COMPARATIVE ASPECTS OF SELF-GOVERNANCE IN THE EU

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Abstract:

The demarcation of the content and the purpose of the concept of public administration has not only theoretical importance but also a practical one regarding the field of the right of a person aggrieved by a public authority, on the one hand, and administrative litigation area, on the other side. As the science of law can not ignore the positive law, it is understood that the demarcation of content and purpose of the concept of government requires an operation to explain the legal regulations in force in relation to what we might call the doctrine's constants in a democratic system.

The inter-war doctrine in our country, in line with the principle of separation of powers, granted, constantly, that the administrative law comprises the rules by which the activity of the executive power is exercised ,but also contains extensive discussion about the limits of that power to the legislative power, of that power to court. Hence the variety of theoretical solutions on the content and purpose of the concept of ***state administration****, or simply of administration. It's the period of crystallization of the classical doctrine in Europe, in general, which is marked by strong opinion fights, majoring those from the French school, theoretical disputes, which influenced the Romanian doctrine.*

Regarding the post-war Western doctrine, we can retain the optical changes, especially in France after 1958, regarding the land concept of separation of powers, were reflected in their understanding of public administration. The removal from the classical paradigms challenged not only the relationship between the executive and the legislative, and, in this context, the relationship executive - administration, but also fundamental reference elements of the classical school, namely, the public service and the public interest.

Keywords: administrative law, public administration, international relations, sovereignty, local autonomy, European integration.

JEL Classification: K23, K33.

INTRODUCTION

The global political organization has been and is a subject of continuous particularly important transformations affecting, in fact, the essence of many legal institutions. The relations between the states and the deepening interdependences between the other participants in the international relations, the deepening global problems and solutions, the accelerating of the emergence and the course of social-political phenomena, have raised new and sometimes unusual issues for the scientists in the social or legal sciences and for politicians, issues which need to find viable solutions and answers.

History has shown that often the solutions provided by the classical theories have been insufficient or incomplete to describe the orientation of the social, political and legal relations, so they need new approaches, abandoning what no longer corresponds to the rethinking of the traditional guidelines to find positive answers.

Thus, the contemporary researchers have turned their attention and area of interest to relative issues to the forms of international cooperation, to the development of international regional cooperation and integration, to the state's place and sovereignty, to the development of the local autonomy, to the emphasis of the democratic values, to the respect of the man's rights and freedoms.

All these aspects are closely linked and their development can not be regarded but only as a whole, through a proper understanding of their own mechanisms and their mutual interconnections.

The problems which the international society, the states, the local communities and the individuals have not encountered before requires new and original solutions. The law as a set of rules, as well as a science is an evolutionary system which always manages to adapt itself and provide appropriate responses. The international and the local dimensions in front of which the sovereign state is located are not isolated issues. Increasingly, the public international law is

concerned with issues of local autonomy, which ceases to be a monopoly of the sovereign state, and at the same time, the local collectivities start playing an important role in the international arena through the external appearance of the local autonomy.

THE EVOLUTION OF THE LEGAL FRAMEWORK AND THE CONCEPTS OF SOVEREIGNTY, LOCAL AUTONOMY AND REGIONAL EUROPEAN INTEGRATION

The state was and is the most important issue of law, both in terms of domestic law and in terms of international law, both for the public law and for the private law. The state is a human society resting on a given territory and subjected to an organized political and legal power, with a sovereign character. Therefore, the state is the sum of three elements: **the people** or **the nation** (the personal element), **the territory** (the material element) and **the state power** or **the political power** (the formal element).

Regarding the third element ,the state power, its main feature is the **sovereignty**. The issue of sovereignty is one of the most important and, therefore, the most studied in the legal literature in general, in the public law, whether domestic or international, in particular.

