

THE TRANSFORMATION OF THE PARADIGM OF THE CONCEPT OF SOVEREIGNTY

Svetlana Slusarenco*,

svetlana_slusarenco@yahoo.com

Veronica Pozneacova**

veronicapozneacova@gmail.com

Abstract: *The concept of sovereignty represents one of the most important concepts within the framework of modern constitutional law, on which is focused the entire system of State power. The concept of sovereignty appeared in Ancient Greece and later was developed and analyzed by thinkers of the Middle Ages and the modern era. One group of the philosophers formulated the concept of papal sovereignty, believing that state power belongs to the Pope of Rome. Others analyzed the concept of royal sovereignty, stating that all state power should be concentrated in the hands of the king and, thus, personify state power. During the Enlightenment and the French Revolution, the philosophers justified the concepts of popular and national sovereignty. As a result of this research, we aimed to analyze the development of sovereignty from the philosophical point of view, as well as the practical applicability of the theories of great thinkers in the modern period.*

Keywords: *sovereignty, state power, governance, human rights*

Introduction

The sovereignty of state power represents one of the basic elements of the state and an inherent feature of any state formation. The importance of this concept lies in the fact that, from the emergence of the state to the present day, the phenomenon of state power plays a key role in the political, social and cultural life of society, influencing international relations and the economic, political and social life of the state. Since ancient times, people have been preoccupied with the search for the answer to the question "*How should be organized the state so that all people to be happy?*" or, in other words, "*To whom should state power belong?*", "*How should that state be governed so that the needs of the*

* **PhD. in Law, University Lecturer, Department of Public Law, Faculty of Law, State University of Moldova.**

** **Senior Specialist, International Relations Department, Projects and Grants Section, State University of Moldova.**

people are met?". The problem of sovereignty is not only the problem of determining the holder of sovereignty, but also the whole mythology, the ontological origin of any political power.¹ Solving the problem of sovereignty is equal with solving the whole problem of state power. At the same time, the concept of sovereignty is a key concept in the science of constitutional law.²

Methodology

The aim of the research is to identify the factors influencing the content of sovereignty and independence of the European Union (EU) Member States at the stage of integration into the European area. The sovereign and independent state, as a subject of international relations, is in a common legal space with other states, global and regional international organizations, and this space is constantly evolving. The essence of the issue we are addressing is not that international relations are governed by international rules, but that the laws of national states conform to the rules of higher regional or international entities. For example, in the EU, much of the national legislation of the Member States is inspired, generated by European legislation.

In this study we have researched doctrinal approaches, normative framework, applying the following methods: historical, systematic, analytical and logical-legal. The comparative method is an essential element of the study, as its use highlights the positive and innovative elements that have led to the exercise of governance through public authority bodies, as well as the possible errors that may occur in the exercise and maintenance of power. In the process of elaborating the paper, the historical method, used to research the origin and evolution of the concept of sovereignty; the logical method (deductive and inductive analysis, typology, generalization, specification, etc.), used constantly throughout the research, especially when synthesizing the various opinions of authors in the field of constitutional law, were applied.

Theoretical background

In the literature, there is no unanimously recognized definition of sovereignty, nor of its defining features. So, we would like to analyze some definitions formulated by scholars in the field of public law, in order to highlight the most important features of this concept. Prof. I. Deleanu

¹ G. Agamben, *Homo Sacer. Homo Sacer and Bare Life* / Scientific Editor D. Novikov, Moscow, 2011, p. 66.

² D.Y. Dorofeev, *Philosophical and legal foundations of the concept of sovereignty* // Journal of the Russian State Pedagogical University named after A.I. Herzen. № 110, 2009, p. 79. Available at: <https://cyberleninka.ru/article/n/idei-i-lyudi>

considered that state power is a sovereign power. It is indisputable that sovereignty is an exclusive attribute of state power, a specific feature of this power which distinguishes it internally from all other social powers (authorities) (e.g., the power of parties, trade unions, associations) and externally from all other state and supra-state powers. Sovereignty is that feature of state power which is expressed in the power of the holder of power to organize and exercise, determine and settle internal and external affairs freely and according to his will, without any interference, respecting the sovereignty of other states and the rules of international law.³ It follows that exclusive or sovereign political authority is a higher form of social organization which, together with nation and territory, constitute indispensable elements of the state, being institutionalized and non-personalized.⁴

Professor Tudor Drăganu points out that the term "sovereignty" has different meanings. Sometimes the term 'sovereignty' is used to designate 'state power', which can lead to unfortunate confusion, since many international documents and constructions do not equate the notion of 'sovereignty' with that of 'state power', but consider it an attribute of 'the people' or 'the nation'.

In another sense, the notion of "sovereignty" is used to emphasize the quality of "state power" as that characteristic of its supremacy.

