EU`S HOPELESS CRISES IN POSTMODERN REALITY

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THE ENDEMIC WRONGS OF THE EU

Although we are going to put forward several statements regarding problems within the EU, they should not be interpreted as a way towards possible solutions. EU structural problems are endemic and thus do not have solutions. The list may include 10s of items but even some of them, crucial ones, lead to the EU's hopelessness. Let's name some of them. First, the lack of economic coherence; for instance, the EU does not attempt to balance the agricultural subsidies of East and West. The EU quite readily carries out the interests of its West against the crucial interests of its Centre and East: France had been ready to deliver the Mistral-Class battleship to Russia to give it capability of marine operations against the Baltic Coast. Germany used its corrupt contacts to construct the Nord Stream-2 gas pipeline to establish a German-Russian supply-line to bypass EU Member States Poland and the Baltic states, nothing to say about Ukraine that has not been significantly supported by the same EU against Russia's intervention in the Donbass area and occupation of Crimea. The most recent dissolution of European unity has occurred on the ideological level – starting from the dispute regarding Soros and ending with establishing current European values. Although Robert Schumann stressed in the very early stages of the EU that it should be based upon Christian values, it is Central Europe – Poland, Hungary et al. – that actually carries them out. The third element is the diversification of the EU's foreign policy. Like the opening of Germany's borders to migrants without the permission of the transit countries. The first reaction by Merkel to Hungarian efforts to defend itself and other countries in Central Europe had been extremely aggressive and negative. Only now (in 2020), many years later, have the German migrant policies become more reasonable, humane and caring, but even today Germany has not offered apologies, either to Hungary or Austria, who had also fallen victim to German imposed migrant policies.

Instead of analysing all these crises individually, let us state a general situation: it has demonstrated that the risk of the disintegration of the EU is much more than a rhetorical device – a toy monster used by scared politicians to enforce austerity on unhappy voters. It is not only European economies but European politics that are in turmoil.[1]

To add to the problems mentioned above, we should state that analysts claim that the crisis will continue to deepen because tensions on financial markets have risen steeply. Although we know that the introduction of the euro has been primarily a political project (it does not correspond to the inevitable demands of Mundell's optimum area) – the Eurozone must impose political unity and centralization upon its members – it may work the other way around in the negative case: political failures might start to destroy the Eurozone. It is noteworthy that in the European parliament there have been several discussions on how to squeeze out of the Eurozone. Discussions not only by euro-countries (Finland, Estonia) but by countries with independent fiscal systems (Sweden, Norway, Poland, Denmark, primarily Northern Europe).

To look at some technical details: "The rate of return of Britain's ten-year debt securities has never been lower in their 300-year history, whereas the interest rates of Spain's debt securities have risen to new heights."[2] The rate of return on Germany's debt securities is also extremely low. At the same time, the eyes of many European Union Member States, especially the new ones, are turned towards Germany. It is Germany from whom decisive actions are expected to solve the financial crisis. "Germany has to decide whether to become a good-natured hegemon or to leave the Eurozone. The first option would be considerably better. It would require two new objectives: first, establishing a more or less level playing field between debtor

[1] I. Krastev. The European dis-Union. Lessons from the Soviet collapse. 2012. Available at http://www.eurozine.com/articles/ 2012-07.-26-krastev-en.html.

[2] G. Soros Euroopa liidu tragöödia ja kuidas seda lahendada (Tragedy of the European Union and How to Solve it).– Tallinn: Vikerkaar 2012, No. 9, p. 63 (in Estonian).

and creditor states, so that they could refinance their government debt on more or less equal terms. Second, aspiring to a nominal growth of up to 5%, so that Europe could grow out of its debt burden."[3] This is what we have said: the current financial crisis is not only a crisis of the euro, but a crisis of the entire European Union (Keeping in mind that the English pound is technically not related to the euro but it is related to Brexit policies).

Therefore, solving this crisis, as well as the further integration of the European Union and the future of the European Union as a postmodernising state, first and foremost, depends on Germany taking the leading position. The first steps to solving this crisis have already been taken, mainly under the lead of Germany. By that we mean the European Stability Mechanism (hereinafter: ESM).

