

# INFLUENCE OF THE EUROPEAN INTEGRATION ON THE SHAPE AND FUNCTIONS OF A CONTEMPORARY STATE

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## 1. INTRODUCTION

At present, European states undergo dynamic transformations connected with integration processes. Their basic laws *sensu stricto*, i.e. legal acts of the highest rank and superior in the hierarchy of domestic sources of law, constitute the foundation of their political systems and legal orders in force. Their stability, on the other hand, remains one of the fundamental constitutional values ensuring stability of political systems.<sup>1</sup> Nevertheless, we currently deal with continually changing political reality, which even in the strongest state organizations with established traditions triggers bigger or smaller changes. The European integration processes belong to the most important factors influencing the functioning of a state, its political system, the shape and scope of its functions, sovereignty and the content of the basic law as a fundamental legal act regulating the above-mentioned matters.<sup>2</sup> The relations

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<sup>1</sup> From the formal point of view, such a state of things can be obtained by more difficult, i.e. more complicated, mode of amendments (rigid constitution); from the substantive point of view, on the other hand, inter alia, by the “possibly narrow scope of the regulated matter, quite high level of its provisions’ generality making various interpretation possible, active attitude of the bodies interpreting a constitution in the process of applying law”. See, K. Kubuj, J. Wawrzyniak, *Wstęp*, [in:] K. Kubuj, J. Wawrzyniak (ed.), *Europeizacja konstytucji państw Unii Europejskiej*, Warsaw 2011, p. 12. For more, also see V. Serzhanova, *Europeizacja konstytucji na przykładzie ustaw zasadniczych Polski i Słowacji w kontekście ich członkostwa w Unii Europejskiej*, [in:] G. Dobrovičova, S. Sagan (ed.), *Implementacja prawa unijnego do systemów prawa krajowego w Polsce i na Słowacji po dziesięciu latach członkostwa w Unii Europejskiej*, Rzeszów 2015, p. 149 ff.

<sup>2</sup> From the point of view of constitutional law and the theory of a state, it is hard to overestimate these issues. A contemporary state’s functions are often determined in basic

between those phenomena are obvious and do not raise any doubts at present; however, the scope of changes connected with those processes is subject to continuous verification, because it depends on the level of particular national states' involvement in them, which is not uniform.<sup>3</sup>

At present, we observe new phenomena the scale and dynamics of which have not been experienced in the history of the Old Continent before. On the one hand, a trend of regional economic, political and cultural integration is clearly seen and, on the other hand, we deal with processes of national states' disintegration.<sup>4</sup> The number and scope of changes in basic laws to some extent seem to depend on the level of formal and procedural difficulties in passing amendments to constitutions, the nature of this act alone, i.e. the scope and level of detailed regulation of matters therein,<sup>5</sup> as well as on the constitutional legalism understood as respect for its provisions in society in a given period.<sup>6</sup>

Integration processes on the European continent undoubtedly evoke a necessity to adjust constitutional systems and basic legal acts to the changing reality, put them in specific legal frameworks and organise them with respect to the principles of lawfulness and basic democracy canons.<sup>7</sup> The phenomenon of integration

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laws. And even if they are not determined in them directly, they undoubtedly result from their constitutional axiology, values and principles. The contemporary concept and scope of sovereignty also constitute a key issue. In my opinion, these are strictly related matters, in fact, they are aspects of the same matter if it is analysed from the perspective of constitutional law and the study of a state. That is why, their coherent analysis is necessary in order to draw reliable conclusions concerning contemporary states' functioning under the influence of regional integration processes as well as globalisation. For more on the influence of the processes of globalisation and the European integration on contemporary states, see: V. Serzhanova, S. Sagan, *Nauka o państwie współczesnym*, 3<sup>rd</sup> edition, Warsaw 2013, p. 230 ff; also, V. Serzhanova, S. Sagan, *Wpływ procesów integracji europejskiej na konstytucje narodowe*, [in:] D. Szpoper (ed.), *W kręgu historii doktryn politycznych i prawnych oraz konstytucjonalizmu, księga jubileuszowa Profesora Andrzeja Sylwestrzaka*, Gdańskie Studia Prawnicze Vol. XXVII, 2012, pp. 307–319; also in the English language: V. Serzhanova, *Modern state in the era of globalization and European integration*, Zborník príspevkov z 2. ročníka Jarnej Školy Doktorandov UPJŠ, Košice 2015, pp. 13–19; V. Serzhanova, S. Sagan, *The influence of the European integration and globalization processes on a contemporary state*, *Annales Universitatis Apulensis, Series Jurisprudentia* 14/2010, Alba Iulia 2011, pp. 219–229; V. Serzhanova, S. Sagan, *Changes in the constitutions of the European states in connection with the integration processes*, [in:] *Perspectives for the development of constitutional law in the conditions of integrating. Section of constitutional law. English part*, Collection of papers from the International Scholastic Conference "Law as a Unifying Factor of Europe – Jurisprudence and Practice, 21–23 October 2010", Bratislava 2011, pp. 259–264.

<sup>3</sup> For more on the issue, see V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 307 ff.

<sup>4</sup> *Ibid.*

<sup>5</sup> See, M. Kruk-Jarosz, *Kształtowanie konstytucyjnych zasad członkostwa państwa w Unii Europejskiej (wybrane problemy)*, *Przegląd Sejmowy* No. 4(99), 2010, p. 43; also, K. Kubuj, J. Wawrzyniak, *Wstęp...*, p. 18; for more, also P. Chybalski, *Analiza porównawcza konstytucji państw członkowskich Unii Europejskiej w zakresie podstaw członkostwa tych państw w Unii*, Warsaw 2010, *passim*.

<sup>6</sup> See, W. Sokolewicz, *O gradacji zmian konstytucji*, [in:] L. Garlicki (ed.), *Konstytucja. Wybory. Parlament. Studia ofiarowane Zdzisławowi Jaroszowi*, Warsaw 2000, p. 179; also, K. Kubuj, J. Wawrzyniak, *Wstęp...*, p. 13.

<sup>7</sup> As far as the latest works are concerned, it is worth referring to J. Jaskiernia, K. Spryszak (ed.), *Dwadzieścia lat obowiązywania Konstytucji RP. Polska myśl konstytucyjna a międzynarodowe standardy demokratyczne*, Toruń 2017, in which one can find many valuable

processes' influence,<sup>8</sup> especially the EU law, on the constitutional law of particular European states, mainly including the EU Member States, is most often referred to as "Europeanization of constitutions".<sup>9</sup> Those processes also have considerable influence on interpretation of sovereignty and, in addition, on the objectives, scope and way of performing functions by a contemporary European state, which, as a result, has also impact on their shape, effectiveness and the way of functioning. This is why, the evolution of the texts of original constitutions is also unavoidable.<sup>10</sup>

articles, inter alia, devoted to international democratic standards and their influence on the Polish basic law.

<sup>8</sup> Integration processes on the European continent of course are not limited to integration at the European Union level because they also cover the area of the Council of Europe and the Organisation for Security and Co-operation in Europe. In the context of the concept of Europeanization of constitutions (especially in its strict sense), however, the EU law undoubtedly influences the content and interpretation of basic laws to the greatest extent. It results from a rather obvious fact that there is an entire separate legal system that the EU, a supranational structure of still 28 states, managed to establish. The other above-mentioned international legal entities (the CE and the OSCE), although they constitute fully valuable international organisations and the level of integration of the states associated in them is not so advanced, do not resemble a treaty of states united in the EU neither from the point of view of their objectives, internal structure and common bodies, and organisational principles nor from the standpoint of the system of legal regulations in force. Integration in the area of binding law and its unification is so far-reaching only in the EU, which obviously has the strongest influence on Member States' national legal systems, including their constitutions. This cannot be said about the CE and the OSCE. That is why, the two organisations are not the subject of interest of the present article.