Sovereignty can be defined as an essential feature of the state power, representing the fact that it is the only power-state within a state, being supreme over all the other powers, such as non-state, which exist and manifest within a state which are subordinated to it, as well as independence in terms of international relations, in relations with other states and other subjects of public international law. The political power takes precedence over any other forces within the territory of the state and it is exclusive, eliminating, in fact, any other state authority. Sovereignty has two dimensions, an internal one and an external one, namely the supremacy and the independence or, in French terminology, sovereignty in state and state sovereignty. The internal aspect of sovereignty, the supremacy, is manifested in relation to the non-state powers, which exist within a state, and which can not exist and can not be exercised unless they are recognized by the state power, within the limits and the conditions imposed by this and under no circumstance against the state power; otherwise, the state power intervenes and sanctions, even reaching the annihilation of the power which manifests itself illegal or even rebellious. The independence, so the external aspect of sovereignty, means subordination to the states, to intergovernmental international organizations and other subjects of public international law, with the consequence of sovereign equality of the states.

On the international stage, the countries are each sovereign. The international community is a juxtaposition of the sovereignty of the member states. Consequently, the sovereignty can not be absolute, but each state must respect the sovereignty of other states and the public international law, a minimum of international order. The public international law, the legal international order, far from being incompatible with the sovereignty of states, it represents their necessary corollary .The concept of sovereignty is a cornerstone of the contemporary public international law, the sovereign state is its main subject.

Gradually, in the international order, sovereignty decreases its absolute character. The initial most obvious expression of sovereignty, the right to make war, as a lawful event in the international relations, disappears in the first half of our century. ***The Concord of the League of Nations***, from 1919, created the first substantial limitation on the right to use force in the international relations. ***The Briand- Kellogg Concord (The Convention from Paris***) from 1928 put the war "outside the law", benefiting from an undeniable universality in the age, in relation to the independent states (63 states in 1939) and through its general formulation and the quasi-universal enforceability ends the traditional capacity of states for war. The general prohibition of using the force is stated as a fundamental principle of public international law, in the ***U.N. Charter*** [1] . At the regional European level, the prohibition of using the force in the relations between the states is explicitly stated in ***The Final Act of the Conference on Security and Cooperation in Europe from Helsinki***, from 1975.

Also, the international law contains today institutions like *jus cogens* (art. 53 and art. 64 of ***The Convention from Vienna on the Law of Treaties***, from 1969) -the mandatory rules from which

no derogation is possible, any contrary rule is invalid [2]. The military intervention to maintain or restore international peace and the humanitarian intervention are also practiced.

Although the international society is changing rapidly and is essentially processed, the states remain strongly attached to their sovereignty. It is sovereign the state which has, following the rules of international law, its domestic and foreign policy leadership, i.e. has the power to control its territory and its citizens, this leadership giving the right to self-limiting and even transfer some of its powers to another law entity.

The territory of the unitary state (the argument is valid, ***mutatis mutandis***, also for the territory of the federal state) is divided, in terms of administrative, in territorial administrative units [3].

The term ***territorial-administrative unit*** has two different meanings, of ***local-territorial collectivity*** and of ***local territorial-administrative district***, which are used depending on the nature of the state's administrative system, i.e. either a system of decentralization, or invalid of deconcentration.

In a first sense, the territorial-administrative units mean ***the administrative districts of the state's territory***, namely, the area of territorial jurisdiction of the deconcentrated state organs. For example, in Romania we speak about administrative district in case of the prefect, of the county directorate for social protection or employment or the county's general direction of the public finance and the state's financial control, respectively, about local or municipal district in case of the local police station or the municipal police.

The territorial-administrative units are, in a second sense, ***the local territorial communities***, meaning the citizens, the population, living on a certain part of the state's territory, with an administrative legal organization and own, different public local interests. The local territorial authorities define the system of administrative decentralization or of local autonomy.

Therefore, the State is not the only recognized local authority, but along it, also the local authorities are moral persons of public law, political and territorial, with their own capacity of public law and own public interests, different from the public interests of the state. They have their own administrative authorities to meet these public interests and also the material, financial and human resources.

The administrative authorities of the territorial communities are chosen by their citizens and are responsible in front of them, they held the power not from the central authority, but from the local electoral body, by choosing, the autonomy is ensured only by choosing. They are named, they are not subordinated and can not be revoked by state governments. Therefore, the public administration loses its unitary character, being formed by the state's administration and the local communities' administration (autonomous local administration).

