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State Sovereignty and Sovereign Rights: The Problem of the Correlation

[1]Yuriy P. Bytyak, [1]Ivan V. Yakovyuk, [1]Olesia Y. Tragniuk,
[1]Tetiana V. Komarova and [2]Sergey S. Shestopal
[1]Yaroslav Mudryi National Law University, Kharkiv, Ukraine, Russia
[2]Vladivostok State University of Economics and Service, Vladivostok, Russian Federation

Abstract: The question on the content of the sovereign rights and their relation to sovereignty is not enough developed in legal science. These issues are in the focus of present study. In the traditional legal doctrine sovereignty is the category that expresses the content and scope of competences of the state in the domestic and foreign policy. The appearance of a new state automatically means the presence of his sovereignty. The loss of sovereignty leads to the termination of its existence as a subject of international law. In international (interstate) communication, the states are forced to self-restriction of their sovereign rights but without losing the sovereignty. As the human rights, the sovereign rights of the state in a certain sense can be treated as natural. The sovereign rights are associated with the existence of the state and do not depend on other non-legal factors. Conception of the state's legal equality results in the identity and equality in sovereign rights that states can use on their own. The meaning of the sovereign rights consist in the determination and guaranteeing clearly defined boundaries of the freedom of the state. Can sovereign rights change in the process of historical development of the states? What is the "measure" of changes of the volume of sovereign rights? The sovereign rights are inherent to the state and as long as sovereign stats play the major role in international law their strength remains ultima ratio.

Key words: State sovereignty, human rights, the rights of the nations, constitutional, rights, ratio

INTRODUCTION

Sovereignty, it is a political and legal category which expresses the content and scope of competence of the state in the areas of domestic and foreign policy. If the fact of the appearance of a certain state is formulated, then it automatically means the presence of his sovereignty. However, the loss of sovereignty of the state leads to the termination of its existence as a subject of international law as sovereignty cannot belong anyone except the state.

State sovereignty should not be overestimated, is not absolute. Interstate communication leads to the intensification of contacts and rapprochement of the positions of the various states. This leads to strengthening of their interaction and interdependence, encourage the search for compromise and harmonization of national interests which in some cases may involve certain concessions for the sake of peace and social progress. It should be also taken into consideration that not only small but also large countries have to adhere the norms and the principles of international law developed with their participation as well as an intergovernmental agreement. As a result, the state in a certain extent constantly resorts to self-restraint on the issue of the implementation of its sovereign rights which however, does not lead to the loss of sovereignty.

The mentioned above processes have been manifested in a certain extent at all times but they have gained special significance after the second world war. The end of the 20th century was marked by the rapid development of globalization and regional integration which led to the creation of numerous intergovernmental organizations and in particular, the supra-national (Supra-governmental) associations and to increasing pressure of Transnational Corporations (TNCs) and Transnational Banks (TNBs). In this conjunction, several researchers G. Sorensen, S. Makinda, B. Buzan, L. Pettiford believe that state needs to exercise a policy that would be more responsive to psychological and historical features of nations and peoples, promoted the development of the sovereignty, conduct an active foreign policy since as Buzan (1991) stressed, "failed states" are unable to effectively carry out its internal and external sovereignty "can guarantee very badly the rights of the individual" (Buzan, 1991).

Corresponding Author: Sergey S. Shestopal, Vladivostok State University of Economics and Service, Vladivostok, Russian Federation

SOVEREIGNTY AND GLOBALIZATION

The principle of state sovereignty in the context of the globalization process acquires particular importance. The equality of states requires the active participation in the dialogue, only between themselves but also with the international financial institutions and non governmental, supranational structures which create their own standards of behavior. Under present conditions in the process of interpretation of the sovereignty principle the focus is on those aspects of its content which would allow the state actively develop international communication while not compromising their foundations.

