

# The Concept of Subsidiarity in a European Context: The End of National Sovereignty?

Frans K.M. van Nispen & Arthur B. Ringeling<sup>1</sup>

Department of Public Administration  
Erasmus University of Rotterdam, The Netherlands.

## Abstract

The concept of subsidiarity is introduced in the context of the European Union by the Maastricht Treaty [1991]. That treaty laid the foundations for the Europe of the future. However, the notion is much older as it is deeply rooted in the Christian-Democratic ideology, notably Roman Catholic religion. It has been applied to the various denominations in The Netherlands, which were institutionalized for years in pillars. The elites at the top of these pillars pursued a politics of accommodation that explains, at least partly, the relative stable political situation.

The consequences were important since The Netherlands is a country in which public and private organizations contribute to the realization of the welfare state. Besides, it is also a country in which local government takes an important share in the implementation of public tasks. Ideologically subsidiarity, sovereignty in the private domain and functionally and territorial decentralization found each other. The result was a relatively small central government, a strong decentralized government and strong social organizations.

The question may be raised what happened with the principle of subsidiarity since the outcome in the Netherlands is rather centralization than decentralization. In addition, one may question what can be learned from the Dutch experience for the process of European integration. In this paper we address the question to what extent the developments in The Netherlands have their parallel in the European context. We conclude that concepts like subsidiarity are a device for a strong society with a relatively weak center and decentralized governments.

## 1. Introduction

A couple of years ago the European Commission established criteria for good governance that should reinforce and support the principle of proportionality and subsidiarity that rules the division of power since the Maastricht-summit [1991] that laid the foundations for the Europe of the future [section 2]. However, the concept of subsidiarity is all but new. It is deeply rooted in the Christian-Democratic ideology, notably Roman Catholic religion and, as such, one of the building blocks of the Dutch

society. The concept has been applied to the various denominations in The Netherlands, which were institutionalized for years in pillars [Lijphart 1975]. The elites at the top of these pillars pursued a politics of accommodation that explains, at least partly, the relative stable political situation [section 3]. A closer look reveals that the Dutch society is much more centralized than though on the basis of the principle of subsidiarity. The question is what happened: did politician pay lip-service to the principle of subsidiarity or is it frustrated by perverse effects or by side-effects of the developments in other policy areas? In addition, one may question what can be learned from the Dutch experience for the process of European integration: is it doomed to fail too in an international context? [section 4].

The domain of the European Union is continuously expanding to new frontiers. It is said that already more than 60 percent of out laws and regulations are made in Brussels. The case of the budgetary policy, that is long considered to belong to the exclusive domain of the European member states, shows that it subject to silent centralization to the supranational level as a consequence of the joint monetary policy [section 5]. Finally, the question may be raised what this means for the sovereignty of the European member states. The ruling of the European Court of Justice regarding the interpretation of the Stability and Growth Pact [SGP] confirms that the principle of subsidiarity is applicable and therefore, that the budgetary policy is subject to centralization. Contrary to the monetary policy, the authority to pursue a budgetary policy will be never transferred completely to a supranational institution.

## 2. Governance

The last couple of decades the role of government has been under attack. We have featured a shift away from government to governance. It is referring to a wide variety of meanings [Rhodes 1997; Kooiman 2002, p. 72], but above all to another role of the government. On one side authors like Osborne and Gaebler have the view that:

*'Governance is the process by which we collectively solve our problems and meet our society's need. Government is the instrument we use. The instrument is outdated and the process of reinvention has begun'* [Osborne & Gaebler 1993, p. 24].

It should be admitted that the government is no longer - if ever in The Netherlands as will become clear later - the conductor of an orchestra, but one of the musicians, though a very special one [Ringeling 1990]. There are others that take a more radical stand advocating a minimalist role of the government leading to the so-called 'hollow state'. In the meantime governments go on doing the things that they do, did in the past and will do in the future. What we can say is that the old hierarchical model has crumbled in the Western world. But the extent differs from country to country. The concept of a network [Kickert, Klijn & Koppenjan, 1997] is, as such, more appropriate for the description and explanation of developments and events in society. Not surprisingly, the concept of a network is seen as one of the major shifts in governance [Kersbergen & Van Waarden 2001]. The other shift are from nation state to supranational institutions, from government to court, from public to semi-public or private organizations, from hierarchies to markets.