In another sense, sovereignty describes the general feature of state power which ensures its supremacy through the expression and realization of the will of the ruler, as the binding will of the whole society, in conditions of the respect for the fundamental rights and freedoms of citizens and independent of any foreign power.⁵

Professor N. Popa mentions that sovereignty is an inalienable right of any state in the governance of society and in the establishment of relations with other countries, and the state decides on the internal organization, establishes the functioning of public powers, the legal status of the citizen, decides the extent of economic objectives that are of strategic importance, organizes the general legal framework for the activity of all economic agents.⁶ Sovereignty can also be defined as a state's supreme right to govern society, to establish relations with other states according to the

³ I. Deleanu, *Constitutional Law and Political Institutions*, vol. 1, Iași, Chemarea Foundation Publishing House, 1993, p. 71.

⁴ I. Deleanu, *Constitutional Law and Political Institutions*, vol. 1, Iași, Chemarea Foundation Publishing House, 1993, p. 31.

⁵ Gh. Iancu, *Constitutional Law and Political Institutions*, Bucharest, Lumina Lex, 2005, p. 258.

⁶ N. Popa, *General Theory of Law*, Bucharest, 1992, p. 63.

rules of international law, and to resolve its internal and external affairs freely, without interference by any foreign power.⁷

In order to answer the question „*who is the holder of power?*”, or “*to whom does state power belong?*”, we would like to examine the concept from a philosophical and legal point of view, which will help us to understand all the particularities of this phenomenon.

Sovereignty emerged as an objective social-political phenomenon at the same time with state power, as an inherent attribute of the state⁸. Sovereignty does not exist in a society where there is no state. The concept of sovereignty emerges only after a social contract between the state and the community.⁹

The first forms of manifestation of sovereignty emerge in societies where there is a supreme and absolute political authority in the community¹⁰. From a historical perspective, it can be said that the sovereignty of state power as a social-political phenomenon emerged long before its crystallization as a theoretical notion, as a result of a profound historical necessity, reflecting the fundamental characteristics of the state: supreme authority exercised over a specific territory, the right to organize itself - economically, socially, politically, militarily, administratively, to draw up laws and rules binding on society as a whole and to impose itself, if necessary, by force of coercion¹¹.

According to the researches of some scholars, the Greeks developed the idea of sovereignty, at least in Aristotle's time, and they were the first to understand its meaning. Within the polis, sovereignty was considered to belong to the aristocratic rulers, or all the citizens, but the polis was seen as a community governed by laws rather than people. Of the Greek philosophers, Aristotle came closest to the concept of sovereignty when he suggested that it was preferable for superiority to be invested in the law, which is above the community or any person within the community¹². Respectively, we note that Aristotle was one of the first philosophers, who founded the concept recognized by contemporary doctrine as an element of the rule of law.

⁷ T. Cârnaț, *Constitutional Law*, Chișinău, Print-Caro, 2010, 2nd ed., p. 158-159

⁸ I. Deleanu, *Constitutional Law and Political Institutions*, vol. 1, Iași, Chemarea Foundation Publishing House, 1993, p. 72

⁹ F.H. Hinsley, *Sovereignty*, Chișinău, Science, 1998. p. 17

¹⁰ Harry Hinsley, *Ibidem*, p. 20

¹¹ C. Ionescu, *Some considerations on Art. 2 para. (1) of the Constitution*. Available at: <https://www.juridice.ro/343767/cateva-consideratii-pe-marginea-art-2-alin-1-din-constitutie.html>

¹² Harry Hinsley, *Ibidem*, p. 24.

Referring to the etymological origin, the word "sovereignty" comes from the Latin word *super* (above)¹³. The first definition of sovereignty is thought to be that of the Roman jurist Proculus (1st century AD): "*Liber autem populus est is, qui nullius alterius populi potestati est subiectus*", which translates as follows: "*The free and independent people is that which has not been subjected to the government of another people.*" The first mention of this word is found in the work register of the Saint-Victor monastery.¹⁴

Over time, the meaning of the term "sovereignty" has changed, referring to the situation of a man who, in terms of hierarchy, is subordinate to no one¹⁵. In this sense, the term sovereignty was first used in 1283 by Phillip de Bonamour, a French jurist who said that "each baron is sovereign in his own estate".¹⁶

It should be noted that the development of the concept of sovereignty began only in the Middle Ages, when it was used to indicate the position of the king at the top of the feudal hierarchy.¹⁷ However, some placed the papacy at the top of this hierarchy.¹⁸ Thus, for example, St. Thomas Aquinas (1225-1274), a Dominican monk and professor of philosophy and theology, and founder of positive law, declared the Pope of Rome to be the representative of the divine life and head of the "Republic of Christ."¹⁹ The Pope of Rome had the right to sanction monarchs and to release monarchs, to release their subordinates from the obligation to obey the monarch.²⁰ From this follows the necessity of the subordination of the individual to the monarch and of the monarch to the church, his conception being justified by the authority of the papacy, which allows us to conclude that sovereignty belongs to the papacy.²¹ This idea is based on

¹³ A. Arseni, *Legitimacy of the representative mandate in the exercise of national sovereignty*, Chisinau, 2019, p. 31

¹⁴ V. Kondurov, *Karl Schmitt's Philosophy of the State*, St. Petersburg, 2016, p. 5
Available at:

https://dspace.spbu.ru/bitstream/11701/5129/1/Vypusknaya_kvalifikacionnaya_rabota_%28Kondurov_V_E_%29.docx

¹⁵ Alexandru Arseni, *Ibidem*, p. 31.