But before going further, we need to realise that although some steps by German banks, especially the ECB under German guidance, may really solve some problems, it is highly doubtful that all the members of the EU would be ready to accept this German intervention. No 1: as the Eurozone is not a Mundell area, it is evident and visible that increasing interest rates in one country may not be beneficial to another, whose economic cycle is just the opposite. This is fiscally evident (look at our recent example of Spain and Great Britain). No 2: Germany is not a very reliable and reasonable political partner within the EU. We mentioned here the Nord Stream case and irresponsible and inhumane migrant policies earlier. Therefore, there is a real risk of fiscal policies carried out without much attention to the interests of the other countries.

We need to make a statement here: German politicians like to make references to their Nazi past when it is convenient. Like when underfinancing their military budget or contributing otherwise to NATO activities. But they do not refer to the questionability of modern policies – like Nord Stream that had been started by the German Chancellor just one week after his resignation when he was hired by Putin's Russia. It is most probably the highest case of corruption in the last 30 years but is never paid attention by modern Germany. And this has definitely nothing to do with the Nazis but with Merkel.

ESM as politics

The ESM is a means established by members of the eurozone, enabling them to help the other eurozone member states in cases of financial difficulties. If one eurozone member is not given a loan from the market to finance its activities, it can ask for help from the other Member States, under the guarantees of which the ESM can take a loan from the market and transfer it to the member state to ensure the sustainable development of the creditor state. Since the Member States are deeply interconnected with one another through export and import relations, they should join forces mainly to ensure the economic competitiveness of their region. At the European Council meeting that took place on 16–17 December 2010, the Member States of the European Union (EU) agreed on the need to establish a permanent stability mechanism to ensure the financial stability of the EU Member States that use the single currency euro (the eurozone). At the same meeting, the EU Member States also agreed on amending Article 136 of the Treaty on the Functioning of the European Union (TFEU) in a way that the Member States would have a clear permission to create a stability mechanism. On 11 July 2011, the Minister of Finance signed the European Stability Mechanism Treaty (ESMT). On 9 December 2011, the heads of governments of the eurozone Member States agreed on amending the ESMT at the European Council. The purpose of the ESM is established under Article 3 of the European Stability Mechanism Treaty that states, "The purpose of the ESM shall be to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. For this purpose, the ESM shall be entitled to raise funds by is-

[3] G. Soros, *ibid.*, p. 65.

suing financial instruments or by entering into financial or other agreements or arrangements with ESM Members, financial institutions or other third parties."[4]

Issuing from the interests of economic and financial stability, the author finds the purposes of the ESM as an international financial institution necessary and justified. The ESM is, by nature, an international agreement that is regulated under international law. By that, an international financial institution is established, that is not an EU institution. The ESM has its members, voting procedure, its employees have certain privileges and immunities. The participating states of the ESM create new rights and obligations for themselves under this treaty. However, problems arise when the ESM as an international agreement is analysed from the point of view of the sovereignty of the Member States. Whether and to what extent are the Member States willing to transfer part of their sovereignty or right to make decisions in solving financial and economic issues to the international financing institutions and what are the functions left to the Member States in deciding over these matters? Let us try to analyse this issue from the point of view of one of the EU's smallest Member States – the Republic of Estonia.

The ESM passed the constitutional review of the Chancellor of Justice in Estonia. According to the Constitutional Review Court Procedure Act (CRCPA), the Chancellor of Justice has the right to contest international agreements to ensure the performance of the provisions stated in §123 (1) of the Constitution; that is, to ensure Estonia would not enter into unconstitutional foreign agreements. Under EU law, there is a principle of acquired competence and the EU has three types of competence – exclusive competence, shared competence and competence to take measures to support, coordinate or supplement measures taken by the Member States. When the monetary policy of the eurozone is under the exclusive competence of the EU, according to Article 5 (1) of the TFEU, the EU only has a supporting role in coordinating the economic policies of the Member States. This means that in this field, the Member States can execute their competencies independently, including cooperate for that purpose and include the EU institutions into their cooperation. The Chancellor of Justice applied for the Supreme Court of the Republic of Estonia to "declare Article 4 (4) of the European Stability Mechanism Treaty signed on 2 February 2012 in Brussels to be in conflict with the principle of parliamentary democracy stipulated with §1 (1) and §10 of the Constitution of the Republic of Estonia, and §65 (10) and §115 of the Constitution".