<sup>9</sup> The phenomenon of Europeanization of constitutions has been very thoroughly described in literature. Thus, my aim is not to analyse in detail the issue that has already been discussed in dozens of articles or to refer to all of them. It is not the aim of my article and does not have a scientific value. However, the approach to the issue presented in the introduction and the methodology of its analysis requires that some reference should be made to this concept for the needs of further considerations. Reflections on the Europeanization of constitutions in the context of the areas of the European integration in its strict sense (EU) undoubtedly justify this. In my opinion, it is worth referring to the most important works by Polish and foreign authors. The most useful in the light of those considerations are the works by constitutional experts who write about the issue very competently: W.J. Wołpiuk, *Semantyczne, prawne i konstytucyjnoprawne aspekty pojęcia europeizacji*, Zeszyty Naukowe Wyższej Szkoły Zarządzania i Prawa im. Heleny Chodkowskiej w Warszawie No. 2, 2008, p. 15 ff; also, M. Ziółkowski, *Europeizacja konstytucji – rekonstrukcja znaczenia*, [in:] K. Kubuj, J. Wawrzyniak (ed.), *Europeizacja konstytucji...*, p. 22. In English literature, it is worth reading: K. Featherstone, C.M. Radaelli (ed.), *The politics of Europeanization*, Oxford 2003, p. 6 ff. Also see, V. Serzhanova, *Europeizacja konstytucji...*, p. 151 ff. For the issue of Europeanization of law, compare, T. Biernat, *Europeizacja prawa – zjawisko wielowymiarowe. Wprowadzenie*, [in:] T. Biernat (ed.), *Europeizacja prawa*, Kraków 2008, pp. 8 and 10; also, B.T. Bieńkowska, D. Szafranski (ed.), *Europeizacja prawa polskiego – wybrane aspekty*, Warsaw 2007, *passim*. One can often find more on the Europeanization of law in the context of constitutional law, also called "Europeanization of constitutions", "Europeanization of basic laws" or "Europeanization of constitutional law", which has become quite common recently, in the works of constitutional lawyers involved in studies of the matter: Z. Witkowski, V. Jirásková (ed.), *Aktualne problemy współczesnego konstytucjonalizmu. Europeizacja Konstytucji Republiki Czeskiej i Rzeczypospolitej Polskiej*, Toruń 2014, *passim*; D. Lis-Staranowicz, J. Galster, *O zjawisku europeizacji polskiego prawa konstytucyjnego*, *Przegląd Sejmowy* No. 2(97), 2010, p. 29 ff; J. Galster, *Konstytucja Rzeczypospolitej Polskiej wobec postępów integracji europejskiej. Diagnoza stanu europeizacji ustawy zasadniczej*, [in:] E. Gdulewicz, H. Zięba-Załucka (ed.), *Dziesięć lat Konstytucji Rzeczypospolitej Polskiej*, Rzeszów 2007, p. 55 ff; K. Wojtyczek, *Europeizacja konstytucji V Republiki Francuskiej*, *Przegląd Sejmowy* No. 6(89), 2008, pp. 139–155.

<sup>10</sup> It can take on various forms depending on a state's traditions and culture, but always leads either to the modification of the content of the basic law or to re-interpretation of this

The present article is devoted to the above-mentioned issues presented from the comparative perspective and exemplified by basic laws and political systems of contemporary European states. The article is, in particular, devoted to an analysis of forms and areas of the functioning of states, in which we observe clear signs of the phenomenon of Europeanization of constitutions and manifestation of influence of the European integration processes on the perception of sovereignty as well as the scope and way of performing functions by contemporary European states exemplified by the EU Member States.

## 2. ESSENCE OF THE PHENOMENON OF EUROPEANIZATION OF CONSTITUTIONS, ITS FORMS AND AREAS

The phenomenon of Europeanization of constitutions may be perceived narrowly (*sensu stricto*) and broadly (*sensu largo*). Simply speaking, the former approach consists in constitutionalising the matters that are in various ways connected with the European Union law, which takes place by means of amendments to a constitution and its re-interpretation in compliance with the principle of the EU law-friendly interpretation. In the latter approach, Europeanization is connected with the law enacted by the European international organisations.<sup>11</sup> In the broader sense, we can speak about the Europeanization of constitutions in the context of a broadly understood European integration and its influence on national constitutions. In the narrow sense, on the other hand, we analyse transformations taking place in the shape and content of basic laws in connection with membership in the European Union and resulting from the implementation and influence of the EU law on domestic legal systems.

In literature, the concept of Europeanization of constitutions is perceived not only in the context of normative changes but sometimes also as a manifestation of the phenomenon of globalisation. Due to dissemination of certain universal constitutional standards in the EU area, the phenomenon started to be interpreted as a certain legislator's obligation to refer to the EU issues in the basic law, which not always and not necessarily results from a state's belonging to the European culture but rather from stronger and stronger influence of the European law on the legal systems of Member States or those aspiring to the EU membership. In this context, J. Szymanek rightly formulates a concept of "Euro-amending constitutions", which means the processes of "interfering into the text of a constitution resulting from

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legal act. On the one hand, it can materialise by formal amendments to constitutions and, on the other hand, it may be reflected in a different interpretation of the existing provisions as a result of constitutional courts' case law. L. Garlicki writes about it competently in *Aksjologiczne podstawy reinterpretacji konstytucji*, [in:] M. Zubik (ed.), *Dwadzieścia lat transformacji ustrojowej w Polsce*, Warsaw 2010, p. 85; also, K. Kubuj, J. Wawrzyniak, *Wstęp...*, p. 12. Also see, V. Serzhanova, *Europeizacja konstytucji...*, p. 150 ff.

<sup>11</sup> J. Galster discusses it very thoroughly in *Konstytucja Rzeczypospolitej Polskiej...*, p. 55 ff; also, D. Lis-Staranowicz, J. Galster, *O zjawisku europeizacji...*, pp. 29 and 51; M. Ziółkowski, *Europeizacja konstytucji...*, p. 22; K. Kubuj, J. Wawrzyniak, *Wstęp...*, p. 15. For more, also see V. Serzhanova, *Europeizacja konstytucji...*, p. 150 ff.

a state's accession to the Union, some type of response to the need of re-organising the pattern of connections between authorities, which in the conditions of membership in the Union at least in some spheres of their activities begin to act in a different way or obtain new, so far unknown areas of their activity".<sup>12</sup>

The Europeanization of basic laws may concern various constitutional matters, inter alia, it may cause changes in interpretation of some constitutional principles (e.g. the principle of sovereignty), lead to modification of the scope of a state's functions, some state bodies' competence and even cause erosion of the constitutional matter.<sup>13</sup> The Europeanization of a constitution takes place with the use of two basic instruments: the change of a Member State's constitutional norms by means of amending the text of the basic law (called the category of formal changes) or re-interpretation of its existing provisions in force (called substantive changes performed without interference into the text of the basic law, in other words, "silent changes" or "breaking through"),<sup>14</sup> i.e. adopting new different interpretation in order to adjust to the EU legal regulations in force. The spheres in which the process of the European integration takes place, namely the economic, political, military and cultural ones, mainly determine the areas in which the changes in basic laws may occur.<sup>15</sup>

The changes resulting from the introduction of the European common currency (euro) on 1 January 1999 (which entered into common use at the beginning of 2002) is an example of the fastest changes in Member States' constitutions caused by integration in the economic sphere. This essential event for economic integration resulted in the necessity to regulate the matter in national constitutions of some states (e.g. the Basic Law of Germany)<sup>16</sup> that entered the euro area and also

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<sup>12</sup> J. Szymanek, *O potrzebie euro-nowelizacji Konstytucji RP*, *Studia Prawnicze* No. 1(183), 2010, p. 9. Such an opinion is also presented by M. Ziółkowski, *Europeizacja konstytucji...*, p. 24. Compare, A. Kustra, „Euronowelizacja” w projektach ustaw o zmianie Konstytucji RP. *Próba oceny*, *Przegląd Sejmowy* No. 3(104), 2011, pp. 31–55.