The local autonomy is manifested in many ways. On the plan of legal capacity, local territorial collectivities are distinct law subjects, with their own public interests. Institutionally speaking, they have their own administrative authorities, outside the state's administrative system. Regarding the autonomy of decision-making, the authorities have their own skills and make decisions in the interests of the communities they manage. Finally, autonomy can not be real, effective, without the presence of autonomy in terms of human, material and financial resources, the local territorial authorities having their own local officials, their own field (public and private), their financial autonomy, especially in terms of establishing and collecting their own taxes and the existence of its own budget.

The ***local autonomy*** denotes the right and the effective capacity of the local administrative authorities to solve and manage on behalf of and in the interest of the local communities they represent, the public affairs. This right shall be exercised by local councils and mayors, and by county councils, by the local public administrative authorities elected by universal, equal, direct, secret and freely expressed vote [4].

The principle of local autonomy is expressed in Article 120 of the Constitution and Law no. 215/2001 and is an important principle of public administration in territorial-administrative units.

The content of this principle and its complex valence result, however, from the law's regulations and it's the quintessence of the whole activity of the public administration from the territorial-administrative units. Its correct understanding has a special importance to the practical actions and avoids its stressing and absolutization, until it becomes synonymous with "the independence" of local authorities in all their actions, or with the so-called "self government" and other similar concepts, which involve a contraposition of the local public administration through which the executive power of the state is done.

THE GENERAL FRAMEWORK OF THE EUROPEAN COOPERATION AND REGIONAL INTEGRATION

Since ancient times, the European societies have evolved not only in the direction of building and strengthening the states, but also establishing solid relationships of solidarity, collaboration, alliance between states. Often, however, when the European countries have undergone changes, increase or loss of territory, important changes in their form and structure, but continued - with rare exceptions – to exist, their alliances proved to be ephemeral, dictated by temporary needs, shattered by the change of some circumstances.

The process of formation and consolidation of the national states in Europe finally ended during World War I. Generally, the current European map overlays the map of nationalities, although not perfect and even though there are hotbeds of tension, ensuring thus, overall, a necessary and desired stability. Worldwide, the '60s were the boom years for the formation of the new independent states, in the process of decolonization.

Sometimes along these movements, sometimes out of step, there was the other process, of cooperation between states, of affirmation and institutionalization of the solidarity between them. With the emergence on the international scene, of a new category of subjects, the international intergovernmental organizations[5], appeared the main institutional form, with character of permanence, to meet the need of solidarity among states at the international level.

Obviously, the various international communities have an extremely varied degree of solidarity. Of course, those from the universal level have the lowest degree due to the extreme variety of the participating states, separated by a whole system of values, attitudes, ideology, tradition, religion, language etc..

The more reduced international communities have a higher degree of cohesion, although in their case, the variations are very large. They are formed, generally, based on very different criteria such as common political and democratic values (The Council of Europe, The North Atlantic Treaty Organization), plus a desire for integration, initially economic, then extended (The European Union [6]), religious values (The Organization of the Islamic Conference), language and the cultural values (The Francophony), traditional political ties derived from a common earlier political organization (The Commonwealth, The Community of the Independent States), communist ideology (former Warsaw Treaty Organization and The Council of Mutual Economic Assistance), etc. political criteria.

Some of these communities benefit from the geographical proximity of their members (with reference to the European regional level, exemplified by The European Union, The Council of Europe, The Organization for Security and Cooperation in Europe), but others are spread across several continents (The Commonwealth, The Francophony).

However, the contemporary realities impose that the globalization of many of the problems, and their solutions, require an increased international solidarity, both universal and regional. This beginning of millennium and probably the coming decades are and will be the period of strong affirmation of the international communities.

Generally, we distinguish **an international collaboration at the universal level**, the typical framework being the United Nations and **international collaborations at regional and subregional levels**. Through its geographical location, but also through its system of values, Romania is interested, in this second part, first, in the international cooperation at the regional

European level. At the current level of development of the international relations, the most widespread form, of common law, of the international organizations, is the cooperation, where the sovereign and equal states cooperate, without transfer of sovereignty towards the international organization and without the possibility for it to impose something to the member states.

