

## SOVEREIGNTY - HISTORICAL, THEORETICAL AND LEGAL ASPECTS

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**Abstract:** *The report traces the emergence, historical development and theoretical justification of sovereign power. It analyzes different incarnations of the idea in a periods of culmination and crisis of the nation-state, as well as contemporary relevance of the concept of sovereignty in a globalized world.*

**Key words:** *state, internal, external sovereignty, supreme, unlimited, independent.*

### Introduction

Concept of sovereignty is a political and historical concept, which is transferred to the state law. To understand how it gets there and gets legal tint, it is necessary to trace its evolution over the centuries. The first attempt to draw a line between the state and other forms of social organization is the view of Aristotle, the distinctive feature of the state is its self-sufficiency (autarchy).

It is assumed that the word "sovereignty" derived from the classical Latin term "superus", that passes in the French "souverain". According to D. Valtchev this is due to the mixing from some authors of two meanings of sovereignty: on the one hand - rule in the state of a person or institution, and the other hand - characteristics of "supremacy" of the state itself. The problem of sovereignty arises itself as a concept together with the emergence of the modern concept of state power in the late Middle Ages. The most common definition of sovereignty - power over a particular territory - can be understood only in tracing the history of its establishment. In the history of sovereignty we can distinguish two periods. The first period occurs within the ancient evolution of sovereign states on the European continent and then - the world; the second one is connected with the limitation of their prerogatives in the second half of the twentieth century [1].

### Exposition

At the end of the fifteenth and the beginning of the sixteenth century in Western Europe occur important, mutually determined changes, united by the common name Renaissance. They are associated with different factors: the rise of material production; distribution of the printed book /respectively – the Knowledge/; altered picture of the world as a result of the discoveries of Galileo, Kepler, Copernicus; the discovery of the New World; the rediscovery of Greco-Roman antiquity and uniqueness of human individual; the radicalization of religious thought. Changes are accompanied by shocks and conflicts on the agenda of political problems, solvable only with also new approaches. One of them, with the actual meaning for centuries, is the notion of sovereignty [2].

The event to which approves long transition of Europe from the Middle Ages to the world of sovereign states is Westphalian Peace Treaty of 1648. According to historian J. R. Strayer England and France seem more sovereign states around 1300, as far as their kings have supreme authority within the territorial limits of the state, but Europe remains remote from Westphalia until the beginning of the Reformation in 1517. By this time Charles V takes the throne in Spain, uniting Castile, Aragon and the Netherlands. At the same time he became emperor of the Holy Roman Empire, won rights to lands in Central Europe, performing at the same time the role of the head of the Catholic Church. Within the limits of the empire, however, Charles V was not sovereign, princes and nobility retained prerogatives over which he has no control. In 1555, the system of sovereign states builds on more solid ground with peace of Augsburg, whose formula "*cuius regio, eius religio*" /who is the kingdom, his religion/ entitles the German princes to impose their religion on the territory, governed by them. Treaty of Augsburg remains perishable because many disputes about title transfer

clauses lead to permanent war. Their culmination was the Thirty Years War, which ended with Peace of Westphalia of 1648. Claim that in Westphalia treaty we may seek the origin of the system of sovereign states is not accepted by all scientists. The reason is that there is not mentioned in the text the terms „sovereign state“. However, sovereign states do not appear ex nihilo; the formation of components of the system of sovereign states passes during centuries after Westphalia. System triumphed as legitimate prerogatives, as actual power. First, countries appear virtually the only form of independent authority in Europe after this authority is subject to the test of the Holy Roman Empire for long. Dutch and Swiss achieved undoubted sovereignty, and the German states increased their rights outside the empire, while diplomatic relations and foreign projects of the great powers gradually reach a common understanding of sovereignty. The power of the Church reduces and soon it will be forced to recognize state sovereignty [3].

Secondly, Westphalia treaty led to the elimination of the interference of the Church limiting the prerogatives of the sovereign. After decades of armed conflict, the concept of Augsburg was finally approved - not just in the version of 1555, but effectively affirming the authority of princes and kings over religion. Over the following decades no European countries will struggle to influence the religious government in other countries, in stark contrast to the previous 130 years ago, when religious wars divide Europe. As sovereign states are becoming more widespread in the coming decades, the prohibition of intervention increasingly applied until finally developed into a fundamental norm of international law. Over the next three centuries, the system of sovereign states became dominant in Europe, culminating in the collapse of the European colonial empires in the mid-twentieth century, when the sovereign state became the only form of political organization of society in the world.