<sup>13</sup> For more, see K. Wojtyczek, *Wpływ Traktatu z Lizbony na ustrój Polski*, *Przegląd Sejmowy* No. 4(99), 2010, p. 24; also, D. Lis-Staranowicz, J. Galster, *O zjawisku europeizacji...*, p. 51; M. Ziółkowski, *Europeizacja konstytucji...*, p. 25. For more on sovereignty in the context of globalisation and European integration, see V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 244 ff; in addition, K. Działocha, *Poszukiwanie formuły suwerenności państwa-członka UE w polskiej nauce prawa*, [in:] J. Wawrzyniak, M. Laskowska (ed.), *Instytucje prawa konstytucyjnego w dobie integracji europejskiej. Księga jubileuszowa dedykowana Profesor Marii Kruk-Jarosz*, Warsaw 2009, pp. 46–62; also compare, J. Kranz (ed.), *Suwerenność i ponadnarodowość a integracja europejska*, Warsaw 2006, *passim*; K. Wojtyczek, *Przekazywanie kompetencji państwa organizacjom międzynarodowym. Wybrane zagadnienia prawnokonstytucyjne*, Kraków 2007, p. 284 ff; by this author, *Przekazywanie kompetencji organów władzy sądowiczej podmiotom międzynarodowym*, [in:] J. Wawrzyniak, M. Laskowska (ed.), *Instytucje prawa konstytucyjnego...*, pp. 426–440.

<sup>14</sup> For more, see A. Kustra, „Euronowelizacja” w projektach..., p. 32; A. Kustra, M. Laskowska, *Przyczyny i skutki zmian w Konstytucji Rzeczypospolitej Polskiej z 1997 roku a członkostwo w Unii Europejskiej*, [in:] K. Kubuj, J. Wawrzyniak (ed.), *Europeizacja konstytucji...*, p. 206.

<sup>15</sup> For more on the areas of the European integration and the influence of the phenomenon on the shape and functions of a contemporary state, see V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 230 ff.

<sup>16</sup> In 1992, Article 88 was introduced to the Basic Law of the Federal Republic of Germany. It stipulates a possibility of transferring the competences of the Federal Bank in the field of currency and its emission to the European Central Bank. See, the Basic Law of the Federal

those that committed themselves to joining the eurozone in the near future. This may concern the Constitution of the Republic of Poland.<sup>17</sup> The changes aimed at controlling national budgets by the European Union institutions are also more and more important. There are also ever more resolute calls for introducing personal income tax paid to the European Union, which of course would have to be reflected in national basic laws.<sup>18</sup>

The adoption of a constitutional act regulating the organisation and functioning of the EU bodies is of key importance for the Europeanization of national constitutions in the context of political integration. So far, the process has encountered far-reaching difficulties because the idea to call the document a constitution was rejected due to too strong and questioned connotations with a state, which might clearly suggest that the Union is going towards the development of a federal state.<sup>19</sup> The adoption of the Treaty

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Republic of Germany of 23 May 1949, [in:] *Konstytucja Niemiec*, translation by B. Banaszak, A. Malicka, introduction by B. Banaszak, Warsaw 2008, p. 79.

<sup>17</sup> The norms concerning the introduction of the euro currency do not, of course, have to be contained in the text of the basic law. Nevertheless, there was such an attempt made in Poland on 12 November 2010 when a bill amending the Constitution prepared by the President of the Republic of Poland was filed (Sejm paper no. 3598). It proposed, inter alia, introducing solutions making it possible to fully meet obligations resulting from the Accession Treaty with respect to membership in the Economic and Monetary Union and introduction of the euro, which would undoubtedly facilitate the introduction of the new currency to the national economic system. There were two readings of the bill but, in the face of no consensus in the Sejm, there was no third reading and voting and, as a result, the legislative procedure was discontinued with the end of the Sejm term. A. Szymt discusses it competently in *Członkostwo i perspektywy jego rozwoju w UE a projekty zmian Konstytucji RP*, [in:] Z. Witkowski, V. Jirásková (ed.), *Aktualne problemy współczesnego...*, pp. 30–32. Due to successive postponing and delaying of the time limit of euro introduction in Poland in relation to the original plan, the government and the parliament does not treat the issue as urgent. However, one can expect or even be sure that sooner or later it will become subject to amendments to the Constitution. The issue has been thoroughly discussed in literature. See, inter alia, such works as: J. Jaskiernia, *Konstytucja a wejście Polski do strefy euro*, Przegląd Socjalistyczny, <http://przeglad-socjalistyczny.pl/opinie/aziemski/1092-jaskiernia> [accessed on 30/11/2017]; by this author, *Członkostwo Polski w Unii Europejskiej a problem nowelizacji Konstytucji RP*, Warsaw 2004, *passim*; by the same author, *Wejście Polski do strefy euro a problem zmian w Konstytucji RP*, [in:] A. Piotrowska-Piątek, P. Ruczkowski (ed.), *Wyzwania w systemie bankowym w XXI wieku*, Kielce 2009, p. 203 ff; T. Knepek, *Przyjęcie przez Polskę waluty euro a zmiany w Konstytucji RP w zakresie polityki pieniężnej*, [in:] J. Gliniecka, E. Juchniewicz, T. Sowiński, M. Wróblewska (ed.), *System prawno-finansowy. Prawo finansowe wobec wyzwań XXI wieku*, Gdańsk–Nynasham–Stockholm 2013, p. 282; J. Barcz, *Członkostwo Polski w Unii Europejskiej a Konstytucja z 1997 r.*, [in:] J. Barcz (ed.), *Czy zmieniać konstytucję? Ustrojowo-konstytucyjne aspekty przystąpienia Polski do Unii Europejskiej*, Warsaw 2002, p. 40.

<sup>18</sup> For more on the issue, compare V. Serzhanova, *Europeizacja konstytucji...*, pp. 153–154; also, V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 310.

<sup>19</sup> The opinion still dominates in literature on constitutional law. Compare, V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 233; also, V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 310. An interesting discussion of the issue can be found in K. Działocha, *Poszukiwanie formuły suwerenności...*, p. 45 ff. However, the issue is treated in a different way in contemporary international and European legal literature, where the term “constitution” stopped being inseparably connected with a national state. At present, it is used in order to describe internally related and non-contradictory set of rules, principles and their basic values that organise the exercise of authority in a given community or international organisation. To a great extent, this results from the Court of Justice of the European Union case law. For a competent discussion



of Lisbon<sup>20</sup> was an important step on the way to political integration; it extended the catalogue of human rights and freedoms (of course, mainly thanks to the Charter of Fundamental Rights that became directly legally binding and applicable), which must have had impact on the trends towards changes in particular national constitutions. Moreover, the reform of the European Union organisational structure and modification of the role of the European Parliament and national parliaments in the decision-making processes in the Union, especially enacting law but also the decision-making procedures which the Treaty of Lisbon introduced, may also result in the necessity to amend some national constitutions.<sup>21</sup> The process may cover the areas of competence of national parliaments, common courts, constitutional courts, prime ministers and government officials, etc. In addition, there is organisation of the European diplomacy, which aims to protect the citizens of the European Union regardless of their state citizenship. Former regulations were limited to the infringement of the judicial power monopoly and delegating it to supranational courts such as the European Court of Human Rights or the Court of Justice of the European Union.<sup>22</sup>

The EU membership and the more broadly understood European integration considerably influence the perception of national states' sovereignty.<sup>23</sup> This sometimes results in the desire and sometimes in the necessity to introduce amendments to the provisions of basic laws concerning renouncing or delegating part of a state's sovereignty to international or supranational bodies or organisations, especially to the bodies and institutions of the European Union.<sup>24</sup> Such provisions were introduced not only to the

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of that, see M. Ziółkowski, *Europeizacja konstytucji...*, p. 26 ff; also, A.V. Bogdandy, *Podstawowe zasady prawa UE – teoria i doktryna*, Part I, Europejski Przegląd Sądowy No. 8, 2009, p. 11.

<sup>20</sup> A consolidated version of the Treaty of the European Union and the Treaty on the Functioning of the European Union, OJ C115 of 9.05.2009.