¹⁶ Viacheslav Kondurov, *Ibidem*, p. 6.

¹⁷ I. Deleanu, *Constitutional Law and Political Institutions*, vol. 1, Iași, Chemarea Foundation Publishing House, 1993, p. 72

¹⁸ G. Vrabie, *Constitutional Law and Political Institutions*, Vol. 2, Iași, Cugetarea Publishing House, 1992, p. 69

¹⁹ Alexandru Arseni, *Ibidem*, p. 31

²⁰ Thomas Aquinas, *Summa contra Gentiles* (Against the errors of unbelievers) quoted after Zăpârțan Liviu Petru, *Doctrina politica*, Iași, 1994, p. 74

²¹ Genoveva Vrabie, *Ibidem*, p. 69

the fact that the divine order objectively limits all possible state power,²² which, in the view of St. Thomas Aquinas, is subordinate to the Church, to which it is vassal and to which it must obey, defend and help it to achieve its aims, and in the fight against heretics, the Church needing the state for its executioner function. The authority of the sovereign over his subjects is explained by the biblical thesis expressed in the phrase "there is no dominion except from God"²³, referring to the supernatural source of the monarch's power, as long as the sovereign never violates the authority of the Church.²⁴

According to the Christian conception, the temporary ruler (king, emperor) is the anointed one, the subject of God, to rule for the common good. When the ruler uses power for his own benefit, he loses legitimacy and God raises up an opponent and a replacement. According to the opinion of other scholars, the church, the Pope, without having temporary sovereignty over kings and emperors, can condemn a worldly rule because of abuses caused by sin.²⁵

According to the views of the philosopher Thomas Aquinas, the state, which is not subordinate to the Church, is illegal and loses its right to exist²⁶. Respectively, we note that the thinker supports the divine origin of sovereignty, which does not mean that God approves any form of government or a particular form of government, much less approves the appointment of a particular ruler.²⁷

The philosopher Thomas Aquinas also develops another concept closely related to that of sovereignty - the concept of the legitimacy of state power, affirming that legality does not constitute legitimacy²⁸, but legitimacy is what grounds legality, and the law, in the thinker's view, must be in agreement with the common good, and therefore with virtue.²⁹

Another philosopher, who contributed to the development of the concept of sovereignty and through his ideas foreshadowed the European Enlightenment visions of popular sovereignty and the separation of powers

²² A. Birmo, *The main trends in the philosophy of law and the state*, Paris, Ed. A. Pedone, 1978, p. 61.

²³ E. Râbca, V. Zaharia, V. Mărgineanu, R. Ciobanu, *Philosophy of law*, Chişinău, Artpoligraf, 2016, p. 80.

²⁴ M. Bădescu, *Fundamental Concepts in Theory and Philosophy of Law*, Schools and Currents in Legal Thought, Lumina Lex, Bucharest, 2002, p. 25-28.

²⁵ P. Georgescu, *Philosophy of Law in the Context of Actuality*. Tractate and anthology of texts. Bucharest, Titu Maiorescu University, 2001, p. 78.

²⁶ Eugen Râbca, Victor Zaharia, *Ibidem*, p. 81.

²⁷ Paul Georgescu, *Ibidem*, p. 73.

²⁸ A. Birmo, *The main trends in the philosophy of law and the state*, Ed. A. Pedone, Paris, 1978, p. 67.

²⁹ N. Popa, Gh. Dănişor, I. Dogaru, D. C. Dănişor. *Philosophy of law: The great currents*, Bucharest, ALL BECK, 2002, p. 95.

in the state, is Marsilius of Padua.³⁰ The thinker considered that the source of political power is the people and from them emanates the government, therefore, the prince being in the state, must govern, being always obliged to the people, to keep the law. He can be punished if he does not respect it. The philosopher states that the Pope and the clergy have no legal justification, not even the right to impose by force the observance of the divine law, and therefore the punishment of heretics can only be pronounced by civil courts. Marsilius of Padua bases his concept of popular sovereignty on the theory of the social contract, demonstrating that political power, the state, is an emanation of the will of the people.³¹

State power is the emanation of the will of the people, to whom belongs the right to make laws binding on all, even those in government. Every citizen has the right to participate in the legislative process and under no circumstances can the law be passed by a single person (the monarch).³²

Therefore, we observe the transition from the concept of papal sovereignty, justified by the fact that state power emanates from God, and the power of the Pope in Rome must be positioned above the power of the monarch, to the concept of popular sovereignty, the people becoming sovereign, with the right to decide on all essential aspects of the social, political, economic life of the state. Moreover, under this concept, the people had the right to elect the king, which shows the transition from hereditary to elective monarchy. We should mention that the terms papal sovereignty and popular sovereignty practically developed in parallel, with a major influence exerted by religion, philosophers' opinions and the form of government existing in their state.