## European Governance

The bulk of the literature on European governance suggests that governance should be seen as a multi-level issue, requiring coordination between the various levels of government [Rosamond, 2000, p. 110, Hooghe and Marks, 2001]. The point of departure of this approach is the existence of overlapping competencies among multiple levels of governments and the interaction of political actors across the levels [Sandholtz & Stone Sweet 1998]. Instead of a two-level game adopted by state-centrists, multi-level governance theorists posit a set of overarching, multi-level policy networks [Marks et al. 1996, p. 41]. It is even seen as ‘an extra level or layer of governance that has been ‘fused’ onto the nation-state’ [Wessels 1997; Peterson & Bomberg 1999, p. 5]. We join that literature, though a white paper on European governance is referring to a broader interpretation of governance, creating an opening for new problem definitions and, as a consequence, new courses of action. It also established a set of five criteria for *good* governance - accountability, coherence, effectiveness, openness and participation - underpinning that democracy and the rule of law should guide the ‘modus operandi’ of the European institutions. Strangely enough, criteria as equity and legitimacy are not among the yardsticks. The application of these criteria should reinforce the principle of proportionality and subsidiarity:

*‘From the conception of policy to its implementation, the choice of the level at which action is taken [from EU to local] and the selection of the instruments used must be in proportion to the objectives pursued. This means that before launching an initiative, it is essential to check systematically [a] if public action is really necessary, [b] if the European level is the most appropriate one, and [c] if the measures chosen are proportionate to those objectives’* [White Paper 2001, p. 8-9].

In addition, the European Commission has committed itself to withdraw proposals that undermine the principle of subsidiarity [White Paper 2001, p. 22]. The application of the principle of proportionality and subsidiarity in pursuing the main goals of the European policies is being reported every year.

The principles of good governance should not be equated, by the way, to democratic government, as better governance cannot be the answer to a democratic deficit. One of the major concerns has to do with the accountability and legitimacy of the joint monetary policy.

## Subsidiarity

The principle of subsidiarity is closely related to the concept of a federation. It is the only theory of European integration that refers to subsidiarity as a principle for the allocation of tasks, responsibility and authority among the various layers of government. [Bekkers 1995, p. 14]. Strangely enough, the F-word is banned from the vocabulary of the European political leaders – which is not to say that we are not moving in the direction of a federation – but the principle of subsidiarity survived as one of the criteria for European governance [Alting van Geusau 1995, p. 51].

The principle of subsidiarity has been introduced in Europe by the Maastricht Treaty [1991]. However, the concept is much older, deeply rooted in the Christian-Democratic ideology, notably Roman-Catholic religion [Siedentop 2000, p.32]. It has played a role in the creation of the German federation as well as in the Dutch political system. The focus may be the same, the locus is different since it is referring at the supranational level to the accommodation of countries rather than denomination or groups in society. It is firmly anchored in the draft Constitution for Europe that is now up for discussion. The section about the competence of the European Union reads:

*'Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at the central level or at the regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at the Union level'* [art. 9, 3].

The application of the principle of subsidiarity is ruled by a protocol that requires, inter alia, wide consultation of national and supranational institutions. It should be noted, however, that the principle of subsidiarity is *not* applicable to issues that belong to the exclusive domain of one of the supranational institutions. It directs only those issues for which a shared responsibility exists. Neither does it touch on issues that belong to the jurisdiction of the national governments. However, the demarcation line is semi-permeable.

The question may be raised whether subsidiarity is a *constitutional* principle directing the distribution of power [ex ante] or a *procedural* requirement, attributing legitimacy [ex post] irrespectively the outcome [Bekkers 1995, p. 175; Siedentop 2000, p. 31]. However, let us see how this concept was interpreted and how it was applied in The Netherlands, before we address that question.