Along with the strengthening of centralized monarchies in Western Europe, arises the need for delineation of the boundary between state power and authority in other social formations. Since the beginning of the fourteenth century adherents of revival of Roman law in Europe was looking for a compromise formula between apologetics of royal power in France and establishment of the unity of Catholic Europe as a political reality. This leads to a situation whereby the emperor is seen as *rex universalis de jure*, while *de facto* his overriding authority was not recognized by some princes in their lands. Therefore, the first attempts to delineate the boundaries of the **internal** sovereignty was dating back to before the appearance of Jean Bodin [4].

The early definition of sovereignty "outside", as part of the fundamental principles of international law, is associated with the names of some members of the late Christian scholasticism in Spain: Francisco de Vitoria, Gabriel Vazquez, Francisco Suarez. Under the influence of their views international law is a further development in the works of Gentili, Wolff, Vattel, Grocius and leads to the formulation of the principle that only sovereign states /i.e. those that are managed without external interference, according to the norms of their own national law/ have the right to participate in the international community.

Along with the strengthening of centralized monarchies, in the fifteenth-seventeenth century there was ongoing process of the emergence and consolidation of the centralized national in Western Europe. Its location just in this part of the continent is due to historical circumstances, relating to the secession of its eastern part as a result of Ottoman invasion. After the Hundred Years War England and France consolidate and centralize. The same trend is observed in Spain. Although fragmented, Germany and Italy generate powerful ideas about national and cultural identity.

As a sovereign state gradually takes the entire European continent, the early modern political philosophers accept this form of organization and seek by what it was legitimated. In the Middle Ages Dante and Marsilius de Padua defend division between secular and religious authority, which led to the transfer of powers in the hands of the secular power. However, they are the creators of the concept of sovereignty. Later, in the early period of Modernity the greatest contribution to the theory belongs to two philosophers who did not write explicitly about sovereignty, but formulate ideas that are more significant for the development of the concept. The first one is Machiavelli.

His theory is constructed on the best knowledge not only of the political system, but of antiquity. In his "Comments on the first ten days of Tit Livius" /1512-1516/ he draws important principles from the history of Rome with its cruelty, but greatness also/. The first important principle is the act that established the state, which is a condition of social life and political unity. This is an act of legislation defining the unconditional exercise of power. This act - principle must be maintained constantly, whatever the means.

Machiavelli dedicated another of his books "The Prince" for Lorenzo de' Medici. It was a textbook, in which he designed techniques for successful government. Observing the structure of Renaissance republics in Italy, he describes what should be the policy of the prince to provide supreme authority within its territory. Apparently he is not influenced by natural and canon law or any rules governing Christianity. Soon he came to the idea that politics should be prepared to make even evil, because sometimes it is necessary to achieve the goal - that's the basic idea of Machiavelli: strong and good governance of the state. The duty of the prince was "*raison d'état*". He is sovereign within the state territory and responsible for the welfare of one body /people/. The importance of "The Prince" is in the idea that the possession of power in a country consist in the holding of all the power. This means an act of establishing not only steady, but strong, precluding compromise will to maintain the country distant from the moral tradition of the Church or suggestions. So he creates a new vision of everything related to collective activities, namely that it is the state with the meaning of "core sovereign power, legislating and deciding on their own community in external, as well as in internal affairs, that makes *plenitudo potestas* from the ecclesiastical, in the secular" [5].

Martin Luther spread the idea of sovereignty from a different perspective. In October 1517 he announced the 91 Wittenberg theses, of which the most important are against the sale of indulgences by the Roman Catholic Church. It is inspired by theological /return to original Christianity/, moral /corruption among senior clergy/ and political arguments. His criticism of corruption in the church is actually directed to the church as a political institution that transforms the Christian community in hierarchical institution. His theology of the Reformation deprived the Catholic Church not only from its spiritual but also from its secular rights. According to Luther, the Church should drop its features of hierarchical institution and must become invisible in a clearinghouse of local churches that have adopted the right faith. So, soon after Luther, the Catholic Church will not own large land from which to collect taxes,

will not judge and rule; Catholic priests will lose its power over secular rulers and the pope will not be able to put secular rulers in power. Even more importantly, the emperor of the Holy Roman Empire can no longer impose the Catholic faith. The church can no longer exercise political and economic power.