Another thinker of the Middle Ages who was concerned with researching the concept of state power and sovereignty was Niccolo Machiavelli (1469-1527), who attempted to conceptualize the idea of sovereignty but did not develop it into a political theory. Machiavelli considered the interests of the state above all, with absolute monarchy as the form of government, the prince being at the head of the state, and the interests of the state being a justification for the application of violence to the people.³³ We observe the phenomenon of the personification of state power, which is embodied in the figure of the monarch, holding absolute

³⁰ O. Klimenko, A. Mirzoev, *Development of the concept of sovereignty from Marsilius of Padua to Hegel*, Legal Science. № 3, 2016, p. 24.

³¹ V. Capcelea, *Philosophy of Law*, Manual for Higher Education Institutions, Kishinev, Arc, 2004, p. 96.

³² M. Padua, *Defensor pacis*/ translated from French by B.U. Esenov, scientific editor, note by G.P. Luparev. M. Dashkov, 2014, p. 106.

³³ N. Machiavelli, *The Sovereign*. M., EXMO-Press; Kharkov: Folio, 1998, p. 63.

power. The philosopher does not identify any difference between the state and the person of the prince, and in order to achieve the interests of the state, Machiavelli believes that the monarch must hold sovereign power, thus creating the basis for royal sovereignty.³⁴

A little later, Jean Bodin (1530-1596) elaborated another conception of the organization of the state, according to which the state appeared independent of the will of man, representing the totality of families, over which sovereign rule was exercised, and which only the heads of families had the capacity to exercise. Defining the republic as "a government based on the laws of nature", Bodin considers the legislative power to be the essence of the state: "where there is no legislative power, he says, there is no republic"³⁵. In his doctrine of sovereignty, he defines sovereignty as the absolute and perpetual power of a republic, which consists in passing and repealing laws³⁶. We could conclude that, according to the great thinker's vision, sovereignty belongs to the legislative power, embodying the right to make laws and direct the internal life of the state.

In Bodin's ideas about sovereignty, one can detect shifts of emphasis from "ius" to "lex" and from "natural" to "statutory" law, meaning positive law.³⁷ According to the theory developed by the great thinker, there must be a supreme power in every state, and the main features of sovereignty include: permanent character, i.e. the state power is established for a period of time, which is not determined in advance, and the holder of the state power, established in office for a fixed period of time, is not sovereign; absolute character - the sovereign (the person or persons who adopt the laws) cannot be subject to these laws, the conduct of the sovereign is superior to the laws and inaccessible to legal regulations, and his will is above the law and the will of other subjects of law.³⁸ This consideration is based on the fact that the will is more important than reason, which increases the importance of the sovereign, who is placed above the law. Bodin was convinced that subjecting the sovereign to any kind of statutory law would undermine the essential meaning of the idea of sovereignty, which is the power to command everyone and everything.³⁹ *The indivisible and unitary character* of sovereignty underlines the necessity of holding state power by a person or governing body; the unconditional and continuous character represents the right of the holder of state power to solve social and political problems, without being obliged

³⁴ Oleg Klimenko, Alexandr Mirzoev, *Ibidem*, p. 24.

³⁵ Ș. Georgescu, *Philosophy of Law. A history of ideas in the last 2500 years*, Bucharest, ALL BECK, 2001, p. 49.

³⁶ Valeriu Capcelea, *Ibidem*, p. 98.

³⁷ Ștefan Georgescu, *Ibidem*, p. 49 .

³⁸ Eugen Râbca, Victor Zaharia, *Ibidem*, p. 81.

³⁹ Ștefan Georgescu, *Ibidem*, p. 49.

to coordinate his own decisions with other persons or institutions, and the citizens have only obligations towards the sovereign.