<sup>21</sup> K. Kowalczyk-Bañczyk, M. Szwarz-Kuczer, *Traktat z Lizbony – reforma czy jej pozory?*, *Studia Prawnicze* No. 1(175), 2008, p. 5 ff.

<sup>22</sup> For more, see V. Serzhanova, *Europeizacja konstytucji...*, p. 154; V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 313.

<sup>23</sup> For more, see K. Działocha, *Poszukiwanie formuły suwerenności...*, pp. 45–62; J. Kranz (ed.), *Suwerenność i ponadnarodowość...*, *passim*; M. Ziółkowski, *Europeizacja konstytucji...*, p. 24; also, V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 311 ff. As far as the latest works on the issue of sovereignty in the context of membership in the EU are concerned, it is undoubtedly worth mentioning a collective work of P. Stawarz, T. Wallas, K. Wojtaszczyk (ed.), *Suwerenność państwa członkowskiego Unii Europejskiej*, Warsaw 2017, *passim*.

<sup>24</sup> For example, it is worth referring to a debate on the issue of amending the Constitution of the Republic of Poland connected with or resulting from Poland's membership in the EU, sometimes called an "integration clause" or a "European clause", conducted for several years and revived systematically with various intensity. The amendment proposed by some authors is in their opinion justified by the fact that the text of the basic law is seemingly insufficient taking into account all the consequences of Poland's membership in the Union. For more, see, inter alia J. Jaskiernia, *Projekt klauzuli integracyjnej do Konstytucji RP*, *Państwo i Prawo* No. 1, 2011, pp. 3–17 and the literature referred to therein. However, the scope of the changes proposed still remains debatable and no reasonable compromise has been reached. A detailed determination of the provisions of the basic law in this respect, on the one hand, seems to be necessary in order to avoid conflicts, at least competence-related ones (which of course constitutes only one aspect of the issue; see footnote no. 56) and, on the other hand, may lead to a not really desired tendency to regulate everything at the constitutional level, which is purposeless and, in fact, impossible. The main reason for the lack of consensus in this matter seems to be very prosaic and results from the stand of present political decision-makers. Frankly speaking, one should look for it in the fact that every successive governing

EU Member States' constitutions (in Austria, Croatia, Denmark, Finland, Greece, the Netherlands, Lithuania, Germany and Sweden) but also constitutions of the states aspiring to the EU membership (Macedonia, Albania) and of the states associated with the EU (Norway), and their scope is varied.<sup>25</sup> However, for constitutional law experts the establishment of changes in the scope of contemporary states' sovereignty as well as the level and way of reflecting that in the basic law texts have fundamental importance.

Family law remains a very sensitive and delicate issue. At present, there is a very dynamic trend towards legalisation of same gender partnerships in various forms.<sup>26</sup> Many states do not want, however, to give up the traditional way of perceiving marriage as a relationship between a man and a woman. Although the issue has a basic impact mainly on the transformation of the traditional institutions of family law developed for ages in Europe and does not directly constitute a constitutional matter, the will to confirm in the basic law that marriage is a relationship between a woman and a man may also cause the necessity to introduce amendments to a constitution (Slovakia and Croatia are examples of that), especially if there are no such a provisions therein. A diverse situation may occur, too. In constitutions in which such a norm is laid down (e.g. Article 18 of the Constitution of the Republic of Poland), in case of the legislator's strong will, a desire to modify or completely repeal such a provision may occur, which will cause permanent changes in family law.<sup>27</sup>

Military integration in the European Union, which encounters serious objections of the Member States, remains an equally important issue. The organisation of the European defence forces is implemented at present within the structure of the Common Security

political party simply does not have the majority necessary to pass amendments to the Constitution that would be in conformity with its vision. At the same time, there is no will to solve the problem, regardless of political divisions and based on a compromise. By the way, many disputes might be avoided with a little more reasonable and pragmatic approach to the interpretation of the provisions of the Constitution in its present wording. In other words, it is not necessary to regulate everything in legal terms (including amending the Constitution); sometimes common sense, all-party political decision-makers' activities and, what is of fundamental importance, the treatment of a state as a common good by all the citizens are sufficient. The law must be simple and clear so that every citizen can understand it. It cannot cause problems with its interpretation. These values, which are carefully cultivated in countries with established democratic traditions and sophisticated political culture (e.g. Nordic countries), unfortunately not rooted in Poland, are worth copying.

<sup>25</sup> Compare, V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 311 ff.

<sup>26</sup> Various types of same-sex relationships (partnerships or marriages) have been legalised in 28 of 50 European states and seven of the nine dependent territories in Europe, including 22 European Union states. In 13 of them, homosexual marriages are allowed. These are Belgium, Denmark, Finland, France, Spain, the Netherlands, Ireland, Island, Luxemburg, Norway, Portugal, Sweden and the United Kingdom. 20 countries recognise partnerships or non-registered co-habitation. In six countries (the Netherlands, Belgium, Spain, Norway, Sweden and Island) it is also legally admissible to adopt children. Moreover, same-sex couples can legally adopt children in Andorra and the United Kingdom. In Denmark, Finland and Germany, parties to a partnership are permitted to adopt their partners' children. In a few states at present, there is a debate concerning the introduction of partnerships or same-sex marriages. The introduction of the latter may be obstructed by the fact that some constitutions define marriage as a relationship between a man and a woman. These are Belarus, Bulgaria, Croatia, Montenegro, Lithuania, Latvia, Moldova, Poland, Serbia, Slovakia, Ukraine and Hungary. Also, see V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 311. The issue of relationships is even more complicated when one of the partners changes his/her gender. It has far-reaching consequences for family law.

<sup>27</sup> For more, see V. Serzhanova, *Europeizacja konstytucji...*, pp. 155–156.



and Defence Policy (CSDP), as a component of the Common Foreign and Security Policy (CFSP). They substituted for the Western European Union (WEU), which was dissolved on 31 March 2010 by the Member States' decision due to the Treaty of Lisbon entry into force.<sup>28</sup> The lack of efficiency of activities aimed at organising the effective EU security structures results from asymmetry in acting in favour of the process of the European integration. This may require amendments to basic law provisions concerning defence of the homeland (one's own country), permission for service or secondment of part of national armed forces under supranational command as well as the use of armed forces abroad under the CSDP (such provisions are, inter alia, laid down in the constitutions of Austria, the Netherlands, Sweden and Slovakia). Such amendments may prove to be necessary in case of countries the basic laws of which stipulate the principle of neutrality as well as those that clearly ban participation in any military treaties (e.g. Malta).<sup>29</sup>

Cultural integration remains the most troublesome, sensitive and imprecise sphere of the EU Member States' integration,<sup>30</sup> because there is a lack of clear common opinions and prescriptions what it should be like. There are two reasons for that: the fears of small-population states and also those which have gained sovereignty recently that they will lose their identity, and the lack of precise and consistent policy of the European Union in this area. States with a small population potential, such as Denmark or Malta, and those that have gained their sovereignty recently, such as Slovakia and Slovenia, and also candidates to the EU membership, Bosnia and Herzegovina or Macedonia, are evidently afraid of losing their national identity. They attach importance to sovereignty and cultivate their statehood, which is their main objective. The concerns are strengthened by the lack of rules and, as a result, established political trends indicating the direction the European Union is taking: development of a "European nation" and disappearance of the identity of nations having their own national states or maintenance of cultural diversity of the European nations. At the present stage, the processes evoke a reflex action of strengthening decisions and extending legal regulations concerning the protection of national heritage, especially a language. This concerns mainly small states that have a relatively short history of their own statehood and are at the stage of consolidating their national identity (e.g. the Baltic states). Such regulations are found, inter alia, in the constitution of Slovakia. Moreover, more and more acts are passed in order to protect a national language and cultural heritage.<sup>31</sup> This is a proof of the Europeans' awareness of the importance of and the will to maintain their cultural diversity, which is perceived as the strength of Europe and its nations.

<sup>28</sup> The organisation was officially declared defunct on 30 June 2011.