Gradually, however, at the international level, international organizations of integration appear, organizations for which the member states freely consent to transfer certain powers of sovereignty, recognizing their right to take compulsory decisions for the member states.

Qualifying an international organization as being of cooperation or integration it must take into account the main and the most numerous activities, its very purpose. It is possible to find in the organizations of cooperation, situations in which the organs take compulsory decisions for its members - the typical examples are the prerogatives of The Security Council to maintain or restore the peace or the compulsory jurisdiction of The European Court of Human Rights in the Council of Europe .Typically, the integration is facilitated, even exclusively possible, only at the international regional level and not universal, at least in the current state of the international society. The situations we analyze regards cooperation and integration at European regional level. Here we have both cooperation and integration.

From many European regional international organizations, we remember the most significant ones, which have quasi-general vocation through their work: of regional European cooperation – in **The Council of Europe** and in **The Organization for Security and Cooperation in Europe**, and of regional European integration– in **The European Union** [7].

REGIONAL EUROPEAN INTEGRATION

The regional international organization which has attained a degree of multilateral integration between its members so far unparalleled in history, which has a series of very special features, is the **European Union**.

Through its original field of action, the organization began very modestly, **The Treaty of Paris from 1951** creating **The Economic Community of Coal and Steel** (ECCS) with six original members: France, Germany, Belgium, Italy, Luxembourg and the Netherlands (Europe of the 6). It is an initiative of the French Minister of Foreign Affairs, Robert Schumann, inspired and trained by Jean Monnet, taking the form of a statement on behalf of the French Government, which was based on three reasons: the reconciliation between France and Germany, by controlling the main products for the war; the situation of the basic industries; the need for Europe to react autonomous and effectively and facing up to the blocks around the U.S. and U.R.S.S. [8]. The organization has four institutions with different legitimacies and different roles: the High Authority, which seeks to override the interests of the Community, with supranational decision-making powers, The Council of Ministers, an intergovernmental body, the Assembly, with role of democratic control, the Court of Justice for law enforcement. It is a revolution in the traditional international organizations, being s Community with clear supranational powers and overstate organs, The High Authority and The Court of Justice. The field of integration is widen by creating, through **The Treaties of Rome from 1957**, **The European Economic Community (EEC)** and **The European Community of Atomic Energy (ECAE**), with 6 members. Each is equipped with its own institutional structure, but the three have the same structure: Commission, Council, Assembly, Court of Justice. To the two treaties from Rome a **Convention on certain common institutions** is attached, in which two institutions, the Assembly and the Court of Justice, are common to the three Communities.

Although there are three distinct communities, founded on distinct treaties and having different institutional structures (with the two exceptions), they are founded in the same states, after the same model and pursue the same objectives. It creates a complex structure consisting of three international organizations of integration. The European Communities evolve in two directions: the geographical expansion and the institutional improvement of integration.

The Treaty of merger from Brussels from 1965 unifies all the institutions of the three Communities, namely the three Councils, respectively the two Committees and The High

Authority. From this moment, the Communities have an unique institutional structure: The Council, The Commission, The Assembly, The Court of Justice. By successive acts, the functions of these institutions are changed.

The Single European Act from 1986 established a European cooperation in the foreign policy.

The Treaty on the European Union (Maastricht Treaty) **from 1992** establishes the European Union, consisting of three pillars. The first is the community pillar, ie the three communities (especially the former Economic European Community, which was renamed **The European Community**), adding **The External and Common Security Policy** and **The Cooperation in justice and domestic affairs** [9].

It is difficult to characterize **The European Union** after the classic patterns of the international organizations. The three **Communities** are international organizations with personality and common organs, which are borrowed to the Union. The main institutions are **The Council, The European Council, The European Commission, The European Parliament, The European Court of Justice and The First Instance Court and The Court of Auditors**. It also includes **The Economic and Monetary Union**, with institutions equipped with their own personality (**The European Central Bank** and **The Institution of the European Monetary**). Also, **The Western European Union**, a different international organization, forms part of the EU development. It is a complex regional international system.