### **3. Subsidiarity in the Dutch Context**

The founding father of the Dutch system of the decentralized state was beyond any doubt Thorbecke<sup>2</sup>. He not only wrote the Dutch constitution of 1848, he also was the producer of the Law on Municipalities and the Law of Provinces. Without exaggeration it can be stated that the structure of government in The Netherlands of the nineteenth century was the product of his vision. And to an important extent that structure is still there.

Thorbecke was influenced by organic thinkers, active in Germany in the beginning of the nineteenth century [cf Toonen, 1987]. A law is according to the ideas of the Historic School of Law the result of an historic development and it has to be so. Law can be derived from the creative development of a nation. It disagreed with as well the ideas of Hobbes about an absolutist state as the idea of social contract of Rousseau. Individualism cannot be the only source for the organization of the state. The state is an organism with characteristics that can not be derived of its parts. Like later would be formulated by the Gestaltpsychology: the whole is more than the sum of its parts.

The whole and the parts do not have a hierarchical relationship as such. The whole and the parts are not synonym for higher and lower. Unity does not result from orders that are issued from the top. The whole and the parts are dependent on each other. They have to collaborate in order to come to adequate action [cp Toonen, 1987, pp. 75-67]. The central state, provinces, and municipalities can be viewed as administrative circles, in part overlapping each other. In a number of activities these government bodies can act by their own. For other activities they need the collaboration of other bodies. It follows that provinces and municipalities had an autonomous sphere. But at the same time there were governmental tasks that they shared and on which they have to collaborate. Their relationship however was organic and not subordinated. Central government was not the unique source of power. Neither could it in a number of circumstances act on its own, but needed the support of other government bodies.

The concept of subsidiarity has been used for a long time in The Netherlands. It did not refer to foreign policy, or after 1945, to European integration. It was used for straightening out and organizing relationships within the country. The principle of subsidiarity referred to the relationship between state and society and asked attention for the position of the components of society toward the state. It is foremost a call for decentralization and the expression of the political will to respect the interests of the nation state and to be restrictive with the transfer of extensive power to the European level of government [Bekkers et al. 1995, p. 20]. The Catholic political movement used the concept. Some protestant movements preferred the term 'sovereignty within its own sphere'. And the third important social and political movement, the social-democratic movement could not stay behind and used the concept 'functional decentralization' although social democrats much more preferred the idea of 'territorial decentralization' than functional decentralization. All these concepts expressed a development in Dutch political philosophy of the beginning of the twentieth century. In this section we pay more attention to this way of thinking.

### **3.1 A Catholic Principle: Subsidiarity**

For the Catholics an important source was the papal encyclical *Quadragesimo Anno* [1931]. The concept was originally derived from the law of nature, i.e. enclosed in the divine order. Society, it said, does not consist of individuals only, but also communities. Bigger communities stem from smaller ones and both must have the possibilities to develop themselves according to their own nature, competences and responsibilities. These communities are institutions of lower order.

The state is an institution of higher order. Because the state is of higher order it has a right to intervene in these communities. The smaller communities have to contribute to the bigger entity and to obey the laws of that entity. The state guards intolerable infringements of the public interest. The state intervenes when lower communities are not able to realize their competences and responsibilities or fail to act according to them. So, governmental intervention is subsidiary [Woldring, 1996, 185]. But the state was not allowed to do everything. It had to respect the independence of the lower communities. Toward them the state had four functions: leadership, control, stimulation and restriction [Banning, 1962, 70].

Interesting to note is that the subsidiarity principle was a reasoning for promoting social policy. Quadragessimio Anno, like its predecessor Rerum Novarum [1891] before, was a progressive document. Both contained not a plea for less, but for more governmental intervention. It also promoted another, more organic way of defining public and private. Certain branches of industry and certain professions should be considered as public or should be organized within the public sector. It was the time of corporatism.

