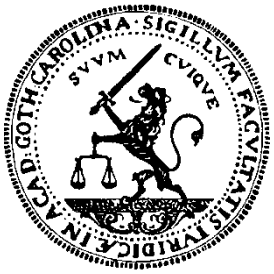

FACULTY OF LAW
Lund University

Yang Jiao

The European sovereign debt crisis: a debt crisis and a sovereignty crisis

JAEM01 Master Thesis

European Business Law
15 higher education credits

Supervisor: Xavier Groussot

Term: Spring 2013

Contents

Abstract

With the eruption of the sovereign debt crisis, a huge threat and disaster had been brought to the European Union, the member states and the entire euro zone. The ongoing financial crisis has made it very difficult or even impossible for some member states within the euro zone to re-finance the government debt without the third party's assistance. Greece being one of those states is experiencing the biggest economic threaten in the national history. In order to 'save the country', the Greek government signed series of agreements, memorandums with the other members states and organizations. The result is promising for it prevented Greece from a sovereign default. It seems that everything goes the way that Greece wants. But in order to receive the money, what is the price for the Greek government to pay? Is it truly as beautiful as it looks?

Key words: the European sovereign debt crisis, European Union, euro zone, third party's assistance.

Abbreviations

CJEU	Court of Justice of European Union
EC	European Commission
ECB	European Central Bank
ECJ	European Court of Justice
EEC	European Economic Community
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EMU	European Monetary Union
ESM	European Stability Mechanism
EU	European Union
GDP	Gross Domestic Product
ILC	International Law Commission
IMF	International Monetary Fund
MEFP	Memorandum of Economic and Financial Policies
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Introduction

From the year 2009, the entire euro zone started to experience the biggest economic recession in the history. Several member states of the Eurozone were severely damaged by the debt crisis that they may face a situation of sovereign default. The ongoing crisis even challenged the whole structure and institute of the European Union. In order to save the distressed member states of the Eurozone and to remain the stability of the Eurozone, a series of efficient measures had been taken during 2009-2012. The measures had made great efforts to the control of the sovereign debt crisis. Yet, they are also being questioned by infringing the European Union law, the constitution of the member states or both[1]. In this thesis, I will discuss the infringement both on the EU level and the member states' level.

In the first part of the thesis, I will give a general legal analyze about the sovereign debt crisis, including a brief overview of the debt crisis, and the measures that had been taken so far (not all the measures), after that, I will talk about the legality of the measures, especially focus on the infringement of ART.125 TFEU—the no-bail-out clause.in addition, i will bring in the "Pringle" case to further discuss the legality of the measures.

In the second part of the thesis, I will take Greece as an example, arguing that the measures had been taken so far has already intervened in the internal affairs of Greece. And it also infringed the sovereignty of Greek people. In order to achieve that, at the beginning, I will introduce the concept of sovereignty from a legal perspective. Then I will discuss sovereignty on EU level---including the debate of sovereignty within the European Union and the different features of sovereignty among the member states. As in the following parts, I will go into details--the legislations of the constitution of Greece, specifically the procedure of ratifying and implementing a law in Greek constitution to make it clear that how signing the agreements and memorandum with the other Member States and international organizations breached the popular sovereignty of Greece. Then, I will argue about whether Greece should call for the state necessity or not, not only because the state is experiencing the biggest economic

[1] For the argument see Adamski, National Power Games and Structural Failures in the European Macroeconomic Governance, CMLRev. 2012, pp. 1219-1364; Athanassiou, Of Past Measures and Future Plans for Europe' s Exit from the Sovereign Debt Crisis: What is Legally Possible (and What is Not),ELRev. 2011, pp.558-575); Ruffert, The European Debt Crisis and European Union Law, CMLRev. 2011, pp. 1777-1806; Tomuschat, The Euro □ A Fortress Threatened from Within, in: Ligustro/Sacerdoti (eds.), Problemi e Tendenze del Diritto Internationzale Dell' Economia, Liber amicorum in onore di Paolo Picone, 2011, pp. 275-297

disaster, which could tear down the entire state’s economic structure, but also what the Greek government had done already violated the Greek people’s free will-----the popular sovereignty.

Part I : Analysis of the European sovereign debt crisis

1.1 A general overview of the EU sovereign debt crisis

The EU sovereign debt crisis, A.K.A the euro crisis (actually not a currency crisis) started in the year 2009. It began in Greece when the new Greek government revealed its budget deficit on the 5th of November, which was surprisingly large that it was actually twice as much as what the country had disclosed(the precise number was 12.7% of GDP). The large deficit directly led to the situation that the debt of Greece had been downgraded. The situation had gone even worse in 2010, when the downgraded- Greek debt was widely sold by the bondholders. In order to stop the threatening financial crisis, Greece came up with a round austerity measures (which had been proved to be a failure). The ongoing debt crisis had spread rapidly to other euro zone member states, including Ireland, Portugal, etc. The sovereign debt crisis had led to a crisis of confidence for European business and economy, and made a serve influence to the entire euro zone, which led to the fact that, without a third party's help, some euro zone member states (such as Ireland, Greece, Portugal) could not be able to re-finance or pay back the government debt. What was the reason that caused the EU sovereign debt crisis? Scholars and experts from different fields had given out reasons from different perspectives: the lack of budget discipline in the European Union Member States, the lack of European regulations to cut the high budget deficit, the evidential justification cannot meet the demand of social budget spending, last but not least, the lack of European institution actions to against the states that have not fulfill the measures to join the euro currency.

So far, several solutions to sovereign debt crisis have been raised: First of all, In order to avoid the crisis spreading and threatening to other member states which has not been damaged, rescue packages have been provided to the distressed member states of the euro area. Secondly, to avoid the future risk, the debtor made the loans conditional to force the creditor to take structural reform and economic austerity. Thirdly, since there is flaw in the original institutional framework of EMU, the framework needs to be reformed. Last but not least, since the reacted insufficient when the debt crisis unfold, the former European financial market regulation called for a re-construction.

These are the possible solutions response to the debt crisis, but would whey work properly under the scope of the European Union law? The truth is it would come up

with certain difficulties. Firstly, it would absolutely meet obstacles when trying to amend a treaty, because member states have different procedures to amend a treaty, which is very difficult to meet everyone's demand. Besides, even a treaty is already been amended, there is still a possibility that the treaty may infringe the constitution law of the member states. Secondly, due to the limitation of ART.5 TEU, it would be impossible for the European Union to come up with secondary legislation to against the debt crisis as a whole. Thirdly, we cannot neglect the existence of the flaw in the framework of EMU.

Because of those obstacles, it seems that the solutions would be difficult to be put into practice, so the distressed member states called for extra EU measures.

1.2 Measures and rescue, stabilization efforts

In order to stop the wild spread debt crisis, and help the deeply trapped member states of the euro zone pass the long depression winter, a series of measures had been taken by the European Union, EU member states, international organizations. So far has made great efforts to the entire euro zone and European Union that it helped the EU prevent a disorderly sovereign default. Although came out with promising results, but it does not change the fact that the measures that had been taken are controversial: Is there enough legal framework or legal basis to support those measures? Or in other words, were the measures that had taken so far legal under the EU law or national law of the member states? Before answering the question, let us look back at the measures that had been taken so far.

During 2010 to 2012, a series of measures had been taken, so as to response to the debt crisis. And help the deeply trapped euro zone member states to get through the debt crisis. The measures are as follows:

1.2.1 Direct financial assistance to the member states of the euro zone

In order to prevent several member states of the euro zone (including: Greece, Portugal. Ireland) from a sovereign default, a series of financial assistances have been provided by the member states, the European Union, International Monetary Union (IMF), European Central Bank (ECB). Among these distressed member states, Greece is the one that had profited the most form the direct loans. In May 2010, a package of loan of 110 billion euro was granted to Greece (A.K.A the First Greek bail-out). The 110 billion euro was divided into two parts: 80 billion euro was sharing-provided by the other member states of the euro zone which did not have a sovereign

default problem. Meanwhile the other 30 billion euro was provided by the IMF. In order to avoid the possible risk in the future, the loan was provided under strict conditions, which means only if Greece meets the measures of the conditions, otherwise the loan would not be provided. In addition, the entire loan-program was strictly monitored and operated by the IMF, ECB, European Union Commission (A.K.A. "the troika"). The first direct loan could not save Greece from the severe recession, so another direct loan package was granted to Greece on the early 2012. Only this time the loan was provided by private creditors.

1.2.2 The European Financial Stabilization Mechanism (EFSM)

The EFSM is a mechanism aiming at providing financial support to the member states that are in difficulties, which is caused by the circumstances that are out of control of the member states. The legal framework of the mechanism is based on an EU regulation that under ART. 122(2) TFEU(Ex ART. 100 TEC). The wording of ART.122(2) are as follows:

"2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken."[2]

The EFSM is an intergovernmental agreement that established by the EU council regulation NO.407/2010. According the regulation, the EU commission is granted the power to collect the money and provide the financial assistance only if the threatened or damaged member states fulfill the requirements that formulated in the regulation (including the procedure of application, disbursement and so on).

1.2.3 The European Financial Stability Facility (EFSF)

In June 2010, a more important part of the rescue program was established---the European Financial Stabilize Facility (EFSF).the EFSF is a temporary facility that aiming at providing financial aids in the forms of loan facility agreement or loan at max 440 billion euro, with conditions to the distressed member states of the euro area----"…It is envisaged that financial support to euro-area Member States shall be provided by EFSF in conjunction with the IMF and shall be on comparable terms to

[2] See, See," CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION"- ART.122(2). Available on the website "http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF"

the stability support loans advanced by euro area Member States …"[3] (The Greece problem was solved by bilateral loans)

The EFSF is established under the Grand Duchy of Luxemburg private law by 17 member states of euro area based on an intergovernmental treaty. Apart from the EFCM, the legal framework of the EFSF is not based on the EU law (ART.122). It consists of framework agreement and articles of incorporation. It is also further developed by different guidelines which are listed out by boards of the EFSF, the guidelines formulate the different financial instruments. All the member states of the euro area are the shareholders of the EFSF. The boards are considered to be the head of the EFSF, which means that it both represents all the euro member states and makes the decisions of the EFSF.

