европейский Союз, его государство-член теряет свой суверенитет. Страна передает некоторые полномочия Союзу, однако это не может рассматриваться как лишение суверенитета.

Ключевые слова и словосочетания: государственный суверенитет, внутренний и внешний суверенитет, Европейский Союз, государство-член, учредительный договор, мировой порядок, международное право, наднациональная международная организация, европейская интеграция.

Introduction

For many decades the concept of “state sovereignty” has been in the center of attention of many philosophers, scholars and representatives of legal science. The discussions on state sovereignty till today continue to form core part of the international order. The notion of “state sovereignty” is the basic concept of the modern international law. Through recent developments and the emergence of globalization much more attention has been put on state sovereignty. In the new world order, states come to share their powers with international organizations, thus bringing new questions around its concept. The emergence of the European integration has become a real challenge to the traditional concept of the state sovereignty. The following article examines the correlation between the concept of state sovereignty and the European Union.

Research methods

Analytical, historical and generalizing methods, as well as a number of specific methods, such as historical-legal methods, were used during the following research. The combined use of these methods has made it possible to identify the content of the main concepts used in the article.

Body

Sovereignty is a necessary political and legal property and an important attribute of any state. The concept of sovereignty traces back to Early Medieval Times, for justifying the powers of princes against the previous power structures, particularly the Emperor and the Pope. The sovereignty, in its historical context, was defined as all the power necessary to ensure civil coexistence during different conflicts, be it religious or civil. Jean Bodin was the first to speak about state sovereignty. In his work “République” he referred to sovereignty as an absolute power, which is capable of expressing itself against all society. Bodin emphasizes not only the horizontal dimension of the power to command but also its absoluteness, which today is defined as an external sovereignty [1, p. 8-9].

The growing number of states and the reinforcement of their leading role in the international order, also the complexity of international life in general, has left a crucial imprint on the doctrine of sovereignty, turning it into a complex set of various views, interpretations and approaches to the concept of “sovereignty”, by

greatly changing the original “Bodinian” structure of the idea of state sovereignty. The very core changes happening in socio-political life of individual states as well as in the sphere of international relations, the strengthening of integration processes, leading to blurring of the borders between the actual individual states, to strengthening their interconnectedness, prejudice the need for a new approach to a number of problems that were associated with the principle of State sovereignty [2, p. 433].

Although state sovereignty is a fundamental principle of international law, the precise meaning of the term sovereignty is not clearly defined so far. During time the following possible definition of sovereignty have been offered: *“Sovereignty is the most extensive form of jurisdiction under international law. In general terms, it denotes full and unchallengeable power over a piece of territory and all the persons from time to time therein”*.

Krasner points out the following four ways in which the term *sovereignty* is usually used:

- Domestic sovereignty- this refers to the organization of political authority within a state and the level of control which is enjoyed by a state,
- Interdependence sovereignty - is concerned with the question of control, for instance, the ability of a state to control movements across its own borders,
- International legal sovereignty - is concerned with establishing the status of a political entity in the international system. The state is treated at the international level similarly to the individual at the national level,
- Westphalian sovereignty – is understood as an institutional arrangement for organizing political life and is based on two principles, namely territoriality and the exclusion of external factors from domestic structures of authority. Westphalian sovereignty is violated when external factors influence or determine the domestic authority structures. This form of sovereignty can be compromised through intervention as well as through invitation, when a state voluntarily subjects internal authority structures to external constraints [3, p. 6].

It’s important to note that views and approaches about state sovereignty may vary from time to time, as changing times necessitate various approaches. According to Fassbender, the concept of sovereignty has become highly adaptable. He believes that sovereignty is a collective term, which indicates the rights and duties that a state is granted by an international law at a certain given time. These sovereign rights and duties constitute state sovereignty [4, p. 6-7].