The political philosophy of Luther explains it all. He believes that under God's authority, there are two orders of magnitude in two forms of government. "Spiritual sphere" is where the Church gets in touch with the souls of the faithful. „Sphere of worldly affairs“ is the place of secular society, where civil authorities control the government by means of laws and coercion. Both areas work for the good of the faithful, but in a different sense, because they are organized separately and independently. Church leaders will exercise their spiritual obligations; princes, kings and magistrates – the worldly. Released from the custody of the Pope and the Catholic Church, once approved secular authority in its field, princes already effectively exercise their sovereignty. At that time, they even exert significant control over the Protestant churches.

Luther gets political sense to the central thesis of the two kingdoms in 1520, when Germany broke out in popular uprisings. After excommunication and expulsion from the church Luther receive active support of the German princes. This shows that the success of the Reformation can be explained not only by religious and moral, but also by political reasons - dissatisfaction with the domination of Rome, pursuit of autonomy of the national religion. The result is that the site of the rights granted from the church is occupied by territorial princes, removed the last obstacle to the political body within the state. Christians will now be subject to the decisions of princes. Repeating almost verbatim the words of Christ, "My kingdom is not of this world," Luther leaves space for the absolute authority of the state in the earthly world.

Strengthening of the central authority in the kingdoms raises some reactions to the meaning of this excessive power. Erasmus reflect on the qualities required of the monarch, when wearing such power; Thomas Moore paints a picture of a rational organization based on social, political equality and tolerance. In his "Treatise on voluntary slavery" /1549/ Etienne de la Boethius puts a key issue shunned until now: what makes people obey? He refers to it not as a specific political regime, but state as absolute power. However, in the beginning of Modern Times other philosophers adopt an explicit doctrine of the sovereignty and even come close to it more than Machiavelli and Luther.

It is assumed that in addition to T. Hobbes, the greatest merit of promoting the notion of sovereignty jurisprudence has J. Bodin. Since then, the idea of sovereignty is seen as a cornerstone of science in the country designed to bring order to its legal problems and justify the legal conception of it. Bodin is the author of several works, but his main work, which contains the theory of sovereignty is "Six books about Republic" / Six livres de la Republique /. The book is written in a dramatic era in France - where the country is divided by civil war between the Calvinist Huguenots and the Catholic monarchy. According to Bodin this central problem can not be solved with the old medieval methods, but using a new concept in which rulers and ruled will unite in a single political body that will stand above other human laws and will in fact be a source of these laws. This is the concept of sovereignty, according to which only the supreme authority within a given territory could reinforce a fragmented society.

In that book he provides a definition of the state / "legal ... management of many families ... "which possess three components: 1/ management based on the law; 2/its social substratum is family; 3/it has a sovereign power. He defines sovereignty as "total and permanent /forever/ might /power/ of one state." In its definition of sovereignty Bodin includes the following features: absolute /its bearer did not obey a foreign will/, constant and eternal. The

definition of Bodin to state as a sovereign community leads to the conclusion that the political community which does

One of the problems that science associated with state sovereignty is the form of government. Bodin distinguishes three forms depending on the question who possess sovereignty: Monarchy /sovereignty is exercised by a person/ aristocracy /sovereignty is exercised by minority/ and popular state /all the people involved in the exercising of sovereignty. He added to this leading criterion, two more unimportant: to whom is entrusted the government and how to implement this power. Bodin conceived sovereignty as absolute and perpetual power, but according to him it is limited by divine and natural law, i.e. it must contain the characteristics of a "fair sole control" [6].

The sovereign body is not subject to any external human laws or authorities. As stated Hinsley, at a time when it is necessary to close the conflict between rulers and ruled, Bodin shows - and this is a remarkable intellectual feat - the conflict may be solved only under two conditions: to establish unlimited power, to distinguish that power from the power of absolutism, which is considered to be free to ignore any laws and regulations. The characteristics of similar power must be: legality, wisdom to impose restrictions on its use on the body politic, because political science includes governing, as well as governed people [7]. Like T. Hobbes, Bodin regarded sovereignty as absolute power. Today the concept continues to dominate in countries around the world as presumption of political rule, including the rules by which the sovereign body of legitimate institutions could limit the civil rights of individuals. The terms intended to refer to the holders of sovereignty are evolving. Rousseau, unlike Bodin and Hobbes, indicate the people of the state as a collective whole, controlled by the "common will". In constitutional governments the people, managed by law is sovereign. This version of sovereignty determines the general legitimacy of power in the world.