One thing should be clarified that: the EFSM is available to both euro member states and non-euro member states, while the EFSF is only available to the euro member states

1.2.4 The European Stability Mechanism (ESM)

On October the 8th 2012, a permanent crisis resolution mechanism was legally established—The European Stability Mechanism (ESM). The need for setting up the ESM is because all the efforts that had been taken during 2010 to 2011 to stop the sovereign debt crisis were very difficult for the market itself to re-gain the confidence. With a close cooperation with the IMF, the ESM is aiming at providing financial assistance to the member states of the euro area who is dealing with financial difficulties. The financial assistance will be provided to the member states with strict economic policy by making proper use of the following instruments:"… Providing loans in the framework of a macroeconomic adjustment program; ... Purchasing debt in the primary and secondary debt markets; … Providing precautionary financial assistance in the form of credit lines; … Financing re-capitalizations of financial institutions through loans to the governments of ESM Members… The ESM will be empowered to directly re-capitalize banks in the euro area once an effective single supervisory mechanism for euro area banks is established."[4]

In general, the ESF will" …assume the tasks currently fulfilled by the European Financial Stability Facility ("EFSF") and the European Financial Stabilization

[3] See, EFSF FRAMEWORK AGREEMENT—paragraph (2),text available on" http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf

[4] See," The scope of activity of the European stability mechanism", available on the website" http://www.esm.europa.eu/#.

Mechanism ("EFSM") in providing, where needed, financial assistance to euro area Member States."[5] The difference between the ESM and the EFSF is that: the ESM was set-up as an international institution, under public international law. It was granted with legal personality from the beginning, and capital stocked of 700 billion euro. While the EFSF was on the other hand operated as a legal person, it was set up under the Luxemburg private law. Being different from the ESM, the bonds of the EFSF are guaranteed by the governments of the member states of the euro area.

The ESM is considered to safeguard the financial stability of the euro area as a whole. The agreement between the member states came up the 2nd of February 2012, but due to the a long process of ratification (especially in Germany), the establishment of the ESM did not come into force until the 8th of October 2012[6]---the member states of the euro area agreed to amend ART.136 TFEU by adding an additional paragraph – "paragraph 3":" The Member States whose currency is the euro may establish a stability mechanism to be activated if indis -pensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."[7] The legal frame work of the ESM is formulated by the "TREATY ESTABLISHING THE EUROPEAN STABILITY MECHANISM", signed by 16 member states of the euro area.

1.3 The no-bail-out clause

The measures that have been taken so far made a great effort dealing with the sovereign debt crisis within the euro area. It helped the distressed member states re-finance the government debt and prevent (but not totally) them from a serious sovereign default. Although it is still a long way to go for the market and the investors to re-gain the confidence, but the results come out so far are definitely promising. With all due respect, the measures are also being questioned by infringing the European Union law, national constitution or both. Before gong any further, let us take a look at how the measures being questioned by infringing the European Union law (noted that there are other infringements and legal issues in the sovereign debt

[5] See," TREATY ESTABLISHING THE EUROPEAN STABILITY MECHANISM", available on the website" http://www.esm.europa.eu/pdf/esm_treaty_en.pdf"

[6] See, Ohler, The European Stability Mechanism: the long road to financial stability in the euro area, GYIL (2012), forthcoming. For a analyze including more details.

[7] See," EUROPEAN COUNCIL DECISION of 25 March 2011-"amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro", available on the websit"http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:091:0001:0002:EN:PDF

crisis, in thesis, we just focus on the infringement of ART.125 TFEU and the infringement of the Greek constitution which will be discussed in the second part).

The main controversial issue is that the financial assistance provided by the EFSF and ESM may infringe ART.125 TFEU. ART.122 TFEU authorized the European Union to provide the financial assistance to the member state if a member state is in difficulties, the wording of ART.122(2) is as follows:"…a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned…"[8]. Since the financial assistance of the EFSF and the ESM were provided by the government of the euro area, then ART.122(2) is not valid.

The wording of ART.125 states as follows:

"1. The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

2. The Council, on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the prohibitions referred to in Articles 123 and 124 and in this Article."[9]

According to the interpretation of ART.125 TFEU, any measures that taken by European Union or the member states, which provide financial assistance to other member states, would be prohibited. But the question is whether we should strictly follow the verbatim, or an extensive interpretation should be required?

There is no doubt that ART.125 would prohibit any forms of "bail-out" to the member states based on its latter interpretation. But it is also undisputed that the principle of the entire section of the economic policy is aiming at approaching an open market economy with free competition, favoring an efficient allocation of

[8] See," CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION"- ART.122(2). Available on the website "http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF"
[9] See,Id-ART.125

resources, and in compliance with stable prices, sound public finances and monetary conditions and a sustainable balance of payments[10]. Among ART.120 to ART.126, ART.122 and ART.125 (along with ART. 143) shows that the European Union is aiming at setting up an independent market that all the member states could finance. Meanwhile, precise rules on fiscal discipline are strictly regulated by ART.126.[11]

The purpose of setting up ART.125 was to ensure that the member state which does not strictly follow the rule of the European Union would not be saved by the union (a perfect example is the situation of Greece in the sovereign debt crisis). But a "negative" reading of the treaty, which would jeopardize the stability of the Eurozone and the single currency, is either helpful or convincing. Now more appropriate arguments had been raised up. One is that voluntary- loans are not being covered by ART.125. The other is that since the treaty could not foresee an emergence as the sovereign debt crisis, the emergence measures that already stated in the treaty (ART.126) should be re-considered and formulated[12]. It is the long-term finance which supported by the ESM that breached ART.126, because it is lack of fiscal discipline. It is not the financial assistance that infringed the rules.

1.4 The "Pringle" case

A landmark case of the European Union's constitutional development during the sovereign debt crisis is the case "Thomas Pringle V. Government of Ireland, Ireland and the Attorney General"[13] (A.K.A. the "Pringle" case). The Pringle case solved the compatibility between the ESM Treaty and the European Union law, and proved that the ESM Treaty is valid.

Mr. Thomas Pringle, an individual and independent member of the Irish parliament applied to the Irish High Court in order to restrain the Irish government from the ratification of the ESM Treaty. Mr. Pringle argued that the ESM Treaty infringes European Union law (ART.125, TFEU—the "no-bail-out clause) and encroaches the role of European Union in economic policy and monetary policy. In addition, the ESM is a new institution that has been set up under public international law, which is not only out of the reach of the EU law, but also lack of accountability

[10] See, Id-ART.119(3), ART. 120
[11] See, L. Knopp, 63 Neue Juristische Wochenschrift 1777, 1779 (2010); see,also, U. Häde, 20 Europäische Zeitschrift für Wirtschaftsrecht 399, 403 (2009)
[12] See, J.-V. Louis, 47 Common Market Law Review 971, 985 (2010); C. Herrmann, 21 Europäische Zeitschrift für Wirtschaftsrecht 413, 415 (2010).
[13] See, C-370/12, Thomas Pringle v. Government of Ireland, Ireland and the Attorney General.

and democratic control. Mr. Pringle also argued that since the EU treaties are part of the Irish constitution, the ratification of the ESM Treat by the Irish government infringes the national constitution. He challenged the EU government's "March 2011 decision" by saying that "to change a legal provision in a treaty (adding a third paragraph to ART.136, TFEU) to allow the ESM to be created was incorrect."

Mr. Pringle did not succeed, so he appealed to the Irish Supreme Court. The supreme court made the judgment on 31, July 2012. In the judgment, based on the Irish law, the supreme court rejected Mr. Pringle's application and constitutional challenge. And then the Irish Supreme Court upheld the reference of preliminary ruling to the Court of Justice of European Union (CJEU), along with three questions which related to the European Union law. The questions are:"

1) Whether European Council Decision 2011/199/EU of 25th March 2011 (1) is valid…?

2)…is a Member State of the European Union whose currency is the euro entitled to enter into and ratify an international agreement such as the ESM Treaty?

3) If the European Council Decision is held valid, is the entitlement of a Member State to enter into and ratify an international agreement such as the ESM Treaty subject to the entry into force of that Decision?"[14]

Because of the "uncertainty as to the validity of that treaty"[15] and "…to remove as soon as possible that uncertainty, which adversely affects the objective of the ESM treaty, namely to maintain the financial stability of the euro area.[16]" The ECJ decided to take an accelerated procedure on 4 10 2012, for it normally would take 1 to 2 years, which is no good for the control of the ongoing crisis. The full court of 27 judges attended at the same time to consider the challenge, which was consider to be extraordinary, for it was the first time in the history that the ECJ used the full court in a case referred by a national tribunal. The ECJ gave the judgment on 21 11 2012. In the judgment the ECJ proved that the ESM treaty is valid and there are no problem

[14] See, Reference for a preliminary ruling from Supreme Court (Ireland) made on 3 August 2012 — Thomas Pringle v Government of Ireland, Ireland and the Attorney General. Text available on the website" http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:303:0018:0019:EN:PDF"

[15] See", ORDER OF THE PRESIDENT OF THE COURT".4 October 2012 (*),(Accelerated procedure),order,7. text available on "http://curia.europa.eu/juris/document/document_print.jsf;jsessionid=9ea7d2dc30db57774ff134e343399983e127354ae11d.e34KaxiLc3qMb40Rch0SaxuKbxb0?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=128422&occ=first&dir=&cid=581740

[16] See", ORDER OF THE PRESIDENT OF THE COURT".4 October 2012 (*),(Accelerated procedure), order 7, text available on "http://curia.europa.eu/juris/document/document_print.jsf;jsessionid=9ea7d2dc30db57774ff134e343399983e127354ae11d.e34KaxiLc3qMb40Rch0SaxuKbxb0?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=128422&occ=first&dir=&cid=581740

about the compatibility between the ESM Treaty and the European Union law. The ECJ also answered the three questions that referred to the Irish Supreme Court.

In the following parts, I will examine the answers which are related the "simplified procedure and the infringement of ART.125 TFEU. For more details about the answers to all the three questions, please see the "judgment of the court" (full court)[17].

In the judgment, the answer for the question, the ECJ states: For the first question,"… when they undertake a revision of the FEU Treaty using that simplified procedure, comply with the conditions laid down by that provision…"[18]which means if a simplified procedure is about to taken, there are certain conditions are required to be meet. In the following part the ECJ stated two conditions as"… the simplified revision procedure concerns 'revising all or part of the provisions of Part Three of the [FEU] Treaty, relating to the internal policies and actions of the Union'.[19] The second condition is:"… [t]he European Council may adopt a decision…such a decision 'shall not increase the competences conferred on the Union in the Treaties'…". [20]Then the ECJ stated that"…to examine the validity of a decision of the European Council based on Article 48(6) TEU… the procedural rules laid down in Article 48(6) TEU were followed".[21] To that end, the first condition is met. In the following part, "…the amendments decided upon concern only Part Three of the FEU Treaty, which implies that they do not entail any amendment of provisions of another part of the Treaties …and that they do not increase the competences of the Union."[22] So the second condition is met as well.