Under the influence of globalization and regional integration, the states increasingly agree to the transfer their own certain sovereign rights to supranational jurisdiction (supra-governmental) associations (European Union) and international organizations (UN, Council of Europe, OSCE, NATO, security, security, etc.). As Tully observes the increasing multi-layered complexity of the world requires a comprehensive understanding of sovereignty (Tully, 1995). This gives rise to a qualitatively new situation for countries that are forced to look for new approaches to the implementation of sovereign rights underscoring the urgency of the problem of disclosure of the ratio of state sovereignty and sovereign rights.

THE SOVEREIGNTY OF THE STATE AS A LEGAL CONSTRUCTION

In order to be consolidated in the law field any state-legal phenomenon should be conceptualized, transferred into the category of legal structures. The sovereignty of the state is a legal construction that reveals the essence of the state authorities. There is an intensive interaction, between the sovereignty's legal concept and its real implementation. Developers of the sovereignty theory point out that the concept of "sovereignty" is far not a formal legal category, deprived of content (Jellinek, 1908; Dugy, 1909; Kelsen, 1999). The determination whether the state is actually a sovereign one or a certain political-territorial formation proclaims itself as a state-that can be obtained only from the analyses of the practice of the implementation of sovereign rights.

It is generally known that the sovereignty is concretized in sovereign rights. However, in legal science the question about the content of the sovereign rights and their correlation with sovereignty have not been enough developed. The content of certain sovereign rights is mainly the subject of international law. However, their developments lack systemic approaches. The attempts to create the universally contractual codifying for sovereign rights of states in the international instruments have been taken from the end of the 19th century. However, even today, this research remains unfinished. V.A. Romanov calls the situation when in the international law the rights of states as subjects and participants of the of international relations have been less elaborated and codified than individual rights (Romanov, 1996) as paradoxical one. This situation is rather destructive. After all, the sovereign rights have the principal value for recognition of states as the principal subjects of international law.

THE CONCEPT OF SOVEREIGNTY IN THE CONSTITUTION OF THE STATE

In modern sonstitutions, the state is usually characterized as a sovereign one. However, to find in international legal instruments and national legislation links to its sovereign rights is rather difficult. As a result, the sovereign rights of the state are not clearly identified at both constitutional and the international legal level. An exception from this rule was the constitutional law of the Soviet Union which in the Constitutions of 1924 (Article 3), 1936 (Article 15) and 1977 (Article 81) contained a atatement that the sovereign rights of the union republics (Soviet republics have been nominally recognized as the states) are protected by the USSR.

Since the 1970s, the category of "sovereign rights" begins unsystematically to be used mainly in international maritime law to determine the competences of coastal states regarding the resources of the continental shelf and the exclusive economic area and from the end of the 1990s to fix the sovereign rights over energy resources (Concluding Document of the Hague Conference on the European Energy Charter of 17 December). The volume of sovereign rights in these spheres is determined by the rules of law of the sea by special conventions, constitutions, national laws and international agreements.

More important for disclosure of "sovereign rights" categories and their relationship with sovereignty is the constitutional legislation and international legal documents regulating interstate relations in the political sphere. Thus, the declaration on principles of international law provides that the state shall not be entitled to use or promote the use of economic, political measures to subdue the other state in question of implementation of its sovereign rights. The declaration also refers to the principle of the sovereign equality of states: all states are juridically equal; they have the same rights and responsibilities are equal members of the international community; each state enjoys the rights inherent in full sovereignty (The Declaration on Principles of International Law concerning Friendly Relations and

cooperation among states in accordance with the United Nations Charter). In a more expanded form this principle is set out in Article 1 of the final act on security and cooperation in Europe.

