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# CAN EU'S CONSULAR LAWS EFFECT SOVEREIGNTY?

## AB'nin Konsolosluk Yasaları Egemenliği Etkileyebilir Mi?

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### ABSTRACT

Sovereignty is one of the most vital foundations for the states in general. A state should protect it for all costs no matter the danger and risk. But to protect its sovereignty and independence, a state should make allies and conduct diplomatic, consular and friendly connections with other states.

For this purpose, a state must create an environment and connection that is reliable without affecting their sovereignty or independence. The question is, what happens if these connection for diplomacy starts to affect their very own foundations as a state for the sake of safety and survival. The fraction of this kind of risk against the independence can lead to disasters but according to the international and EU laws, we can expect nothing but diplomatically optimistic ideas in general for a better future.

But states should always be ready for any kind of gaps and dangers against their sovereignties, between the agreements and laws that are presented over them. For this purpose, we shall observe and deep dive over these ideas for to seek if there are any dangers over the sovereignty of states with a case of EU's Consular Laws.

**Keywords:** Consular Law, EU, Sovereignty.

### ÖZET

Egemenlik, devletler için hayati temellerden biridir. Bir ülke, tehlike ve risk ne olursa olsun egemenliğini her türlü bedel karşılığında korumalıdır. Ancak bir devlet, egemenliğini ve bağımsızlığını korumak için müttefiklikler oluşturmalı ve diğer devletlerle diplomatik ve dostane bağlantıları ile konsolosluklar kurmalıdır.

Bunun için bir devlet, egemenliğine ve bağımsızlığına zarar vermeyecek güvenilir ortam ve bağlantılar yaratmalıdır. Soru şu ki: "Diplomasi için gerekli olan bu ortam ve bağlantılar, güvenlik ve hayatta kalma adına bir devletin kendi temellerini etkilemeye başlarsa ne olur? Bağımsızlığa karşı bu tür bir riskin felaketlere yol açabilirliği göz ardı edilmemelidir. Ancak uluslararası yasalara ve AB yasalarına göre, daha iyi bir gelecek için diplomatik açıdan iyimser fikirlerden başka bir durum beklenmemelidir.

Ancak ülkeler, yapılan anlaşmalar ve çıkarılan bu kanunlardaki her türlü boşluk ve tehlikeye her zaman hazır olmalıdırlar. Bu amaç için, AB Konsolosluk Kanunları örneğinde, devletlerin egemenliği konusunda, herhangi bir tehlike olup olmadığını araştırmak için bu fikirleri ele alıp derinlemesine inceleyeceğiz.

**Anahtar Kelimeler:** Konsolosluk Hukuku, AB, Egemenlik.

### 1. INTRODUCTION

Sovereignty is a vital question when consider the EU's status over the member states. All these sovereignties combine and transfers their content to a supranational level for continuing prosperity. But of course, there is always a price for ever lasting peace. We should all acknowledge that the European Union's (EU) authority and power over the national legislatures are significant in general (Csatlós, 2017, p. 28).

In a sense of statue over sovereignty represent the basic control of EU's power. This control can be about protection, security, or asylum in member states or third world countries as well but at the end there is an authority over sovereignty. These abstracts will be the questions for us to answer or observe during this study and we should carefully peel the details of EU consular laws for further understanding over sovereignty.

To begin with first we should understand the Article 46 of the Charter of Fundamental Rights. Article 46 represents; “ Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State”<sup>1</sup>. This article alone stands to protect the citizens of EU, but when we try to look at this from the certain points of view it can affect a state’s security and sovereignty in the senses of national interests.

Of course, what if the national interests get in the way of consular security and the sovereignty of other states comes into being when the aim of perception changes. What this perception refers to my understanding is to the opposition between the territorial principle of "jurisdiction" exerted by each state over the population within its own borders, and the definition of "nationality" binding each state to its own residents (Battini, 2011, p. 173).

Jurisdiction is the main source of our question which we will observe, since states, citizens and their allies agrees upon various borders and limits over power which of course can be stretched over for some sense. But how far can it be stretched and in what sense when it comes to the sovereignty of other individuals or states in general. But furthermore, the EU’s consular law balances the jurisdiction on a supranational level for its member states and external allies as well. For the EU’s balance we can observe and understood that the main emphasis of the chapter is on the belief that consular policy is a crucial element in measuring both the extent of creativity and the durability of national diplomacy in the face of a distinctly European diplomatic order (Pasarín, 2015, p. 356). For this kind of diplomatic order there should be various arrangements and compromises through some cases and maybe over sovereignty as well, but how large these compromises will be up to the states.