The infringement of ART.125 TFEU, in the judgment, the ECJ started with the interpretation of the ART.125. The ECJ stated that"… that article is not intended to prohibit either the Union or the Member States from granting any form of financial assistance whatever to another Member State." [23] Then the ECJ brought ART.122 and ART.123 to support the reading of the ART.125. Firstly, within the interpretation of ART.122, the ECJ emphasized that:"… If Article 125 TFEU prohibited any financial assistance…Article 122 TFEU would have had to state that it derogated from Article

[17] See, JUDGMENT OF THE COURT (Full Court),27 November 2012 (*) text available on" http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62012CJ0370:EN:HTML"
[18] See, Id—paragraph 33.
[19] See, Id—paragraph 34.
[20] See, Id
[21] See, Id—paragraph 35,36.
[22] See, Id—paragraph 36.
[23] See, Id—paragraph 130.

125 TFEU." [24]Secondly, the ECJ compared the word using in ART.123 and ART.125, and clarified that the word used in ART.123 is much stricter than ones used in ART.125. Then the ECJ stated that"… The difference in the wording used in the latter article supports the view that the prohibition stated there is not intended to prohibit any financial assistance whatever to a Member State." [25]Thirdly, the ECJ tracked back to the original resource of the prohibition that states in ART.125 is actually from" Article 104b of the EC Treaty (which became Article 103 EC), which was inserted in the EC Treaty by the Treaty of Maastricht."[26] According to the Treaty of Maastricht, the ECJ provided that"… the aim of Article 125 TFEU is to ensure that the Member States follow a sound budgetary policy…the prohibition laid down in Article 125 TFEU ensures that the Member States remain subject to the logic of the market when they enter into debt…Compliance with such discipline contributes at Union level to the attainment of a higher objective, namely maintaining the financial stability of the monetary union."[27]

Last but not least, the ECJ referred to the ESM Treaty, it stated that"… the instruments for stability support demonstrate that the ESM will not act as guarantor of the debts of the recipient Member State, The latter will remain responsible to its creditors for its financial commitments." [28] In addition, the ECJ noted that"… assistance amounts to the creation of a new debt, owed to the ESM by that recipient Member State…"[29]

The ratification of the ESM Treaty before the entry into force of Decision 2011/199, To answer the third question, the ECJ emphasized whether the amendment of the decision confirms the existence of a power possessed by the Member States, along with the reading of paragraphs 68, 72 and 109 of the judgment, the ECJ noted that"… decision does not confer any new power on the Member State."[30] Then the ECJ came out with the conclusion that "…the right of a Member State to conclude and ratify the ESM Treaty is not subject to the entry into force of Decision 2011/199."[31]

The ART.125 TFEU (the no-bail-out clause) was interpreted in many different

[24] See, Id—paragraph 131.
[25] See, JUDGMENT OF THE COURT (Full Court),27 November 2012 (*) text available on" http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62012CJ0370:EN:HTML"--paragraph 132.
[26] See, Id—paragraph 134.
[27] See, Id—paragraph 135.
[28] See, Id—paragraph 138.
[29] See, Id—paragraph 139.
[30] See, Id—paragraph 184.
[31] See ,Id—paragraph 185.

ways before the "Pringle" case, which could be sum up to three main ways, as in "verbal, purposive, and ultima ratio"[32]. During the case, the ECJ had to use all the three main ways of interpretation to approval the compliance between the ESM and ART.125 TFEU. According to the judgments, the ECJ also set out three requirements, which are supposed to be satisfied. The requirements are: firstly, the member states which accept the financial assistances must hold the commitment to the creditors. Secondly, the financial assistances would be only provided under strict conditions. Lastly, the financial assistances would be only provided as to safeguard the financial stability of the Eurozone as a whole.

Several arguable issues had been raised up by the interpretation of ART.125 of ECJ. In the upcoming part, I will focus on one important issue, that Is, the collective reading of ART.122 and ART.123, in order to support the interpretation of ART.125 in the judgment.

In the judgment, by analyzing ART.122(2) and comparing the wording of ART.123, the ECJ stated that" ART.125 did not prohibit all kinds of financial assistances, meaning, certain forms of financial assistances are allowed. The question is: Did ART.122(2) and ART.123 truly support the conclusion of ECJ about ART.125?

According to the judgment, the ECJ emphasized that:"... If Article 125 TFEU prohibited any financial assistance…Article 122 TFEU would have had to state that it derogated from Article 125 TFEU."[33] But the truth is ART.122 and ART.125 are two equal provisions of the treaty, which means the two provisions should be reconciled with each other. Besides, ART.122 was not set up as an exception either. In the declaration No.6 of the treaty of Nice, the relationship between ART.122 and ART.125 had been regulated as"… decisions regarding financial assistance, such as are provided for in Article 100 (now Art. 122) and are compatible with the no-bailout rule laid down in Article 103 (now Art. 125)…"[34]

In addition, to apply for ART.122 TFEU, a quaint balancing is required[35]. A more appropriate relationship between ART.122 and ART.125 should be considered as: the assumption is formulated in ART.125, while the exception to the assumption is yet regulated in ART.122(2). But still it would not lead to the interpretation that all other

[32] See, "Special Section The ESM Before the Courts--The ESM and the European Court's Predicament in Pringle. Vestert Borger, page129-130, available on: http://www.germanlawjournal.com/pdfs/Vol14-No1/PDF_Vol_14_No_1_113-140_ESM%20Special_Borger.pdf

[33] See, JUDGMENT OF THE COURT (Full Court),27 November 2012 (*) text available on" http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62012CJ0370:EN:HTML"-paragrapg 31

[34] See, Treaty of Nice Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, decl. 6, March 10, 2001, 2001 O.J. (C 80) 78.

[35] See, "For an elaborate discussion of how to carry out this balancing exercise", Louis, supra note 35, at 983–85

forms of financial assistance would be covered by ART.125, except the circumstances that had been already regulated in ART.122(2). It could be considered as: only if ART.125 is being regarded, otherwise the European Union would not be authorized the legal power to provide the financial assistances. In addition, in ART.125 further information about the financial assistances which provided by the member states cannot be found.

Similar to the situation of reading of ART.122, there is not adequate evidence could be found in ART.123 to support ART.125 which had set up a restricted scope. According to the comparison of ART.123 and ART.125, the ECJ indicated that since the wording in ART.123 is much stricter than the wording used in ART.125, logically it should be considered that not all the financial assistances were prohibited by ART.125. The truth is the ECJ's conclusion is somehow an indication which is lack of legal basis support.

It is certainly arguable that a restrictive reading of ART.125 is being required by the wording of ART.123, for the monetary financing somehow can do certain damage to the stability of the price. Meanwhile, the prohibition that the ECB and central bank of the member states cannot provide credit to public sector, at the same time, does not apply to the European Union and the member states. The truth is: the central banks are more eager to launch the EMU, due to the strict wording of ART.123, which also led to another situation of credit arrangement for public authorities during the member states. All in all, the wording in ART.123 was originally and yet much more intended to regulate the specific nature of central banks along with their position, which means the wording certainly could not support the interpretation of ART.125.

Conclusion about the "Pringle" case: It was rather pragmatic than theoretic that the ECJ had given the judgment to the "Pringle" case, for it was mostly intended to give a fast and efficient response to the ongoing debt crisis, which is still a huge threaten to the stability of the euro area. To this extent, rejecting all the challenges which brought up by Mr. Pringle by the ECJ had come up with a dominant reason. But the lacks of constitution had also been pointed out in the judgment, due to the nature of the ESM, which is an intergovernmental institute set up under public international law, which is not only out of the reach of the EU law, but also lack of accountability and democratic control. The approval of the compatibility of the ESM with the EU treaties at the time seems to be the most efficient way to deal with the sovereign debt crisis. For back to the beginning when the sovereign debt crisis

unfolded, the provision in the EU treaties did not support adequate legal basis for the member states. The ECJ's judgment emphasized the supremacy of EU law as well. To sum up, the judgment of the ECJ did provide sufficient legal principles and political pragmatisms to meet the demand of safeguarding the financial stability of the euro area as a whole.

Part Ⅱ:The infringement of Greek constitution

During the EU sovereign debt crisis, Greece is one of the member states, which is not only been seriously damaged, but also the one profited the most from the "rescue-package". During February to May 2010(the first bail-out), the Greek government had signed a series of agreement with the other member states and international organizations, so as to save the state from an economic eruption. According to the agreements, in order to get the money form the financial assistance, Greek government had to amend certain law to the national constitution. The ratification and implementation were considered to be infringing the Greek constitution and violating the popular sovereignty. In the following part, I will go into details to reveal how such infringements and violation had been done in the name of "saving the country". Before that several concepts need to be clarified first, including the concept of sovereignty, the sovereignty debate within the European Union.

2.1 The understanding of sovereignty

In the traditional concept, sovereignty is usually automatically considered as a state that being completely independent and being fully recognized within the international community. "Acting completely independent as well as being regarded by the other states", this concept of sovereignty is traditionally being understood as "external sovereignty". It means a state that has its legal authority, and not under control of any power of any other states

2.2.1 External and internal sovereignty

Normally," traditional Sovereignty" can be easily measured. Meaning if a state itself can act independently on the international level to other states and the "acting "can be regarded by the other but not all states. Then the state can be considered sovereign. That is usually to be considered as" external sovereignty" Meanwhile, there is another traditional term that closely related to external sovereignty. And that is" internal sovereignty". Internal sovereignty usually being understood as: within the territory, the state itself has a clear, ultimate power that can maintain itself stable. It can be challenged by other bodies or communities. Comparing the two concepts of sovereignty, we can see that the external sovereignty is way clear than the internal sovereignty. All in all, no matter under what circumstances, in order to be sovereign, a

state must be able to make the public maintain stable within its territory, and the authority should be willingly respected by most of the nationals.

Since the traditional understanding of the concept of sovereignty can always be put into two ways: sovereignty can be exercised both in the relationship to one's external and internal affairs.in history there is always a connection between the internal and external sovereignty, in another word: the two forms of sovereignty are seriously bound to each other. Even though the two forms of sovereignty are bound to each other, it is still important to distinguish the concept between the two. Firstly, sovereignty normally can be exercised in two ways by different institutions: Usually, in internal affairs the legislative is considered as sovereignty. While in external affairs, executive is usually be seen as sovereignty. Sometimes the real difficulty lies in the telling the difference between national sovereignty and parliamentary sovereignty.[36] Secondly, the functions of internal and external sovereignty are different as well. Speaking of external sovereignty of one state, it is usually related to the question of cooperation within absolute sovereign entities. While internal sovereignty within one state is often related to either legal or political matters. Last but not least, the internal sovereignty is usually considered as final, while the external sovereignty cannot be easily been seen as ultimate or final, because a sovereign can only co-exist as in a equal to other sovereigns within a state,[37] only under this circumstances, the external sovereignty can been seen as equal ultimate.