Constitution of a number of states also contains provisions relating to the implementation of sovereign rights of membership in the intergovernmental association. Thus, the German constitution (Article 23), regulating the question of its participation in the European Union, provides for the transfer of the latter's sovereign rights (Seregin *et al*., 2009). The Austrian constitution (Article 9) allows the possibility of transferring sovereign rights to interstate institutions and authorities. The Article 79 of the constitution of Russian Federation says that the state can participate in interstate associations and transfer to them part of its powers in accordance with international treaties, if it does not contradict the principles of its constitutional system. This provision more fully characterizes the relation of sovereignty and sovereign rights. Since, the constitution provides for delegation of authority, it means that the practice of voluntary transfer by state of right for implementation of certain rights or authorities is wholly acceptable precisely because it does not violate the sovereignty of state.

Thus, sovereignty does not exclude the possibility of its implementation by participating of the state in the activities of interstate unions (Article 88-2 of the constitution of French Republic specifies that such participation is possible in compliance with the principle of reciprocity during the transfer to interstate structures the right of implementation of sovereign law or authority). The transfer by the state of certain sovereign rights and authorities to supranational structures does not mean the restriction of sovereign rights. The transferred right is compensated by the acquisition of the so-called system-wide authority. As a result, the limits of the overall activity of the states is expanding significantly.

Unlike, the situation in federal state where it is impossible to return back unilaterally already transferred sovereign rights, in the European Union such a transfer does not affect the sovereignty of member states as it transmits the union not the rights themselves but only the right to implement them which it can afford to return by leaving the EU (Yakovyuk, 2013).

THE SOVEREIGNTY AND SOVEREIGN RIGHTS

The ratio of sovereignty and sovereign rights it is efficient to consider over the philosophical categories "part" and "whole". It is well known that a certain system can be understood as a "whole" only by understanding the nature of its parts. However, one should not be limited to the study of parts, avoiding the analysis of their relationship within the whole. Every single item can be properly comprehended when it is analyzed not in isolation from the system and in interconnection with it.

In this case, the sovereign rights should be treated as the term "part" and sovereignty of state should be treated as the term "whole". In the state sovereignty, the sovereign rights, revealing its structure and content are in relatively constant and legitimate relationship. With the help of sovereign rights the internal and external aspect of sovereignty traditionally are disclosed. If the whole (state sovereignty) ensures the functioning of parts, the parts (the sovereign rights) contribute to the persistence of the sovereignty integrity (Shestopal and Oleynikov, 2016). The sovereign rights out of state sovereignty lose not only some of its properties but cannot exist because the quantitative aspect of the whole is the sum of the parts but in quality the whole is greater than their sum. Thus, sovereignty cannot be reduced to the properties of the mechanical the sum of properties of its parts. Therefore, it is necessary distinguish between sovereignty and the sovereign rights which are used to determine the state authority in a particular area with limited content.

The structure constitutes an important feature of the whole (national sovereignty) which on the one hand, connects the part (the sovereign rights) in a single entity and on the other-makes these parts to function according to the laws of the system. If the system (state sovereignty) is effective, the replacement of its components (sovereign rights) more specifically, the procedure for their implementation should be carried out only for saving and enhance this efficiency. This is what happens in the case of the states-members of the European Union. Therefore, the transformation of state sovereignty logically associated with a change in its structure that is with the change of the aggregate links between the sovereign rights.

Regarding other antinomy: "Part precedes a whole" or "whole precedes the parts" we agree with the authors who believe that the whole becomes the whole by synergy of parts. One of the parts is directly connected not only with one whole but also with others because of certain conditions tends to go beyond the boundaries of a source and to transform themselves and the whole. An illustration to this statement is the practice of delegating by national governments of the EU institutions the right to implement certain sovereign rights.

Defining the sovereignty of the state through a set of sovereign rights, some authors talk about the possibility of expanding or narrowing of sovereignty; about the completeness or incompleteness of its character on the recognition of partially sovereign or semi-sovereign

states. Such ideas should be recognized as methodologically erroneous because they ignore the specific nature of sovereignty as a legal phenomenon (Ovchinnikov *et al*., 2015).