ASPECTS OF COMPARATIVE LAW ON THE CONSTITUTIONAL GUARANTEE OF THE LOCAL AUTONOMY

When talking about the comparative law, **The Constitution of Belgium**, with the very complicated federal system that it creates, establishes four linguistic regions and three communities, three regions, provinces and villages. Here are merging the federalism and the local autonomy in a complex manner, with a laborious constitutional separation of powers between the structures. Moreover, Belgium has made a curious and interesting development in terms of scientific, from an unitary state to a regional state and then to a complex and original federal state, but the question is whether this formula will resist or is, along the previous ones, a simple transition stage in a process that will end up dismantling the state. The Danish Constitution stipulates the right of villages to manage themselves, under the oversight of the state, in the conditions set by the law, providing the existence of municipal councils and elected parish councils.

France's Constitution also guarantees and develops the local autonomy, talking about their own management. In France, the free management of the local territorial collectivities and their status are matters enshrined in the Constitution (art. 34 and art. 72), (matters where the law determines the fundamental principles). The term used by the Constitution to refer to the local autonomy is self-administration. The doctrine emphasizes that, if the administrative decentralization regards only the state's relationships with the local territorial communities, the self-administration also takes into account the relationship between the territorial local collectivities.

The German Constitution, a constitution of a federal state, specifically regulates the relations between the Federation and the Länder, the local autonomy revealing the latter.

The Greek Constitution provides that the state's administration is based on the principle of deconcentration, and local collectivities enjoy local autonomy, having the management of the local affairs, under the aegis of the state.

The Italian Constitution creates a regional state, favoring the local autonomy, based on the principle of decentralization, regulated in detail.

The Luxembourg Constitution is for the municipal autonomy, the municipalities possessing their own personality, their own organs, their own patrimony and their own budget.

The Dutch Constitution also regulates, in detail, the local autonomous administration.

Portugal's Constitution states that the democratic organization of the state include the local collectivities, which are autonomous, with wide ranging legislation on local autonomy.

The Spanish Constitution recognizes the autonomy of regions and the solidarity between them, ensuring the municipalities' autonomy, offering in detail reports between them and the state.

The Irish Constitution does not mention the local autonomy [it is a problem of law. And **The United Kingdom** without a written Constitution leaves the local government for the law. Each of the four component parts (England, Wales, Scotland and Northern Ireland) has its own local organization.

CONCLUSIONS

One important aspect is the state's commitment towards decentralization, the local autonomy, through the international regulation. This dimension of local autonomy is much more recent and has an important significance in the evolution of the concept at the international level .

By ensuring a detailed autonomy at the constitutional level, the state has committed virtually irreversible, but at a purely internal level. Through the international consecration of local autonomy, the state is committed to an international level, it is a huge step, with revolutionary character.

The local autonomy, the relations between the state and the local territorial authorities from its territory, are out of the exclusive sphere of the internal law, becoming a matter of cooperation and international regulation. The local authorities and the local autonomy are not up to the absolute sovereignty of states, but come to be internationally guaranteed and protected.

Introducing the problem of local autonomy in the international field is still shy in terms of regulations and especially, about the area of geographical expansion. It was not universally imposed, but strongly, only at regional European level. There are, thus, two multilateral international treaties, in the Council of Europe, relative to the local autonomy.

One is **The European Charter of the local autonomy** adopted in Strasbourg on 15 October 1985. The European charter of the local autonomy came into force on 1 September 1988. On 15 June 1998, it is ratified by 30 states and signed by 5 more.
The other treaty is **The European Framework-Convention on the cross territorial cooperation of the territorial communities or authorities .**

The first treaty regards the problem of local autonomy globally, but the focus is on its internal dimension, while the second regulates only the external dimension of the local autonomy, it's only a particular issues, that is cross-border cooperation, and not the entire area of supra-border cooperation.

The will that animated the signatory states of the two international conventions is obvious from the preamble of each one and is extremely important for the characterization of the international protection of the local autonomy.

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