The two forms of sovereignties cannot be separated in practice. Even though there are clear differences in the concepts.[38] The two forms of sovereignty are closely bound to each other: where there is internal sovereignty, there is external sovereignty.[39] Without external sovereignty, the internal sovereign cannot define the latter and without the internal sovereignty in the constitutional determination of competence, there cannot be external sovereign and no human rights limitation in particular.[40] However it is hard to place one in front of another in case of emergence.[41] in the European context this issue is particularly relevant. Different from the federal

[36]See" Debates about sovereignty in the United Kingdom, for instance, tend to conflate both kinds of sovereignty."
[37] Art.2(1) of the united nations Charter guarantees the principle of sovereignty and the equality of states. See Bleckmann, 1994, n.6.
[38] See MacCormic, 1999, 129 who distinguishes internal fromexternal sovereignty and considers that the latter can exist in the absence of the former.
[39] On this notion of 'Relationsbegriff', see Rhonheimer, 1989, 263. See also Loughlin, 2003 on the importance of the relationship between those who govern and those governed. See also Walker, 2003a; Aalberts, 2004, 37
[40] SOLANGE 1 IN 1974, BVerfGE 37, 271; solange2 in 1986, BVerfGE 73,339; Maastricht Urteil in 1993, BVerfGE 89, 155
[41] See Pfersmann, 2001, 38-39 on this double determination of external sovereignty. See also Bleckman, 1994, n. 7 and 11; James,1999,464

states, the European Union was not created through the gradual concession of member states' external sovereignty.[42] There is a saying that the only matter should be concerned within the European context is internal sovereignty.[43] To some extent, it somehow underestimates the close bond between the internal and external sovereignty. With less internal sovereignty, the external sovereignty is affected as well and gradually shrunk at national level.[44]

2.2 The Sovereignty debate of EU

2.2.1 The sovereignty of EU

Does the European Union have sovereignty or not? This is a question that has been raised since the early days when the European Union was founded. The debate has been going on up till now. To answer the early question, perhaps we should solve one question in advance, that is: how are we going to describe the European Union? The official describes the European Union as:

"…an economic and political union of 27 member states that are located primarily in Europe. The EU operates through a system of supranational independent institutions and intergovernmental negotiated decisions by the member states."[45]

The core of EU law is based on the original treaties. But there is no formal fundamental law (for example: constitution law). It made the EU's legal nature remain uncertain. In addition, the European Union consists of 27 member states, among which, most of their national legal system refers to civil law, which means the case law does not operate the same force as statue.

Clearly the European Union is definitely different from the traditional form. The nature of the EU is so unique that we can hardly describe it in a precise way: Firstly, the EU is not a state, because the EU does not fulfill the measurements and limitations of either internal or external sovereignty. The EU does not have that much sovereign power."…Its inability to determine autonomously the form and substance of its own political existence distinguishes it from a state"[46]. Secondly, the European Union is clearly not an international organization either. Because it somehow has too much sovereign authority that it cannot be consider as an organization-"The sovereign authority it exercises with direct effect in member states distinguishes it from ordinary

[42] See Pfersmann, 2001, 37, eiler, 2002
[43] MacCormic, 1999, 133; MacCormic, 1996, 553
[44] Art.1-27 of the Draft Constitutional Treaty on the establishment of an EU Minister of Foreign Affairs.
[45] "Basic information on the European Union". European Union. europa.eu. Retrieved 4 October 2012.
[46] see "Supremacy of EU Law: A Comparative Analysis", author, AISI ZHANG .published on 5th of October 2012.

international organizations."[47]

Scholars have different opinions about the description of the EU. Some say that the European Union is an emerging system consisting of multiple- level- governance. In the whole functioning system, due to the basic spirit of making efforts to the EU, "the governments of the member states are actually losing the influence in both subnational and supranational."[48]Some other scholars rather consider the European Union as a combination of a sovereign state and an international organization.[49] Some scholars even criticize that: along with the non-stop enlargement to the European Union, the EU can be seen more of a neo-medieval empire than a strength type of united -state.[50]

As discussed above. The nature of the European Union is so complicated to describe. So it is not easy to say whether it has sovereignty or not. Some say it does have sovereignty some say it does not. The debate is still going on. In my opinion, to see the sovereignty on EU level, the concept of the sovereignty must be different from the traditional point of view. The sovereignty of EU must be understood as a whole new concept apart from the nation/state sovereignty, because the European Union is such unique "united states". Doctor Adrián Tokár believes that the European Union does have sovereignty. In his paper he argues that the EU does have sovereignty, he compared the different understanding of "power" and "force", Balanced the EU supremacy and the member state's domestic legislation, using different measurements to make the statement clear. In his paper he states:

"…the EU does have sovereignty in a legal sense; it creates legal norms that are superior to legal norms of the member states… The member states do not enjoy legal supremacy in areas entrusted to the EU…the enforcement rests with the member states; however, in the majority of cases EU measures are complied with…"[51]

2.2.2 Pooling sovereignty

Since the nature of the European Union is still uncertain (as we discussed above). Then the debate about whether the European Union has sovereignty or not will still be

[47] 4 Grimm, Dieter, "European Court of Justice and National Courts: The German Constitutional Perspective after the Maastricht Decision", 3 Colum. J. Eur. L. 229 (1996-1997). At 53
[48] Mark A. Pollack, "Theorizing the European Union: International Organization, Domestic Polity, or Experiment in New Governance", Annu. Rev. Polit. Sci. 2005. 8:357-98.
[49] 1 Prof. Karel Klima, "The Constitutional Legal Nature of the European Union", Workshop Papers for VIIth World
Congress of the International Association of Constitutional Law, No.4.
[50] Jan Zielonka, "Europe as Empire: The Nature of the Enlarged European Union", Oxford University Press, 2006.
[51] see "IWM Junior Visiting Fellows Conferences, Vol. XI", published 2nd of November, 2001 by the author Adrián Tokár

carried on for a long time. Since the European Union consists of 27 independent sovereign states, then a new way of saying the sovereignty in EU has been raised—"pooling sovereignty".

Before we go even further, let us take a look at the legislation of the treaty first. In the "Treaty on European Union (former name-"Maastricht Treaty") A.K.A"TEU",[52] ART.4(2)says" The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State."[53] It basically says that: after the European Union being founded, the sovereignty of the member states are still being respected and protected under the treaty, which make it sound really equal. There are many different features in the member states. In order to found a much stronger economic and political union, and maintain it stable, the European Union will respect the different features and let the member states keep them under the new functioning structure. But the question is if the member states fully keep their different features, there will be conflict between the member states and the European Union.

In order to solve the problem above, ART. 4(3) TEU states that:" Pursuant to the principle of sincere co-operation, the Union and the Member States shall…assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure … to ensure fulfillment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. In addition: "…The Member States shall facilitate the achievement of the Union's tasks and refrain from any measures which could jeopardize the attainment of the Union's objectives."[54] ART.4 did not go into details, it just generally says that the European Union and the member states will mutually respect and co-operate with each other. To fulfill that expectation, the member states have duty to operate, and facilitate achievement of the Union's task. It does sound really equal. Because in ART4 TEU, it carries out the relationship of co-operation between the European Union and the member states, and the relationship is mutual. Based on ART4 TEU, the sovereignty

[52] See" Maastricht Treaty" (7 February 1992) CVCE
[53] See the textbook of "THE TREATY ON EUROPEAN UNION "- ART.4(2)
[54] See the textbook of "THE TREATY ON EUROPEAN UNION "- ART.4(3)

of the member states is being respected and protected. Is that all the truth?

In the European Union, it is not possible for a single state to change a single European law. “Pooling sovereignty” in EU is intended to strengthen one member state’s resource in the way of joining them with the others. In practice, “pooling sovereignty” means: in order to make the decision which related to specific matters of joint interest democratically on EU level, the member states have to give up parts of the decision-making-power to the shared institutions that they have created.

In the global context, no state can act independently on most issues, and pooling sovereignty somehow has made great objections to be achieved. So the “pooling sovereignty” is a better way to solve the debate of the sovereignty within the European Union then?

Member states which agrees or sacrifices their sovereignty to the European Union thought that they may somehow increase their sovereignty in practice on EU level. But the truth is they lost more than they got. First of all, they did sacrifice their national sovereignty to the European Union, for the EU has supremacy over national law of the member states. Secondly, in the way of limiting or abolishing the national veto power (especially in the EU sovereign debt crisis), the EU continually reduces the power of “weaken” or “small” member state in the situation of decision-making. In addition, the member states which are much stronger in the politics and economy become more and more powerful in the condition of making policy or decision to specific matters.

2.2.3 Supremacy of EU law

In order to enhance the concept of a” new legal order”,[55] the European court of justice developed the supremacy of European Union law. As a matter of fact, what interesting is that: the supremacy of the European Union law itself does not have any formal basis in any of the European Union Treaties. A famous case that brought out the debate between the national law of the member state and the European union law is the Flaminio Costa v ENEL [1964] ECR 585 (6/64).[56] The main issue about the case Flaminio Costa v ENEL was that there was a conflict between the European union’s legal provision of the free movement of goods and the member state’s national law on the national electricity monopoly. In the judgment of the case, the European

[55] see” Judgment of the Court of 5 February 1963. - NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. - Reference for a preliminary ruling: Tariefcommissie - Pays-Bas. - Case 26-62.- “new legal order”

[56] See” Flaminio Costa v ENEL “[1964] ECR 585 (6/64)

court of justice had established three states which made it very clear that supremacy rule over the national law of the member states. First of all, "the EEC Treaty has created its own legal system which…became an integral part of the legal systems of the Member States and which their courts are bound to apply."[57] Secondly, Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.[58] Last but not least," The executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the Treaty."[59] Nowadays, from the EU's perspective, the issue between the conflicting national law of the member states and the supremacy of the EC law is that "...under the principle of supremacy, precedence must always be given to Community law over conflicting national law however framed and including national constitutional provisions."[60]

How did the ECJ developed the doctrine of the supremacy of EU over the national law of the member states is by setting up a series of important rulings step by step:

1) In the case "Van Gend en Loos[1963] ECR 1"[61].the ECJ established that the EU is an independent legal order that being from the member states.

2)Then come along with the landmark case "Costa v ENEL[1964] ECR 585[62], in that case, The ECJ firstly introduced the doctrine of the supremacy of the EC law.

3)In 1970, it was the case" Internationale Handelsgesellschaft [1970] ECR 1125"[63] that established the EU law is supreme over the provisions of the domestic constitutional law fo the member states.