The sovereignty of state cannot be identified with its powers and competence. Sovereignty is a specific property of state power which cannot be measured in volume (which is why there can be no question of expansion or contraction of sovereignty) (Lepeshkin, 1977). It is possible to limit the government in the implementation of specific rights or competence but it is impossible to limit the sovereignty. Sovereignty is closely related to competence. The concept sovereign rights of state is a more inclusive by volume than the competence of public authorities. Sovereign rights these are legal possibilities of the state conditioned by the interests and needs of the people. Whereas the competence of state authorities consists of a set of powers with respect to certain items of reference. For the implementation, the sovereign rights should be transferred into the category of state authority bodies in certain subjects of reference without this they remain only prospective. Connectivity of the sovereignty and jurisdiction of a state is also expressed in the fact that state sovereignty is realized through the competence of the government and its bodies in their respective spheres of social life.

If the competence of state in connection with certain circumstances is narrowed to a certain critical minimum, then such a state is losing the property of being a sovereign and is transformed into a different political and territorial entity. This expresses the close relationship between the sovereignty and jurisdiction of the state, their interdependence (Lepeshkin, 1977). In other words, the presence of a certain amount of fundamental sovereign rights in the state suggests the presence of its sovereignty (in this case, a dialectical relationship between "quantity" and "quality" is clearly seen). The qualitative status of state sovereignty provides presence at the state such volume of the rights without which the existence of the state is impossible. This minimum of rights constitutes the core based on which the competence is formed. However, it is mistake to claim that sovereignty state is determined by its competence on the contrary, sovereignty is the source of the competence of the government. In this connection we should agree with the opinion of Levin (1948) that sovereignty does not consist of sovereign rights. It is the basis of rights, expressing at the same time the nature of implementation of these rights (Levin, 1948). In addition, since sovereignty is a quality, not a quantitative category, then to talk about it divisibility is incorrect. The powers of the state may be shared or delegated; right to the realization of sovereign rights can be transmitted but not sovereignty itself. If sovereignty can be transferred then only completely and not partially. Nevertheless, at that the state concedes its right to sovereignty to the other subject.

It is worth noting that there cannot be universal, given in advance to all states an exhaustive list of sovereign rights. The state has to have as much sovereign right as it needs to be independent in its relations with other countries and to be the supreme authority on its own territory (Goryunov, 2007). Depending on the particular circumstances, the state can actualize the rights that are required to perform the functions of a particular historical situation. Such a connection between sovereignty and sovereign rights suggests a presumption of inexhaustibility of the sovereign rights of the state. Inexhaustibility of sovereign rights does not require proof, if it is determined that the state has sovereignty (Goryunov, 2007). The broad by volume list of state capabilities contains the state rights having different role and importance to ensure the sovereignty. Hence as in the case of human rights, it is conventionally accepted to allocate conditionally the basic sovereign rights having essential nature and most fully characterizing the state as a sovereign organization of power and other sovereign rights.

The right to make decision and modification of constitutional and current legislation the right to set up governmental authorities; citizenship, currency, collection of taxes and fees the establishment of administrative territorial division, determine the mode of activity of non-governmental organizations; disposal of its territory and natural resources, implementation of law enforcement, the creation of the armed forces etc. that is the rights disclosing the content of internal sovereignty are decided to attribute to the basic sovereign rights of states (Lyubashits *et al*., 2015a).

External sovereignty decided to disclose through the right to conclude international treaties and agreements; establishment of diplomatic relations; participation in international organizations a declaration of war and conclusion of peace; implementation of activities in the exclusive economic zone and on the continental shelf; exercise of jurisdiction over nationals outside the territory of the state; the right to participate in international conferences; the right to neutrality, etc. (Lyubashits, Mamychev *et al*., 2015b; Mordovcev *et al*., 2015).

External sovereignty although, it is important to state the positioning tool in the international arena in fact is secondary with respect to the internal sovereignty. External sovereignty itself is not able to guarantee the territorial integrity of the state and its existence. However, to implement internal sovereignty without external is

isolation it is practically impossible in the modern world. The foregoing leads to the conclusion that the state is sovereign as long as it owns the main complex of the sovereign rights and the ability to express the people's will.