In brief, the arguments of the Chancellor of Justice in defence of the underlying principles of the Constitution of the Republic of Estonia are as follows: first, Article 4 (4) of the ESM infringes the principles of democracy and parliamentary reservation, as well as budgetary powers of the Riigikogu. "The principle of parliamentary democracy includes the chain of legitimacy and political responsibility, in which executive power is responsible to the parliament, and the parliament to the people as the highest power.… A budget is also an instrument of the Riigikogu that is used to perform the obligation provided in §14 of the Constitution to ensure people's fundamental rights and freedoms. … Budgetary choices belong to the core competences of the Riigikogu, on which the legislature has an extensive margin of decision."[5] Second, the ESM creates a threat of significant increase in the debt obligations of the Republic of Estonia. "The nominal value of the Estonian subscribed share capital in the ESMT is approximately 8.5% of gross domestic product; that is, an exceptionally large proprietary obligation. … It cannot be ruled out that the ESM debt obligations must be reflected as government debt in the meaning of TFEU Article 126 (2) b) and the TFEU Protocol No. 12 Article 2."[6] Third, the excessive generality of both the ESMT and the European Stability Mechanism Treaty on the regulation of the provision of financial aid may infringe the competencies of the Riigikogu of the Republic of Estonia in influencing the budgetary processes of the Republic of Estonia. "By ratifying the ESMT, the Riigikogu merely decides on adopting a financial obligation, but the terms on which the ESM may use the right to provide financial aid that is secured by Estonia has been stipulated very vaguely. ... §65 (10) of the Constitution together with the principle of parliamentary democracy and the Riigikogu's budgetary powers provide that the Riigikogu must have a chance to influence the terms and conditions of the financial aid agreement via the Government of the Republic. An unavoidable precondition for the involvement of the Riigikogu is that the ESM Board of Governors shall decide on matters related to the provision of

[4] The European Stability Mechanism (ESM). Article 3. Available at http://www.efsf.europa.eu/attachments/esm_treaty_en.pdf.

[5] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

[6] The Treaty on the Functioning of the European Union. Article 126. Available at http://eur-lex.europa.eu/LexUriServ/ LexUriServ.do?uri=CELEX:12008E126:EN:NOT.

financial aid provided in ESMT Article 5 (6) f) and g) exclusively by mutual agreement. Article 4 (4) of the ESMT, however, allows for the authorisation of ESM financial aid by an 85% qualified majority, meaning that the Estonian vote is not decisive. Agreement of the six largest countries is sufficient for the required 85%."[7] The author must agree with the statements of the Chancellor of Justice in the matters concerning the protection of Estonian sovereignty.

MAY THE ESM BRING SOVEREIGNTY BACK?