4)In 1978, in" Simmenthal[1978] ECR 629"[64], The ECJ emphasized that "supremacy of EC law strongly affects the legislation in prior and the future.

5)In 1990, in" Factortame[1990] ECR I -2433"[65]. It made the obligation of the member states even more clear that the national law should be ignored if there was a conflict between the EU law and the national law.

6)In 1996, in order to warn the government of the member states of the

[57] See "Flaminio Costa v ENE"L [1964] ECR 585 (6/64)-judgement.
[58] See"Flaminio Costa v ENEL "[1964] ECR 585 (6/64)
[59] See"Flaminio Costa v ENEL" [1964] ECR 585 (6/64)
[60] See," The National Court's Mandate in the European Constitution, Hart Publishing 2006, pg. 559. author, Monica Claes
[61] See "Van Gend en Loos v Nederlandse Administratie der Belastingen" (1963) Case 26/62
[62] see" Flaminio Costa v ENEL" [1964] ECR 585 (6/64)
[63] See" Internationale Handelsgesellschaft" 11/70 [1970] ECR 1125
[64] See C-106/77," *Simmenthal* II "[*1978*] *ECR 629*
[65] See" Factortame"[1990] ECR I -2433

consequence of breaching the EU law, in "Brassiere du Pechier[66] and Factorame (No.4)[1996]2 WLR 506[67]" the ECJ announced that the government will take the financial loss as in the result of breaching the EU law.

According to Enchelmaier, Stefan, the doctrine of the supremacy is addressed as follows:" in case, and to the extent, of irreconcilable results in the application of both legal systems to the same situation, the conflicting national law of member states becomes inapplicable."[68] It means if there is a conflict in between the domestic legislation and the EU law, EU law rule over the national law of the member states.

The reason that ECJ determined that the supremacy of EU law operate over national law is to make sure that when a conflict appears, it is the EU law that should be the one to apply. It is also saying in Craig." P and G. De. Burea" 's book "since the aim of creating a uniform common market between different states would be undermined if Community law could be made subordinate to the national law of various states."[69] . Well, although the ECJ can grant the EU law the authority to run over the domestic legislation of the member states. But most of the member states did not consider the doctrine of the supremacy unconditionally. Some member states did not really accept the" new legal order" which developed by the ECJ, especially when this" new legal order" is found being against the domestic constitutional legislation. In other words, the ECJ might have the supremacy (also addressed as the primacy) over national statues, but it cannot be against the member states' constitutional law (which seen as the foundation of the domestic legal structure). There had been arguments going for years since the doctrine of the supremacy had been developed. Some member states' national courts even claim (after the ECJ emphasized the doctrine of supremacy of EU law) that: the ECJ do not have the ultimate power to rule the competence between the national law and the EU law. The decision should be left for member states to decide. They hold the ultimate power.

2.2.4 The features of sovereignty in different EU member states

— The sovereignty of the Hungarian republic

During the early days, there was no such concept of sovereignty in Hungary. The

[66] See "Brassiere du Pechier[66] and Factorame (No.4)[1996]2 WLR 506
[67] See" Factorame "(No.4)[1996]2 WLR 506
[68] See "Supremacy and Direct Effect of European Community Law Reconsidered, or the Use and Abuse of Political Science for Jurisprudence", Oxford Journal of Legal Studies, Jun 2003, Vol. 23, Issue 2, p.281-299. Author, Enchelmaier, Stefan,
[69] see "EU Law Text, Cases and Materials (Fourth Edition)", Oxford University Press, 2007,p.344. author, Craig, P. and G. De Búrca,

sovereignty didn't come up as a problem of constitutional law, because back to the kingdom days , in the 16th century , the term" doctrine of the holy crown"[70] was widely accepted in the state. The doctrine of the holy crown was a combined theory based on the glory and power of the crown, and the theory of an amalgam of medieval organic state. And the "doctrine of the holy crown" has maintained for centuries.

After the World War Ⅱ, as the kingdom came to an end . The widely spread "the sovereignty of the 'working people'" had replaced the "doctrine of the holy crown" in Hungary. And it stayed for decades.

In 1989, a referendum on details of transformation played an important role in the set-up of the new democratic system. The transformation to the rule of the law has put the "popular sovereignty" into the front. It seemed to be working really well until a referendum on a constitutional amendment was initiated in 1999. As the referendum came out, the popular sovereignty seemed like a threat to the present constitutional system during that time. Since then, in order to solve the sovereignty problem, Hungarian government has adopted a solution which is very close to the" German Agent Solution".[71] The "German Agent Solution" can be understood as "Sovereignty definitely belongs to the people, but the way that how people use it is different, people could not just use it directly. Instead, the sovereignty was being guarded in a bank vault, so it would not be risky for the owner to use it. only the agents that either from the Parliament or be chosen from the parliament has the power to use the sovereignty, the bank that in charge of the protection and the agent that selected to use the power were all "watched" by the German national constitutional court. To sum up, the German agent solution is that it is the parliament of Germany that actually has the power to use sovereignty, only that power is being used under the name of the entire state's people. The entire procedure of using the sovereignty was under surveillance, just to make sure that the power was not being infringed.

--- Parliamentary sovereignty in the United Kingdom

The official of the United Kingdom consider the parliament of sovereignty as a principle in the UK's constitution. They state the parliament sovereignty as follow:

"Parliamentary sovereignty is a principle of the UK constitution. It makes Parliament the supreme legal authority in the UK, which can create or end any law.

[70] Bárány-Oberscall M. von, Die Sankt Stephans-Krone und die Insinien des Königreichs Ungarn, Vienna-Munich 1974—the "holy crown of Hungary"

[71] Neutralizing the Sovereignty Question-Compromise Strategies in Constitutional Argumentations before European Integration and since" author , András Jakab , European Constitutional Law Review, Vol. 3, pp. 375-397, 2006. August 28, 2007

Generally, the courts cannot overrule its legislation and no Parliament can pass laws that future Parliaments cannot change. Parliamentary sovereignty is the most important part of the UK constitution."[72] In the United Kingdom, the fact is that the British constitution law is often described as 'partly written and wholly uncodified', because the legislation of the constitution law does not exist in the test. As a matter of fact large parts of the constitution law have already been written down, much of the constitution law were written in the statute law. Over the years, in order to limit the application of parliamentary sovereignty, the British Parliament has made a few Effective legislation come into force. These laws made influence in political developments both internally and internationally.

2.3 The popular sovereignty and the sovereignty of Greece

2.3.1 Popular sovereignty

The original resource of the popular sovereignty is the people of the state.it means the power comes from the people of the state. The authorities are somehow "signing" the social contract and legal bond to the people of the state.[73] By signing the social contract, the people of the state and the political authorities are legally bond to each other. If the sovereign cannot bring out the popular will. Then it might be a big chance that it will lose its attributions. Of course, the democracy and sovereignty is closely bond.

The principle of popular sovereignty brings out the advantage of bringing a clear connection between the politics and democracy-sovereignty. It also lies at the origins of the connection between sovereignty and self-determination or national autonomy.[74] It sets out in the European context.

The core of the "popular sovereignty" is that the government operating at the present is created by majority of the people. All the power (including the legal power, political power, etc.) that the government has is actually from the free will of the state's people. Popular sovereignty in its nature is considered to be fundamental and equal to anyone that announces to be self-governing. All the power operates in the state's people in many different ways. From the concept of the popular sovereignty, we can see that the popular sovereignty is actually an ideal philosophy, because the

[72] See "the legal work of the parliament of UK", parliament sovereignty
[73] See ROUSSEAU, 1962
[74] See e.g. Weiler, 2003, 16 on the pass énature of sovereignty claims by contrast to arguments of self-determination and national autonomy or identity.

ultimate power belongs to every single person who made up the country equally. The government/ authority operating at the present, just represents the free will of the state's people. The majorities of the people make the decision that who could represent them to use the power both on the internal and international level. The popular sovereignty also can be understood as a kind of internal sovereignty, generally meaning "the ultimate source of authority within a state".

We can come up with three main features from above about the popular sovereignty

—The government operating at the present is created by majority of the people, and all power of the government comes from the free will of people. It is the people within a state territory that has the ultimate power (legal and political power).

—The resource of the state's legislative and executive power comes from the will of the people and the power comes from and will exist with the people and the nation.

—The nature of the popular sovereignty and the whole history of making the popular sovereignty show that the popular sovereignty is an ideal philosophy.

2.3.2 The sovereignty of Greece

According to the constitution law of Greece, it states the Greek sovereignty as popular sovereignty.

Article 1

1. The form of government of Greece is that of a parliamentary republic.

2. Popular sovereignty is the foundation of government.

3. All powers derive from the People and exist for the People and the Nation; they shall be exercised as specified by the Constitution."[75]

We can see that the popular sovereignty is the foundation of the GREEK government, and it is the people of Greece that have the political and legal power. But there is only one question: since the popular sovereignty is kind of ideal theory, we are worrying about what sort of impact can it make on the Greek fundamental law---the constitutional law. The question will be answered in the rest of the paper

2.4 The infringement of Greek constitution

2.4.1 The financial assistance from EU member states and

[75] The legislation of THE CONSTITUTION OF GREECE. THE FIFTH REVISIONARY PARLIAMENT OF THE HELLENES RESOLVES ART.1 (1), (2), (3)

International Monetary Found

As I mentioned before: The state\ national\ external sovereignty usually can be understood as a state that has the power to act independently from an external or higher authority. In the case of Greece, it means that Greece is" sovereign enough" to sign any agreement (bailout)with the International Monetary Foundation or EU member states, or other international organizations.

Before we go any further, first of all .let us take a look back at the main agreements that Greece have signed with the other EU member states and the International Monetary Union (IMF) to save the national economy after the eruption of the debt crisis. During the period of May, 2010.The Greek government had sign a series of memorandums and agreements in order to stop the crisis and save the national economy. In total we call them the "financial assistance package", according to the official announcement.