Should we not say that originally the concept of subsidiarity was a device for more state and a larger public sector? Because it became also a concept that recognized the importance of social organizations vis a vis the state, stressed that the state was not competent for everything, that it had to be prevented that the state became an all overwhelming power. Quadragessimio Anno expresses it like this:

*'... just as that what individuals achieve on their own initiative and by their own effort, may not be taken away from them and dedicated to the community, likewise it is also unjust and a great disadvantage, even a disturbance of the good order, to transfer that what can be done by a smaller and subordinated community to a bigger and higher ordained community. Every social interference, according to its nature, has to be a help to the members of the social boy, and not destroy or absorb them.*

So, to conclude, the principle of subsidiarity has two aspects. On the one hand, it offers the state the right to intervene in developments in society. On the other hand, it stresses the right of independence of other communities than the state in the organization of social fabric.

### **3.2 The Protestant Dogma: Sovereignty in its Own Sphere**

A similar philosophy could be found in circles of the Reformed Church. It came into being in the eighties of the nineteenth century after a split with the mainstream protestant church. Its leader, Abraham Kuyper, formulated the principle that the state was not the only sovereign in society. In a series of lectures about the Calvinist religion at Princeton University [under the auspices of the L.P. Stone Foundation] he argued:

*'In a Calvinistic sense we understand hereby, that the family, the business, science, art and so forth are all social spheres, which do not owe their existence to the state, and which do not derive the law of their life from the superiority of the state, but obey a high authority within their own bosom; an authority which rules, by the grace of God, just as the sovereignty of the State does. This involves the antithesis between State and Society, but upon this condition, that we do not conceive this society as a conglomerate but as analyzed in its organic parts, to honor, in each of these parts, the independent character, which appertains to them' [Kuyper 1898].*

Society consisted in his view of a lot of different sectors and institutions, each with its own competence and responsibility, each also with sovereignty in its own spheres

[Woldring, 1996, 192-195]. He made a principal distinction between state and society and also between the authority of the state and other forms of authority in society. The authority of the state was artificial and mechanical, whereas the authority of social institutions like families, companies, churches and school was organic and essential to preserve the unity of the institution. The state had to serve the interests of the community. People would be represented in order to influence rulemaking and control the execution of policy. In particular the people had to control the degree that the state respected the sovereignty, the freedom, competences, and responsibilities of the communities. The authority of the state and the authorities of the communities had to be aligned to each other.

The Catholics were a minority in The Netherlands. A number of protestant groups like the Reformed Church were also. What united them was that they did not want to loose their identity. And concepts like subsidiarity and 'sovereignty in its own sphere' were forceful concepts to reach that. With the help of that these political movements succeeded in establishing their own educational system, sponsored by the state. It is obvious that schools are very crucial in promoting an identity as are hospitals, housing associations, old age homes, newspapers and broadcasting systems. The outcome has been called the pillarization. Each, originally religious group build up its own social and political organization. They became broad and important social movements that combined social organizations, political parties, churches, unions of employers as well as laborers. According to his or her conviction everybody could live in its own pillar.

The pillarization was not the only consequence for the structure of society, because the christen-democrats also stimulated corporatist arrangements in the public sphere. Special organizations for certain productions sectors were proposed. Representatives of organizations of employers and unions had to collaborate in boards sharing the responsibilities for production circumstances and labor conditions. In a number of European countries this movement could be observed in the twentieth century [cf. Schmitter and Lehbruch, 1979]. It should be noted that private organizations participated in public activities, like rule making. In Christian-democratic circles it was not unusual to consider the rule making by social institutions also as rulemaking of a public character [see Balkenende, 1992].

### **3.3 The Social Democratic View: Decentralization**

The principle of subsidiarity basically comes down, as we have mentioned before to decentralization. In particular in social-democratic circles it was to some extent used as a competitive philosophy for the concept of subsidiarity. But the concept had a significance that was much more containing. Therefore we have to go back to the world of thought when the Dutch state was constructed.