## 2. CONSULAR LAW AND ORDER

The consular law undoubtedly, one of the most complex mechanism of the international law and politics. Consular relations, the administrative object of consular law, are part of foreign relations, the inter-state relations formed by an agreement between the two States on the operation of consular functions by the bodies of one of the other countries (Maftai, 2016, p. 66-67). To establish an environment of order and international trust, there should have been rules which would prevent miss directions and diss trust in general. Founding of trust would create a safe space and security for states to contact and open channels with each other to ensure even more cooperation. But of course, these tools are can be directed and directly named as consuls. For this direct purpose of security and order we can observe from the EU as an example;

“Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.

The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection.<sup>2</sup>”

As for the indication of the article comes with the diplomatic and consular protections, we all know that the European Union is an evolving organisation with integrated political involvements with its member states. What will happen when the order becomes the tools for political involvement for such evolving organisations? The answer to that question lays the foundations between the line of protection and the benefit which will eventually affects the sovereignty of the very states which are

<sup>1</sup> Article 46 of the Charter of Fundamental Rights of the European Union.

<sup>2</sup> Article 23 of the Treaty on the Functioning of the European Union (TFEU).

in the heart of the EU as well. In a global scale of impact over order and the consular laws we should also discuss the balance of powers, jurisdictions and immunities of the states in other states which are based on laws in general.

To keep the order in the new world order, especially after the collapse and divide of the Soviet Union and with the dawn of the internet era is more complicated. The internet can also encourage an information seeker, when attempting to meet a foreigner or even a foreign country, to avoid the "middle-man" such as bureaucracy (Choi, 2006, p. 117). While everyone else can use the internet over the diplomatic and consular usage, the sovereignty might start to be shared among many. Decisions and impacts over the course of action which are taken through the internet can cause different disorder over the states. Which we all should understand sovereignty and diplomacy is very fragile.

The possible risks through the fear of fragility over sovereignty can cause many divisions over ideas and opinions, this effect can be very dangerous for European Union, because this organisation (EU) is a union and involves supranational foundations. When the sharing of these powers and sovereignties starts to be more and more, all we can expect is calamity at the end, with fear of course. Which is where the consular affect and protection can show this calamity and connection through fear at the end. But for that order of legality and integration of sovereignty between themselves, they increase the debate on competition between legal orders and creates room for member states to take measures outside the legal order of the community in general (Micklitz, 2017, p. 508). From which I am trying to make an even further connection that relates the sovereignty and order within the EU.

### 3. THIN LINE BETWEEN THE COOPERATION AND SOVEREIGNTY

Diplomatic and consular relations are based over cooperation and holds a fragile line with sovereignty but of course when we start to compare and distinct the terms of cooperation and sovereignty, we should first observe the motivations behind one's actions. For this purpose, co-operation is essentially a sequence of mutual behaviour and their reasons as they are as diverse as its goals, spreading to all realms worthy of state action based economics, military, political, educational, social and humanitarian initiatives as they goes (Loewenstein, 1954, p. 224). The main factor in this topic is mutual behaviour and of course the fact of benefit between states. To act within the concept of cooperation, the consular activities can determine the protection and political ethics in a higher sense for ethics and especially for within the foundations of sovereignty.

What happens when the cooperation starts to render the sovereignty? According to the instrumentalist understanding, it is only under advantageous terms that states pledge themselves to international and regional cooperation, that is to say, where the cost of ceding state sovereignty is outweighed by the mutual and cooperative solution (Spandler & Söderbaum, 2019, p. 3) . Which this sentence determines the relations between sovereignty and cooperation as well. The mutual consent is the most important fact of a consular and diplomatic relation between states as it was stated in the Article 2 of Vienna Convention of Consular Relations;

“ The establishment of consular relations between States takes place by mutual consent.<sup>3</sup>”

But what if this mutual consent is a sinister act of infiltration through diplomatic means to render a state's sovereignty which we know state tend to be very pragmatic for many reasons. What we can perceive at the at that mutual consent of states or through organisation (which we study right now is EU) can be persuaded through many means which can affect its citizens just for the masks over diplomacy and protection in the end. Philosophically speaking, many political and diplomatic persuasions should be considered pragmatic in general, but diplomacy should always be non-aggressive and optimistic as well. This defines the line of diplomatic and consular relations between cooperation and sovereignty as well.

<sup>3</sup> Article 2 of Vienna Convention of Consular Relations.