"On 2nd of May the mission concluded a staff level agreement for a joint euro area / IMF financing package of EUR 110 billion and supporting economic policies. On the same day the Euro group agreed to activate stability support to Greece via bilateral loans centrally pooled by the European Commission. On 9 May the IMF executive board approved a Stand-By Arrangement. On 18 May 2010, the euro area Member States disbursed their first installment of EUR 14.5 billion of a pooled loan to Greece, following a disbursement of EUR 5.5 billion from the IMF."[76]

The timetable is as follows:

—2010, 5, 3rd : The Memorandum of Economic and Financial Policies (MEFP)[77]

: The memorandum of Understanding on Specific Economic Policy Conditionality[78]

—2010, 5, 8 : Loan Facility Agreement (in total 80 billion euro)[79]

—2010, 5, 9 : Stand- by Agreement with the International Monetary Fund (in total 30 billion euro)[80]

These were really huge supports to Greek government at that moment because

[76] See"the Economic Adjustment Programme for Greece", (European Economy. Occasional Papers. 61. May 2010. Brussels. Internet only. 93pp. Tab. Graph. Ann. Bibliogr. Free.)
KC-AH-10-061-EN-C ISBN: 978-92-79-15074-6 ISSN: 1725-3195

[77] See" The Second Economic Adjustment Programme for Greece", (European Economy. Occasional Papers. 94. March 2012. Brussels. Paper and internet. 192pp.)
KC-AH-12-094-EN-N ISBN: 978-92-79-22849-0 ISSN: 1725-3209

[78] See" The Second Economic Adjustment Programme for Greece"

[79] See "the report from the European Commission about the financial assistance in EU Member States, Financial assistance to Greece"

[80] See the report from the IMF,"IMF Executive Board Approves €30 Billion Stand-By Arrangement for Greece", Press Release No. 10/187, May 9, 2010

the nation itself was facing the biggest crisis in the history. And it seemed that the money just came in time .To the Greek government, it was a big relief, because under the heavy burden of the debt, the government could not even catch a breath. The officials described it as" unprecedented ". Well it looked like it was a win-win situation: the Greek government got help and support, and to the European Union and the IMF, it was a big step that they had taken to stop the debt crisis. But was it really as good as it looked like?

2.4.2 The compact of the financial assistance on the Greek constitution

First of all let us take a review of the "IMF - stand - by agreement"

On May 9th .The Executive Board of the International Monetary Fund (IMF) approved a three-year SDR 26.4 billion (€30 billion) Stand-By Arrangement for Greece in support of the authorities' economic adjustment and transformation program. This front-loaded program makes SDR 4.8 billion (about €5.5 billion) immediately available to Greece from the IMF as part of joint financing with the European Union, for a combined €20.0 billion in immediate financial support. In 2010, total IMF financing will amount to about €10 billion and will be partnered with about €30.0 billion committed by the EU.[81]

The Stand-By Arrangement, which is part of a cooperative package of financing with the European Union amounting to €110 billion (about US$145 billion) over three years, entails exceptional access to IMF resources, amounting to more than 3,200 percent of Greece's quota, and was approved under the Fund's fast-track Emergency Financing Mechanism procedures. To sign this agreement, what the Greek government should do in return was that the government has to commit the wrong management and the debt crisis, also commit that without the financial assistance , Greece can't put the national economy on the right track .Greece has to accept the financial assistance .

The question is " Is the' IMF stand- by agreement' a real international agreement? From a legal point of view: It is more a unilateral act than a typical international agreement. legally speaking ,Greece doesn't have to do anything from the judicial order, but to take the money.

[81] See the report from the IMF,"IMF Executive Board Approves €30 Billion Stand-By Arrangement for Greece", Press Release No. 10/187, May 9, 2010

Comparing with the “IMF stand – by agreement”, the “loan Facility Agreement “is a typical international agreement. But there is one thing that should be notified is that: It is not the European Union but the rest of the member states that signed the agreement with the government of Greece. And Greece should do certain things in return.

After examining the agreements and the Greece’s implementation of the agreements, there is another question that has been raised up: Is Greek legal system a euro system? To make the question more clear .First of all, we have to notify one interesting thing .Within the EU member states. According to different states’ national constitutions, the procedure of applying for an international agreement is different. For example: in the kingdom of Netherland. According to the Dutch constitution, when the government signs an international agreement, the agreement is automatically applicable since the moment when being signed. But in the case of Greece, the procedure is totally another thing. It is that when the Greek government makes an international agreement, in order to apply, it has to be ratified first. Then we have to make one thing clear—how to ratify?

According to the Greek constitution: in the first chapter” STRUCTURE OF THE STATE”, Article 28 states as follows:

“1. The generally recognized rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.”[82]

According to Art. 28(1), we know that if the rules come from the well-recognized international law(convention).they will be part of the Greek domestic law automatically. Art.28(2), (3)says:

“2. Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law anctioning the treaty or agreement.”[83]

[82] See “The legislation of THE CONSTITUTION OF GREECE. THE FIFTH REVISIONARY PARLIAMENT OF THE HELLENES RESOLVES -section 1 “STRUCTURE OF THE STATE”, article 28(1)
[83] See “The legislation of THE CONSTITUTION OF GREECE. THE FIFTH REVISIONARY PARLIAMENT OF THE HELLENES RESOLVES.-section 1 “STRUCTURE OF THE STATE”, article 28(2)

"3. Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity."[84]

From Art. 28 (2),(3) we can see under what condition a law has to be ratified into the constitution law of Greece, and what the procedure is in order to ratify a law. In the Greek constitution law part three" ORGANIZATION AND FUNCTIONS OF THE STATE", Art.51 gives out the condition that the number of the members of the parliament has to reach certain amount to ratify the law. Article 51 states as follows:

"1. The number of the Members of Parliament shall be specified by statute; it cannot, however, be below two hundred or over three hundred."[85]

"2. The Members of Parliament represent the Nation."[86]

From Article 28 we can see that there are actually two ways to ratify an agreement depending on how much sovereignty an agreement can be passed from the international organization. In article 28(1) we can see that if "The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity." In this case, it means that the international agreement has to be ratified before it becomes operative. In article 28 (2) we can see that " when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law anctioning the treaty or agreement."[87] In this case, it means that to ratify the international agreement, a certain number of members of parliament have to vote for it, and the number can be below the tree-fifths of the current number of the members of parliament. In article 28(3) we can see that in the event of transferring sovereignty, the number of the members of the parliament has to be absolute majority. In article 51(1), we can see that the number of the members of the parliament should be between two hundreds and tree hundreds. In total, in the case

[84] See "The legislation of THE CONSTITUTION OF GREECE. THE FIFTH REVISIONARY PARLIAMENT OF THE HELLENES RESOLVES.-section 1 "STRUCTURE OF THE STATE", article 28(3)
[85] The legislation of THE CONSTITUTION OF GREECE. THE FIFTH REVISIONARY PARLIAMENT OF THE HELLENES RESOLVES -section 3 "ORGANIZATION AND FUNCTIONS OF THE STATE", article 51(1).
[86] The legislation of THE CONSTITUTION OF GREECE. THE FIFTH REVISIONARY PARLIAMENT OF THE HELLENES RESOLVES -section 3 "ORGANIZATION AND FUNCTIONS OF THE STATE", article 51(2)
[87] The legislation of THE CONSTITUTION OF GREECE. THE FIFTH REVISIONARY PARLIAMENT OF THE HELLENES RESOLVES -section 1 "STRUCTURE OF THE STATE", article 28(2)

of Greece, the number of the members of the parliament should be more than 180 or at least to 200.

On May 6th, 2010, the Greek parliament adopts law 3845/2010 .Article 1(4) of law 3845/2010 provided the authorization (legal power) to the Financial Minister to represent the state of Greece .It legally provided the Financial Minister the authority to sign more multilateral or bilateral memorandum, loan conventions or international agreements, with the Member states of the euro zone, the European Commission, the International Monetary Fund, The European Central Bank, In the Article, it also said that "the agreements, the conventions, the memoranda should have been brought to the parliament of the state for ratification.

Two days later, without any ratification. The Greek government signed the "Loan Facility Agreement" with the International Monetary Fund. What is more ironic is that three days after signing the international agreement. The Greek parliament adopted another law-3847/2010.In the Article 9 of law 3847/2010, it declared that the international agreements, conventions, or memorandum containing in law 3845/2010 article 1 will be only brought to the parliament for discussion but not for ratification.

The Greek law 3845/2010 and law 3847/2010 putting together can be understood as: The Greek parliament actually gave the Financial Minister the extensive and official authority or power to sign any agreement .convention, or memorandum. And he" legally" doesn't have to bring any of them to the parliament for ratification. Does it mean that the Financial Minter can do "whatever" he wants beyond the state's fundamental law, just in the name of "saving the country from the devastating debt crisis"? Where is the popular sovereignty? Where is the free will of the Greek people? This is actually a way of being anti-constitution.

According to the Greek official declaration, the reason why the parliament adopted the law was because they are trying to save the country from a collapse, which makes it more ironic because the Greek parliament actually adopted other laws to avoid the existing constitution. Was it worth it that to" break" the state's fundamental law just for the fiscal policy? Is Greek legal system a euro system?

In 2012, as the" EU/IMF-Greece memorandum" updates, the Greek parliament adopted law 4046/2012. According to article 1(3) of law 4046/2012, the Greek parliament provided the Minister of Finance, the Prime Minister, and the chairman of the Greek Central Bank the authority to sign all the relevant international treaties to

substantiate the Financial Aid Package. According to article 1(5) 4046/2012,"all the relevant treaties are deemed ratified at very moment that all the contracting parties sign them." On one hand, the authority and the legal power is created by law On the other hand, it is not seen by the state's constitution.

The Greek government explained that "the highest law is the safety of the country. The state's constitution will be meaningless if the nation falls apart (collapse)."is it a sweet excuse to say that the authorities have to do things that against the constitution just to protect all the citizens of Greece?

Similar case" Bundesverfassungsgericht"[88] happened in Germany, who was the biggest creditor to Greece during the sovereign debt crisis.

During the first Greece bail-out, the"Währungsunion-Finanzstabilisierungsgesetz"[89] was passed by Germany to authorize the financial minister to grant a loan of 22.4 billion euro to Greece. In addition, in order to approval the rescue package legal under German law, the "Stabilisierungsmechanismusgesetz "[90] was adopted to provide another loan of 147.6 billion euro to Greece.

The controversial legislation was considered to be unconstitutional and breached the sovereignty of the people of Germany. Furthermore, the rescue package was considered to be illegal under German basic law. The case was appealed to the German Federal Constitutional Court, which later was adjudicated by the court that the laws adopted in response to the rescue package were constitutional (for more information of the judgment, see the judgment of "Bundesverfassungsgericht").

Two things should be noted in the case is: First of all, according to the judgment of the case, in order to cover the loss of the German citizen which caused by the adoption, certain compensation was given to the citizens by the Germany Federal Constitutional Court, Which not only led to the transfer of the power of sovereignty, but also brought out "the willingness to encourage the rights of the German citizens"[91].

---

[88]See, Bundesverfassungsgericht[BVerfG][Federal Constitutional Court] 7 Sept. 2011 (Euro Rescue Package Case), 2BVR 987/10, available at http://www.bverfg.de/entscheidungen/rs20110907_2bvr098710.html;see also Press ReleaseNo. 55/2011, Federal Constitutional Court, Constitutional Complaints Lodged Against Aid Measuresfor Greece and Againstthe Euro Rescue PackageUnsuccessful—No Violation ofthe Bundestag's Budget Autonomy (7 Sept. 2011), available at http://www.bverfg.de/pressemitteilungen/bvg11 - 055en.html.