Social-democrats had to discover the virtues of decentralized government, focused as they originally were on social relationships and the role of the state [see Brasz, 1960, 81-86]. However, once they started to participate in the government of bigger cities, the advantages of creating conditions and services on the local level became clear. In a number of West-European countries they developed a strong tradition of territorial decentralization. That tradition can also be found in the Scandinavian countries. The

central state in their view was, however, always close by. Organic thinking was not a part of their philosophy. To the contrary, when they were able to initiate reforms at the national level and force other governments to participate in the execution of it, they would not hesitate. At the same time a lot of the social-democratic representatives on the national level build up their political experience in local government.

To sum up, important political movements in The Netherlands all had elements in their philosophy seeing to the relationships between the state and the communities. That last may be considered as lower, the state was not free to do or not do with regard to these communities. The concept of subsidiarity meant a limit to state intervention. The consequence was that a lot of public tasks were promoted on a decentralized level, within government or in society itself. According to this concept one could speak of governance with a relative small center.

#### **4. How Subsidiarity has Worked-Out in the Dutch Context**

The principles leading to decentralization that we described produced however strange results. To some it can be said that the Dutch from the second half of the nineteenth century was a state with a relative weak center. The national government was, without any doubt, much stronger than during the time of the Dutch federal republic during the 17<sup>th</sup> and 18<sup>th</sup> century, but that changed with the French occupation [1795-1813]. A monarchy replaced the republic when Willem the first came to power as the first King of The Netherlands. The new Constitution of 1813 country transformed the country from a federal in a unitary state. The changes were somewhat against the current European trend, but the new unitary state cannot be compared in anyway with the centralization of, for instance, the French state or the British Empire. Surprisingly, about 150 years later Gladdish calls his book about the Dutch state *Governing from the Centre* [Gladdish, 1991]. One may question if he is right and, if so, what happened? Did the principles not work anyway? Or did they work differently than expected? In addition, what can be learned from the Dutch experience for the future of the European Union?

##### **4.1 The Trade-Off between Centralization and Decentralization**

The concept of decentralization has reigned in The Netherlands for almost the whole 20<sup>th</sup> century. The various political movements all agreed about one thing: give way to decentralized governments and social organizations. The outcome was not without consequences since The Netherlands is characterized as a country with a relative small, and in the view of some observers, effective and efficient government [see Wilensky, 2002].

The role of the centralized government has increased more and more during the second half of the 20<sup>th</sup> century. The country is more and more centralized than before. The decision making process has become a national affair. The regulation of policy areas has grown substantially despite the pursuit of deregulation. In one sentence, the center that seemed so empty originally became a busier and busier place. At least three explanations can be offered for this unexpected process of centralization.

First, the birth of the welfare state and the reconstruction of the country after the war have induced a process of centralization of the Dutch society. The need for concerted action between state, employers and the unions has led to a highly complicated system with responsibilities for all stakeholders that has laid the foundation for the so-called Dutch 'poldermodel'. Besides, the centralized government became the main provider of subsidies in order to promote redistribution which is characteristic for the welfare state. At the top of the process of centralization 42.5 per cent of GDP was spent by or through the national government as compared with 21.7 percent of GDP by the subnational government [1987].

Second, the politics of accommodation, nowadays referred to as 'consensual democracy', is directed by four empirical grounded rules of the game [Lijphart 1986; Van Mierlo 1989]:

1. The cooperation at the top of the pillars in the form of all party government or a grand coalition;
2. The distribution of goods and services as well as subsidies on the basis of the fair share principle;
3. A veto in issues that are considered as crucial, fundamental and vital for the identity and philosophy of a pillar;
4. A maximum of autonomy for each pillar to make its own decisions [the principal of subsidiarity].

These rules had consequences for the actual structure of the public sector in The Netherlands. The cooperation at the top leads almost unnoticed, but inevitable leading to some degree of centralization and harmonization. However, the institutions and organizations of the pillars curtailed the relative strength of the central government. The situation changed drastically due to the diminishing role of the denominations as a leading principle. Surprisingly, the system of cooperation at the top was kept in operation. It provided a license for centralization to the national government, being not longer subject of a system of checks and balances.