SOVEREIGNTY AND INTERNATIONAL ORGANIZATIONS (SUPRANATIONAL ASSOCIATIONS)

The concept of "restrictions" of state sovereignty appear immediately after the occurrence of the sovereignty theory but special popularity they are beginning to use with the development of the processes of globalization and regional integration which leads to the institutionalization of international cooperation (Pastukhov, 2006). The most popular idea according to which the state accession to the integration associations (primarily focus on the European Union) leads to a limitation of state sovereignty. This conclusion is regarded as erroneous.

States knowingly engage into international organizations, voluntarily giving them for the duration of the international treaty right of realization of part of their duties and rights to be exact to involve them in a joint implementation. At the same time, states independently develop and enter into contracts between themselves and therefore of their signing or adherence to legally does not result in depriving the state transferred under the contract sovereign rights. Such a transfer of the right of the functions and competence is one of the ways of realization of the state's sovereign rights in the form of voluntary self-limitation of its own jurisdiction. In addition, the state may at any time to exercise its sovereign right to unilateral withdrawal (denunciation) of an international treaty. The legitimacy of the denunciation is based on the fact that the right to it can be provided in the contract or in the agreement which is attached to it. If the possibility of denunciation provided by international treaties and regulations are not fixed intention of the participants to prevent such a possibility, the denunciation is considered to be impossible (Malanchuk, 2000). However, international legal practice comes from the fact that the exit from the interstate organizations is admissible even in those cases where in the memorandum these issues are not regulated. History shows that the exit of the member states of the European communities has always been possible. In 1985, from the community came out Greenland which is part of Denmark, enjoying since January 1981 the right of self-government. In this case, Denmark itself remained a member of the Union. By virtue of Lisbon Treaty, the question of withdrawal from the EU structure is regulatory settled-art.

The 50 of the EC Treaty provides that any member state in accordance with its constitutional regulations could decide to withdraw from the Union (European Union: the basic acts in the wording of the Lisbon Treaty with comments, 2008). Same satiation we can see with the most recent so called Brexit the exit of Great Britain from EC.

In analyzing, the problem of the sovereignty states after the entering into the supranational union the position of constitutional justice organisms of states-EU members becomes important. So, the Constitutional Court of Germany in the "Maastricht decision" (1993) regarding the transfer of Germany authority to EU pointed out that the state as a result of the transfer is not subjected to some restrictions of its sovereignty which would be inconsistent with the provisions of the Constitution. In addition, the Constitutional Court stressed that member states are the founders of the Treaty on European Union and may terminate their membership in it unilaterally.

In the discussions on the state sovereignty, the idea that the attitude of the state to its own sovereignty will eventually be revised is expressed even more often. According to A. Chayes in the future, the subject of discussion will be "a new sovereignty" which will be formed under the influence of co-operation in the field of compliance with international law and will cover all states except for a few self-marginalizing. Sovereignty will consist not in a freedom of states to exercise its power independently, pursuing their own interests but in cooperation with relevant countries having more or less equal status, that would be the essence of international life (Chayes and Chayes, 1995).

Nevertheless, these views are not shared by all scientists. We should not exaggerate the importance of globalization and underestimate the role of national sovereignty in the modern world. According to Makuev (2008) challenges of globalization enhance the value of the part of the legal sovereignty. In addition, the concept of "supranational" makes sense only as long as the members of the integration association retain the status of a sovereign state (Yakovyuk, 2004).

CONCLUSION

The state sovereignty involves sovereign rights. This makes it possible to relate them as "whole" and "part" and accordingly emphasize that although it is interdependent legal phenomenon, yet unacceptable to identify the sovereignty of the state with its sovereign rights. Thus, the sovereign rights are not inherent in all the signs that characterize the sovereignty of the state. If the sovereignty of the state cannot be transferred or restricted (sign of inalienability of sovereignty), the

domain of the sovereign rights can be limited in a certain way, narrowed but only insofar and to the extent until the state considers it useful and necessary.