Bodin, being an advocate of hereditary monarchy, believes that only monarchy can ensure that the social and religious confrontations in France can be overcome⁴⁰. Jean Bodin thus became the author of the secular theory of sovereignty, recognizing the king as a sovereign independent of the outside world, which led to the separation of states from papal power⁴¹, the monarch being subject only to natural law, which was made up of eternal laws given by God⁴². Sovereignty, according to Bodin's view, is personified, with the sovereign (monarch) having legislative and judicial prerogatives, resolving issues of war and peace, and appointing public officials. The only limitation of the sovereign's power was that the king did not have the absolute right to decide on the use of the state budget. For example, for the introduction of new taxes and duties, the monarch had to seek the consent of the States General, who only had the right to vote for the approval of the state's fiscal policy⁴³. The absolutization of the sovereign's power meant that the people had no protection against violations of the law. Bodin mentioned only the right to property, which had to be respected, but this appeared as a moral demand on the sovereign⁴⁴. The people must obey the legal monarch, but they have the right to kill the tyrant. In exceptional situations, when decisions need to be taken urgently, absolute power belongs to the monarch, who has the 'right of last decision', which is a principle feature of sovereignty⁴⁵. Like the philosopher Thomas Aquinas, Jean Bodin approaches the concept of the legitimacy of state power by stating that this power is based on natural laws, the violation of which leads to the loss of legitimacy of state power.⁴⁶

Therefore, we could conclude that sovereignty is the absolute and perpetual power of a republic⁴⁷, which is manifested in the adoption of laws, the declaration and ending of wars, the appointment of officials, the dispensation of justice⁴⁸. The importance of the concept developed by the

⁴⁰ Eugen Râbca, Victor Zaharia, *Ibidem*, p. 88.

⁴¹ Arseni Arseni, *Ibidem*, p. 32.

⁴² Genoveva Vrabie, *Ibidem*, p. 69.

⁴³ Oleg Klimenko, Alexandr Mirzoev, *Ibidem*, p. 24.

⁴⁴ Ștefan Georgescu, *Ibidem*, p. 49 .

⁴⁵ K. Schmitt, *Political Theology*. Moscow, KAHOH-PRESS-Lj Kuchkovo POLE, 2000, p. 18-20.

⁴⁶ D. Shumkov, *Social and legal foundations of state sovereignty of the Russian Federation* (historical and theoretical analysis): abstract of the PhD thesis. St. Petersburg. 2002, p. 46.

⁴⁷ Genoveva Vrabie, *Ibidem*, p. 69.

⁴⁸ M. Voiculescu, *History of Political Doctrines*, Bucharest, Hyperion XXI, 19921, p. 60.

great philosopher Jean Bodin is expressed by the fact that he addresses the concept of the legitimacy of power and creates a theoretical system of categories and notions centred on the concept of sovereignty. This system was further developed and refined by the great philosophers of modernity.⁴⁹

Results and discussions

The development of the concept of "*sovereignty*" is also influenced by the formation and development of states on the European continent and reflects the stages of formation and evolution of states. The Peace of Westphalia in 1648 exhausted the process of executing the discussion about the mandates of the community and the authorities of power in accordance with their possibilities. Thus, all 145 sovereign subjects, which signed the Treaty of Westphalia, represented the European Christian civilization. During the first 150 years of its existence, the system of sovereign states remained Eurocentric, and the occupation and exploitation of the peripheries of giant lands was considered as mutual action with those peoples and generations, which represented a secondary system of semi-sovereign states.

Analyzing the concept of sovereignty reflected in the doctrine of contemporary constitutional law, we attest that it represents the supremacy and independence of state power in the sphere of internal and external relations,⁵⁰ and the given notion does not apply to a state authority, a person, but to the state itself. State sovereignty is the feature of state power that it is supreme within the territory of the state and independent of any state or international body, a feature expressed in the power of the state to freely resolve its internal and external affairs, provided that it respects the sovereignty of other states and the rules of international law.⁵¹

The actual concept of sovereignty in the XXI century at the international level

Actually, the concept of sovereignties is facing new challenges. We should analyze the concept of sovereignty in the context of the joining various international organizations. Analyzing the sovereignty through the prism of the international law, we could conclude that sovereignty as "*indivisible, unlimited and illimitable*" power that was described by Hobbes does not exist. The well-known American jurist, Hugh Evander

⁴⁹ Oleg Klimenko, Alexandr Mirzoev, *Ibidem*, p. 24.

⁵⁰ I. Guceac, *Constitution at the crossroads of millennia*, Chisinau, Tipografia Centrale, 2013, p. 30.

⁵¹ Ion Guceac, *Ibidem*, p. 83.

Willis (1875-1967), remarks: *“It may be said that each nation is independent of every other and that international law is not a limitation upon any of them because it is self-imposed, but the facts of life limit external sovereignty. So far as there are international law, treaties, conventions, and the League of Nations, all national sovereignty is limited in international relations. In the same way internal sovereignty has its limits. Both the states and the nation in the United States are limited by bills of rights. If sovereignty must be independent and unlimited there is no such thing as sovereignty”*⁵².