Third, the prominent role of the political ideologies has almost faded away due to the retreat of the state [Tjeenk Willink 2004, p. 22]. The primacy of politics was hollowed-out [Frissen 1999], sharply reducing the legitimacy of politicians. It should be noted that the politicians did not loose the battle with organizations in the private sector, but with organizations in the public sector, notably the bureaucracy [Ringeling 2004]. Public officials, filling the gap that politics create, fostered uniformity of conditions and situations in their realm. Besides, it turned to the private sector for guidance, lacking a seamount. The gospel of efficiency with its praise of the economy of scale became the main yardstick to assess the performance of the government.

The combination of these developments has cumulated in an almost unprecedented centralization. In recent years, we featured a retreat of the central government with regard to execution of public policy. But load shedding was from the public to the private rather than within the public sector. It features one of the major shifts in governance that can be labeled 'governance without government' [Kersbergen & Van Waarden 2001, 16-18]. The position of the municipalities and provinces may have lost terrain, but they still have rights of their own. The same may be said about the semi-public organizations that have a big share in the execution of the tasks of the welfare state. In fact we feature a revival of these semi-public organizations due to the retreat of the government. The deregulation and privatization movement may be over

the hill, but it is obvious multi-layer governance and, therefore, subsidiarity are going to play a major role in Dutch politics. What can be learned from the Dutch experience for the process of European integration?

## **5. Subsidiarity in the European Context**

The all party government or grand coalition has its equivalent in the institute of bi-annual summits of the European Council that got legal recognition by the Single European Act [1987]. The meeting of the Heads of States or Governments of the European Member States features the intergovernmental approach contrary to the European Commission that reflects the supranational method.

The budgetary policy of the European member states is coordinated and monitored by the Economic and Financial Council [ECOFIN] that gathers in Brussels once a month. Decisions are basically made by qualified majority, in co-decision or consultation with European Parliament, with the exception of fiscal matters for which unanimity is required. None of the member states has veto-power, though some countries are more equal than others. The voting power of the member states in the ECOFIN is more or less related to the size of the population. A coalition of 25 of the 87 votes is needed to block a decision<sup>3</sup>. In this paper we further focus on the principle of subsidiarity as applied to or illustrated by the budgetary policy.

### **The Case of the Budgetary Policy**

A couple of observations can be made when the principle of subsidiarity is applied to the budgetary policy. At face value, the principle of subsidiarity is not applicable because the budgetary policy belongs to the exclusive domain of the European member states. However, budgetary consolidation is a prerequisite for a joint monetary policy and, therefore, may jeopardize the principle of subsidiarity regarding the fiscal policy of the European member states. It might be relevant, therefore, to look at the consequences of the common monetary policy for the budgetary policy of the European member states.

The decision to transfer the exclusive authority for a common monetary policy to a new independent institution at the supranational level has been a deliberate decision of the European member states. The side-effects, though, on the budgetary policy are rather implicit and obscure. The time schedule of the budget cycle in the European member states has been streamlined to a calendar year. The reference value for the budget deficit is set at the 3 per cent of GDP at market prices. Later, the heads of state and government agreed to reduce the budget deficit even further to 'close to balance or even in surplus'. The progress that is made with regard to the reduction of the budget deficit has to be reported every year in a convergence report [outs] or stability report [ins]. The method of open coordination [bench-marking] in combination with the procedure for the reduction of excessive deficits is inevitably leading to a centralization of the budgetary policy. The guidelines have been reinforced and strengthened as part of the Stability and Growth Pact that was reached at the Amsterdam summit. Finally, economic coordination is pursued by the Broad Economic Policy Guidelines [BEPGs] that are updated every year.

The budgetary policy has been subject of the intergovernmental approach that is closely related the neo-functional theory of integration which can be described best as:

*'While a federal outcome might be the ultimate goal, this would not be achieved through the pursuit of rational argument and forward-thinking constitutional design, but through incremental and strategic means'*  
[Rosamond 2000, p. 51].

The consequence of all the side effects of the joint monetary policy is a centralization of the budgetary policy, i.e. a frustration of the principle of and subsidiarity.

