THE DIVIDING REFERENDUMS OF THE PROVINCES FROM THE COUNTRIES: TOWARDS A NEW EUROPEAN POLICY

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Abstract: The year 2014 was marked in the European public debate by three main issues, which had direct consequences upon all country policies, and also the EU, about the policies they will be carried out.
The first issue is related to the outcome of elections for the European Parliament, which brings with it, according to normal political logic, new people in managerial positions, as well as various other guidelines. The main problems occur first in the direction of Eastern Europe, as Ukraine is in a difficult position now, and the new context, also led to a redefinition of the relation of EU Member States with Russia; and then towards the West, where the referendum in Scotland has put to the test many of the EU and of other States resorts.
Specifically, the discussion of autonomy or independence, in conjunction with the legal framework established by the European Union, requires a new approach to the relationship between the central authorities of the countries and the local communities, by developing a new set of policies and legal norms capable to unite and not to divide and reduce.
On these ideas, we seek to provide a perspective to be useful both to the academic environment and also to practitioners.

Keywords: referendum, states, European Policy, boundary, local autonomy

Introduction

Year 2013 has been one of the most important worldwide, as it laid the foundations of everything that's going rabidly durin last months from a military point of view on large areas of Europe, Asia and Africa. Therefore, we can conssider it, in a universal history of law, as a decisive year for humankind, especially in the context of psychological developments in this moment.

There is however a major difference. Europe is a continent where political and administrative construction of states had a solid background of scientific level and identity development, which has created among nations a consciousness of their nationality, as well as the need to build a state. Asia and especially Africa still remained at a tribal level, sectarian, where the consciousness of the sanguineous group is more powerful than the awareness of institutionalization of society-more precisely the need for creating public institutions which will express the administrative will of the State in several areas.

Therefore, if we are to analyze all governments classifications - more recently recognized under the name of "top of failed states", we can notice that in the first positions there are always only countries from Africa and Asia, and the European ones with a strong educational tradition (even if not always longer than 150 years), occupies the last positions.

For this reason we could not identify important legal acts on a continental level in Asia and Africa, especially before 1950, because over-mental and administrative structure of the states was not in accordance with map, and, by default, with the allegiances that the citizens had to their leaders. Only the decolonization has been able to change those aspects

partially, specifying that in Africa is much more difficult to carry out this supreme judicial effort, because the borders are the most artificial than in the whole world.

Ways of reporting of the failed states from the fundamental law

States expresses themselves by institutions, and they form "a judicial administrative material" that inspires the conscience of citizens, these are always referring to the legal context performed by state power. The structure of these institutions is specified by the Constitution, and this fact leads to another assessing of the relevance of actions of state within the educational and administrative field, hereinafter referred to as the concept of the supremacy of the Constitution, and by citizens – the respect for the law. "Rule of law", "rechtstat", "supremacy of loi", all based on mental identification of the citizen with society, enables the latter to adopt rules with a general character to the first.

Specifically, failed states have a low level of reference to the Constitution, both of leaders - question which does not capture too far, because there are situations in which any leader of a state is forced, in the name of state reason, to adopt certain measures which are outside the constitutional frame - and especially of ordinary people, which are not to be found in legal application of the rules. In this way, the politics is "immunized" against the application of laws - especially those of criminal law, which establishes the most serious form of liability for infringements of legal rules, in a failed state; the phenomenon is rapidly known by country's inhabitants, even they don't have any longer confidence in the political power and the rules dictated by it. Direct consequences are two

There are two main types of direct, relative to the political attitude toward the citizens.

Thus, if the political leaders establishes that only they are immune besides the law, obviously, an a non-expressed immunity in laws, but with visible effects - the state is turning into a dictatorship of the politicians, as they are the only ones to decide who has the right to exist, to make profits and to thrive in that country, and the only solution for development that appears is that of entry into politics, in order to become immune. In this situation, ordinary people do not have a choice, for that the politics is in all and the only decider.