Although it seems impossible to formulate an all-inclusive and overall definition of sovereignty, nonetheless there are two major points of view with regard to the concept of sovereignty that can continuously be identified. The first

view is that sovereignty means absolute power above the law and that absolute sovereignty is one of the most powerful and inviolable principles in international law. The second view is that it is of utmost significance that states – as the most important subjects of international law that do not claim that they are above the law or that international law does not bind them [4, p. 6]. It is also important to mention that sovereignty is distinguished between internal and external sovereignty of a state. The internal sovereignty is usually described as the authority to exercise the function of a state within national borders in order to regulate the internal affairs freely, without any intervention from other states. This means, internal sovereignty is comprised of rights that state possesses within its territory. What refers to external sovereignty, thus it is traditionally understood as a legal independence from all foreign states, for protecting the state's territory against an outside interference. The concept of external sovereignty includes international independence, meaning the right to international self-help in international society [5, p. 15].

The aim of transforming several aspects of national sovereignty to a supranational entity was a direct result and a tough consequence of World War II. In the aftermath of this war, Europe was seeking for an international and transnational cooperation as solution to the continued prospect of war. The first stone put towards having a supranational union was in 1952 when six founding members joined together as members of the European Coal and Steel Community (ECSC). Then, the progress towards unity was later achieved with creation of the European Atomic Energy Community (Euratom) and the European Economic Community (EEC). Later other countries came to join and in 1992, the pivotal Treaty on European Union (Maastricht Treaty) was signed, which was fully aimed to integrate the political, social and economic institutions of the European Union [6, p. 113-114]. Later other Treaties were signed and the last one was the Treaty of Lisbon signed in 2009, that included key changes to the governance of the Union.

The European Union has a legal and political structure that is unique in the world, as it is composed of 27 sovereign states that, as already mentioned above, are bound together by a series of treaties into a supranational entity. The sovereignty issue in the European Union is not a new idea and it is possible to distinguish between three specific perspectives concerning sovereignty in the European Union. The first approach claims that state sovereignty diminishes through the EU membership, the second one analyses the transformation of sovereignty through regional integration and finally, the third approach discovers the disappearance of sovereignty as an object of study [7, p. 5].

The first approach refers to the disappearance of sovereignty as a state attribute. Scholars who are keen on this approach, mention Jean Bodin's definition of sovereignty: those who are sovereign can under no circumstances be subject of

another authority. This means that when a state joins a supranational entity, becomes a member state of the European Union, transfers its decision-making rights to that entity, hence the double sovereignty of the state – internal and external disappears. Nonetheless, we believe, that it is important to mention that even though EU norms are legally binding, states can still oppose these norms, meaning they are free to renegotiate the rules defined by European Institutions.

The second group of scholars believes that state sovereignty is only transformed through European integration. They claim that state sovereignty constitutes the central aspect of regional integration. Sovereignty has to be characterized not as a zero-sum game but as a dual concept: the state and the European Union possess both forms of sovereignty which are transformed through interaction and time to time are interpreted. In this understanding, sovereignty can only be recognized if we take into account the interpretation given by the actors themselves. This interpretation seems to presume that there was a so-called golden age of state sovereignty. In this way is described the period where neither globalization nor regional integration put the state sovereignty under question. The following article, however, does not share the following assumption.

What refers to the last group, some authors consider state sovereignty as one of the many aspects that must be taken into account when reforming the perspective of multi-level governance into what they refer to as a theory of differentiated integration, other scholars close to a multi-level understanding of the EU have taken sovereignty explicitly into account [8, p. 6-11].

Conclusion

To sum up all above mentioned, we can conclude the following:

- Sovereignty continues to play a vital role and be an essential part of political processes. State sovereignty is an indispensable attribute of a state. Since Medieval times, the issue of sovereignty in the European territory and later in the European Union, has been in the center of attention of scholars,
- Contrary to the abovementioned three approaches, the state and sovereignty continue to remain on the very top of the agenda of the European integration processes and European Institutions. At certain points the state sovereignty and the European Union cross paths, which we believe is inevitable. Nonetheless, we can claim that by joining the European Union, a Member State willingly transfers certain rights to the Union, which in some aspects can be considered as a limitation of the power of sovereignty in regards to the binding decisions made by the Union, however there cannot be a word about a state losing its sovereignty.

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