The applicability of the principle of subsidiarity to the budgetary policy has been challenged by the French minister of Finance Francis Mer, claiming that the budgetary policy belongs to the exclusive responsibility of the European member states:

*'We still live in a Europe where the nation states are in charge of public policy, notably the budgetary policy'* [Mer 2002].

He refused, supported by his German colleague, to reduce his budget deficit below the reference value. He issued, motivated by electoral reasons, a package of measures to accomplish tax relief instead of deficit reduction, arguing that the SGP is not alone about stability but also about the growth. The budget deficit would disappear as snow under the sun as soon as the economy recovers. Unfortunately, the outcome of this strategy will be only visible in the long run.

The conflict about the applicability of the principle of subsidiarity was settled in favor of the nation states. The proponents of going by the book - Austria, Finland, The Netherlands and Spain - were simply overruled by a qualified majority of the opponents, pointing at the economic situation<sup>4</sup>. As a consequence, the French as well as German governments are breaking their obligations under the treaty for the third year in a row. Paradoxically, economic, read budgetary coordination was required at the time by the German government in exchange for its support of the French initiative for a joint monetary policy.

The decision of the ECOFIN to suspend the procedure for the reduction of excessive deficits, notably not to charge penalties, is brought to court by Pedro Solbes Mira, the then commissioner for Economic and Financial Affairs, backed unofficially by the Dutch government. The court has ruled that the decision of the ECOFIN is illegal and, therefore, that it has to reconsider its position, implicitly underscoring that there is no distinction between big and small states. Meanwhile, the European Commission has issued a discussion about a more flexible interpretation of the obligations of the European member states under the SGP, taking into account the economic cycle and the size of the public debt. In addition, coherence is required between the budgetary and economic policy objectives as part of the Lisbon strategy.

The question may be raised what this means for the budgetary policy. First, the decision of the European Court of Justice regarding the interpretation of the SGP is, as such, the mere codification of the principle of subsidiarity and proportionality, i.e.

a statement that [a] public action is really necessary, that [b] the European level is the appropriate one, and that [c] the measures chosen are proportionate to the objectives.

Second, the ruling constitutes a change in the division of power in favor of the supranational level. The consequences are a bit ambiguous. On the one hand, the European member states are not any longer [if ever] free to pursue their own budgetary policy. They have to live up to their obligations under the SGP that is an integrated part of the draft constitution. The budgetary policy is clearly a multi-level game. On the other hand, the leeway of the European member states may be greater thanks to a less rigid interpretation of the reference value for the budget deficit and the procedure for the reduction of excessive budget deficits.

The case of the budgetary policy is hiding a more fundamental conflict about the division of power in the Europe of the future, i.e. what the Germans have called the 'Kompetenzkatalog'. The decision of the European Court of Justice is feeding the fear of the outgoing Dutch commissioner for the Internal Market, Bolkestein, who has claimed that we are making:

*'... the same mistake all the time: Europe is engaged when something is considered as good or positive. It is an ordinary bureaucratic instinct. We are only paying lip service to the doctrine of subsidiarity [...] that is continuously trampled by feet. The principle of subsidiarity is not used so far by the European Court of Justice as an argument to change or the reject an European guideline'* [Kranenburg 2004].

The opposite is true: the ruling of the European Court of Justice reconfirms a European guideline.

One of the main reasons that subsidiarity is trampled by feet is, according Bolkestein, that the European institutions belong to the inner circle. He argues that the check by an outsider is needed to avoid that the principle of subsidiarity will keep a dead letter. The role of the national parliaments in the monitoring of the principle subsidiarity that is foreseen in the draft Constitution for Europe should be considered, therefore, a promising step in the right direction [Bolkestein 2004, p. 27]. Contrary to the Dutch situation, the principle of subsidiarity is molded or turned in a procedure in which national parliaments play a major role. A third, respectively fourth [if a provision has to do with freedom, justice or security] of the national parliaments may force a reexamination of a proposal.

## **6. The End of Sovereignty?**

The position of the state has always been weak in The Netherlands, a country that has been often referred to as a decentralized unitary state. The consequence is that reference is made to the government rather than to the state. Contrary for instance to France, sovereignty never has been issue. The sovereignty in its own sphere, i.e. subsidiarity has been the leading principle in the creation of the Dutch state [Tjeenk Willink 2004, p. 13].