It should be mentioned that actual political philosophy does not position sovereignty as an absolute and unlimited power, denying the characteristic approach to classical philosophy. We should highlight the difference between the internal and external sovereignty. The internal sovereignty is the state’s right to decide on the organization of political, economic, social, cultural life and other areas that are included in the concept of the internal affairs of a state. The internal sovereignty manifests in the field of international relations, in the state’s right to conclude treaties and to join international organizations. So, according to the doctrine of international law, sovereignty represents the supremacy and independence of state power in the sphere of internal and external relations⁵³. At the same time, state sovereignty is a quality of state power to be supreme in the territory of the state and independent from any state or international body, a characteristic expressed in the right of the state to resolve its internal and External Affairs freely, provided that the corresponding rights of other states and the norms of international law are respected⁵⁴.

In this context we should mention the declaration of Kofi Annan the UN secretary-general pronounced at 18 September 1999. According to him *“State sovereignty, in its most basic sense, is being redefined—not least by the forces of globalization and international co-operation. States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty—by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights. When we read the charter today, we are more than ever conscious that its aim is to*

⁵² H. Willis, *The Doctrine of Sovereignty Under the United States Constitution*. Articles by Maurer Faculty, 1929. Available at:

<https://www.repository.law.indiana.edu/facpub/1256>

⁵³ I. Guceac, *Constitution at the crossroads of millennia*, Chisinau, Tipografia Centrale, 2013, p. 30.

⁵⁴ Ion Guceac, *Ibidem*, p. 83.

*protect individual human beings, not to protect those who abuse them*⁵⁵. This statement was pronounced by the UN Secretary General in analysis of the concept of sovereignty in the context of the humanitarian interventions of the XX century and forecasting the change in the sovereignty's meaning in the XXI century. From those exposed abought, we could conclude that humanitarian crises, violations of human rights, genocides show that the sovereignty of the state is not absolute one.

So, we should mention that the humanitarian intervention or the responsibility to protect in the actual terminology represents the actions of the international community regulated by Chapter 6 and 7 of the United Nations Charter that could be taken if there are presented the threat to the peace, the security of humanity and acts of aggression. According to the one of the definitions of this concept, the humanitarian intervention represents actions undertaken by an organization or organizations (usually a state or a coalition of states) that are intended to alleviate extensive human suffering within the borders of a sovereign state. Such suffering tends to be the result of a government instigating, facilitating, or ignoring the abuse of groups falling within its jurisdiction. This abuse often takes the form of deliberate and systematic violations of human rights, including forced expulsions, ethnic cleansing, and, in the most extreme cases, genocide⁵⁶. In these situations, the international community intervenes in the internal affairs of the state in order to save the categories of the population subjected to persecution. So, the people's particular interest is positioned as one more important than the interest of governors who abuse their power.

In this study, we should analyze some aspects of the humanitarian intervention because the application of the articles of Chapter 7 of the UN Charter allows the violation of the sovereignty of the state and the application of the armed force to restore the peace and security of humanity. We should highlight that *“Humanitarian intervention constitutes a calculated and uninvited breach of sovereignty (state rights) in the name of humanity (individual rights). In the post-Cold War era, however, this conception of sovereignty as sacrosanct came under sustained attack. It was argued that despotic leaders should not be able to hide behind the shield of state sovereignty and that the international*

⁵⁵ K. Annan, *Two Concepts of Sovereignty*, The Economist, 18 September, 1999. Available at: <https://www.economist.com/international/1999/09/16/two-concepts-of-sovereignty>

⁵⁶ D. Bell, *Humanitarian intervention*. *Encyclopedia Britannica*, March 26, 2019. Available at: [Humanitarian intervention | International Law & Human Rights | Britannica](#).

community had an obligation to intervene to stop the widespread abuse of human rights”⁵⁷.

In his declaration Kofi Annan noted four aspects of humanitarian intervention which need to be considered with special care. “First, “intervention” should not be understood as referring only to the use of force. And yet the commitment of the world to peacekeeping, to humanitarian assistance, to rehabilitation and reconstruction varies greatly from region to region, and crisis to crisis. If the new commitment to humanitarian action is to retain the support of the world’s peoples, it must be—and must be seen to be—universal, irrespective of region or nation. Humanity, after all, is indivisible”⁵⁸. So, the UN secretary-general does not admit an uneven approach to humanitarian crises and genocide situations that are common for several international crises. Each humanitarian intervention represents a violation of the sovereignty of the state, as well as the principle of non-interference in the internal affairs of the state, which determines the necessity of the development of standards accepted by the international community that will not allow the application of double standards.

Kofi Annan highlight that “traditional notions of sovereignty alone are not the only obstacle to effective action in humanitarian crises. No less significant are the ways in which states define their national interests. The world has changed in profound ways since the end of the cold war, but I fear our conceptions of national interest have failed to follow suit. A new, broader definition of national interest is needed in the new century, which would induce states to find greater unity in the pursuit of common goals and values. In the context of many of the challenges facing humanity today, the collective interest is the national interest”⁵⁹. So, the international interests which are manifested in the defense and promotion of the human’s rights should prevail over the interests of the state leadership that blatantly violates fundamental human’s rights.