However, there is a minimum difference: if the parties determine that on the political scene there is no place for everyone, then, we find ourselves in a form of oligarchy, the people will become helpless in front of state power. The power flow from one party to another only as a result of these negotiations underground, which makes that during elections to appear stronger or weak parties, with more than one control functions in the administration or not. The one who has more will win the elections, but the change of leaders does not lead to an immunity decrease of politicians and of those close to them. Thus, justice is very selective, and will establish in society a climate of distrust and split the two parties between a world of politics and the citizens, in such a way that the lives of those two groups become parallel, the only time they join together being to elections or protests.

In Africa and Asia this type of alliances are frequently find, and available in Europe for years met this aspect especially in the Member countries of the Soviet Union and in Bulgaria. Romania has been close to this model, which has left deep traces in society difficult to solve now.

In the second type of attitude in the political power toward the citizens, there is no variant more honest, including the politicians. Specifically, only politicians who are in power are immune to the law, the other being possible victims at any moment. So, who is in power begins cleansing political scene of opponents, and this shall be completed by establishing dictatorship.

In Africa and Asia, this type of alliance is very common, and in Europe last year met this especially in states of the former Soviet Union and Bulgaria. Romania was close to this model, which has left deep scars difficult to heal and now society.

In the second type of attitude of political power to the citizens, there are more honest versions, including from politicians. Specifically, only the politicians in power are immune to the law, the other being possible victims at any moment. So who is in power to begin cleansing the political arena opponents, and this completes the establishment of the dictatorship.

However, results of politicians are influenced by wartime military success and peace-term outcome of economic policies in particular, and - in particular cases - the referenda, which are legal documents major changes (usually fundamental law) or changing borders of states. Process referendums were held to change state borders or creating new is quite rare, because the interests are high. This is not something unrealistic, because, for example, after World War used the Boundary, for example between Czechoslovakia and Poland.

Analysis of the forms of organization and association of states

To better understand what requires changing border states must summarized in what form they are held because some borders are state changes to "slide" from one form of organization to another, the structure State changes sometimes decisive.

Thus, within the structure of state forms we encompass federal and unitary state. Unitary state is called in the literature of constitutional law and public international law, and simply state, and federal state is analyzed as the compound or complex state, with member associations.

As a form of state structure, the unitary state is characterized by the existence of state structures and the existence of one single row of central state organs (single legislative body, one government, one supreme judicial body). Citizens of the unitary state with a single citizenship and administrative organization of the territory is such that, in principle, the state of the administrative units subordinated to uniform central state bodies. An important consequence of these features is the fact that, in principle, the right is applied uniformly throughout the unitary state [1].

Unlike unitary state, federal state consists of two or more Member States, which is a new state union federation - the unitary subject of law. It is characterized by the existence of two rows of central state organs, namely the federal authorities (Parliament, Government, Supreme Court) and bodies of Member States, meaning that each Member State has a parliament, a government and a supreme judicial body's own. Resulting from the union member states which still maintain a certain independence, the federation is characterized by a special structure of the federal state bodies. The federal parliament is a bicameral

[1] Uglean, G., *Constitutional Law and Political Institutions*, FRM Publishing House, Bucharest 2007, p. 316.

parliament, this necessarily imposing the existence of a second chamber to represent Member States (Council Member in Switzerland, the United States Senate). Of course, there are unitary states in which parliament is bicameral structure, but here bicameralism is justified by "political expediency and ingenuity constitutional" or the need to achieve a balance in democracy and regulation. For federal states, however, bicameralism is a necessity. [2]

Relations between the Member States of the federation are ratios of domestic law governing forming a union of constitutional law, unlike state associations, unions forming international law and the relations between states are reports of international law. Therefore, if these relations are governed by the constitution of the federation in the first case, they are covered in the second international treaties. We mentioned also another feature of the federal state, namely the existence of two citizens, but which engage each other. Citizens have the citizenship of Member State and nationality of federal state, unless the State law decides otherwise. This situation must be distinguished from normal dual citizenship, which may arise due to conflicts between the laws relating to citizenship, or his indulgence by law [3].

Several of the world's 25 federation are multinational countries within which national groups are demanding greater recognition and autonomy[4].