However, sovereignty has ceased to be something absolute a long time ago in today's postmodern world (like very many other things – botanical classifications, divisions of political parties etc). Its meaning depends upon the situation for which sovereignty is needed. Therefore, the arguments of the opposite side must also be considered – in that case, it is the Government of Estonia, and the Ministry of Finance to be more precise. The arguments of the Government in support of the ESM are as follows: first, the request of the Chancellor of Justice of the Republic of Estonia to the Supreme Court of the Republic of Estonia is not permitted, since… "valid legislation does not enable the Chancellor of Justice to initiate standard control in the stage of *ex-ante* verification. The Chancellor of Justice has a constitutional function in *ex-ante* and *a posteriori* control of constitutional review. For an international agreement to be ratified, the contestable legislative act in the meaning of §142 of the Constitution is the ratification act, which does not exist in case of the ESMT. Although the first contribution to the ESM is envisaged in the state budget of 2012 by the Riigikogu, it does not mean ratification of the ESMT in the meaning of §121 of the Constitution and is not an independent basis for incurring expenses."[8] Second, the ESM should not be handled completely separately from EU law, the economy and monetary union. The link between the ESMT and EU law is affirmed by European Council decision No. 2011/199. The Court of Justice, the European Commission, the ECB and the Council of the European Union are also involved in implementing the ESM. In response to that, first the author agrees with the statement that in developing EU integration processes, referring to international law is inevitable, and it cannot and should not be handled separately from EU law. Rather, the connections between international law and EU law in today's globalising world should be treated as connections between general and special norms, the universal and the specific. In legal literature, for example, the Schengen convention is also considered a source of EU law. The EU integration process is further developed in some situations by international law and these treaties are closely related with the regulatory object of the EU treaties. Inevitably, we must agree with the statement that the main purpose of the ESM is the continued stability of the single currency of the EU, the advancement of EU objectives and the protection of the interests of the EU Member States. Therefore, the ESM must be assessed based on Estonian membership in the EU, since its contents and nature is related to EU membership and strongly concerns EU law. The author finds that, third, one of the strongest arguments in favour of the ESM is the argument that by accession to the ESM, the general right of defence based on the concurrence of §10 and §13 (1) of the Constitution, aimed at the protection of all rights enacted in 1973, is ensured. "The state has an obligation under financial stability as the principle of the Constitution to establish and develop legal provisions and take measures to protect an important public interest. Financial stability cannot be felt in the conditions of the normal functioning of the economy, but a lack of financial stability may endanger the functioning of a state in addition to the subjective rights, as well as safeguarding of other constitutional principles and values."[9] This argument also accords with our view that for a small country in today's world, it is extremely important to share its sovereignty through integration primarily with such a region that is closest to the small country culturally and historically, and would help it realise its shared sovereignty in the best possible manner. For Estonia as a small economy and political entity, this is undoubtedly the European Union. "This brings about changes in competencies of the state authorities of the Member States. Both the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union and the ESMT affirm the need for further development of the EU integration process by using international

[7] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

[8] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

[9] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

law or closer cooperation provided under the EU treaties. At that, the boundary between international and EU law is vague. Although amendment of the TFEU Article 136 does not provide for an obligation to establish the ESM this article ties the ESM to the EU law."[10]

For the EU integration processes and the economic and monetary union to function better, the eurozone countries have transferred their monetary policy to the exclusive competence of the EU. "The priority of Estonia in the EU in 2011–2015 is reinforcement of the eurozone. Although economic and monetary union is the EU's objective and purpose, ensuring its functioning and preservation of its stability is an obligation of the Member States. If Estonia would stay out of the ESM, it would not be able to decide on the politics of the currency valid in Estonia. For that, coordinated, efficient and rapid joint activity of the Member States is necessary. There have been occasions in the history of the EU when the Member States have entered into treaties with the EU judicial area for horizontal achievement of the goals of the EU. Such treaties are also considered to be sources of the EU law."[11]

The Supreme Court of the Republic of Estonia may declare an enforced or unenforced international agreement or its provision unconstitutional (§15 (1) 3)). The Supreme Court *en banc* of the Republic of Estonia took a stand after long and careful analysis and consideration of the arguments of both parties, so that the Chancellor of Justice requested a constitutional review of Article 4 (4) of the ESMT, not the entire ESMT. This was the position the Chancellor of Justice expressed when stating the reasons for the request and in the propositions provided for the *en banc* session of the Supreme Court. The Chancellor of Justice also stated in the session that he had contested only Article 4 (4) of the ESMT.