The UN secretary-general argued that “in cases where forceful intervention does become necessary, the Security Council—the body charged with authorising the use of force under international law—must be able to rise to the challenge”⁶⁰. So, namely UN plays the most important role in the authorization of the humanitarian intervention and this international organization should act promptly and uniformly in the situation of the existence of the threat of peace and security of humanity,

⁵⁷ Kofi Annan, *Ibidem*, p. 3.

⁵⁸ Kofi Annan, *Ibidem*, p. 3.

⁵⁹ Kofi Annan, *Ibidem*, p. 3.

⁶⁰ Kofi Annan, *Ibidem*, p. 3.

which is practically impossible if one of the member states of the Security Council is involved in armed conflict.

Kofi Annan argued that *“when fighting stops, the international commitment to peace must be just as strong as was the commitment to war. In this situation, too, consistency is essential. Just as our commitment to humanitarian action must be universal if it is to be legitimate, so our commitment to peace cannot end as soon as there is a ceasefire. The aftermath of war requires no less skill, no less sacrifice, no fewer resources than the war itself, if lasting peace is to be secured”*⁶¹. So, the role of the international community does not finish simultaneously with the finish of the war and UN should do everything possible to lessen the consequences of war.

We can conclude that at actually humanity is facing with the modification of the concept of sovereignty that is transformed from the absolute and unlimited power of the state over the territory and its own citizens into one limited by international commitments, treaties, provisions of international law, the guarantee the respect to fundamental human rights. Therefore, the UN Security Council sanctions humanitarian intervention, which is an exceptional measure undertaken by the international community in the case of flagrant violation of human’s rights and threats to the peace and security of humanity. Despite the fact that humanitarian intervention violates the state’s sovereignty, the application of force in this case is absolutely legal, if it is carried out in compliance with the provisions of the UN Charter because it defends the interest of ordinary citizens persecuted by the state leadership. Accordingly, the “individual sovereignty” defined by the UN secretary-general becomes more important than the sovereignty of the state which undertakes acts of genocide and mass killings⁶².

The concept of sovereignty in EU

The concept of sovereignty in EU should be analyzed both thought the prism of the sovereignty of the state members of community and the “sovereignty” of the EU organization as the complete entity.

We should note that the philosophy of the EU is based on the two concepts that explain the actual construction of the EU, namely supranational and intergovernmental theories. According to one of the definitions, a supranational union represents a type of multinational political union, where negotiated power is delegated to an independent

⁶¹ Kofi Annan, *Ibidem*, p. 3.

⁶² A. Arseni, V. Pozneacova, *The Concept of Sovereignty in the Political Philosophy—From Antiquity to the Contemporary Epoch*. Humanities and Social Science Research, 4(3), 2021, p. 1.

authority by governments of member-states, which actions in the interest of community. The international community includes the 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. 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 decision-making process in comparison with supranational theory. In international relations, scientists who develop this theory treat states, in general, and national governments, in particular, as the main actors of the integration process⁶³.

The supranational and intergovernmental character of the EU is regulated by the Treaty on the Functioning of the European Union, which in the 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."*⁶⁴ 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"*⁶⁵. This competence shows the supranational construction of the EU because in the domains established by treaty states do not have de right to legislate.

Beginning from that exposed above, we should note that in the doctrine of European law crystallized two different opinions which refers to the concept of sovereignty within the European Union. According to one point of view, the legislative process at the level of the European Parliament violates the sovereignty of the states, because in the areas mentioned in the articles 3-5 of the Treaty on the Functioning of the

⁶³ Alexandru Arseni, Veronica Pozneacova, *Ibidem*, p. 1.

⁶⁴ *Consolidated Version of the treaty on the functioning of the European Union*. Official Journal of the European Union, C 326/47, 26.10.2012, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

⁶⁵ *Consolidated Version of the treaty on the functioning of the European Union*. Official Journal of the European Union, C 326/47, 26.10.2012, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

European Union the national Parliament do not have de right to legislate. We should note that the right to legislate is one of the most important state's prerogatives and the manifestation of national sovereignty of the state, which is limited in the member states' of EU. According to other savants, the actual construction of the EU does not limit the state's sovereignty. This point of view is based on the fact that the right to join the International Organization is one of the state's exclusive prerogatives. So, namely state decides to join the EU, having the right to leave the International Organization, as Britain did. These researchers argue that the State cedes to the International Organization only certain strictly limited competences and the state's sovereignty remains unlimited by the EU's construction. We adhere to the point of view according to which the sovereignty of EU member states is not limited by the implementation of the legislative process at the community level, because states through elections appoint their representatives in the European Parliament and membership in the International Organization is a right, an expression of the sovereignty and free will of the state.