Analyzing the existing federal structure states in the world today, we find a variety of states, due to the diversity of solutions that imposed in time.

Researching federal state as a form of state structure, it is necessary to identify the subjects of federation and forms of autonomy. Only the member states of the federation are topics for law, and only states in the union that arose within federation. Only the federation subjects maintain a certain independence or sovereignty, but they are, in principle, entitled to draw from the federation[5].

Besides federation issues, we can identified and some form of autonomy, determined by local need solving national problems. Thus, you may encounter as forms of autonomy in a federation of autonomous republics, autonomous regions, national districts, autonomous provinces.

Thus, an ethnofederal state is a federal state in which at least one constituent territorial governance unit is intentionally associated whith a specific ethnic category...It is found that all ethno federations that have collapsed have possessed core ethnic region, whereas no ethno federation lacking a core ethnic region has collapsed[6].

Another issue of great theoretical generality development trends of the federal state. Federal State shall, in principle, two opposite trends, trends that are not easily identified and expressed differently in the various federations, the core states, the problem solving the national ideology of the underlying state. One of these trends is centralized, unitary state transition to, and the other, decentralization, keeping the federation. These trends are conditioned by economic problems cannot be solved in principle by the Member States, the

[2] Uglean, G., *Constitutional Law and Political Institutions*, op. cit., p. 316 – 317.
[3] Ibidem.
[4] Auclair, C., *Federalism: its principles, flexibility and limitation*, Forum of Federations Vol. 5, No. A-1, p. 3-5, 2005
[5] Creţu, V., *Public International Law*, FRM Publishing House, Bucharest, 2006, p. 69 – 70.
[6] Hale, H.E., *Divided We stand: Institutional Sources of Ethnofederal State Survival and Collapse*, World Politics, Volume 56, Issue 02, p. 165-193, 2004

distribution of fuel and energy, the development of radio and television programs, the labor movement, the need for social services, health. The complexity of the issues that determines or condition the two tendencies, their variety require different solutions, corresponding to the specific interests of the individual federal states. These trends explain the structural changes produced in some federations after 1990 [7].

Under the doctrine of state associations typically investigates personal union, real union confederation.

Associations of states are forms of state structure, they hindered the rise to new states and thus, implicitly, to new legal topics. They are forms of international life, organized and based on international treaties, the member states retaining its independence (true, sometimes formal) and entering them in the constitutional relationship (law), but the relationship of international law [8].

Confederation of states is an association of independent states determined by economic and political considerations as internal order and external order, which creates a new state law that individual subject. States forming confederation pursue common goals of economic, financial, political, defense. To discuss and resolve common issues, confederate states elect a joint body called diet or Congress, whose decisions are subsequently approved by the states. The basis of confederation stands to international treaty. Examples of confederations of states: American Confederations States between 1778-1787; German Confederation between 1815-1871; Swiss Confederation between 1815 to 1848.[9].

As seen, the history ruled against the state associations, as changes in the economic and communications favor large states, under the administrative efficiency and financial return, even if it sacrificed ethnicity.

The separation referendums of provinces from the state in the new European context

The doctrine states that border the state is the line that divides land and water within state territories of neighboring states, and defines vertical airspace and airspace basement and basement neighboring states [10].

The state border determines the limits of the state exercising territorial sovereignty and the right of the people to decide their own fate. Inviolability of borders is a prerequisite to the development of each country and the people. Border mutual respect and obligation of states to solve border disputes peacefully is an essential element of the principle of territorial integrity enshrined in international law in a number of international treaties.

In this respect, we mention the Declaration on principles of international law 1970 UN General Assembly states that "every State has the duty to refrain from resorting to the threat of force or use of force to violate the existing international boundaries of a State, or as a means of resolving international disputes, including territorial disputes, and problems related to their border states "and the Final Act of the CSCE in Helsinki in 1975, introducing the norm among the basic principles of relations between its signatory states.