The Supreme Court *en banc* of the Republic of Estonia gave its interpretation of the ESMT, from which we will consider mainly the most important statements concerning the Supreme Court's views on the sovereignty of the Republic of Estonia. First, the Supreme Court of the Republic of Estonia emphasises the importance of the sovereignty of the nation and state of Estonia, stating that, "Pursuant to §1 (1) of the Constitution, Estonia is an independent and sovereign democratic republic wherein supreme political authority is vested in the people. With this provision the principle of sovereignty has been fixed constitutionally as the basis for the Estonian people and the State of Estonia. The sovereignty of the people gives rise to the sovereignty of the State and thereby all the state institutions get their legitimation from the people. The core essence of sovereignty is the right of discretion in all matters irrespective of external influences. One element of a state's sovereignty is the state's financial sovereignty, which includes taking decisions on budgetary matters and on assumption of financial obligations for the State."[12] Treating sovereignty today as a resource and a competence that can be manipulated, it has acquired a new substance and is operationally compared to the classical concept of sovereignty.

Second, the Supreme Court of the Republic of Estonia has established that when treating the sovereignty of the Republic of Estonia, one should take into consideration the contemporary context. "The wording of the sovereignty clause of the Estonian Constitution is strict, providing that the independence and sovereignty of Estonia are timeless and inalienable. The sovereignty provision of the Estonian Constitution may not be interpreted so that Estonia may not enter into international agreements or assume obligations before other states. The norms of the Constitution are characterised by a wide discretion of interpretation. In the assessment of the Supreme Court *en banc*, despite the strict sovereignty clause the present-day context shall be considered in furnishing sovereignty."[13]

Third, sovereignty is nothing absolute since states enter into international agreements. "Entry into international agreements

[10] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

[11] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

[12] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

[13] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

is allowed by Chapter IX of the Constitution. If we interpret sovereignty as absolute, entry into international agreements should not be allowed because entry into an international agreement always means restricting one's sovereignty to some extent. It follows that the Constitution does not require, despite the strict wording of the sovereignty clause, observation of absolute sovereignty. In her opinion submitted to the Supreme Court, Dr. A. Albi refers to the fact that membership in the EU and in international organisations has become a natural part of sovereignty in this day and age".[14]

Fourth, Article 4 (4) of the Treaty infringes the financial competence of the Riigikogu arising from §65 6) of the Constitution in conjunction with §115 (1) of the Constitution, and from §65 10) of the Constitution in conjunction with §121 4) of the Constitution. "The Riigikogu cannot fully review, through the representative of Estonia, whether and how financial assistance is granted in an emergency procedure under Article 4 (4) of the Treaty. At the same time, a decision on granting financial assistance taken under Article 4 (4) of the Treaty may affect the fulfilment of Estonia's obligations to the ESM in the future – by way of a capital call (1,153.2 million euros). In the opinion of the Department of Economics of the Estonian Business School it is pointed out that the state must be ready for additional financial payments to the extent of the amount referred to. Therefore, financial assistance granted in an emergency procedure under Article 4 (4) of the Treaty may affect the revenue and expenditure of the Estonian state budget, and thereby restrict the budgetary-political choices of the Riigikogu. Such an infringement of the financial competence of the Riigikogu also brings about an infringement of the principle of a democratic state subject to the rule of law and of the state's financial sovereignty since indirectly the people's right of discretion is restricted."[15] Regardless of the fact that the ESM constitutes a partial infringement of the people's right of discretion, the Supreme Court found that Article 4 (4) of the ESMT is not contrary to the Constitution of the Republic of Estonia, and dismissed the request of the Chancellor of Justice.

Deepening economic and financial crisis that carries a paradigmatic nature has not slowed down, but rather accelerated the deconstruction of a modern state. This crisis is mainly related to the exhaustion of the modern, primarily consumption-oriented, *status quo* economic model. Where do we go next, when the so-called double-consumption resting on debt has exhausted itself? From this point of view, different protests against every possible measure of the EU (the ESM, etc.) that have so far been proposed for saving the euro, are understandable. When the ordinary citizens of the EU have gathered under the slogan 'This is not our debt!' in their manifestations, the EU Member States have tried to confront these measures in a legal manner, justifying opposition to the measures planned for solving the crisis with the infringement of the sovereignty of the eurozone countries. Examples of that are the Tea-Party movement in the USA and "green vests" in France – none of them organized by a single entity but both developed from strictly economic and fiscal causes.