Since the time of Bodin's political and scientific phraseology, the word „sovereignty“ was in use in three meanings. The first meaning of the term is the quality of government /rule and absolute independence „within“ and „outside“. It is the earliest and most correct, but even there is disagreement among the authors for him - for example that it corresponds only with the internal power of the state, but in international relations is more appropriate to use the term "independence"/.

The second meaning of the term is the sum of all the rights and functions of government. This leads to confusion between the two concepts, which originates from Bodin, who in writing the positive content of sovereignty, actually lists the basic functions of government. Identification of sovereignty with the state power is seen in the first European Constitution. Declaration of the Rights of Man and Citizen and the Constitution of France from 1791 equate sovereignty with the sum of all the authorities representing the state. The exercise of this power, i.e. sovereignty is through delegation.

In his third significance the term is used in the sense of quality of the High Authority of the State. This is understandable because, Bodin creates a theory to qualify the king as sovereign. The theoretical explanation of the established tradition is that the state is subject to the sovereignty, but sovereignty is exercised by individuals in their behalf. In modern times the crowned heads of state are considered to be called sovereigns. After the French Revolution, all the prerogatives of the monarch automatically was transferred to the people and the absolute power of the king will be replaced with the absolute will of the people. Therefore, if people perceived as a collective personality, it will be also sovereign, exercising delegated power through its agent – parliament /that is a sovereign body also/. As a remark of this statement, however, there exist the consideration that if the people as an integral community is sovereign, the the

not have sovereignty / absolute and sole constant power / is not a state.

rights of its bodies, defined by the constitution, are legally bound by it.

According to Bodin any historical society is characterized by a cohesive and unified political power. It does not matter what is its origin or whether it is well managed; the main question is by what it is characterized: it is sovereign and is carried out by "a correct management of multiple households and what they do." This means that the state is composed of households /families/, subject to paternal authority, which is subject to the sovereign power. In the broadest sense its dominion includes the following quality characteristics: it is absolute and does not need any justification, does not depend on anything; it is therefore self-sufficient, it is an integral - if the delegate is unified with any delegation, it is a constant, did not affect the vicissitudes of time, i.e. "it is like assertion of theologians - God." The place where is done sovereignty, the focal point of public policy, is the state. It can create or abolish laws, to judge or to pardon, to wage war or conclude peace ... The holder of sovereign power can be the people, part of it or individual. To be used in practice, the sovereign power must be incarnated in specific institutions. Although, examining the possibilities for different combinations Bodin prefers "royal democracy," i.e. monarchical form of government over the "free born subjects."

Under the influence of the French Revolution the concept of sovereignty is enlarged with new qualities: indivisible, indefeasible, inlapsable. It is indivisible because the integral common will of its bearer /associated by social contract people/ is indivisible. The thesis of the indivisibility of the will is formulated by Rousseau in the course of the Revolution and transferred on the concept of state. The same applies to the assumption that it is inalienable. This Rousseau's idea stems from the nature of the people, conceived as a collective personality, as well as from the striving to overcome the patrimonial conception of the state as a property of the ruler, which can be alienated to private reasons. Claim that sovereignty is "inlapsable" means that it can not be lost by legal prescription, i.e. by continuous possession. This idea was borrowed from Roman private law by theorists of absolutism.

Hayek analyzes sovereignty in terms of spontaneous law. By attacking the concept that legislation is the only source of law, he drew from it two ideas that have caused major changes in modernity. According to the first idea certainly there exists legislature with unlimited power. According to the second idea law is everything and only that what ordered this supreme legislature. According to Hayek, the concept of unlimited will of the supreme legislator serves to justify the absolute power of monarchs after as Bacon, Hobbes and Austin, as well as of "democratic assembly" later. If the term "law" is reduced to "the rules governing targeted and concerted actions of an organization," then "the law that in the earlier sense of "nomos" was considered a barrier to any power, becomes instead an instrument for exercise of the same power [8].