[7] Uglean, G., *Constitutional Law and Political Institutions*, op. cit., p. 318.
[8] Uglean, G., *Constitutional Law and Political Institutions*, op. cit., p. 319.
[9] Creţu, V., *Public International Law*, FRM Publishing House, Bucharest, 2006, p. 71.
[10] Geamănu, G., *Public International Law: Treaty*, vol I, RSR Academy Press, p. 406, quoted in Burian, A., et al, *International Public Law*, Elena-VI Publishing House, Chisinau, 2009, p. 165.

The change of the territory of the member states is admitted by contemporary international law based on the principle of the right of peoples to dispose of themselves and only through peaceful means.

According to the Final Act of the CSCE Helsinki signatory states consider that "their borders can be changed in accordance with international law, by peaceful means and by agreement."

Specifically, since Article I of the Final Act of the CSCE Helsinki we find the following:

-The participating States will respect each other's sovereign equality and individuality as well as all the rights inherent in sovereignty and that includes their sovereignty, including in particular the right of every State to juridical equality, territorial integrity, liberty and political independence. They will also respect each other's right to choose and freely develop the political, social, economic and cultural, as well as the right to establish laws and regulations.

-Under international law, all participating states have equal rights and obligations. They will respect each other's right to freely define and manage its relations with other States in accordance with international law and in the spirit of this Declaration.

-They consider that their frontiers can be changed in accordance with international law, by peaceful means and by agreement. They also have the right to belong or international organizations, to be or not a party to bilateral or multilateral treaties, including the right to be a party to treaties of alliance or not; they also have the right to neutrality.

May retain attention and assignment of territory, designating swipe of a territory under the sovereignty of state sovereignty which gives it receives. Cession of territory was made in the past by sales, lease technique, by contrast, the endowment and others the contemporary international law does not allow assignment of territory only if it complies with inalienable and indefeasible right of peoples to self-determination and is conducted within and peaceful as a result of some agreements between states [11]. Grigore Geamănu stated that in these cases we are in the presence of violations of the principle of sovereignty and territorial integrity, and not some "exceptions" to the exclusive nature of this sovereignty. The fact that these violations generally belong to history is further evidence of their incompatibility with contemporary international law [12].

After 2008, the economy was attempted propagation of a trend to hide realities. Speculation is not stopped, and many countries felt that somehow escaped the sovereign debt crisis and investors' money will help them to strengthen back to previous levels, but reality has shown that this was not the case.

After 2013 came in 2014, which brought a host of other items of the same Act of the CSCE Helsinki Final: art. II, III and IV[13]:

-The participating States consider inviolable each other all boundaries and borders of all states in Europe, and therefore they will refrain now and in the future from any attempt on their borders.

[11] Burian, A. et al., *Public International Law*, Elena-VI Publishing House, Chisinau, 2009, p. 168.
[12] Burian, A. et al., *Public International Law*, Elena-VI Publishing House, Chisinau, 2009, p. 168.
[13] The texts selection is made by the authors, in an order different from that of the document.

-Consequently, they will also refrain from any application or act to seize and capture the whole or part of the territory of any State participating.
-The participating States will respect the territorial integrity of each of the participating countries.
-Accordingly, they will refrain from any action incompatible with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force.
-The participating States will refrain also each other to make the territory subject to military occupation or other direct or indirect use measures of force in contravention of international law or subject of acquired through such measures or the threat of them. No occupation or acquiring of this nature will not be recognized as legal.
-The participating states shall refrain in their mutual relations, as in general in their international relations from resorting to the use of force or threat of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with purposes of the United Nations and with this statement.
-No consideration may be invoked as a justification for resorting to the use of force or threat of force inconsistent with this principle.
-Accordingly, the participating States will refrain from any act which constitutes a threat of force or use of force, directly or indirectly against another participating State.
-Also, they will refrain from any manifestation of force in order to make another participating State to renounce the full exercise of its sovereign rights.
-Also, they will refrain in their mutual relations and any act of reprisal by force.
-No such use of force or threat of force would not be used as a means to resolve differences between them.

The interpretation of these texts shows that only peaceful means can be used to change the borders. It is still a beautiful expression of the aspirations of mankind. Reality has shown that changing borders rather pragmatic reasons and violent way.