We have reason to start to guess that, in relation to possible ways out of the fiscal and financial crises, we should distance ourselves from the different concepts of a modern state and sovereignty that do not correspond to the new political realities of modern Europe. More than that, we have to instantly take the second step as well, to jump over the postmodern state as well. But, yes, the first criticism of the planned EU financial crisis measures should be treated through the conflict of a modern *versus* postmodern state. First and foremost, it is a multipolar world in which development is handled not only through greater regional autonomy and the new transnational economic model, but also through a more pluralist society. Proceeding from this context, more attention should also be focused on the question of what does the economic model of a postmodernising society look like.

When the classical state and legal structure are about to collapse, what will happen to the modern economic system? It can be assumed that this collapse does not mean a premodern state type of chaos, but a new order.

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[14] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

[15] Estonian Supreme Court Decision No. RK 3-4-1-6-12, 12.07.12. Available at http://www.riigikohus.ee/?id=11&tekst=222548593#_Toc329264065.

POSTMODERN STRUCTURE BEFORE AN AFTER-POSTMODERN STATE

Many positive definitions of postmodernism and phenomena around it are actually not "positively" defined. They are all related to modernism and not each other. Therefore, while continuing our study here we have to indicate this terminological problem. Postmodernism has been defined by Lyotard through several features – the disappearance of big narratives and classifications, among others. Modernism existed before postmodernism and lacked the Lyotardian features plus some drastic features related to postmodernism (same big stories, strictly defined Newtonian physics). When we can trace the movement from modernism to postmodernism (in art the borderline is most visible in the shift from impressionism to expressionism, as totalitarian art is still modernist). The next step back is pre-modernism, which is actually not related to the subsequent steps towards the modernisms. Premodernism (renaissance) is actually a thing in itself and not a step towards any type of modernism. Leonardo da Vinci is not a step towards Picasso and Michelangelo did not prepare the Eiffel Tower. Michelangelo's helicopter design features many elements of the modern counterpart but was just an engineering exercise and not something prepared for production. The theoretical issue, therefore, is whether the after-postmodernism is similarly disconnected with modernism or presents the movement towards something completely different. It is evident that we do not have an answer to that, as we are living through this change at the beginning of the 21st century.

Perhaps it is not even important to find this answer but it seems to us important not to overstress the continuity of the EU crises and the future of the European philosophical, political and legal being.

Consequently, the EU will be a network-based structure and order without a strong central power. A typical example may be the activity of the European Commission. It is characterised by abandoning differentiation between foreign and domestic policies, mutual interference in each other's domestic issues, rendering state borders insignificant, mutual openness, transparent safety, and so on. It is characteristic of postmodern states that the *raison d'etat* and immorality of the Machiavellian state theories have been replaced by a moral scientific character that includes both international relations and internal policy.[16]

But it is noteworthy that in late September 2010, Hungary refused to have any political and professional contact with the Vice-President of the European Commission due to his disrespectful behaviour towards that country. On a minor level, one of the authors of this article (Igor Gräzin) initiated a brief demarche against one of the fraction-leaders (Guy Verhofstadt), who had insulted the Estonian government by labelling one of its parties fascist. These two examples prove that overall liberalism in the EU may be replaced by dictatorial policy-making if that is preferred by strongmen's political interest in supressing the countries and political groups they happen to dislike.

However, the new security system in a postmodernising world is addressing the problems that have changed the balance of powers in the today's world. The most outstanding postmodern agreements may be considered the Treaty establishing the European Community and the Treaty on Conventional Armed Forces in Europe (CFE). The list can be continued with institutions that involve the apparatus of Europe's postmodern states – the Organization for Security and Co-operation in Europe (OSCE), the Chemical Weapons Convention (CWC), the International Atomic Energy Agency (IAFA), among others.