<sup>29</sup> For detailed information about military integration, see V. Serzhanova, *Europeizacja konstytucji...*, p. 156; also, V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 234 ff. For more on constitutional norms concerning defence of the country, the use of armed forces abroad, the principle of neutrality and a ban on entering military alliances in some constitutions of European states and possible amendments to them, see V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 313 ff.

<sup>30</sup> F. Gołembski, *Kulturowe aspekty integracji europejskiej*, Warsaw 2008, *passim*.

<sup>31</sup> Such an act has been in force in Slovakia since 1996 and in Poland since 2000. Those legal acts constitute a very important part of legislation in the Baltic states, where they play a very important role in the development of the reviving states and national identity. For more detailed information about cultural integration, compare V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 237 ff. For more on the regulations concerning the protection of national and cultural identity in the European constitutions, see V. Serzhanova, S. Sagan, *Wpływ procesów...*, pp. 315 and 317.

### 3. CONTEMPORARY STATES' OBJECTIVES AND FUNCTIONS VERSUS THE ISSUE OF SOVEREIGNTY

A state's functions are inseparably connected with the objectives that this omnipotent political structure pursues. A state's functions should be interpreted as basic directions of activities that are determined by aims that one wants to achieve. A state's objectives are understood as what a state organisation's political decision-making centre pursues.<sup>32</sup> With the evolution of states, their objectives and, as a result, their functions underwent transformations and differed as to the scope of their implementation in every historic epoch.<sup>33</sup> At present, a state's functions are developed under the influence of processes connected with the phenomena of the European integration and globalisation, which set objectives for contemporary states that were unknown in former periods, determined by the fact that national economy management escaped the control of particular states.

At present, states' objectives are determined by organised structures of society's political organisations and mainly by political parties as well as trade unions, pressure groups, churches, etc. International organisations, both the universal ones like the UN and regional ones like the European Union, or military ones like the NATO also play an important role. Contemporary states' leaders rarely determine their objectives. The states pursue the following aims: to achieve common good, to ensure an individual's freedom and an individual's and the community's security, to participate in the distribution of goods produced by the community, to ensure the defence of its territory and its integrity as well as co-operation under treaties on the international arena, and to combat terrorism. The latest is the aim pursued by the Euro-Atlantic world, which faces threats from Islamic extremism.

With the use of the most common classification most often applied in literature, based on the object-related criterion, i.e. the type of a state's activity resulting from the activities it undertakes in particular spheres of public life, a state's functions can be divided into external, internal, economic-organisational, cultural-educational and social ones.<sup>34</sup>

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<sup>32</sup> M. Manelli initiated studies of a state's functions in Polish literature, first in an article published in *Państwo i Prawo* (No. 1 of 1957): *Pojęcie funkcji państwa*, and next in a monograph *O funkcjach państwa*, published in Warsaw in 1963. It was written from the point of view of the Marxist-Leninist ideology but, paradoxically, is in many parts still up-to-date. I adopt the definition of a state's objectives proposed by S. Ehrlich, *Wstęp do nauki o państwie i prawie*, Warsaw 1977, p. 66. For more on the concepts of contemporary states' objectives and functions and their classifications, see V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 65 ff.

<sup>33</sup> "While in the 19<sup>th</sup> century, a state's functions can be limited to the protection of the legal system (referred to as external and internal functions), in the 1920s their catalogue is extended by economic, social and educational ones. This increase in a state's interference in an individual and community's life is justified by the theories of a state of well-being (*welfare state*, *sozialstaat*, *social state*, *service state*)", see L. Dubel, A. Korybski, Z. Markwart, *Wprowadzenie do nauki o państwie i polityce*, Kraków 2002, p. 42.

<sup>34</sup> There are generally two approaches to classifying a state's functions. The first one assumes a "classical" interpretation of a function as an object connected with the fact that contemporary states develop their structures based on the principle of separation of powers, which determines the scope of activity of particular public authority bodies. Such a division

The traditional external function consists in a state's participation in the international community. A state implements its foreign policy and maintains diplomatic relations with other states and international organisations.<sup>35</sup> Foreign policy covers economic relations, including trade exchange and scientific and cultural policy as well as information about the country and personal contacts. External security, i.e. military treaties, is a separate and extremely important element of every state's foreign policy.<sup>36</sup> A state's position on the international arena depends on many factors: national conditions, geographical location, the size of its territory and population, economic potential, military strength, cultural identity and a political system. Thus, a state has a specialised diplomatic service, including consular offices responsible for the protection of the state's diaspora abroad. On the other hand, international terrorism that occurred at the end of the 20<sup>th</sup> century is a new phenomenon. Combating it by individual states proved to be inefficient. It requires that political and military alliances are organised and attempts are made on a regional and global scale.<sup>37</sup> Therefore, the regional co-operation of states that strive together to solve problems connected with external security and economic development gains more and more importance in the contemporary world. The European Union plays a special role in this area.<sup>38</sup>

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of functions can be found, e.g. in the works by A. Mycielski or A. Peretiatkowicz. One can even have an impression that the authors identify the separation of powers with a state's functions. Compare, A. Mycielski, *Zarys nauki prawa państwowego. Część I ogólna*, Wrocław 1959, p. 85 ff; also, A. Peretiatkowicz, *Państwo współczesne. Wiadomości ogólne. Ustrój polityczny Anglii – Stanów Zjednoczonych – Związku Radzieckiego – Polski*, VIII edition, Poznań 1946, p. 56 ff. The second approach originates from the American school of systemic analysis and, that is why, it can be called a systemic one. It differentiates: a function of developing political behaviour patterns which, on the one hand, aim to maintain the existence of the system and regulate tensions occurring in it and, on the other hand, to implement those norms and values that result from general aims of the political system; an adaptation function; an instrumental and purpose-related function and an integration function. Both classifications are taken into account in Polish works on a state's functions. This is what can be found in E. Kustra, *Wstęp do nauk o państwie i prawie*, Toruń 1997, p. 58. On the other hand, P. Winczorek bases his study only on the school of systemic analysis and refers to the thoughts of an outstanding Polish sociologist and ethnographer, B. Malinowski (1884–1942). See, P. Winczorek, *Wstęp do nauki o państwie*, 2<sup>nd</sup> edition, Warsaw 1997, p. 29. The stand presented by the supporters of the systemic analysis method negates the point of view of constitutional lawyers who look at a state's functions through the prism of public authorities' activity in particular spheres of the separation of powers and its reflection in the regulations of the basic law. However, the concept is criticised because of its far-reaching abstraction and generality. Compare, T. Langer, *Amerykańska wersja analizy systemowej w nauce o polityce*, Warsaw 1977, p. 77. Both approaches (objective and systemic) to the classification of a state's functions should be treated complementarily because they supplement each other and are not mutually exclusive. For more, also see V. Serzhanova, S. Sagan, *Nauka o państwie...*, pp. 65–74. For a still different approach to the concept and classification of a state's functions, see A. Korybski, *Funkcje państwa*, [in:] B. Szmulik, M. Żmigrodzki (ed.), *Wprowadzenie do nauki o państwie i polityce*, Lublin 2007, pp. 101–110.

<sup>35</sup> M. Dobroczyński, J. Stefanowicz, *Polityka zagraniczna*, Warsaw 1984, p. 124 ff.

<sup>36</sup> J. Kukułka, *Międzynarodowe stosunki polityczne*, Warsaw 1982, p. 240 ff.

<sup>37</sup> B. Balcerowicz, *Sily zbrojne w państwie i stosunkach międzynarodowych*, Warsaw 2006, p. 82 ff.

<sup>38</sup> See, V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 67. Compare, A. Korybski, *Funkcje państwa...*, pp. 107–108.