[89] See, GesetzzurÜbernahme vonGewährleistungen zumErhalt derfür die Finanzstabilität in derWährungsunion erforderlichen Zahlungsfähigkeit derHellenischen Republik [Actto AcquireGuaranteesforthe Preservation of Financial Stability in the MonetaryUnion Required Solvency oftheHellenic Republic], 7 May 2010, BGBL. I at 537
(Ger.)

[90]See,GesetzzurÜbernahme vonGewährleistungen imRahmen eines europäischen Stabilisierungsmechanismus[Act Concerning theGiving ofGuaranteesin the Framework of a European Stabilisation Mechanism], 22 May 2010, BGBL. I at 627 (Ger.).

[91] 23 Current developmentsshow the Parliament'srecollect on itsresponsibility forintegration. In response to the German Federal Constitutional Court'sjudgment,the Parliamentstipulated the Principle of Parliamentary Budget

In the case of Greece, the popular sovereignty was breached by the Greek government in the name of saving the economy of the country, and the democracy was neglected by the Greek Government as well, yet no certain compensation had been given yet.

Secondly, in the judgment of the case, the "Principle of Parliament Budget" was emphasized by the German Federal Constitutional Court, which said that: any financial assistance which is supposed to be provided to the other member states of the euro area by the Federal Government of Germany, should be brought to the Parliament of Germany for approval first". In the case of Greece, the adoption of the memorandum and the rescue package should also be brought to the parliament for ratification first under the Greek Constitution, and yet the procedure had been neglected, and the Greek Constitution had been violated by its own government.

2.5 Doctrine of state necessity

The highest law is the safety of the state. From a constitutional perspective, the reason that the Greek parliament adopted law 4046/2012, 3847/2010, and 3845/2010 and signed those agreements is because the stability and safety of the state is beyond all. By this they meant that they do not have other options but to do those things just in order to protect the people of Greece.

Before we criticize the Greek Government's declaration .we should make one thing clear first: the doctrine of state necessity.

Back to the early days, the theory of the doctrine of necessity had not been written down in any formal test. In the modern times, the doctrine of necessity has been used more in similar justifications. After Second World War, the theory of the doctrine of necessity was first used in a controversial judgment by the chief justice of Pakistan in 1954[92]. The chief justice used the doctrine of necessity as a kind of 'extra-constitutional' power to react to the situation of state emergence, and made it come into force after then. In the judgment 1954, it provided the doctrine of necessity the legal resource, which it can be put into the 1954 judgment. It was the judgment 0f 1954 that had made the doctrine of necessity established for the first in the history. The Pakistani 1954 judgment is a milestone to the doctrine of necessity. After 1954,

---

into the Act Concerning theGiving ofGuaranteesin the Framework of a European Stabilisation Mechanism. Cf. Gesetzzur Änderung desGesetzeszurÜbernahme vonGewährleistungen imRahmen eines europäischen Stabilisierungsmechanismus[StabMechG], 9Oct. 2011, BGBL. I no. 51 at 1992 (Ger.), available at http://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger_BGBl&bk=Bundesanzeiger_BGBl&start=//*%5B@attr_id=%27bgbl111s1992.pdf%27%5D.

[92] See " Pakistan, 1954: First use of the Doctrine of necessity".See also "^ Wolf-Phillips, Leslie. "Constitutional Legitimacy: A Study of the Doctrine of Necessity." Third World Quarterly, Vol. 1, No. 4 (Oct., 1979) 99.

the theory has since been continuously used in a certain amount of case in the commonwealth nations and some other places (including India, Rhodesia, Grenada[93], etc.). The doctrine of necessity was latest used in Nigeria[94] in 2010, it was used to justify extra-legal actions. In practice, actually the excuse of doctrine of necessity can be operated in two different levels: operating at the international law level and at the domestic law level.

2.5.1 Doctrine of necessity at the domestic law level

As a matter of fact, some decisions have been taken nowadays, relying on the concept that: the national courts are actually referring to the state necessity. But before any decisions been taken, two things must be clarified first: the required criteria and the definition of the doctrine. Necessity is being considered as a common law which could provide a justification against any illegal government-act in case that there is a public emergency in the state. It somehow builds up a significant connection between the actual powers of the state's government and the react of the authority when the state is under the condition of a public emergency.

At the domestic law level, the excuse of necessity can be accepted under three circumstances: first of all, the "lesser evil"[95] choice: it means when the state is under the condition of emergence, there is no better choice but to choose the one that is less harmful. Secondly, it is to balance the interests between public and individuals in order to reduce the loss. Thirdly, it is somehow like the "self-defense ", meaning: the necessity can be accepted when there is a reason or a case that can preclude wrongfulness." Gregson v. Gilbert"[96] a 1783 UK case, makes a good example of precluding the wrongfulness. In that case a hundred and fifty slaves were pushed overboard due to the reason that the water was running short.

It is a general principle that, it must be due to a good faith so that one can and shall apply for the doctrine of necessity. Pakistan established "Text of Supreme Court Judgment on Review Petitions" in 2001, in the test, the Pakistani supreme court stated that:'… The concept of the law of necessity would arise only if an act which would otherwise be illegal becomes legal if it is done bona fide, in view of state necessity, with a view to preserving the state or society from destruction'[97]. The test officially

[93] See "Grenada, 1985: Second use of the Doctrine of necessity",see also, H.V. Evatt and Eugene Forsey, Evatt and Forsey on the Reserve Powers. (Sydney: Legal Books, 1990), p. xciv.
[94] see"Nigeria, 2010: Nigerian parliament creates an Acting President".-doctrine of necessity.
[95] See political science about " Lesser of two evils principle"/" lesser evil"
[96] See"Gregson_v._Gilbert#Legal_proceedings--"Zong massacre"
[97] Text of Supreme Court Judgment on Review Petitions, (7 February 2001) Supreme Court of Pakistan, , Para. 5

approved the principle of applying the necessity. The doctrine of necessity usually can be applied when the state is under certain condition of emergence, the "certain condition" includes nature disasters,(such as: earthquakes, floods, etc.) or wars, epidemics, emergences caused by other issues, such as: the collapse of civil government.

The conditions /criteria of applying for doctrine of necessity are as follows:

1）It can be used when the state is under certain condition of emergence, the "certain condition" includes nature disasters,(such as: earthquakes, floods, etc.) or wars, epidemics, emergences caused by other issues, such as: the collapse of civil government.

2） If the emergence in 1) appears. The necessity must be applied by a "constitutional organ "(organ of a state; branch of a government).

3）Before applying for necessity, all other remedies have to be tested to be certain that they are not working in the case. Or there must no other remedies at all.

4）The balance has to be considered between the measures taken and the circumstances causing problems within the state.

5）The measures only should be taken temporarily, limiting it to the period of time that the emergence would last.

6）Normally, a group or authority cannot apply for necessity except that they are considered to be good to the existence and the continuation of the emergence itself.

7）Necessity at international law level.

In international law, since when an emergence appears, it usually makes it impossible for the sates or international organizations and so on to fully meet the demand their obligations that they concerned. The doctrine of necessity (also addressed as the state of necessity) is normally aimed and used to excuse the wrongfulness of those states, international organizations, etc. In the customary rules of international law, the doctrine of necessity has been developed and addressed as 'defense necessity'.

The doctrine of necessity is being used under certain circumstance on international law level, that is, in order to safeguard an essential interest which is being threatened by grave and imminent peril, a state has nothing else but to adopt an act along with its international obligation to other states. The adopting an act has to be the one and only way to do so. In practice, there is a big chance that the doctrine of necessity may sometimes prohibit a certain kind of obligation, which is either an

obligation demanded under a bilateral investment law, or an obligation under international customary. It is "an exception from illegality and in certain cases even as an exception from responsibility.[98]"

In 1997, the International Law Commission (ILC) gave an opinion to the case: 'Gabcikovo approved customary rule character of the ILC Draft Articles[99][100]'. That opinion has developed the doctrine of necessity on the international law level. It states:" The state of necessity is a ground that recognized by customary international law for precluding the wrongfulness of an act not inconformity with an international obligation … such ground for precluding wrongfulness can only be accepted on an exceptional basis."

In the 21 century, the doctrine of necessity had been further developed by the International Law Commission (ILC). The ILC put the doctrine of necessity into text by formulating" Draft Articles on State Responsibility" in early 2000. In 2001, in order to make the states clearly know the responsibility of the international wrongful acts, the ILC adopted "Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries[101]", and gave out the rules of international law in the text. The secondary rules of the sate responsibility had been emphasized in the 2001's text book .But the articles in the text book did not give out neither the content of the international obligation, nor the responsibility of the breach, Because the" Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries" is just the function of the primary rules.

In the "Draft Articles on State Responsibility", Chapter Ⅴ, " circumstances preluding wrongfulness, State of necessity" article 33 formulates the conditions and exceptions of applying for the doctrine of necessity. The article states follows:

1. A state of necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act of that State not in conformity with an international obligation of the State unless:

(a) The act was the only means of safeguarding an essential interest of the [*452] State against a grave and imminent peril; and

(b) The act did not seriously impair an essential interest of the State towards which the obligation existed.

---

[98]See" Continental Casualty Company v Argentine Republic, ICSID Case No ARB/03/09."
[99] See "Gabčíkovo–Nagymaros Waterworks, Hungarian: Bős–nagymarosi vízlépcső, Slovak: Sústava vodných diel Gabčíkovo – Nagymaros"
[100] See"Gabčíkovo-Nagymaros Project (Hungary/Slovakia)"
[101] See" draft articles on responsibility of states for internationally wrongful acts with commentaries 2001"

In article 33(1), it formulates the conditions of applying for the doctrine of necessity .

2. In any case, a state of necessity may not be invoked by a State as a ground for precluding wrongfulness:

(a) if the international obligation with which the act of the State is not in conformity arises out of a peremptory norm of general international law; or

(b) if the international obligation with which the act of the State is not in conformity is laid down by a treaty which, explicitly or implicitly, excludes the possibility of invoking the state of necessity with respect to that obligation; or

(c) if the State in question has contributed to the occurrence of the state of necessity.[102]

In article 33(2), it formulates the exceptions of applying for the doctrine of necessity.

In the case of Greece, the Greek government couldn't ratify the law only if there is no other remedy for the current situation not apart from the international treaty and measure. The way that the Greek government adopted law 4046/2012, 3847/2010, and 3845/2010 and signed those agreements with the member states and international organizations had already breached the constitutional law, in addition, the whole country is under the condition that there is a big chance that the civil government will collapse due to the unstoppable sovereign debt crisis. So the state necessity should be called for.