Thus in the period of emergence and shaping of the concept of sovereignty in France, its creators do not consider it as a quality of government and identify the notion with absolute state power. That trend continued long characteristic of French doctrine / French and English, according to D. Valtchev /. Confederal /later-Federal/ structure of Germany leads the representatives of the German school to opposite conclusions - that sovereignty is only one, and not a necessary feature of government. According to them, there may exist semi-sovereign and insovereign states, that is proved by the appearance later of Federation. Moreover, the German legal theorists detached two sides of sovereignty. The positive side is expressed in the unique opportunity of the state to define its legal system; the negative - in the impossibility for it to be legally restricted by anyone against her will. Some of

the later researches from the early twentieth century rejected completely classical theory of sovereignty.

The modern concept of sovereignty as a quality of government is not contrary to the way it defines G. Bodin - as "puissance absolue et perpetuelle d'une republique", especially if federations are separated and the model of

Among the properties of the "internal" sovereignty, there are also features that characterize sovereignty in the context of the relations of the state with other states, and shape the character of its "outside", international sovereignty. Viewed from this perspective, sovereignty is independent. It is negative sovereignty because it constituted a denial of any external interference in the internal affairs of a country. Regardless of its size and strength, states are legally equal in the international community due to its sovereignty. Possibility of a State to impose its will over another sovereign state derives from the established methods of international law: contract, friendly intervention, war. The principle of free government will, on which are based international relations, suggests that even be linked to adverse obligations, sovereign state allows it not because others direct it to do so, but by "formally free will." Foreign country may exercise only political pressure, but it is by the free will of the country concerned, that will be accepted law, that will implement the unfavorable arrangements. Citizens of the state will obey not the demands of foreign countries, but the law of their country. As sovereign power state has the right to dismiss the other countries, then she takes the risk of adverse political, not legal issues. Accepted practice in the publishing jargon any enemy interference in internal affairs to be called a violation of sovereignty does not always mean violation of international law

In theory there is not reached consensus on the relationship between internal and external sovereignty. According to Jelinek this are two sides of the same content, two different concepts and "external sovereignty is only necessary reflex that supreme state power throws out to complete his independence: internal and external." According to Esmen external sovereignty is the other face

unitary state is accepted. Logical consequences of the adoption of sovereignty as its quality leads to the formation of its properties that define sovereignty as legal dogmatic concept: "it is *supreme, self-derivative, unlimited, independent, irresponsible, unified and eternal.*

of sovereignty and a "right to represent the people and tie it in its relations with other nations." Le Für assumes that there is only one sovereignty, linked to the right of the state to impose their will on everyone in the country, in the name of the general interest, hence the term "external" or "interstate" sovereignty should be replaced with the concept of independence. According to Lawrence as sovereignty granted permits conditions to do everything, so it may be exercised only within the state borders and as subjects of international relations, states are independent and not sovereign. Morellet offers one of the most convincing set of external sovereignty. According to him he has a "dual content: first, the right of each country freely and independently determine their attitude to other countries, and second, the right of every State to exclude the involvement of other countries in its internal affairs" [9].

Countries are often forced to "self-limiting" external sovereignty of their own accord, forced by political circumstances and economic conditions. This is usually regulated by international agreements, which generally can not be denounced, except with the risk of suffering reprisals or even war, defaulting a sovereign state. This raises the question whether this is a legal norm to which the entity is bound voluntarily, is it possible unilateral release of it and should a voluntary breach commitment lead to a legal liability? [10]

Countries that undertake appropriate international obligation must adopt appropriate domestic law, because their citizens are subjects of international law, and the state as a legal entity. This rule is seen as a public-rule, first by the U.S. Constitution. Art. 4 of the Weimar Constitution of 1919 in Germany accepted the binding effect of the generally recognized rules of international law as part of German law

### Conclusions

Sovereignty is eternal, because the state is created to exist forever. Despite the disappearance of some historical states, countries generally have no age limit. It follows that the temporal effects of the acts of the government depends on itself, i.e. if it does not withdraw them, they will exist indefinitely /as well as some medieval laws in England that are not canceled in the twentieth century still exist/. At the time when radical changes led to the actual demolition of the state, earlier acts of power remain in force until the new government confirm, amend or create new ones. This also applies to international agreements, that retain their strength after the change until they are terminated by the new government. Therefore, acts of government can be canceled only by another sovereign power.

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