For the EU's consular relations and the mutual recognition with consent, it secures its citizens individual rights by the Article 23 of TFEU as we know. But in any other situation, however an EU Member State will not be responsible for a violation of the non-discrimination requirement, because it is in effect not obligated to provide consular and diplomatic security to its citizens (Vigni, 2010, p. 3). But in the face of this case, what is sovereignty of a state without the trust of its citizens. For EU, the member states are mainly responsible for assisting their residents, perhaps one might say exclusively. Cooperation is definitely important, even inevitable, but other factors especially national sensitivities and public opinion, need to be considered (Porzio, 2008, p. 95).

That exact reason why this confusion happens when these opinions and laws clash between the cooperation and sovereignty with the member states and the European Union. Because a state might decide to ignore the facts of protection in the face of national interest but what happens when the EU (which is a supranational organisation) decides to intervene and disturbs the bigger picture of that state? Of course, an agreement and cooperation in a diplomatic area requires mutual consent, especially in the EU but at what cost we might ask at the end. This basic example presents us the thin line we were trying to observe at the first place between the sovereignty of the states and the cooperation which is agreed upon the states for diplomatic and consular purposes in general.

#### 4. DISCUSSION

Diplomatically speaking when a state submits its rights to a supranational organisation (EU in this instance), it releases some of its sovereignty to that organisation. Which results in the cooperation for a whole bigger picture in general. Like I presented the foundations of these rules through this paper now we will try to decide, how much can EU interfere with a state's sovereignty? For instance, we can give the impending example of internal security of EU and its member states. Because EU is a union which is responsible for their economic, social and diplomatic welfare. These reasons can be shown as the excuses to interfere with other member states' sovereignty in general but of course consular protection fall into that category as well.

But what of the effects of EU's consular law outside of the union which regulates over the protection through non-member states. It would still protect the interest of the member states but when protecting through consular relation it can still interfere with their sovereignty. Protection and security can lead to many miss-directions, especially in the 21<sup>st</sup> Century. This reasons alone can lead to many distrust and tackles over the mutual benefits and cooperation for diplomacy alone. Of course, we should remember EU is not a state. But like the political structures of the world, it is evolving maybe towards that phase. As EU member states remain independent diplomatic players themselves, the EU's restrictions on the initiation and conduct of diplomatic relations are frequently put to the test. Moreover, as the EU is not a nation-state, it does not have at its hands such strictly state-like competences in international diplomatic law (Wouters, & Duquet, 2012, p. 33).

But how long can a state be independent since they are in a union which feeds them with extreme economic ties and integrates them even closer. With these kinds of effects, a state cannot remain completely sovereign from one point to another. Let us we imagine an addict, what would happen if its source of addiction dries up? The answer is, it would fall into the withdrawal, it would suffer and for to stop this suffering they would give away their rights, freedoms and sovereignty in general, especially in diplomatic and consular areas. This is why we are asking the questions to understand the deeper foundations of EU's consular laws for further evolution over politics for both its member states and regarding non-EU states as well.

But when in place of a new EU members have managed to do even more by themselves, largely because they can work more efficiently to advance their goals within the context of formal decision-making laws which the power relationship between central and peripheral EU members is essentially reversed by membership and again over the next two decades, the large pattern in EU politics is expected to be highly affected by this changing balance of power (Moravcsik, & Vachudova, 2003,

p. 52). These change over the balance of power at the end would effect the relations between states and EU which would be the drastic control over them, especially over sovereignty because as a new state you are in the new territories. These question are purely based on diplomatic relations which can be observed and put over questions in the future to have a better understanding upon the dangers or even possibilities of the EU's consular and diplomatic effects over the sovereignty of member states.

## 5. CONCLUSION

There can be no doubt that there are dangerous possibilities of political realism of the world which effects every diplomatic actor on the Earth. Settings of the EU's consular policies and relations laid the foundations over protection for the EU citizens both in and out of the EU. Main values of the sovereignty which we discussed over this paper resides in the structures of the European Union. At the end it ties to the political connections over consular laws and diplomatic relations with other states. A sovereign state (especially in the EU) depends on the EU's influence both economically and most of the cases politically. Union demands ever-closer union, and this is why it can surround and effects the member states' sovereignty when we observe this at the end over consular relations. Because EU is a supranational organisation and member states give a part of their sovereignty to that organisation at the end of the day to benefit from the EU's large influence.

Furthermore, that is one of the main reasons why I gave the example of an addict and related to that terms with the member states of the EU for further understanding of why these states open their sovereignty to the EU especially in consular and diplomatic relations. Related connection over the diplomacy and consular within a supranational organisation with many other sovereign states can bring many complication to their independence which would result in the loss of decision making or even sliding of sovereignty for the states in general.

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