[102] see"draft articles on responsibility of states for internationally wrongful acts with commentaries 2001"

Conclusion

The sovereign debt crisis is still going on at the moment. There is still a possibility that the distressed member states of the euro area may face a situation of a sovereign default. It is somehow a paradox to give a possible solution to the sovereign debt crisis with breaching the sovereignty of a member states. On one hand, the sovereign debt crisis is the first economic recession in the European history that threatened the structure and institution of the EU. Dealing with this kind of economic eruption, EU along with the member states are honestly lack of experiences. Besides the EU treaties could not provide sufficient legal basis to deal the sovereign debt crisis, which called for a re-form. But the truth is: EU along with the member states and international organizations are doing their best to take measures to safeguard the financial stability of the euro area as a whole, although the measures had been questioned the whole time for infringing the EU law, constitution of the member states or both. On the other hand, from a traditional point of view: Sovereignty is the priority and fundamental of one state. It does not belong to any individual, organization or party. A nation cannot claim to be independent without sovereignty. Politics, economy and other issues will become meaningless without sovereignty. In the democratic countries, sovereignty of democracy somehow means the sovereignty of the people of the state. In the case of Greece, since the Greek constitution law claims that the nation is based on the popular sovereignty. So all the power come from the people's free will, and will rest with all the Greek people. The current government is just selected to represent the will of the Greek people. They absolutely have no right to deprive of the state's sovereignty from the Greek people. Of course the government cannot decide what is best for Greece by selling the state's sovereignty for money.

Bibliography

[1] Adamski, National Power Games and Structural Failures in the European Macroeconomic Governance, CMLRev. 2012, pp. 1219-1364;

[2] Athanassiou, Of Past Measures and Future Plans for Europe' s Exit from the Sovereign Debt Crisis: What is Legally Possible (and What is Not),ELRev. 2011, pp.558-575);

[3] Ruffert, The European Debt Crisis and European Union Law, CMLRev. 2011, pp. 1777-1806;

[4] Tomuschat, The Euro– A Fortress Threatened from Within, in: Ligustro/Sacerdoti (eds.), Problemi e Tendenze del Diritto Internationzale Dell'Economia, Liber amicorum in onore di Paolo Picone, 2011, pp. 275-297

[5] CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION" "http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri= OJ:C:2008: 115:0047:0199:en:PDF

[6] EFSF FRAMEWORK AGREEMENT http://www.efsf.europa.eu/attachments/20111019_efsf framework_agreement_en.pdf

[7] The scope of activity of the European stability mechanism", http://www.esm.europa.eu/#.

[8] TREATY ESTABLISHING THE EUROPEAN STABILITY MECHANISM", http://www.esm.europa.eu/pdf/esm_treaty_en.pdf"

[9] Ohler, The European Stability Mechanism: the long road to financial stability in the euro area, GYIL (2012), forthcoming.

[10] EUROPEAN COUNCIL DECISION of 25 March 2011http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:091:0001:0002:EN:PDF、

[11] L. Knopp, 63 Neue Juristische Wochenschrift 1777, 1779 (2010); see,also, U. Hä d e, 20 Europ äische Zeitschrift für Wirtschaftsrecht 399, 403 (2009)

[12] J.-V. Louis, 47 Common Market Law Review 971, 985 (2010); C. Herrmann, 21 Europ äische Zeitschrift für Wirtschaftsrecht 413, 415 (2010).

[13] ORDER OF THE PRESIDENT OF THE COURT".4 October 2012 (*),(Accelerated procedure),order,7. "http://curia.europa.eu/juris/document/document_print.jsf;jsessionid=9ea7d2dc30db57774ff134e343399983e127354ae11d.e34KaxiLc3qMb40Rch0SaxuKbxb0?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=128422&occ=first&dir=&cid=581740

[14] JUDGMENT OF THE COURT (Full Court),27 November 2012 (*)http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62012CJ0370:EN:HTML"-

[15] Vestert Borger, "Special Section The ESM Before the Courts--The ESM and the European Court's Predicament in Pringle. page129-130, available on:http://www.germanlawjournal.com/pdfs/Vol14No1/PDF_Vol_14_No_1_113-140_ESM%20Special_Borger.pdf

[16] Treaty of Nice Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, decl. 6, March 10, 2001, 2001 O.J. (C 80) 78.

[17] For an elaborate discussion of how to carry out this balancing exercise", Louis, supra note 35, at 983–85

[18] The united nations Charter guarantees the principle of sovereignty and the equality of states. Bleckmann, 1994, n.6.

[19] MacCormic, 1999, 129 who distinguishes internal fromexternal sovereignty and considers that the latter can exist in the absence of the former.

[20] On this notion of 'Relationsbegriff', Rhonheimer, 1989, 263.

[21] Loughlin, 2003 on the importance of the relationship between those who govern and those governed.

[22] Pfersmann, 2001, 38-39 on this double determination of external sovereignty

[23] Draft Constitutional Treaty on the establishment of an EU Minister of Foreign Affairs.

[24] Basic information on the European Union. European Union. europa.eu. Retrieved 4 October 2012.

[25] AISI ZHANG, Supremacy of EU Law: A Comparative Analysis. 5th of October 2012.

[26] Grimm, Dieter, "European Court of Justice and National Courts: The German Constitutional Perspective after the Maastricht Decision", 3 Colum. J. Eur. L. 229 (1996-1997). At 53

[27] Mark A. Pollack, "Theorizing the European Union: International Organization, Domestic Polity, or Experiment in New Governance", Annu. Rev. Polit. Sci. 2005. 8:357-98.

[28] Prof. Karel Klima, "The Constitutional Legal Nature of the European Union", Workshop Papers for VIIth World ,Congress of the International Association of Constitutional Law, No.4.

[29] Jan Zielonka, "Europe as Empire: The Nature of the Enlarged European Union", Oxford University Press, 2006.

[30] Adrián Tokár, IWM Junior Visiting Fellows Conferences, Vol. XI", published 2nd of November, 2001

[31] Monica Claes, The National Court's Mandate in the European Constitution, Hart Publishing 2006, pg. 559.

[32] Enchelmaier, Stefan, Supremacy and Direct Effect of European Community Law Reconsidered, or the Use and Abuse of Political Science for Jurisprudence", Oxford Journal of Legal Studies, Jun 2003, Vol. 23, Issue 2, p.281-299.

[33] Craig, P. and G. De Búrca, EU Law Text, Cases and Materials (Fourth Edition)", Oxford University Press, 2007, pg.344.

[34] Bárány-Oberscall M. von, Die Sankt Stephans-Krone und die Insinien des Königreichs Ungarn, Vienna-Munich 1974—the "holy crown of Hungary"

[35] András Jakab, Neutralizing the Sovereignty Question-Compromise Strategies in Constitutional Argumentations before European Integration and since", European Constitutional Law Review, Vol. 3, pp. 375-397, 2006. August 28, 2007

[36] Weiler, 2003, 16 on the passénature of sovereignty claims by contrast to arguments of self-determination and national autonomy or identity.

[37] The legislation of THE CONSTITUTION OF GREECE. THE FIFTH REVISIONARY PARLIAMENT OF THE HELLENES RESOLVES.

[38] Economic Adjustment Programme for Greece", (European Economy. Occasional Papers. 61. May 2010. Brussels. KC-AH-10-061-EN-C ISBN: 978-92-79-15074-6 ISSN: 1725-3195 1725-3195

[39] The Second Economic Adjustment Programme for Greece", (European Economy. Occasional Papers. 94. March 2012. Brussels. Paper and internet. 192pp.), KC-AH-12-094-EN-N ISBN: 978-92-79-22849-0 ISSN: 1725-3209

[40] The report from the European Commission about the financial assistance in EU Member States, Financial assistance to Greece

[41] The report from the IMF,"IMF Executive Board Approves €30 Billion Stand-By Arrangement for Greece", Press Release No. 10/187, May 9, 2010

[42] Press:ReleaseNo. 55/2011, Federal Constitutional Court, Constitutional Complaints Lodged Against Aid Measuresfor Greece and Againstthe Euro Rescue PackageUnsuccessful—No Violation of the Bundestag's Budget Autonomy (7Sept. 2011), http://www.bverfg.de/pressemitteilungen/bvg11‐055en.html.

[43] GesetzzurÜbernahme vonGewährleistungen zumErhalt derfür die Finanzstabilitätin derWährungsunion erforderlichen Zahlungsfähigkeit derHellenischen Republik [Actto AcquireGuaranteesforthe Preservation of Financial Stability in the MonetaryUnion Required Solvency oftheHellenic Republic], 7 May 2010, BGBL. I at 537(Ger.)

[44] Current developmentsshow the Parliament'srecollect on itsresponsibility forintegration. In response to the German Federal Constitutional Court'sjudgment,the Parliamentstipulated the

Principle of Parliamentary Budget into the Act Concerning theGiving ofGuaranteesin the Framework of a European Stabilisation Mechanism. Cf. Gesetzzur Änderung desGesetzeszurÜbernahme vonGewährleistungen imRahmen eines europäischen Stabilisierungsmechanismus[StabMechG], 9Oct. 2011, BGBL. I no. 51 at 1992 (Ger.), available athttp://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger_BGBl&bk=Bundesanzeiger_BGBl&start=//*%5B@attr_id=%27bgbl111s1992.pdf%27%5D.

[45] Wolf-Phillips, Leslie. "Constitutional Legitimacy: A Study of the Doctrine of Necessity." Third World Quarterly, Vol. 1, No. 4 (Oct., 1979) 99

[46] Text of Supreme Court Judgment on Review Petitions, (7 February 2001) Supreme Court of Pakistan

[47] Draft articles on responsibility of states for internationally wrongful acts with commentaries 2001

Table of Cases

[1] C-370/12, Thomas Pringle v. Government of Ireland, Ireland and the Attorney General.

[2] Case: Solange II:2 BvR 197/83, Europäische Grundrechte-Zeitschrift, 1987, 1, [1987] 3 CMLR 225, noted by Frowein (1988) 25 CMLRev 20

[3] Flaminio Costa v ENEL "[1964] ECR 585 (6/64)

[4] Van Gend en Loos v Nederlandse Administratie der Belastingen" (1963) Case 26/62

[5] Internationale Handelsgesellschaft" 11/70 [1970] ECR 1125

[6] C-106/77," Simmenthal II "[1978] ECR 629

[7] Factortame [1990] ECR I -2433

[8] Bundesverfassungsgericht– 1 BvR 1215/07

[9] Continental Casualty Company v Argentine Republic, ICSID Case No ARB/03/09