The internal function consists in the provision of order and security in a state and is implemented by public administration bodies, the police, secret service, justice administration bodies, prosecution offices and prison guards. More and more often, it also concerns information order and personal data protection. The issues of order and security are of public and all-party importance; not only governments but also the community are interested in them.<sup>39</sup> Thus, willing to efficiently counteract breaches of security and public order, a state tries to obtain support from various social organisations and local communities (community policing) to co-operate in the field of security and proper functioning of the whole social system.<sup>40</sup> Within that function, the protection of citizens' property and health is extremely important. A state enacts necessary regulations serving those purposes and also creates and equips various police forces, including municipal police.<sup>41</sup> Performing the internal function, a contemporary state uses electronic surveillance of its citizens to a wider extent. Every day, one can see some examples of it, i.e. CCTV cameras in public buildings, work places, hotels, residential areas, etc.<sup>42</sup> Under the pretext of protecting personal security and property, individuals become the object of interest of a state and non-governmental institutions protecting people and property. The process is unfavourable for the rights and freedoms. It is in flagrant collision with respect for dignity and privacy.<sup>43</sup> The tendency is strengthened by a very general slogan of "the fight against terrorism".<sup>44</sup> However, one cannot identify the necessity to ensure personal and community security and, at the same time, agree that the rights and freedoms, including people's dignity and privacy, would be limited.<sup>45</sup>

The movement of people and the issue of multiculturalism and tolerance towards aliens, on the one hand, and the protection of a state's territory against illegal migration, on the other hand, are some of the contemporary states' most important problems. Europe faced the necessity to establish the European Border and Coast Guard Agency (FRONTEX), an organisation co-ordinating the activities of national border guard services.<sup>46</sup> Organised crime remains another extremely

<sup>39</sup> W.J. Wołpiuk, *Sily zbrojne w regulacjach konstytucyjnych RP*, Warsz 1998, p. 46 ff.

<sup>40</sup> Interesting considerations concerning security bodies and their role in society can be found in the work by J. Czapska and J. Wójcikiewicz, *Policja w społeczeństwie obywatelskim*, Kraków 1999, *passim*; especially on community policing, p. 129 ff.

<sup>41</sup> S. Pieprzny, *Ochrona bezpieczeństwa i porządku publicznego w prawie administracyjnym*, Rzeszów 2007, p. 73 ff.

<sup>42</sup> S. Fundowicz, *Utrwalanie obrazów w przestrzeni publicznej*, [in:] E. Ura, K. Rajchel, M. Pomykała, S. Pieprzny (ed.), *Bezpieczeństwo wewnętrzne we współczesnym państwie*, Rzeszów 2008, p. 78 ff; also, V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 69.

<sup>43</sup> An interesting study of the right to privacy was presented by J. Braciak, *Prawo do prywatności*, Warsaw 2004, *passim*; also, Z. Janku, *Prawo jednostki do bezpieczeństwa (teoria, prawo, praktyka)*, [in:] E. Ura, K. Rajchel, M. Pomykała, S. Pieprzny (ed.), *Bezpieczeństwo wewnętrzne...*, p. 13 ff; B. Jastrzębski, *O problemie prawa obywateli do bezpieczeństwa publicznego*, [in:] E. Ura, K. Rajchel, M. Pomykała, S. Pieprzny (ed.), *Bezpieczeństwo wewnętrzne...*, p. 16 ff.

<sup>44</sup> T. Białek, *Terroryzm, manipulacja strachem*, Warsaw 2005, p. 223 ff; J. Muszyński (ed.), *Terroryzm polityczny*, Warsaw 1981, *passim*.

<sup>45</sup> For more, see V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 69. Compare, A. Korybski, *Funkcje państwa...*, p. 107.

<sup>46</sup> The name FRONTEX originates from the French *frontières extérieures*, i.e. "external borders". FRONTEX was established on 26 October 2004 based on the Council Regulation (EC)

dangerous phenomenon. It implies close co-operation of law enforcement agencies on the regional scale (Europol) or the global scale (Interpol).<sup>47</sup>

The phenomena blur the distinction between external and internal functions and indicate that the two spheres of a state's activities infiltrate one another. "That is why, not only internal entities but also the external ones as well as non-governmental organisations usually participate in the implementation of a state's external function. The participation of those various entities contributes to representation of diverse interests and extension of the basis for the development of a stable social order in a state".<sup>48</sup>

The economic-organisational function at present consists in the creation of conditions and stimulation of economic activities. The scope and intensity of a state's interference into the economic sphere depends on the doctrines adopted by political circles. In places where liberal options dominate, a state limits its activity to the fiscal (low taxes are conducive to investments) and monetary policy (ensuring a stable exchange rate and maintaining a strong position of the national currency). On the other hand, in case of a state's strong interference into the economic sphere, the function will be considerably extended. A state, not allowing privatisation, manages the key areas of infrastructure, rail and road transport, energy system, etc. It implements the policy of supporting the private economic sector financially (use of intervention prices for agricultural products purchased and subsidising businesses) and sometimes regulates private companies' price policies. In general, the function consists in ensuring trade exchange and development of economic activities. A state fulfils these tasks mainly by creating appropriate legal norms and establishing institutions that look after certainty and security of trade exchange. Inter alia, it establishes commercial and arbitration courts, supervises notary offices and registers businesses. Moreover, it influences the market by establishing bodies and institutions of consumer protection and combating unfair competition. It also influences the economy by formulating a customs policy limiting import or export and an appropriate transport policy. However, contemporary states lose the ability of influencing their domestic economies that are following globalisation and regionalisation trends. Supranational institutions such as the World Bank or the International Trade Organisation and big corporations take over economy management on a global scale. However, on the Old Continent, the European Union

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No 2007/2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349/1, 25.11.2004). On 14 April 2005 a decision was made that the head office of FRONTEX would be in Warsaw. Formally, the Agency started working on 1 May 2005 and practically on 3 October 2005. At present, it operates as the European Border and Coast Guard established by the Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.09.2016). See, V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 69.

<sup>47</sup> H. Kurta, *Interpol*, Warsaw 1976, *passim*; also, P. Wawrzak, *Współpraca policyjna a system informacyjny Schengen II*, Warsaw 2008, p. 21 ff. Also see, V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 70.

<sup>48</sup> E. Zieliński, *Nauka o państwie i polityce*, Warsaw 1999, p. 141.

takes over the role. It managed to introduce a common currency, which resulted in the national countries' loss of influence on its exchange rate.<sup>49</sup> Thus, the economic function performed by contemporary states undergoes considerable transformations. A separation of a state and economy occurs as a result of regional integration and globalisation processes and the loss of control over domestic economies. The capital circulates on a global scale as quickly as the Internet connections and does not belong to a particular territory. This makes tax collection in national states difficult. Multinational corporations try to avoid paying taxes and use, inter alia, tax havens, i.e. states that exist mainly thanks to the principle of bank secrecy: Switzerland, Liechtenstein, Cyprus, the Cayman Islands, etc. Budget planning also undergoes transformations because it depends on external factors. In the European countries, the EU subsidies constitute part of their national budgets.<sup>50</sup>

The cultural-educational function consists at present in taking care of states' cultural heritage, and creating and maintaining the system of education. Sometimes, in extreme cases, especially in totalitarian states, society is subject to political indoctrination in the ideology adopted by the state. A state strives to maintain its nation's cultural heritage by creating legal and financial frameworks aimed at preserving its material and spiritual goods. Thus, inter alia, it supports the restoration of historic buildings, takes care of their substance by state bodies' supervision; it amasses collections and funds museums. As far as this is concerned, it co-operates with international organisations (UNESCO). A state also financially supports literature, which is extremely important for national culture, participates in film production, backs theatres and theatrical art. It gets financially involved in the maintenance of public mass media: radio, television and other modern technologies of providing access to cultural goods. A contemporary state also funds the public system of education at the elementary and secondary level, which apart from spreading knowledge shapes citizens' attitudes. Funding university studies, which in most European states are free of charge but in some others are to be paid for, is an open issue.<sup>51</sup>

The social function concerns social insurance, health protection, social support and creation of conditions for full employment as well as legal norms regulating labour (conditions for concluding and terminating employment contracts, health and safety, employees' holiday and healthcare rights). For welfare states, ensuring the social minimum benefit for the unemployed remains a very important issue. Co-operation with non-governmental organisations, trade unions and churches, which are involved in charity, aid for families, health and palliative care and aid for homeless people, plays an important role in fulfilling this function.<sup>52</sup>

The issue of a new way of perceiving sovereignty, which is one of the fundamental principles of most European national constitutions, is a key one in the context of

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<sup>49</sup> For more detailed information, see V. Serzhanova, S. Sagan, *Nauka o państwie...*, pp. 70–71.