As human rights, states sovereign rights in a certain sense can be described as natural ones. The sovereign rights are associated with the existence of the state and do not depend on other non-legal factors. Sovereign rights typically do not require any specially written legalization-this is evidenced by the fact that the vast majority of the rights which are associated with expression of the sovereignty of States is not directly fixed in national legislation exactly as a sovereign right. They exist objectively and are independent of any particular states the carrier of these rights. Undoubtedly, they can be fixed in the national legislation and international legal instruments, moving into the category of positive law but the lack of such a normative securing does not mean that the state is deprived of them.

Since, the recognition of the existence of a particular state or its independence is not necessary for another state and is implemented (or not implemented) only by its own decision, it is possible to conclude that the new state during specific time can exist as a sovereign organization of power which is not recognized by other states. So, Soviet Russia has been recognized by other countries only in 1920-1921 when it established diplomatic relations with Estonia, Lithuania, Latvia and Finland and then entered into a commercial agreement with UK, Germany, Italy and Norway (Konnova, 2007). However, the fact that the process of diplomatic recognition stretched for decades (the United states recognized the Soviet Union only in) should not be concluded that that up to 1920 and the later Soviet Russia and then the Soviet Union was not a sovereign state.

The state legally equal recognition logically follows that they have the same and equal sovereign rights that can be used at their discretion. The value of the sovereign rights consists in the determination and guaranteeing of clearly defined boundaries of the freedom of the state. The sovereign rights are characterized as equal for each state, in spite of the differences in territory, population, political, economic, social systems and level of welfare. From this point of view, the division of countries into large and small, developed and developing, does not make much sense because it is not provided by international law, establishing the principle of formal legal equality of states.

The content of the sovereign rights and its listing that is historical phenomenon: at each stage of the state-legal development the definite set of sovereign rights of the state is formed. On the question of whether the sovereign rights will be changed in the development process there is no unity of views. While some authors argue that sovereign rights are absolutely unchanged, since the reduction in volume makes impossible the implementation of sovereignty while others admit the possibility of expanding or narrowing depending on the specific historical conditions (Kozlov and Shafir, 1991).

We believe that the general trend should be considered as a gradual expansion of the number of sovereign rights. From the ascertaining of the possible change of the volume of the sovereign rights it can be concluded that if the extension of sovereign rights is a positive phenomenon, since specifies the manifestation of the sovereignty of the state in various spheres then the question of the possibility of its restriction should be treated with caution as it may cause an undermining of sovereignty. Therefore, you should take into account the philosophical category of "measure" which assumes for the "quality" of some quantitative characteristics (Kozlov and Shafir, 1991).

The sovereign rights of states are an indispensable as are necessary for its normal functioning. They are recognized as indispensable as are the terms of state sovereignty, specifying its content. The sovereign rights are inherent to the state they are not granted to him by anyone and therefore can neither be taken away from them or limited in volume. While the main entities of international law remain sovereign states their strength was and remains ultima ratio. Only a temporary limitation on the right implementation of the state's sovereign rights may take place but not of the sovereign rights per se by the decision of the international community in the UN security council, in accordance with the provisions of the Charter (Articles 39-51) to ensure international peace and security.

State authority is designed to take care of the interests of its people acting as its source and created by them state. Accordingly, under the general rule government has no right to conclude agreements or to take any other steps that are harmful to the state. Exceptions to this rule are cases of force majore (e.g., due to the occupation of the country) but in this case as a sovereign government is obliged to stop immediately imposed agreement or a decision as soon as it will allow the correlation of forces or the international situation.

Basing on conclusions from the analysis of the sovereign rights of states we suggest the following approach to the definition of the phenomenon under investigation: sovereign rights this is necessary for the existence and development of the state legal possibilities that are recognized as an integral such legal possibilities must be general and equal for each state.

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