In the search for a constitutional identity of the EU, how to differentiate between the strong ethnic values related to national identity and the 'thin' European norms should be considered, and instead of searching for ways to unite them, the virtues of their lasting opposition should be seen. "Such differentiation between 'values' and 'norms', 'moral' and 'legal obligations' or 'loyalty' and 'obligation' is one of the most important elements of liberal constitutionalism. It does not mean that values belong to the premodern world and should be abandoned gradually, or that the people would be happy to accept abstract, rational norms. It simply means that in a pluralist world, conflicts of loyalty are better resolved by agreed norms, rather than 'shared values'."[17] In such a way, the biggest strength of the EU may be the utmost abstractness of the European construct on one hand, and on the other, its 'value-free nature'. This means that people with different values may reach a consensus

[16] R. Cooper. The Breaking of Nations, Order and Chaos in the Twenty-First Century.– London: Atlantic Books, p. 50.

[17] J. Lacroix. For a European constitutional patriotism. – Political Studies 2002, 50(5), pp. 944–958.

through the common norms that they accept. They may but they needn't, as we had stated earlier, because the strength and number of obstacles is too large and none of us is able to see how they can be overcome.

And ultimately, the constitutional independence of a state can be considered absolute only until it comes into contact with certain conditions of formal and substantive legitimacy. Several international agreements and organisations have reduced the autonomy of states. The peculiarity of today is that such sovereignty has started to be divided between states. Several final decision making rights concerning different policies, like economic, planning, and even social policy, have largely converged on international organisations like the WTO, the UN and the European Court of Human Rights. Regional autonomy has increased, challenging the traditional modern federal systems and making them increasingly consider confederacy in the new postmodern context, or consolidation in which shared sovereignty based on consensus could become the norm for today's statehood. The abovementioned also concerns the EU. Next to national sovereignty, human sovereignty is about to become more important in today's postmodernising world. This is attested by the fact that today's postmodernising law is characterised by highly intensive activity in the field of human rights.

The deconstruction of a modern state and the development of the EU as a modern postmodernising democratic state based on the rule of law, largely related to the globalising world, the increasing importance of the media, public opinion, the interests of certain groups and regions, and the reinforcing civil societies, could still evolve in some direction and without much of a probability. The postmodern state defines itself in today's globalising world still through defence policy. Although even NATO has problems here. The confrontation of parties in Cyprus is still out there. Turkish involvement in the Karabakh conflict is not within the framework of NATO as such but Turkish involvement as a NATO country is definitely outside NATO's best plans and interests. The idea of several NATO countries led by Germany to create European armed forces (i.e. to eliminate American involvement on the continent) will definitely result in the creation of a weak army outside the interests of the European majority (the Visegrad and Baltic states). But still, NATO's involvement – "It does so as a matter of political choice. There is no iron law of history that compels states to take the risk of trusting transparency rather than armed force as the best way of preserving its security."[18] A postmodern state is more pluralist, more multicultural, more citizen- than nation-centred and less centralised than a bureaucratic modern state. Although the EU has been on its way towards such a new type of state for a while, the deconstruction of the modern state has not been completed yet. Consequently, one Cooper notes, "This development of state structures is matched by a society that is more sceptical of state power, less nationalistic, in which multiple identities thrive and personal development and personal consumption have become the central goals of most people's lives… the struggles of the twentieth century have been the struggles of liberalism – the doctrine of the individual – against different forms of collectivism: class, nation, race, community or state. On this basis, the United States would also qualify as a postmodern state".[19] In the author's opinion, the entire globalising and post-industrial world is in its essence potentially postmodern in the sense of the deconstruction of statehood in its modern meaning.

It is inevitable structurally that the EU still corresponds to several features of the postmodern state (If it didn't correspond, it could not exist). First, the postmodern EU should be multi-subject, meaning establishment of a mainly network-based institution with a modest hierarchy, and the corresponding governing, in which the principle of subsidiarity would become more important than the principle of supranationality. Based on that context, it could be asked whether governing or state authority is a form of sovereignty. If yes, sovereignty ultimately depends on state authority. Herewith, the scale of alternatives as to governing is wide. Post-sovereignty or governing a supranational state, late sovereignty, open statehood, uniform belonging of sovereignty to the Member States via an intergovernmental conference, etc. However, the most vital of these theories is yet to develop.[20] When viewing sovereignty outside state authority, as is often done, there is a threat that sovereignty may lose its meaning altogether due to its general nature.