<sup>50</sup> Also see, *ibid.*, p. 245 ff.

<sup>51</sup> See, *ibid.*, pp. 71–72.

<sup>52</sup> *Ibid.*, pp. 72–73.



functions performed by a contemporary state in the era of regional integration.<sup>53</sup> Evolution of sovereignty, in terms of its definition and practice, to a great extent influences the objectives and functions of contemporary states. A process of its considerable external and internal limitation can be observed.<sup>54</sup>

The monopoly on commonly binding legal norms and their enforcement as well as the administration of justice has always been one of the unquestionable aspects of sovereignty. At present, however, more and more norms in particular states are enacted outside them, by international organisations, which strive to unify law, or by regional associations of states, as it occurs in the European Union, which applies the principle of primacy of its law.<sup>55</sup> These norms become an integral part of national legal systems, which considerably influences the strict way in which classical external and internal functions of a state and the scope of foreign and domestic policy have been perceived in the doctrine so far. The re-interpretation of these concepts in the Polish basic law performed by means of the Constitutional Tribunal case law is an example in support of that.<sup>56</sup>

The administration of justice to a state's citizens has been another important manifestation of sovereignty not raising any doubts until recently. The obligation to submit to the jurisdiction of supranational bodies that adjudicate in cases of citizens who are not satisfied with the judgements of national courts is critical. Breaking the administration of justice, which is one of the most important attributes of sovereignty, has become a legal, political and psychological fact noticed by citizens who can now conduct litigation against their own states before justice administration bodies outside their own country.<sup>57</sup>

The establishment of the European Union citizenship is another issue in uniting Europe. Based on the doctrinal attitude, which undoubtedly suggests that citizenship is the relationship between an individual and a state, it is necessary to state that the European citizenship is mainly a political intention assuming that the EU will aim

<sup>53</sup> See, K. Działocha, *Poszukiwanie formuły suwerenności...*, pp. 45–62; J. Kranz (ed.), *Suwerenność i ponadnarodowość...*, *passim*; M. Ziółkowski, *Europeizacja konstytucji...*, p. 24.

<sup>54</sup> V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 318; for the origins and evolution of the concept of sovereignty, see V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 44 ff. For expert literature on the issue, see J. Jaskiernia, *Istota i charakter prawny związania suwerennego państwa polskiego międzynarodowymi standardami demokratycznymi*, [in:] J. Jaskiernia, K. Spryszak (ed.), *Dwadzieścia lat...*, p. 398 ff.

<sup>55</sup> See, K. Wojtyczek, *Przekazywanie kompetencji organów władzy sądowniczej...*, p. 426 ff.

<sup>56</sup> The Constitutional Tribunal ruling of 20 May 2009, Kpt 2/08, OTK ZU 2009, No. 5A, item 78. The Tribunal stated that the relations between Poland and the European Union could not be unambiguously contained in the constitutional frameworks of foreign policy or domestic policy because the EU law constitutes at the same time part of the national legal order and is applied by state bodies. Thus, it is found in the area of "internal affairs and foreign policy of the Republic of Poland" (Article 146 para. 1 Constitution) as well as "the affairs of State" (Article 146 para. 2). On the other hand, it placed participation in meetings and decision-making groups and meetings with representatives of other states and international (supranational) organisations within the function of "conducting foreign policy". This means that in this case, the Tribunal also applied the interpretation of the Constitution in the way that is friendly to the European integration. For more, see M. Laskowska, *Przyczyny i skutki zmian...*, pp. 210–211; also, V. Serzhanova, *Europeizacja konstytucji...*, p. 160.

<sup>57</sup> For more, see V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 267 ff.

to apply some form of statehood. In accordance with the Treaty of the Functioning of the European Union, the EU citizenship is connected with the possibility of exercising some rights and Member States are obliged to guarantee human rights and fundamental freedoms because their aim is to strengthen the position of the EU citizen and create a basis for citizens' more intensive identification with legal, political, social, cultural and economic range of the EU activities.<sup>58</sup>

Integration and, more broadly, globalisation processes *inter alia* cause that contemporary states lose the possibility of managing their national economy which to a greater and greater extent depends on supranational corporations as well as banking and financial systems because there are not autarchies any more. This results in the loss of one of the most important attributes of sovereignty and dependence on the decisions made by economic organisations and financial systems functioning outside a national state. The flow of capital to a big extent remains outside national governments' control. Sustainable balance in particular states' economies that used to be an indispensable condition of the entire economic thought has become an illusion today.<sup>59</sup>

The loss of military and defence function by national states is another factor limiting sovereignty in favour of non-national political and military structures. A contemporary state has also lost the monopoly on possessing and disposing of armament and, as a result, organised armed forces intended for the protection of national borders. The lack of efficient control over a part or, sometimes, even most of their territory also causes a major problem for contemporary states. Such a situation occurs in dozens of states in the world.<sup>60</sup> The most evident examples are Somalia, Afghanistan and Georgia as well as Moldova, a part of the territory of which is under control of the authorities of an unrecognised state of the Pridnestrovian Moldavian Republic.<sup>61</sup>

Many regional movements are dangerous because they often lead to national states' destruction. The Taliban's movement that can be observed in Afghanistan or Pakistan or armed groups in Somalia, which was completely destroyed and became a pirates'

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<sup>58</sup> For thorough and deep analysis of the EU citizenship, see *ibid.*, p. 50 ff.

<sup>59</sup> *Ibid.*, p. 245.

<sup>60</sup> International practice allows the existence of a state without a territory but treats it as a temporary situation. There are many examples of such states at present: Palestine, Western Sahara, South Ossetia, Abkhazia, etc. The lack of efficient control over a state's own territory concerns mainly states where there was a secession, which resulted in the development of quasi-state organisms with indefinite status and which are not recognised by the majority of the international community.

<sup>61</sup> The latest history knows cases of over 30 states created after 1945 that were not recognised. At present, there are at least a dozen of states that are not recognised (it is difficult to determine their number definitely and undoubtedly). These are countries that have not been recognised by any member of the United Nations, e.g. Nagorno-Karabakh, Somaliland or the Islamic State, and those recognised by one or a few states, e.g. Abkhazia, South Ossetia (recognised by four states: Russia, Nicaragua, Venezuela and Nauru) or Northern Cyprus (recognised only by Turkey), or a few dozens of states, e.g. Kosovo or the Chinese Republic. It is not possible to mention them all; and it is so not just because of their number but mainly their ambiguous status. It is not the aim of the present article, either. It is only worth mentioning that they differ by the level of their internal organisation progress and they are at a different level of development and efficiency of functioning. What is most important, each of them meets the requirements of the definition of a state to a different extent.

base, are such examples. Moreover, due to a new type of conflicts that need joined allies' response, the use of armed forces escapes national states' control. Decisions on military involvement are taken outside a state, e.g. in the structures of the NATO, which is the biggest organisation of the Euro-Atlantic world and national armed forces are more and more often involved in conflicts outside their countries, e.g. in Iraq, Afghanistan, Chad, Sudan, Congo, etc. At present, there are many non-governmental organisations sometimes operating globally which have armed forces that can pose a threat to national states. It is true in case of Al-Qaeda or the Islamic State. After the intervention in the former Yugoslavia, the NATO formally promotes a new strategy that admits limitation of sovereignty in favour of the priority of human rights and democracy. The latter, however, are treated selectively and not always consistently. It can also be seen how imperfect the European Union military structures and policy are. In the face of the events in the countries of North Africa and Asia after 2011, especially in the light of escalated activity of the Islamic State since 2014, the necessity to establish European armed forces has been more and more clearly marked.<sup>62</sup>

A contemporary state also loses its monopoly on information in favour of global media. The networks of broadcasters, such as e.g. CNN or Al Jazeera, air globally. One cannot overestimate the role of the Internet which enables individual users to exchange information beyond a state's control. This results in the decrease in a state's possibilities of implementing its own information policy. The consequence is the lack of possibility of promoting national history and culture. A state's role is limited to the provision of transmission order by allocation of frequencies for broadcasting radio and television programmes, cellular phone communication and other forms of information transmission.<sup>63</sup>

Integration and globalisation tendencies clearly change the scope of functions of a contemporary state, which is deprived of influence on the national economy, taxes and defence. In the face of limitation to many functions, the role of a contemporary state consists in ensuring the security of trade exchange and investment in the territory of its jurisdiction. In addition, states limit their area of activity to ensuring internal order in given territories. Globalisation and integration causing migration on an unprecedented scale have also impact on the disappearance of citizens' identification with a national state.<sup>64</sup> In such circumstances, there is a clear increase in the role of civil society which takes over many state's competences in the process of decentralisation and considerably shapes political decisions.