Analyzing the concept of the sovereignty in the actual construction of the EU, we should analyze the process of the accession to EU, during which the sovereignty of all states, members and candidate states is perfectly respected because states should ratify the agreement to accession to the EU according to their constitutional rules. This is not a formal prerogative because Norway, for example, twice gave up joining the European community. The sovereignty of the candidate state is respected until the last stage of accession, especially when public opinion considers that the negotiated conditions of accession are not satisfactory⁶⁶.

We should note that among the conditions of accession to the EU is the compliance to the *acquis* of EU. This condition may seem as a very restrictive one and may be an obstacle to the exercise of sovereignty in the economic and legal fields. The candidate must accept not only the treaties' regulations but also the whole legislation of the EU. It should be noted that the candidates have always achieved a transition period for adapting the state to their new economic and legal situation. Plus, the introduction of the single European currency represented another attack on the sovereignty of the state, because coin minting of the national currency was traditionally the responsibility of the state as a manifestation of its sovereignty⁶⁷.

⁶⁶ N. Coșleț, *The impact of state membership in the UN, NATO, and EU on state sovereignty*. In: *Realities and perspectives of national legal education*: Vol. 1, 2019, p. 668. ISBN 78-9975-149-79-2.

⁶⁷ Nicolae Coșleț, *Ibidem*, p. 668.

Actually, in the community's law appears the concept of the “strategic sovereignty”. The emergence of this concept is based on the fact that European countries are increasingly vulnerable to external pressure that prevents them from exercising their sovereignty. This vulnerability threatens the European Union’s security, economic health, and diplomatic freedom of action, allowing other powers to impose their preferences on it. To prosper and maintain their independence in a world of geopolitical competition, Europeans must address the interlinked security and economic challenges other powerful states present – without withdrawing their support for a rules-based order and the transatlantic alliance. This means creating a new idea of “strategic sovereignty”, as well as establishing institutions and empowering individuals that see strategic sovereignty as part of their identity and in their own interest. Most fundamentally, the EU needs to learn to think like a geopolitical power⁶⁸. The emergence of the concept of strategic sovereignty of the EU is determined by the deepening of the supranational tendencies of this organization. The concept of strategic sovereignty is manifested in several areas including security, health, climate, economic and digital fields⁶⁹.

Therefore, actually within the EU could be identified two trends related to the concept of sovereignty. On the one hand, states transfer the defining powers to supranational bodies for the proper functioning of the International Organization and for the development of uniform policy in the areas established in the Treaty on the functioning of the EU. On the other hand, there is created the concept of strategic sovereignty of the EU, which is seen as a superpower capable of promoting its own interests, based on the unity of the legislation of the member states. Respectively, we could note the transfer of the states’ competence to the supranational bodies and creating a new concept of sovereignty that allows the promotion of the interests of the member states of the community.

Conclusions

Sovereignty is a key concept of constitutional doctrine, from the Middle Ages to the contemporary period. Sovereignty has always been conceived as the supreme power, granted either to the Pope of Rome, the king, the people or the nation, depending on the period of development of political thought and significant historical events in the universal history of humanity. The triumph of the concept of popular sovereignty was

⁶⁸ J. Puglierin, P. Zerka, *European Sovereignty Index*. June, 2022. Available at: <https://ecfr.eu/wp-content/uploads/2022/06/European-Sovereignty-Index.pdf>

⁶⁹ A. Arseni, V. Pozneacova, *The Concept of Sovereignty in the Political Philosophy – From Antiquity to the Contemporary Epoch*. Humanities and Social Science Research, 4(3), 2021, p. 23.

manifested in the granting of supreme power to the people, who are sovereign in their state. This principle has been enshrined in majority of the world's constitutions.

The phenomenon of globalization and the geopolitical changes of the current period have determined the redefinition of the phenomenon of sovereignty, which is no longer positioned as the absolute and unlimited power of the state in internal and external affairs. It no longer represents the unconditional and unlimited power of state power over a territory and its citizens. Today, the exercise of state sovereignty is linked to the state's obligation to guarantee and respect fundamental human rights and freedoms. The UN can authorize the military forces of a state or coalition of states to enter the territory of another state if its leadership commits acts of genocide, war crimes, crimes against humanity and threatens the peace and security of humanity. Thus, the welfare of the people and respect for human rights take precedence over state sovereignty and state power over its territory and citizens.

In the 21st century, the transformation of the concept of state sovereignty is manifested in the ceding of some state powers to community bodies within international or regional organizations. Thus, these transformations within some states generate a paradigm change in the concept of sovereignty, from national sovereignty to strategic sovereignty.

Based on the above, we could conclude that, from ancient times to the present, the concept of sovereignty has been and remains one of the most controversial theories, reflecting the overall structure of state organization. Nowadays, there is a tendency to re-evaluate the essence of sovereignty and adapt it to the conditions of contemporary reality.

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