However, recently in Scotland was a separation referendum in that country to the whole policy driven builders in London, and in these days Catalonia took steps to implement a referendum on separation from the leadership of Madrid, which was attacked already before the Council of State, for a procedure that seeks to declare the unconstitutionality of this approach. Scotland's answer was negative on the separation, but in sunny Spain the result might be different, including in terms of its acceptance by the Spanish army.

Hence, the basic problem: the EU has safeguards against these referendums, that weaken both political and economic coherence - although legally these popular consultations are not always illegal?

The problem is, even now just in case of Catalonia, as one can imagine two situations:

a) The Spanish State Council declared the referendum unconstitutional, and initiators surrendered. In this case, the discussion is closed;
b) The Spanish Council of State has the same decision, but the initiators of the referendum procedure continue. In this situation, you will need to decide the Commission? That will be the position of the Council? Furthermore, Let's imagine that refendumul will take

place, and from Madrid comes an order to arrest the breakaway leaders, pursuant to a warrant issued by a Court of law? We do not want to imagine what that would mean a possible clash between military forces loyal to Spain and armed groups who will want or even proclaim new State of Catalonia, but this assumption may be possible.

It is obvious that at European Union level these two refendumuri have produced panic. The fact that one of them was in favour of European integration as a result, does not mean that you cannot register another referendum result exactly the opposite, that could be followed by other referendums, in some other countries.

Hence, the necessity to reform the policy across Europe, in the sense of limitations of local autonomy, as it is clear that what is in excess of certain limits that could be admissible in administrative centralization report entail other losses. This, in the sense that since the submission of the European civilisation is not contested by any other continent, it is observed that the manner in which our continent will resolve the issue of referendums is likely to be followed, as the previous one, and the other continents.

Specifically, local autonomy should not oppose administrative centralization, but to work with this community effort to streamline trans-continental threats (environmental, pollution, organized crime, terrorism).

We also consider important to debate the issue on redefining the European Union as an entity that leverages the states and their position on the continent, or the continent ethnicities, because it is possible to complicate the situation in the second variant, under complex rights provided smaller communities, which is extended in the direction of self. At this time, the European institutional structure furnishes a set of opportunities for nonstate actors to intervene, gain recognition, build systems of action, and secure protection[14].

In the face of these political problems requires a response of the same nature. However, the answer must be written in a legal form - more, by an act of general value, which might be considered a new legal basis for the rights of nations in this century. And if we cannot reach to a compromise, the threat of new wars redrawing of borders can be very real.

Conclusions

Referendums have an important role, in legal terms: they allow us to find the will of the people in a way that no other electoral procedure does. To vote for a candidate it does not mean that he will fulfill all his electoral promises, and this happens in any consolidated democracy.

The European Union is a political-juridical creation, which seeks the unification and harmonization of the citizens of states from the European continent, and it cannot opposes to such ideas of popular consultation, but needs to be more convincing in its plans for unification, if it wishes not to be defeated by the smaller nations, which they want their country on this continent. The fact that we are in this kind of situation where the Catalans may detonate an explosion at the base of the entire European project is a mistake not only of leadership from Madrid, but also of the community authorities.

[14] Keating, M., *European integration and the nationalities question***,** Politics & Society, vol. 32 no. 3, p.367-388**,** 2004

For this reason, we consider appropriate that this major political entities quasi-continental, which is EU, to be redefined and adjusted, for the purposes of assisting the states, and about local autonomy and the various ethnic groups much less importance, and in the future may be opened a debate on the need for a more powerful support granted to the states centers to the detriment of too tough measures offered to the periphery. We could not consider that all these ideas would be an abdication of the general principles of the European Union, because the EU is the product of national states, and not of the ethnic minorities.

In fact, this is the lesson of final referendums of separation of Scotland and Catalonia: violating principle „*est modus in rebus*" and attracts that roll-over of the large car the tree of naive rivalries: separation is not power, but exactly the opposite.

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Declaration on Principles of International Law in 1970

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