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<sup>62</sup> It seems to be justified mainly because the military aims determined by the NATO, as the only efficient alternative to the operations of national armed forces in the field of a state's own defence, are more and more distant from military aims set in the European states. The strengthening tendencies to involve Member States' armies (of course, it concerns European states) in conflicts taking place far away from the European continent prove that. Thus, the establishment of the European armed forces with coherent military aims, protecting the defence interests of the European states seems to be a reasonable step. For more details, see V. Serzhanova, *Europeizacja konstytucji...*, p. 164 ff; also, V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 318.

<sup>63</sup> For more, compare V. Serzhanova, S. Sagan, *Nauka o państwie...*, p. 245 ff; also, V. Serzhanova, S. Sagan, *The influence...*, pp. 226–227.

<sup>64</sup> An interesting study of an individual in globalisation processes can be found in J. Staniszkis, *Antropologia władzy. Między Traktatem lizbońskim a kryzysem*, Warsaw 2009, p. 149 ff.

#### 4. CONCLUSIONS

Contemporary European states undergo dynamic transformations connected with integration processes, which can sometimes be perceived as a manifestation of globalisation. As a result, national constitutions to a greater extent not only register but also open to such processes. The European integration influences them in a particularly strong way. Thus, the phenomenon called “Europeanization of constitutions” in literature becomes more and more common. On the other hand, we observe attempts to introduce regulations that aim to protect and preserve states’ national heritage, culture and languages.<sup>65</sup>

A state’s membership in the European Union causes far-reaching political consequences. It poses new challenges to Member States in the process of adjusting their legal systems, including the content of their basic laws, to the continually changing political and legal reality.<sup>66</sup> The implementation of the EU law into national legal orders sometimes also necessitates amendments to basic laws. This is reflected in all constitutions of the EU Member States.

The processes of limiting states’ sovereignty and voluntary transfer of its part to international and supranational organisations, including military alliances, are not without influence on constitutional regulations. Similar attempts to introduce detailed regulations concerning limitation of sovereignty and precise determination of matters concerning the relations between a state and the European Union, although inefficient so far, have also been undertaken in connection with the Polish basic law. However, in the face of the fact that such an amendment has not eventually been made, it is not out of the question that in more favourable political circumstances, such norms will be also introduced to the Polish Constitution.<sup>67</sup>

Integration processes in the European space clearly change the scope and way in which a contemporary state performs its functions. What happens is not only the limitation of states’ influence on their fulfilment but also the fact that the so far clear borderlines between them are blurred, which is exemplified by external and internal functions. Integration and globalisation to a great extent limit individual states’ ability to manage national economies. The introduction of the common supranational currency in Europe may be a step on the way to take over control of the procedures of the national budget development.

Globalisation and integration processes contribute to increased migration of people and related greater and greater challenges. This considerably influences national states’ internal functions, because it triggers the necessity to introduce

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<sup>65</sup> See, V. Serzhanova, *Europeizacja konstytucji...*, p. 165; also, V. Serzhanova, S. Sagan, *Wpływ procesów...*, p. 318.

<sup>66</sup> For expert comments, see K. Kubuj, J. Wawrzyniak, *Wstęp...*, p. 14 ff.

<sup>67</sup> An attempt to introduce the broadest amendment to the Constitution of the Republic of Poland took place in 2010 within joined legislative work on two bills at the same time: the above-mentioned President’s bill and one proposed by MPs. Both bills proposed to repeal Article 90 and add Chapter Xa instead, which would more precisely and thoroughly regulate matters connected with Poland’s membership in the European Union. Due to the lack of political consensus, the work on the bills stopped after the second reading and was discontinued. Also see, footnote no. 24.

specified legal solutions, breaks down civilization barriers and ensures economic, cultural and educational integration.

As a result, national constitutions, especially new and small states' ones, also at the legislative level, try to protect their national cultural identity. In the era of the European integration, a contemporary state on the one hand is characterised by the weakening of a national state, including its sovereignty, influence on economy and disposal of armed forces, and on the other hand, by the transmission of the central government's competences to local, autonomous or self-government authorities, which strengthens the regionalisation trend, often by the revival of historic regions and even disintegration of national states. The phenomenon has also been observed in many European countries.

Thus, at present, we observe two phenomena that are contradictory in nature. On the one hand, it is the erosion of national states resulting mainly from globalisation processes driven by supranational powers, which causes increased integration aimed at uniting in local (regional) supranational structures. On the other hand, there is a phenomenon of regionalisation consisting in strengthening the influence of territorial division units, including autonomous regions, at the expense of central authorities' territorial jurisdiction of national states. Those, however, still seem to be indispensable as a factor of maintaining international balance between political blocks.

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## INFLUENCE OF THE EUROPEAN INTEGRATION ON THE SHAPE AND FUNCTIONS OF A CONTEMPORARY STATE

### Summary

Nowadays, contemporary European states are undergoing dynamic transformations connected with the integration processes. Thus, national basic laws not only register to a wider extent, but also become open to integration processes, which is commonly called "Europeanization of constitutions". Regional integration causes far-reaching constitutional consequences for the European states. It poses new challenges to the EU Member States in the process of adjusting their legal systems, including the contents of their basic laws, to the permanently changing political and legal reality. Objectives and functions performed by the contemporary European states, particularly their scope and ways of fulfilment, are also undergoing transformation. The key issue is also new understanding of the concept of sovereignty.

Keywords: European integration processes, national basic laws, Europeanization of constitutions, regional integration, the European Union Member States, functions and objectives of contemporary European states, sovereignty

## ODDZIAŁYWANIE INTEGRACJI EUROPEJSKIEJ NA KSZTAŁT I FUNKCJE WSPÓŁCZESNEGO PAŃSTWA

### Streszczenie

Współczesne państwa europejskie ulegają dynamicznym przemianom związanym z procesami integracyjnymi. Stąd narodowe ustawy zasadnicze w coraz szerszym zakresie nie tylko rejestrują, ale także otwierają się na procesy integracji europejskiej, co powszechnie określa się mianem „europeizacji konstytucji”. Integracja regionalna powoduje daleko idące konsekwencje ustrojowe dla państw europejskich. Przed państwami członkowskimi UE stawia nowe wyzwania w procesie dostosowywania ich porządków prawnych, w tym treści ich ustaw zasadniczych, do wciąż zmieniającej się rzeczywistości politycznej i prawnej. Przemianom podlegają również cele i funkcje realizowane przez współczesne państwa europejskie, a w szczególności ich zakres i sposób wykonywania. Kluczowym pozostaje także problem nowego pojmowania suwerenności.

Słowa kluczowe: procesy integracji europejskiej, narodowe ustawy zasadnicze, europeizacja konstytucji, integracja regionalna, państwa członkowskie Unii Europejskiej, funkcje i cele współczesnych państw europejskich, suwerenność

**Cytuj jako:**

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