Second, as a network-based flat institution, the EU would also become more pluralist and minimalist than a modern state,

[18] R. Cooper. The Breaking of Nations, Order and Chaos in the Twenty-First Century.– London: Atlantic Books, p. 50.
[19] *Ibid.*, p. 51.
[20] N. MacCormik. Questioning Sovereignty. Law, State, and Nation in the European Commonwealth. – Oxford University Press 1999, pp. 123–137.

maintaining mainly the functions related to defence of a state and partially also those of foreign policy. In light of the pluralism principle, not only sovereignty issues, but also matters of national identity arise. In solving the issues of identity, the relationship between social and ethnic identity is extremely important. When in theory, ethnicity is a part of ethnic identity, and ethnic identity, in turn, a part of social or citizen identity, then in Estonia, these relations were left officially unregulated, meaning that a declared identity corresponding to these relations was left unestablished. However, in relation to the new European identity, an analysis of the current situation becomes important, since it would ascertain the nature and share of ethnic awareness, ethnic self-denotation, negative ethnic identity and a changed or pseudo-identity in the Estonian conditions.

Third, the EU should be more transparent and open, meaning a constant dialogue between the state and civil society, as well as possibilities for making decisions based on consensus. This means that a state should transfer part of its traditional tasks (e.g. education, health care, social services, etc.) to civil society. Channels should be sought from the sphere between people's and citizens' associations and the state that would create new possibilities for members of society to participate in the democratic process. The strength of people's and citizens' associations lies in the independent setting of goals and the potential resulting wish to take responsibility for the development of society. Many of the current problems in society that the state hopes to solve with the help of civil society, depend on the deliberate policy of the state. Civil society is vitally interested in having the actions of the state in certain frameworks and under the control of the law, "but at the same time, efficient in the implementation of the laws that protect the pluralism of civil society and the freedoms it needs."[21]

THE BALTIC CODA

In discussing the Central European and Baltic problems in the development of a civil society, it is noted that "the diapason of civic initiative opens faster if the parliaments and governments are able to legitimise it and have the corresponding knowledge."[22] It is thought that the most serious problems of the newly independent Central and Eastern Europe have been a lack of trust between civil societies and the states, preventing natural cooperation and dialogue between state and civil society with the aim of achieving an intelligent consensus in deciding on mutual matters and enabling to create the conditions for the emergence of social law. Probably one of the ways out of this is the establishment of a democratic state based on the rule of law in which life goes by certain rules and these rules, that is, the law, are laid down by the people themselves. "The limits of one's freedom of behaviour are set and monitored mainly by the people themselves, not by someone from the outside, like the state or its institutions (police, court, etc.)."[23] The fact that the conditions for the existence and development of a civil society largely depend on their relations with the state based on the rule of law have even justified treating them as similar concepts.

And ultimately, the constitutional independence of a state can be considered absolute only until it comes into contact with certain conditions of formal and substantive legitimacy.. The abovementioned also pertains to the European Union. Next to national sovereignty, human sovereignty is about to become more important in today's postmodernising world. In addition, as this results from analyses of the EU's existential problems and its ethical degradation, it has to be the New Europe (Visegrad and the Baltics) that will lead us into the newly democratic future.

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[21] H. Schneider. Riik ja ühiskond teoreetilis-metodoloogilisest aspektist. Mõtteid omariikluse tähtpäevade puhul (State and Society from a Theoretical and Methodological Aspect. Thoughts on Anniversaries of Sovereignty). – Juridica, 1998. Vol. 10, pp. 509–517 (in Estonian).

[22] A. Aarelaid. *Kodanikualgatus* ja seltsid Eesti muutuval kultuurimaastikul, koostanud Aili *Aarelaid (Citizen's Initiatives and Societies on Estonia's Rapidly Changing Cultural Landscape, compiled by Aili Aarelaid)*, 1996, p. 74 (in Estonian).

[23] R. Maruste. Põhiseadus ja justiitsorganite süsteem (Constitution and System of Judicial Bodies). – Juridica 1998, Vol. 7, pp. 326–327 (in Estonian).