The principle of subsidiarity is frustrated in the second half of the twentieth century due to a number of developments in society with centralization instead of decentralization as a perverse effect. One may question if this is the end of

sovereignty by someone defined as ‘the right to sit at the table’. The answer is no. The principle of subsidiarity is still alive. But it did not prevent a centralization of policy making in the public sector in The Netherlands.

The question is what can be learned from the Dutch experience for the process of European integration. The developments in The Netherlands constitute a potential threat for the principle of subsidiarity at the European level. The future is not so bright. First, it refers to the concept of a federation which is not longer, if ever, the leading theory of European integration. Second, the principle of subsidiarity is downgraded from a constitutional principle to a procedural requirement, opening the door for lip-service. It is far too early to draw conclusions, but we distinguish six potential outcomes:

First, the principle of subsidiarity is respected, especially in the case of ‘new’ tasks. It is hard to believe as the Dutch commissioner Bolkestein has argued, that a decentralization of current activities will take place;

Second, the applicability of the principle of and subsidiarity may be consistently and deliberately limited, for instance by a declaration that a policy area belongs to the exclusive domain of the supranational level. The opposite might be true as well but that is not in conflict of the principle of subsidiarity.

Third, the provision in the constitution is essentially symbolic. Politicians pay lip-service. The reference that they make to the principle of subsidiarity is basically rhetorical. A decentralization of tasks has never been the intention.

Fourth, the principle of subsidiarity may generate opposite effects, because benchmarking and coordination lead to centralization rather than decentralization;

Fifth, the application of the principle of subsidiarity may be frustrated by developments like the economy of scale or bureaucratic behavior that interfere with the strive for decentralization;

Last, but not least, the application of the principle of subsidiarity may generate perverse side-effects that lead to centralization in other policy areas with as a consequence that a member state over-all is worse off.

The case of the budgetary policy indicates a shift in [the division of] power within the framework of subsidiarity in the direction of the European institutions. The opposite effect that is generated by the principle of subsidiarity – centralization instead of decentralization - constitutes a potential threat to the sovereignty of the nation state. However, the stand of the European member states with regard to the reduction of their budget deficit shows that they are prepared to fight for their own sovereignty<sup>5</sup>.

One may question whether the case of the budgetary policy is representative for the process of European integration. On the one hand, the implicit centralization does not seem to be restricted to budgetary or fiscal policy. The accreditation or benchmarking in higher education as a consequence of the Bologna-declaration will lead to a shift in the division in power in favor of a supranational institution and a centralization or harmonization of programs. On the other hand, a debate is launched about the decentralization of the agricultural policy that has been the core business of the European Union for a long time [cp. Bolkestein 2004].

Finally, the question may be raised to what extent national differences are still accepted. It should be repeated that variety is the spice of life. The differences in

budgetary strategy or policy mix of the European member states to deal with fiscal stress constitute not so much of a threat as well as a force. The core of politics is, as Van Gunsteren has stated correctly, learning to cope with differences [Van Gunsteren 1994].

## Endnotes

1. We would like to thank the member of the Center of Public Governance and the participants of the 2004 Conference of the Transatlantic Policy Consortium.
2. In all fairness should be noted that Thorbecke belong the liberal movement.
3. A qualified majority will be reached from November 1, 2004 on if the following two conditions are met:
  - if a majority of member states approve in some cases a two-thirds majority;
  - a minimum of 232 votes is cast in favor of the proposal, i.e. 72.3 % of the 321 votes.

In addition, a member state may ask for confirmation that the votes in favor represent at least 62% of the total population of the Union. If this is found not to be the case, the decision will not be adopted.

4. The minority coalition, standing for 20 of the 87 votes, came 5 votes short for a veto.
5. The outcome of the process of European integration may, as such, more in line than expected with the striking characterization of Alexis de Tocqueville of the original idea of the American federation' [Van Aubele & Van Nispen 2002, p. 102].

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